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

+ W.P.(C) 3940/2012

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Judgment Reserved on : May 07, 2013
Judgment Pronounced on : June 21st, 2013

B.K.SHAH MEDICAL INSTITUTE AND
RESEARCH CENTRE

..... Petitioner

Through: Mr.Maninder Singh and Mr.P. S. Bindra, Adv.

versus

BOARD OF GOVERNORS IN SUPER SESSION
OF MEDICAL COUNCIL OF INDIA

..... Respondent

Through: Mr.Amit Kumar, Adv.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J.

1. By the present petition the petitioner seeks quashing of email/communication dated 27.06.2012 sent by the respondent, Medical Council of India (hereinafter referred to as 'MCI'), whereby petitioner's application for increasing MBBS seats from 150 to 250 has been rejected.
2. The brief facts, leading to filing of the present petition, are that the petitioner is a medical college and is running a MBBS course. As per the petition, the petitioner is run by a Public Charitable Trust, namely, Sumandeep Vidyapeeth Trust. The Trust had established a Dental College in the year 1999 and a Teaching Hospital at Piparia, Tax, Waghodia, Dist. Vadodara (Gujarat) in the year 2000. The petitioner's Hospital has been in operation since 2000 and has been providing medical and teaching services to a large number of people. The petitioner's Trust had also started a College for Physiotherapy in the year 2000.

3. In the year 2002, petitioner's Trust had made an application under Section 10A of the IMC Act (hereinafter referred to as 'the Act') for establishing a Medical College At Piparia, Ta, Waghodia, Distt. Vadodara (Gujarat) for 150 MBBS admissions annually. Upon satisfaction of the respondent, MCI, regarding fulfilment of all the conditions, permission under Section 10A was granted to the petitioner from the academic year 2003-04.
4. Since the petitioner fulfilled all the requirements as per the statutory scheme incorporated under Section 10A of the Act and the statutory regulations made thereunder, the petitioner was granted renewal of permission, year after year, and eventually recognition under Section 11(2) of the Act was granted by the Government of India notification dated 30.06.2008.
5. It is the case of the petitioner that upon the grant of recognition u/s 11(2) of the Act, the petitioner had become entitled to admit 150 MBBS students in every academic year without being required to seek any further annual permission / renewal from the respondent-MCI. However, the petitioner or any other college does require permission from the MCI for seeking increase in the admission capacity.
6. It is contended by Mr.Maninder Singh, learned senior counsel for the petitioner, that it requires large investments and lot of efforts, finances for providing and continuously maintaining additional infrastructural, teaching and other facilities for seeking increase in the admission capacity. The petitioner college, for the purpose of seeking increase in the admission capacity, i.e. 150 to 250 MBBS admissions annually, had put in all the required efforts, resources and finances for this purpose and is maintaining the same at a huge running cost.
7. On 6.8.2011 as per respondent's regulations, the petitioner had submitted its application u/s 10A of the Act and the regulations made thereunder for

increase in the admission capacity from 150 to 250 MBBS admissions annually. This application was duly submitted with the office of the respondent-MCI on 06.08.2011, completed the formalities and also submitted the necessary documents to be submitted in this regard.

8. Mr.Maninder Singh, senior counsel for the petitioner submits that as per the regulations the application under Section 10A of the Act is required to be made to the office of the Ministry of Health, Government of India, whereafter it is forwarded to respondent-MCI for evaluation and recommendations. However, with the passing of the Indian Medical Council (Amendment) Act, 2010, all the decisions are required to be taken by the Board of Governors itself under Section 10A of the Act and not by the Central Government. Mr.Maninder Singh further submits that Clause 5 of MCI Regulations of 1999 lays down that if any application forwarded to it by the Government of India is incomplete and does not fulfill the statutory preconditions, as per MCI regulations, it is the duty and obligation of respondent to return the same. It has also been made obligatory on the part of respondent to return any such scheme/application to the Ministry of Health, Government of India alongwith the enclosures and the processing fees with the obligation to further state the deficiencies in any such application. It is, thus, contended that it is only when an application is found to be complete by respondent-MCI under the provisions of Clause 5 of MCI regulations, that respondent undertakes the exercise of conducting an inspection in terms of Clause 6 of its regulations. Counsel further contends that under the statutory regulations of MCI, it is only those applications made under Section 10A which are found to be complete and fulfils all the statutory preconditions that respondent-MCI undertakes the further exercise of evaluation by conduct of inspection of the college.

9. In support of the above submission, reliance is placed on *Government of A.P. & ANr. Vs. Medwin Education Society & Ors* (2004) 1 SCC 86 and more particularly paragraphs 23 and 24, which are reproduced below:

23. It is not in dispute that one of the qualifying criteria to render an association eligible for permission to set up a new medical and dental college is to the following effect:

“Essentiality certificate regarding the desirability and feasibility of having the proposed medical college/dental college at the proposed location has to be obtained by the applicant from the respective State Governments or the Union Territory Administration and that the adequate clinical material is available as per the Medical Council of India’s requirements.”

