

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 18TH DAY OF AUGUST 2015/27TH SRAVANA, 1937

W.P.(C).No.21098 of 2015 (J)

PETITIONER(S):-

PRINCIPAL,
MOUNT ZION MEDICAL COLLEGE, CHAYALODE P.O.,
ADOOR - 691 556

BY ADVS.SRI.KURIAN GEORGE KANNANTHANAM (SENIOR ADVOCATE)
SRI.JESTIN MATHEW
SRI.TONY GEORGE KANNANTHANAM.

RESPONDENT(S):-

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1. UNION OF INDIA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
MINISTRY OF HEALTH & FAMILY WELFARE, NIRMAN BHAVAN,
NEW DELHI - 110 011
 2. THE MEDICAL COUNCIL OF INDIA,
REPRESENTED BY ITS SECRETARY, POCKET-14 - SECTOR 8,
DWARAKA PHASE-1, N.DELHI 110 077

R1 BY CENTRAL GOVERNMENT COUNSEL SMT.PREMLATHAK.NAIR.
R2 BY STANDING COUNSEL SRI.TITUS MANI VETOM.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
12-08-2015, ALONG WITH WP(C).22658/2015-F & WP(C).22771/2015-V,
THE COURT ON 18-08-2015 DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS:-

- | | |
|---------|---|
| EXT.P1 | TRUE COPY OF THE LETTER DATED 2-2-2015 ISSUED BY THE 2ND RESPONDENT. |
| EXT.P2 | TRUE COPY OF THE COMPLIANCE REPORT DATED 7-3-2015 TO THE 2ND RESPONDENT. |
| EXT.P3 | TRUE COPY OF THE STATEMENT DATED 11-03-2015 TO THE 1ST RESPONDENT. |
| EXT.P4 | TRUE COPY OF THE NOTICE FOR HEARING DATED 4-3-2015 ISSUED FROM THE 1ST RESPONDENT TO THE PETITIONER. |
| EXT.P5 | TRUE COPY OF THE NEWS REPORT DATED 17-04-2015 APPEARED IN THE MATHRUBHOOMI DAILY. |
| EXT.P6 | TRUE COPY OF THE LETTER DATED 21-04-2015 FROM THE PETITIONER TO THE 2ND RESPONDENT. |
| EXT.P7 | TRUE COPY OF THE SCHEDULE ATTACHED TO THE M.C.I. ESTABLISHMENT OF MEDICAL COLLEGE REGULATIONS, 1999. |
| EXT.P8 | TRUE COPY OF THE DECISION DATED 15-006-2015 TO THE PETITIONER. |
| EXT.P9 | TRUE COPY OF THE LETTER DATED 11-05-2015 OF THE 2ND RESPONDENT. |
| EXT.P10 | TRUE COPY OF THE ORDER DATED 10-07-2015 IN WPC NO 435/2015 OF THE SUPREME COURT OF INDIA. |
| EXT.P11 | COPY OF COMPUTER PRINT OUT OF THE BED OCCUPANCY ON THAT 11.2.2015 OF MOUNT ZION MEDICAL COLLEGE HOSPITAL (PRODUCED ALONG WITH REPLY AFFIDAVIT). |
| EXT.P11 | TRUE COPY OF THE REGULATION AMENDING THE EXISTING "MINIMUM REQUIREMENT FOR 100 MBBS ADMISSION ANNUALLY REGULATION, 1999 ISSUED BY THE MEDICAL COUNCIL OF INDIA. |

RESPONDENT(S)' EXHIBITS/ANNEXURES:-

- ANNEXURE R2(a) TRUE COPY OF LETTER MCI-34(41)2014-MED/128071
DATED 29.08.2014.
- ANNEXURE R2(b) TRUE COPY OF ASSESSMENT REPORT DT.06.01.2015.
- ANNEXURE R2(c) TRUE COPY OF LETTER MCI-34(41)(R-42)/2014-MED/159408
DATED 12.2.2015.
- ANNEXURE R2(d) TRUE COPY OF ASSESSMENT REPORT DATED 11.2.2015.
- ANNEXURE R2(e) TRUE COPY OF ASSESSMENT REPORT DT.17.4.2015.