24. The statutory requirements as laid down in the Act and the Regulations are, therefore, required to be complied with before application filed by the person or association for setting up a medical college is taken up for consideration.”

10. It is further submitted by counsel for the petitioner that after the respondent-MCI conducts inspection of the institution, it comes under an obligation to thereafter take necessary action under clause 7 of the Regulations of preparing and forwarding a factual report to the Central Government alongwith its recommendations, as has been provided in Clause 7 of MCI regulations. This clause also provides for the reconsideration and Clause 8 of MCI regulations becomes applicable in relation to grant of permission.
11. Mr.Maninder Singh also contends that having regard to the fact that huge efforts, resources and finances are required for either establishing a medical college and/or seeking increase in the admission capacity and further huge efforts, resources and finances are required for continuously maintaining the same. The statutory scheme under the Act and the regulations made thereunder does not permit any casual approach on the part of the MCI in not taking necessary steps in time. The statutory

scheme does not permit the MCI not to discharge all its obligations in time towards grant of permission/ renewal.

12. It is next contended by Mr.Maninder Singh that the petitioner had submitted its application on 06.08.2011 to the MCI (in terms of the provisions of the MCI Amendment Act of 2010). All the necessary preconditions were fulfilled and necessary documents had been furnished to respondent-MCI. However, pursuant to a communication on the website of MCI dated 08.12.2011 for a revised affiliation, petitioner sent a communication dated 21.12.2011 for submitting the assessment Form-A, Form-B and declaration forms in support of its scheme/application dated 06.08.2011 which had been submitted in the prescribed format. Counsel submits that the petitioner had been further given to understand that after 03.11.2010, the respondent had dispensed with the requirement of revised Essentiality Certificate for those medical colleges who have already been established and their MBBS degree has already been recognized. However, the petitioner still furnished a revised Essentiality Certificate issued by Government of Gujarat on 22.12.2011. On 10.01.2012, the petitioner had requested respondent to undertake the exercise of further evaluation of petitioner's request for increase of seats from 150 to 250 MBBS admissions annually.
13. Respondent-MCI in terms of the provisions of Clause 5 of its regulations, vide letter dated 27.01.2012 addressed to petitioner Institute, required the petitioner to submit the following:
 - i) Consent of affiliation in the prescribed format;
 - ii) Year wise targeted time bound programme; and
 - iii) Processing fee of Rs. 4 lakhs
14. In compliance with the aforesaid letter of respondent-MCI on 15.02.2012, petitioner submitted revised consent of affiliation in the prescribed format,

yearwise targeted time bound programme alongwith draft for Rs. 4 lakhs bearing No. 775932274, in favour of Secretary, MCI, drawn on Indian Overseas Bank.

15. It is strongly urged before this Court by Mr.Maninder Singh, senior counsel, that since the respondent was fully satisfied that petitioner had fulfilled all the statutory preconditions and all other requirements for evaluation of petitioner's scheme for increase of seats from 150 to 250 MBBS admissions annually, respondent by e-mail addressed to Dr. B. Prabhakar, Dr. B.L. Sherwal, Dr. G. Rajeshwari and Prof. V. Shukla, required them to conduct an inspection of petitioner's institute for increase in the admission capacity from 150 to 250 MBSS admissions annually. Copy of the aforesaid mail was also marked to the petitioner. In the said copy the Dean of petitioner's Institution was advised to cooperate with the assessment forms in 2 parts and also to cooperate with the inspection team of respondent-MCI. The inspection of petitioner's institution was to be conducted on 26th and 27th March, 2012.
16. Mr.Maninder Singh submits that having regard to the fact that 26th & 27th March, 2012 were falling within Holi Holidays and other religious festivals including Gudi Padwa, Chetichand, Chaitri Navratri and Mahavir Jayanti, the petitioner requested respondent to re-schedule the inspection within a period of 2 weeks and after 26th of March, 2012.
17. It is further submitted that having regard to the bonafide and genuineness in petitioner's request, the respondent vide its subsequent communication dated 10.04.2012, received by the petitioner on 15.04.2012, intimated the petitioner that the inspection of petitioner's college for increase of seats from 150 to 250 MBBS admissions annually was re-scheduled for 16th & 17th April, 2012.
18. It is further pointed out by counsel for the petitioner that inspection of

petitioner's Institution was conducted by assessment team of MCI on 16th and 17th April, 2012. Counsel also submits that it was petitioner's clear understanding and firm belief that the inspection team of the MCI was fully satisfied in relation to the fulfillment of all the infrastructural, teaching and other facilities for 250 MBBS admissions annually.

19. Mr.Maninder Singh submits that the respondent was under a statutory obligation to assess the scheme submitted by the petitioner for increase of seats from 150 to 250 MBBS admissions annually alongwith the inspection report and take a decision thereupon in terms of Clauses 7 & 8 of MCI regulations. However to the utter shock and dismay petitioner received an email from respondent-MCI dated 27.06.2012 at 9.04 P.M., that the Board of Governors of respondent-MCI had decided not to approve the scheme/ proposal of petitioner for increase of seats from 150 to 250 MBBS admissions annually on the ground that according to respondent-MCI, petitioner did not qualify the criteria of submission of application, i.e. the existence of teaching hospital for 10 years as 1st letter of permission for standing of medical college was issued on 30.09.2003. In view thereof Petitioner's application/ scheme for increase of MBBS seats from 150 to 250 annually under Section 10A of the Act from the academic year 2012-13 was disapproved.
20. The petitioner vide its letter dated 30.06.2012 while stating the aforesaid facts brought to the notice of respondent-MCI that its action was wrong and in breach of the Indian Medical Council Act and rules framed thereunder. The said letter was received by the respondent-MCI on 30.06.2012. However, the petitioner has not received any response from the respondent-MCI in this regard. Thus, there continues to remain an impermissible and illegal refusal on the part of the MCI in discharging its statutory obligations.

21. Mr.Singh further contends that the requirement under the regulations is to, as on the date of making the application for increase of seats, provide 1100 beds in the attached hospital for teaching of the students. The hospital should be of 10 years standing and respondent-MCI was fully satisfied that petitioner fulfilled this statutory requirement of 1100 teaching beds with 10 years' standing. The certification by the State Government to this effect in the Essentiality Certificate was also found to be satisfactory by respondent-MCI. In case the MCI was dissatisfied with the petitioner fulfilling its obligations, the respondent-MCI was statutorily obliged to return the application.
22. Strong reliance has also been placed by senior counsel for the petitioner on the essentiality certificate issued by the State wherein it has been stated that the institute has 1250 number of teaching beds with the standing of twelve years to show that even the State Government has recognised the fact that the petitioner had a teaching hospital of more than 10 years of standing. It has been stated that according to Qualifying Criteria, Sub Clause 5, refers that a person must own and manage a hospital of not less than 300 beds with necessary infrastructural facilities capable of being developed into teaching institution in the campus of the proposed medical college. Relevant portion reads as under:

“2. QUALIFYING CRITERIA

5. that the person must owns and manages a hospital of not less than 300 beds with necessary infrastructural facilities capable of being developed into teaching institution in the campus of the proposed medical college.”

23. Elaborating his arguments further Mr.Maninder Singh, counsel for the petitioner submits that the petitioner had fulfilled both the criteria for increase in the number of seats, as the petitioner had more than 1100 beds with a hospital of a standing not less than 10 years, besides fulfilling all

other conditions. It is contended that the petitioner's teaching hospital is more than 10 years old having been established in the year 2000. This fact was also mentioned in the essentiality certificate issued by the State Government. It is thus contended that the respondents cannot raise the objection that the petitioner does not have a teaching hospital in existence for 10 years. It is also contended that the rules required for expansion of an institute must have a teaching hospital which has been in existence for 10 years, but the rules nowhere prescribe that an application seeking enhancement in the number of seats is to be made 10 years after it was granted first letter of permission. Mr. Singh, also contends that the MCI has erroneously calculated the period of 10 years from the date of grant of letter of permission for running the MBBS course.

24. Senior counsel for the petitioner has further relied upon in the case of *Nazir Ahmad v. King Emperor*, reported at AIR 1936 Privy Council 253 (2), to canvass his argument that since the rule nowhere prescribes that the hospital must be in existence 10 years from the date of letter of permission, the respondent cannot give an interpretation, which is not as per the Rule. It has been argued where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all. Relevant portion of the judgment reads as under:

“The matter to be considered and decided is one of plain principle and first importance, namely, is such oral evidence as that of the Magistrate, Mr. Vasisht, admissible ? It was said for the respondent that it was admissible just because it had nothing to do with Section 164 or with any record. It was argued that it was admissible by virtue of Sections 17, 21, 24 and 26 of the Indian Evidence Act, 1872, just as much as it would be if deposed by a person other than a Magistrate.