Vku/-

[true copy]

K. Vinod Chandran, J

W.P.(C).No.21098/2015-J, 22658/2015-F & 22771/2015-V

Dated this the 18th day of August, 2015

JUDGMENT

The three writ petitions raise an identical issue, but rest on different set of facts. The issue projected is, the efficacy of the recommendation made by the Medical Council of India [for brevity “MCI”] under Section 10A of the Indian Medical Council Act, 1956 [for brevity “the Act”]. Two of the petitioner-Colleges had been carrying on the graduate course in Medicine in the earlier academic year and was before the Central Government for an approval in the second year; while one of the colleges had approval for the two earlier academic years, which was coming up for renewal the third time. Though the facts are different, a common judgment is passed, since the matters were heard together since the legal issue is common, and the facts are to be examined juxta positioned with the law to decide the individual cases.

2. I have heard learned Senior Counsel Sri.Kurian George Kannanthanam in W.P.(C).No.21098 of 2015, learned

Senior Counsel Sri.S.Sreekumar in W.P.(C).No.22658 of 2015 and learned counsel Sri.George Jacob in W.P.(C).No.22771 of 2015 for the respective petitioners; Sri.Titus Mani Vettom, learned Standing Counsel appeared on behalf of the MCI who was supported by Sri.M.L.Sureshkumar, Smt.Prelatha K.Nair and Sri.K.Thyagarajeswaran, learned Central Government Standing Counsel appearing for Union of India in the respective writ petitions; and Sri.P.Sreekumar, learned Standing Counsel for the 3rd respondent in W.P.(C).No.22771 of 2015.

3. The essential arguments addressed for the petitioners, were the manner in which the MCI conducts the inspection and re-verifies the compliance of rectification of deficiencies, emphasising the haphazard manner in which the recommendations are then made to the Central Government. Under Section 10A of the Act, when the establishment of a medical college is mooted or when it comes up for renewal of approval, before the Central Government, the Central Government refers the same to the MCI. The MCI, after conducting inspection, forwards a recommendation to the Central Government, which could either be positive or negative.

Invariably the Central Government acts on the recommendation made by the MCI; but by the proviso of sub-section (4) of Section 10A, no disapproval by the Central Government could be made unless the concerned person or college is given a reasonable opportunity of being heard. The Medical Council of India Establishment of Medical College Regulations, 1999 [for brevity “the Regulations”] is also relied on, to contend that if at all, the recommendation is negative, on the ground of deficiency noticed on inspection, then an opportunity is to be afforded to the college to rectify such deficiencies; upon which the MCI would be obliged to make a revised recommendation, on which again the Central Government should hear the college and pass appropriate orders.

4. Learned Senior Counsel Sri.S.Sreekumar relied on the order of the High Court of Madhya Pradesh, Jabalpur in **W.P.No.7521 of 2015 dated 01.07.2015**; Sri.George Jacob relied on the order of the Hon'ble Supreme Court in **W.P.(C). No.469 of 2014 and connected cases dated 18.09.2014** and of the order of the High Court of Judicature at Bombay in **W.P. No.5481 of 2015 dated 07.07.2015**; Sri.Titus Mani Vettom relied

on the decision of the Hon'ble Supreme Court in ***Manohar Lal Sharma v. Medical Council of India* [(2013) 10 SCC 60]** and the judgment of the High Court of Delhi in **W.P.(C).No.6261 of 2013 dated 20.12.2013**; and Smt.Premalatha K.Nair relied on the decision in ***Priya Gupta v. State of Chhattisgarh* [(2012) 7 SCC 433]**.

W.P.(C).No.21098 of 2015

5. The petitioner had been carrying on the graduate course in medicine in 2014-15 and applied for an extension of Letter of Permission [for brevity "LoP"] for the year 2015-16 also. Exhibit P1 dated 12.02.2015 is the recommendation of the MCI, forwarded to the Central Government based on an inspection. The petitioner being granted an opportunity of hearing, had submitted Exhibit P2, by which the petitioner had pointed out the rectification of the deficiencies in Exhibit P1. Exhibit P1 was pursuant to an inspection carried out by the Council Assessors of the MCI, [for brevity "CAs"] on 5th and 6th of January, 2015, the report of which is produced by the MCI in its statement as Annexure R2(b). The MCI is said to have conducted a further

surprise inspection on 11.02.2015, when again certain deficiencies were noticed. The said fact has not been specifically averred in the writ petition. The said report of the CAs is placed at Annexure R2(d), which noticed certain other deficiencies not noticed in the earlier report. Again on the directions of the Central Government, the MCI had made a further inspection on 17.04.2015 by CAs, which report is produced as Annexure R2(e).