It was also said, and with this argument their Lordships agree, that if the oral evidence was admissible then Section 91 of the Indian Evidence Act requiring evidence in writing did not apply

because the matter would in such a case not be one which had to be reduced to writing. For the appellant it was said that the Magistrate was in a case very different from that of a private person, and that his case and his powers were dealt with and delimited by the Criminal Procedure Code, and that if this special Act dealing with the special subject matter now in question set a limit to the powers of the Magistrate, the general Act could not be called in aid so to allow him to do something which he was unable to do, or was expressly or impliedly forbidden to do, by the special Act. The argument was that there was to be found by necessary implication in the Criminal Procedure Code a prohibition of that which was here attempted to be done: in other words that the Magistrate must proceed under Section 164 or not at all.

To this contention it was answered that there was no ground for reading the word " may " in Section 164 as meaning " must " on the principle described in *Julius v. Lord Bishop of Oxford* (1880) 5 App. Cas. 214. There is no need to call in aid this rule of construction—well recognised in principle but much debated as to its application. It can hardly be doubted that a Magistrate would not be obliged to record any confession made to him if, for example, it were that of a self-accusing madman or for any other reason the Magistrate thought it to be incredible or useless for the purposes of justice. Whether a Magistrate records any confession is a matter of duty and discretion and not of obligation. The rule which applies is a different and not less well recognised rule, namely, that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden. This doctrine has often been applied to Courts—*Taylor v. Taylor* (1875) 1 Ch. D. 426, 431 and although the Magistrate acting under this group of sections is not acting as a Court, yet he is a judicial officer, and both as a matter of construction and of good sense there are strong reasons for applying the rule in question to Section 164.

On the matter of construction Sections 164 and 364 must be looked at and construed together, and it would be an unnatural construction to hold that any other procedure was permitted than that which is laid down with such minute particularity in the sections themselves. Upon the construction adopted by the Crown, the only effect of Section 164 is to allow evidence to be put in a form in which it can prove itself under Sections 74 and 80 of the Indian Evidence Act. Their Lordships are satisfied that the scope

and extent of the section is far other than this, and that it is a section conferring powers on Magistrates and delimiting them. It is also to be observed that, if the construction contended for by the Crown be correct, all the precautions and safeguards laid down by Sections 164 and 364 would be of such trifling value as to be almost idle. Any Magistrate of any rank could depose to a confession made by an accused so long as it was not induced by a threat or promise, without affirmatively satisfying himself that it was made voluntarily and without showing or reading to the accused any version of what he was supposed to have said or asking for the confession to be vouched by any signature. The range of Magisterial confessions would be so enlarged by this process that the provisions of Section 164 would almost inevitably be widely disregarded in the same manner as they were disregarded in the present case.”

25. Senior counsel has also relied upon in the case of *Meera Sahni v. Lieutenant Governor of Delhi*, reported at (2008) 9 SCC 177, more particularly para 35, which reads as under:

“35. It is by now a certain law that an action to be taken in a particular manner as provided by a statute, must be taken, done or performed in the manner prescribed and in no other manner. In this connection we may appropriately refer to the decision of this Court in Babu Verghese v. Bar Council of Kerala, (1999) 3 SCC 422, wherein it was held as under:

It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in *Taylor v. Taylor* (1875) 1 Ch D 426 which was followed by Lord Roche in *Nazir Ahmad v. King Emperor* AIR 1936 PC 253 who stated as under:

"where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all."

32. This rule has since been approved by this Court in *Rao Shiv Bahadur Singh v. State of V.P.* AIR 1954 SC 322 and again in *Deep Chand v. State of Rajasthan* AIR 1961 SC 1527. These cases were considered by a three-Judge Bench of this Court in State

of U.P. v. Singhara Singh AIR 1964 SC 358 and the rule laid down in Nazir Ahmad case (supra) was again upheld. This rule has since been applied to the exercise of jurisdiction by courts and has also been recognised as a salutary principle of administrative law.”

26. Per contra, Mr.Amit Kumar, counsel for the respondent, submits that the answering respondent, MCI, is a body constituted under the provisions of the Indian Medical Council Act, 1956 and has been given the responsibility of discharging the duty of maintenance of standards of medical education in the country.
27. It is submitted by Mr.Kumar that an existing medical college can seek increase in its admission capacity only with the permission of Board of Governors and for the purpose of seeking increase in admission capacity, an existing medical college is required to submit an application as per the scheme framed under Section 10A(2)(a) & 10A(2)(b) of the Act and the regulations framed thereunder.
28. Reliance is placed by counsel for the respondent on Part II of the Opening and Increase Regulations, 2000, which deals with increase in admission capacity in any course. The qualification criteria prescribed under Regulation 3 therein prescribes as follows:-

“3. QUALIFICATION CRITERIA

(b) For annual intake capacity of 250

(i) Number of teaching beds not less than 1100 with standing of not less than 10 years.

29. Mr.Kumar next contends that in order to qualify to apply for increase in admission capacity under Section 10A of the Act, it is incumbent for the college to submit an application only after meeting the eligibility conditions mentioned in qualification criteria. An application by an

existing medical college for increase in admission capacity of MBBS course without meeting the qualifying criteria laid down in its regulation is not a scheme under Section 10A of the Act.

30. Reliance is placed by Mr.Kumar on the case of ***K.S. Bhoir v. State of Maharashtra*** reported at (2001) 10 SCC 264 more particularly at para 8 wherein it is held as under:

“8. ...The said Regulation provide for eligibility criteria to be complied with even for making an application and part of the said Regulations deal with the requirements to be complied with when any medical college applies for increase in admission capacity in the college....”

31. It is, thus, submitted by Mr.Kumar that before making an application qualification requirements are to be complied with. An application submitted without fulfilling the eligibility criteria cannot be treated as a scheme under Section 10A of Indian Medical Council Act as before making an application qualification requirements are to be complied with. Reliance is placed on *Govt. of A.P. & Anr. vs. Medwin Educational Society & Ors.* (2004) 1 SCC 86, wherein it was held:

“24. The statutory requirements as laid down in the Act and the Regulations are, therefore, required to be complied with before application filed by the person or association for setting up medical college is taken up for consideration.....”

32. It is submitted that the Hon’ble Supreme Court has once again reiterated the said position of law in a recent judgment delivered on July 4, 2012 in the Civil Appeal No. 4911 of 2012 titled as ***Medical Council of India v. Rama Medical College Hospital and Research Centre, Kanpur*** that procedure indicated in section 10A, an in particular Section 10A (2) would have to be followed. Paragraphs 46 and 49 of the said judgment are

quoted herein under for ready reference:

“46. There is no getting away from the fact that Section 10A lays down the criteria for grant of permission for establishment of a new medical college and that Section 10B supplements the same by making it clear that even while increasing the number of seats in a medical college/institution, the procedure indicated in Section 10A, and in particular Section 10A(2), would have to be followed. At every stage, it is the Council which plays a very important role in either the grant of permission to establish a new medical college or to increase the number of seats. Furthermore, on account of the Regulations of 1999 and 2000, the norms relating to eligibility criteria, as set out in the 1999 Regulations, as also in the 2000 Regulations, have to be complied with, either for the purpose of grant of permission for establishing a new medical college or for introducing a new course of study along with the intention of increasing the number of students in the medical institution.

49. For the reasons aforesaid, we are unable to agree with the reasoning of either the learned Single Judge or the Division Bench of the High Court in arriving at the finding that once permission had been granted under Section 10A of the Act, it would amount to grant of recognition and, therefore, the medical college / institution, was free to enhance the number of seats without the permission either of the Council or the Central Government.”

33. It is submitted that in the above case, Rama Medical College and other similarly situated colleges were inspected by Medical Council of India for increase in admission capacity by mistake but before passing the order on application seeking increase, it came to the notice of the Board of Governors that the colleges were not qualified to even apply in terms of Qualification Criteria of Regulation, 2000 for increase in admission capacity and they did not fulfil the condition mentioned in clause 3 of Opening Regulation, the applications were rejected by the Board of Governors and the Hon'ble Supreme Court upheld the order of the Board of Governors and dismissed the writ petitions. Therefore, the issue raised

in this petition that once the inspection was carried out the respondent was bound to consider the scheme of the petitioner is no longer res integra.

34. Mr.Kumar next submits that the scheme submitted under section 10A of Indian Medical Council Act, 1956 by the petitioner college was returned on 27.06.2011 on the ground that the college has not fulfilled the qualifying criteria of having 1100 teaching beds with standing of not less than 10 years. The Hon'ble Supreme Court in the above referred case has specifically laid down in the above judgment that there has to be a 'scheme' as per Regulations before the medical college can seek increase in the admission capacity. It is pertinent to mention that standing of 10 years of the teaching hospital having 1100 teaching beds is a condition precedent to apply for increase in seats in MBBS Course to 250 per academic year which the petitioner did not fulfil.
35. It is next submitted by Mr.Kumar that the assessment of the college was conducted inadvertently as the Essentiality Certificate issued by the State Government had stated the petitioner has 1250 number of teaching beds with standing of 10 years.
36. It is further submitted by counsel for the respondent that the Letter of Permission was granted to the petitioner college on 30.09.2003 by the Central Government. Accordingly, the college would complete 10 years only on 30.09.2013 and the qualifying criteria as laid down in Clause 6 of the Opening and Increase Regulations would be met only on or after that date. The Letter of Permission granted to the petitioner college clearly shows that the medical college has not completed 10 years and therefore, the hospital attached to the medical college cannot in law be said to be having teaching beds of 10 years of standing. The teaching bed would come into existence only after the teaching commences in any Medical College.