6. Exhibit P1 lists out around eight deficiencies, which are as follows:

- “1. Daily average OPD is 494 against requirement of 500.
2. Although on average, there are 36 admissions in a day, on day of assessment, it has increased to 83 which is not feasible.
3. Number of major Surgical operations is only 3 for the whole hospital on day of assessment which is inadequate.
4. Daily average of normal delivery is only 0.9 & of Caesarean section is only 0.2 which is inadequate.
5. MRD: It is partly manual.
6. O.T: 5th O.T. is designated as ER/Septic/Minor O.T. and therefore cannot be considered as a major O.T.; hence there is a deficiency of 1 major O.T.
7. ETO sterilizer is not available.

8. Anatomy department: There is only 1 Demonstration room available against requirement of 2 as per Regulations.
9. Other deficiencies as pointed out in the assessment report”.

The final negative recommendation was on the deficiencies as noticed in Exhibit P9 dated 11.05.2015.

7. It is to be noticed that the inspection conducted on 5th & 6th of January, 2015, the report of which is produced at Annexure R2(b), did not notice any deficiencies at all, as is indicated in the summary of assessment; at the conclusion of Annexure R2(b) report. A reading of Exhibit P1 on the other hand would indicate that the MCI had gone through the entire report and found certain deficiencies, which, according to the learned Senior Counsel for the petitioner, are not deficiencies which could be sustained under the Regulations. They are mostly in the realm of the subjective satisfaction of the CAs, which cannot be relied on to recommend rejection of extension of a LoP. The surprise inspection dated 11.02.2015 is said to have been not referred to in the writ petition, since Exhibit P1 does not rely on the same. The learned Senior Counsel would in

fact specifically point out that the inspection for verification of compliance on 17.04.2015, and the recommendation of the MCI at Exhibit P9 dated 11.05.2015 discloses no verification of the deficiencies noticed in Exhibit P1. Exhibit P9, however, brings forth other deficiencies which were never noticed earlier and, hence, the petitioner is prejudiced insofar as no time being granted for rectification of the same. When Annexure R2(b), first inspection report of the CAs, did not notice any deficiencies, there was absolutely no necessity for a second inspection and the negative recommendation at Exhibit P9, according to the learned Senior Counsel, is ill-motivated.

W.P.(C).No.22658 of 2015

8. The petitioner herein had been carrying on the graduate MBBS course in two earlier academic years and was before the Central Government for LoP for the third year. With respect to this petitioner also, the first inspection was carried on by CAs on 12th and 13th of December, 2014 when Exhibit P6 inspection report was prepared. Exhibit P6 report notices only a shortage of teaching faculty by 1.43%, which is specifically

noted to be the deficiency of two Assistant Professors in the Department of Anatomy. The Executive Committee of the MCI at its meeting on 13.01.2015 and 31.01.2015 deferred the decision with respect to the petitioners' College as is evidenced by Exts.P7 and P8 minutes. A second inspection, that too, a surprise inspection, is said to have been conducted on 06th February, 2015, the report of which is produced by the MCI at Annexure R2(a) of its statement. The inspection found certain deficiencies, which prompted the MCI to recommend denial of extension of LoP by Annexure R2(b) dated 12.02.2015. However, further inspection was not conducted by the MCI and the recommendation was made declining extension of LoP by Exhibit P20 dated 11.05.2015.

9. The deficiencies noticed by the CAs in the present case are as follows; evident from Ext.P13 minutes and Ext.P14 recommendation of MCI

- “1. Deficiency of faculty is 41% as detailed in report.
2. Shortage of Residents is 63% as detailed in the report.
3. Bed occupancy is 33% on day of assessment which is grossly inadequate.

4. Casualty attendance on day of assessment is only 10 for 24 hours which is grossly inadequate.
5. There are only 7 Major and 2 Minor operations for the whole hospital on day of assessment which is inadequate.
6. ETO sterilizer is not available.
7. Anatomy department: Capacity of cold storage is 4 bodies against requirement of 8 as per Regulations.
8. Microbiology Department: There are only 3 service laboratories available against requirement of 7 as per Regulations.
9. Forensic Medicine department: In museum, there are inadequate number of specimens and there are no charts, prototype firearms, photographs. There are no catalogues.
10. Other deficiencies as pointed out in the assessment report”.

10. The learned Senior Counsel would argue that the second surprise inspection ought not to have been conducted, since the earlier inspection did not find any deficiencies. It is also argued that the second inspection was only an eye-wash, insofar as CAs having come to the premises of the college/hospital only at 3.00 p.m. and having concluded the proceedings before 4.30 p.m. It is also contended that the inspection was conducted on a Friday and many staff members

left the premises of the college, the college being situated in a remote area in Wayanad. The inspection, in any event, should have started from 9.00 a.m. as per Exhibit P9 "Assessor's Guide for Undergraduate assessment 2015-16" brought out by the MCI itself. The CAs have merely conducted a headcount of the faculty available and that cannot be sustained in view of the fact that the inspection was not commenced in the morning and was not conducted in the proper manner, that too, on a Friday evening.