37. Mr.Kumar also submits that assuming without admitting that the hospital is in existence since 2000, the permission for running a medical college was granted to the petitioner only from session 2003-2004, and the hospital became a 'teaching hospital' with respect to MBBS Course only thereafter, therefore, as per the requirement of the regulations the standing of 'Teaching Hospital' shall have to be counted from 2003-2004 session irrespective of the fact of the date of establishment of the hospital by the petitioner.
38. Counsel further submits that merely because the petitioner was running a Dental College and Physiotherapy course the hospital established by the petitioner cannot be treated as 'teaching hospital' for the purposes of the Opening an Increase Regulations, 2000 which deal with medical and not dental colleges. It is further contended that the requirements for being a teaching hospital for imparting medical courses, such as MBBS are altogether different from that for running a dental or physiotherapy course and as such a hospital cannot be treated as a 'teaching hospital' under the Opening and Increase Regulations where training of medical students, i.e. MBBS and/or PG Medical Courses are not being imparted.
39. Mr.Kumar submits that it is incorrect to state that it is only after an application submitted under Regulation 4 & 5 is found complete in all respects fulfilling statutory preconditions; it is evaluated by MCI under regulation 6. The regulations 7 & 8 are also to be read along with regulations 4 5 and 6 as they are part of a composite scheme. Respondent has also denied that MCI is obliged to send a factual report to Central Government once it has conducted an inspection because after the Amendment of the IMC Act in 2010 the central Government has no role to play in granting permissions under Section 10A of the Act or that the same has been admitted by the respondents in Para 7 of the Writ Petition.

Moreover, a deficiency of not fulfilling the eligibility and qualifying criteria can be pointed out even at the stage when physical inspection has already been carried out and the same is categorically been provided in regulation 7(a) in following words, “After examining the application and after conducting necessary physical inspections, the Medical Council shall send to the central Government a factual report stating – (1) that the applicant fulfils the eligibility and qualifying criteria. ...”. Since there is no role of Central Government under Section 10A, therefore, a report of the deficiency need not be sent to the Govt., however, the decision can definitely be based on the finding of non-fulfilment of ‘qualifying criteria’ even after carrying out physical inspection of the college.

40. It is further submitted that the interpretation placed by the petitioner on applicability of Section 10A(5) is wholly erroneous and misplaced in law and facts. Section 10A(5) talks about a situation where on a “scheme” complete in all respects as per the statutory provisions, no order passed by the Central Government (now MCI) has been communicated to the college within one year of submission of scheme, such ‘scheme’ shall be deemed to have been approved.
41. It is further submitted that the MCI has rejected the application of the petitioner college only on not being satisfied with the content of the application as it was evident from the record itself that when the permission to establish the medical college was granted only in 2003, the teaching hospital attached to it cannot be taken as having 10 years of standing as ‘teaching hospital’ before 2013 and the certification by the State Government which is not in accordance of statutory requirements does not entitle the petitioner college to even apply for increase in seats to 250 before session 2013-2014.
42. Mr.Kumar also submitted that as per the regulations there are certain

requirement to term a ‘hospital’ as a ‘teaching hospital’ and every hospital cannot be treated as a teaching hospital until it fulfils certain statutory preconditions. In the Establishment of Medical College Regulations, 1999 under, Clause 2 “Qualifying Criteria”, inter alia, provides as under:

“(5). that the person owns and manages a hospital of not less than 300 beds with necessary infrastructural facilities capable of being developed into a teaching institution in the campus of the proposed medical college”

43. It is submitted that the above regulation would apply to a person who is proposing to establish a new medical college does not use the terms ‘teaching bed’ and ‘teaching hospital’ vis-à-vis the term ‘teaching beds’ used in the Opening and Increase Regulations, 2000 for increase in intake up to 250 admissions. The Establishment Regulations contemplates a mere hospital in existence with the college which is capable of being developed into a teaching institution. That the difference in the language of the provisions of Establishment Regulations, 1999 and opening and Increase Regulations, 2000 makes it abundantly clear that the term ‘teaching beds’ only means beds used for the purpose of teaching in the medical college. Further, before a hospital becomes a teaching hospital, it has to fulfill requirements laid down in the Minimum Standard Requirements for the Medical College for 250 Admissions Annually Regulations, 1999 (For Short “MSR 250”).
44. It is thus submitted by the counsel for the respondent that a hospital cannot be considered as ‘teaching hospital’ from a time even prior to that when the teaching and training of MBBS students had started in that hospital. Such an interpretation would frustrate the whole object of the regulations as is evident from different terminology used in Establishment Regulations, i.e. requirement of having only ‘hospital capable of being

developed a teaching institution' before establishment and that used in the Opening and Increase Regulations, 2000, i.e. 'Teaching Hospital' and 'Teaching beds'.

45. I have heard counsel for the parties and considered their rival submissions. The request of the petitioner for increasing MBBS seats from 150 to 250 has been rejected by the respondent on the ground that the petitioner college has not fulfilled the qualifying criteria of having 1100 teaching beds with standing of not less than 10 years.
46. It is the case of the petitioner that the petitioner has fulfilled all the requirements as it is successfully running a medical college. The petitioner was granted renewal year after year and eventually recognition under Section 11(2) of the Act was granted. Based on grant of recognition the petitioner became entitled to admit 150 MBBS students without being required to seek any further permission/renewal from the MCI. With a view to seek increase in the admission capacity from 150 to 200 MBBS seats the petitioner had put in necessary efforts for maintaining additional infrastructure, teaching and other facilities and only thereafter an application was submitted to the MCI on 6.8.2011 for increase in seats.
47. The first submission of learned counsel for the petitioner is that after the application was submitted it was found complete in all respects. Reliance has been placed by Mr.Maninder Singh, learned senior counsel for the petitioner on Clause 5 of the MCI Regulations, 1999, to canvas his argument that if an application is forwarded by the Government of India is incomplete and does not fulfil the statutory pre-conditions as per the MCI Regulations, the same is to be returned along with all the enclosures and processing fee.
48. Learned senior counsel for the petitioner contends that in the present case the application was not returned. The respondent undertook to conduct an

inspection in terms of Clause 6 of Regulations and once the inspection is carried out the respondent is estopped from raising any ground to point out any deficiency in the application form although it is not admitted that any deficiency exists.

49. Since strong reliance has been placed by Mr.Maninder Singh, counsel for the petitioner on clauses 4 to 8 of the Regulations, the same are reproduced below:

“4. APPLICATION FEE:

The application shall be submitted by registered post only to the Secretary (Health), Ministry of Health and Family Welfare, Government of India, Nirman Bhavan, New Delhi – 110 011 along with a non-refundable application fee of Rs. 3.5 lakhs in the form of demand draft/ pay order in favour of “Medical Council of India” payable at New Delhi. The Fee is for registration, technical scrutiny, contingent expenditure and for five inspections. Beyond five inspections, the normal inspection fee prescribed by the Council will apply. The Schedule for receipt of application for establishment of new medical colleges and processing of the applications by the Central Government is given in the Schedule annexed with these regulations.

5. REGISTRATION :

Applications referred by the Ministry of Health & Family Welfare to the Council will be registered in the Council for evaluation and recommendations. Registration of the application will only signify the acceptance of the application for evaluation. Incomplete applications will not be registered and will be returned to the Ministry of Health & Family Welfare alongwith enclosures and processing fee stating the deficiencies in such applications. The Council shall register such incomplete applications, if so directed by the Central Government for evaluation but shall submit only a factual report in respect of them and shall not make any recommendations.

6. EVALUATION BY MEDICAL COUNCIL OF INDIA:

The Council will evaluate the application in the first instance in terms of the desirability and *prima facie* feasibility of setting up the medical college at the proposed location. Therefore, it shall assess the capability of the applicant to provide the necessary sources and infrastructure for the scheme. While evaluating the application, the Council may seek further information, clarification or additional documents from the applicant as considered necessary and shall carry out physical inspection to verify the information supplied by the applicant

50. As per Regulation 4, an application is to be submitted by the applicant along with the application fee of Rs.3.5 lacs for five inspections. A careful reading of clause 5 would show that an application received, is to be registered in the MCI for evaluation and recommendation. It has been made clear that registration of the application will only signify the acceptance of application for evaluation and incomplete applications would not be registered and shall be returned. However, incomplete applications would only be registered, if directed by the Central Government. It has been strongly urged that once an application has been registered, it would be deemed that the application is complete in all respects. This submission of the counsel for the petitioner is without any force. Regulation 5 is to be read along with the Regulation 6 which empowers the Council to evaluate the application in the first instance in terms of the desirability and *prima facie* feasibility. It also empowers the Council to seek further information, clarification or additional documents from the applicant.
51. While there is no quarrel with the general proposition which is sought to be urged before the Court, but the same cannot be considered as an absolute rule. An application without fulfilling the eligibility criteria

cannot be treated as an scheme under Section 10A of Indian Medical Council Act. It has been clarified by counsel for the respondent that the inspection of the college was carried out inadvertently as the respondent was misled by the Essentiality Certificate issued by the State Government wherein it was mentioned that the petitioner has “1250 number of teaching beds, with standing of 10 years”. The explanation rendered by the respondent for conducting the inspection is cogent and plausible and thus accepted by the Court. The purpose of formulating the regulations is to lay down the manner and the procedure as to how an application so received is to be processed and without any delay. As a general rule if the application is not in order or if an applicant does not fulfill the basic criteria there would be no occasion to process the application any further, much less to form an inspection team and to have the institution inspected. I am of the view that in case even after the inspection it is noted that the essential eligibility criteria has been overlooked inadvertently or otherwise the scheme can be rejected and the application would be rejected even if an inspection was carried out. In case a deficiency is inadvertently overlooked and an inspection is carried out to say that the respondent cannot in any circumstances point out any deficiency is unacceptable, as the same would be against the very aim and object of the Act and the Regulations framed thereunder. Thus, the first submission made by learned senior counsel for the petitioner is rejected.

52. The application of the petitioner has been rejected for the reason that there was no teaching hospital in existence with a standing of ten years.
53. It is the case of the petitioner that the petitioner has been running a dental hospital since the year 1999 and a College of physiotherapy since the year 2000. Admittedly, it is only in the year 2002 that the petitioner’s trust had made an application under Section 10A of the IMC Act for establishing a

medical college for 150 MBBS admissions annually and the MCI had granted permission under Section 10A only from the academic year 2003-2003. The short question, which, thus, comes up for consideration and the only bone of contention between the parties is whether the period of ten years is to be calculated from the date the respondent had granted permission under Section 10A to the petitioner for establishing a medical college or whether the period of ten years is to be counted from the date the petitioner had established a medical college which in this case was in the year 2000.

54. Learned senior counsel for the petitioner, during the course of hearing, has relied upon the Medical Council of India Amendment Notification dated 17.9.2010, more particularly Clause 6, which reads as under:

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

(a) For annual intake capacity of 200

- (i) Number of teaching beds not less than 900 with standing of not less than 10 years.
- (ii) OPD strength per day not less than 2000
- (iii) Bed occupancy : Average not less than 75%
- (iv) The hospital must be unitary.

(b) For annual intake capacity of 250

- (i) Number of teaching beds not less than 1100 with standing of not less than 10 years.
- (ii) OPD strength per day not less than 3000
- (iii) Bed occupancy : Average not less than 75%
- (iv) The hospital must be unitary.

55. While relying on Clause 6(b) learned senior counsel for the petitioner

submits that Clause 6(b) (i) provides that number of teaching beds should not be less than 1100 with standing of not less than ten years. It is submitted by senior counsel for the petitioner that Clause 6 nowhere provides that the hospital should be a running hospital of not less than 10 years from the Letter Of Permission (LOP). Senior counsel has relied upon Clause 3, Part II, Scheme for Permission of the Central Government to Increase the admission capacity in any course of study or training (including Post Graduate Course or study or training) in the existing medical colleges/institutions, to show that wherever it was the intent of the respondent to say that the medical college/institution is to be recognised by the Medical Council of India, the same has been said so in clear terms.

56. The second submission made by counsel for the petitioner that it is not necessary that 10 years are to be counted from the date of LOI, is without any force. The letter of permission was granted to the petitioner, college on 30.9.2003 by the Central Government. The interpretation sought to be given by the counsel for the petitioner that it is not necessary that the hospital should have been attached to a medical college for 10 years is not an essential criteria, is also without any force, as teaching bed would come into existence only after teaching commences in any medical college. In the absence of any document to certify the state of the hospital which was being run by the petitioner in the year 1999 and 2000 which was admittedly a dental hospital and a physiotherapy course cannot be a benchmark as the MCI, would be in no position to certify the condition / infrastructure of the hospital, and thus, the only interpretation which can be given is that the hospital should have been a teaching hospital and not from the date any hospital was established. Merely because the petitioner was running a dental college and a physiotherapy course, it cannot be

treated as a teaching hospital for the purposes of the increase in number of seats. On the contrary there is force in the submission made by Mr.Kumar, counsel for the respondent that every hospital cannot be treated as a teaching hospital until it fulfils the statutory pre-conditions. At the time of establishment of a proposed medical college, the word teaching hospital has not been used and the Regulation contemplates a mere hospital in existence with the college, which is capable of being developed into a teaching institution. I am of the view that a hospital cannot be considered a teaching hospital from a time prior to when teaching and training of MBBS students had not started in the hospital.

57. In my view any other interpretation would frustrate the whole object of the Act and the Regulations. The fine distinction sought to be drawn by the counsel for the petitioner while placing reliance on clause 6 which has been reproduced in paragraph 49 of the foregoing that the word teaching hospital has not been used explicitly, is not acceptable, as a harmonious interpretation has to be given keeping in view the aim and object of the Regulations.
58. For the reasons aforesaid, the present petition is without any merit. There is no infirmity in the impugned order passed by the respondents. Accordingly, the petition is dismissed. No order as to costs.

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59. In view of the order passed in the petition (W.P.(C) 3940/2012) the present application is also dismissed.

G.S.SISTANI, J

JUNE 21st, 2013 ssn