W.P.(C).No.22771 of 2015

11. The petitioners herein were before the Central Government for extension of LoP for the second academic year of commencement of the graduate course in MBBS. The first inspection of the petitioners' campus was carried on 05th and 06th of January, 2015, in which, as in the other cases, no deficiencies were noticed. A subsequent inspection was carried out on 11th and 12th of February, 2015, when many of the students and faculty were away from the Campus for an intercollegiate competition. The second report is produced at

Annexure R2(d), which indicates the deficiencies noticed, based on which Exhibit P29 recommendation was made by the MCI pointing out the following ten deficiencies:

- “1. Deficiency of teaching faculty is 50.43% as detailed in the report.
2. Shortage of Residents is 88.23% as detailed in the report.
3. Bed occupancy was 24.33% on day of assessment.
4. Casualty attendance was only 1 patient in Casualty ward during 24 hour period on day of assessment.
5. Data provided by the institution shows bed occupancy to be average 200 on 9th and 10th February 2015 (i.e. 1-2 days before assessment) and on 11th and 12th February 2015 (i.e. days of assessment) are wrong and inflated as bed occupancy was only 24.33% on first day of assessment.
6. There was only 1 Major & 1 Minor operation on day of assessment.
7. There was no delivery - Normal or Caesarean - on day of assessment.
8. ICUs: There was only 1 patient in NICU/TICU and 2 patients each in ICCU & SICU on day of assessment.
9. Nursing staff: Only 116 Nurses are available against requirement of 175 as per Regulations.
10. Number of patients shown in OPD by the institute are grossly inflated. On physical verification of different OPDs, there were scanty patients and

more than 50% faculty/Residents were not available in OPD.

11. Other deficiencies as pointed out in the assessment report”.

The learned counsel would contend, in the same lines as in the previous case, that the second inspection was a mere eye-wash and the shortage in faculty was found on a mere headcount made.

Requirements to be fulfilled:

12. The learned Standing Counsel for the MCI would specifically point to Section 19A, which clothes the MCI with the power to prescribe the minimum standards of medical education. This Court was also taken through the “Requirements to be fulfilled by the applicant-colleges for obtaining Letter of Intent and LoP for establishment of the medical colleges and yearly renewals under Section 10A of the Act”. While prescribing the minimum standards, the MCI was quite conscious of the legislative mandate to provide for quality education, which alone could bring forth eminent professionals. The learned counsel would emphasise the fact that herein we

are concerned with medical education, where the students eventually turn out as doctors; enjoined with the onerous responsibility of dealing with human beings and their lives.

13. The judgments of the High Courts of Madhya Pradesh and Bombay and the order of the Hon'ble Supreme Court is relied on to contend that this Court, exercising jurisdiction under Article 226 would be entitled to go beyond the time limit specified in ***Priya Gupta*** (*supra*) when an obvious illegality is found. It is specifically pointed out that the Hon'ble Supreme Court had, in the interim order dated 18.09.2014 specifically expressed a desire to reconsider the directions in ***Priya Gupta*** (*supra*). ***Manohar Lal Sharma*** (*supra*), however, was placed on record by the learned Standing Counsel for the MCI to stress the fact that the inspections are conducted by doctors of unquestionable integrity and reputation and that cannot be interfered with by this Court especially when an examination of facts with respect to the infrastructure available, the faculty and treatments carried on have come up for consideration.

14. The Division Bench of the High Court of Madhya Pradesh relied on the decisions of the Hon'ble Supreme Court in ***Swami Devi Dayal Hospital and Dental College Vs. Union of India and others* [2013 (1) SCALE 608]**, ***Priyadarshini Dental College and Hospital Vs. Union of India and others* [(2011) 4 SCC 623]** and ***Royal Medical Trust (Regd.) Vs. Union of India and another* [2013 (12) SCALE 145]**. Therein though a review was directed by the Central Government, the MCI refused to take it up on the ground that the MCI had received a legal opinion to the effect that the provisions of the Act provided for no such direction; especially since the date for recommendation by the MCI and final approval by the Central Government had expired, by the time a review was ordered. The Division Bench clearly found that when a recommendation under Section 10A (4) has been sent to the Central Government, against a scheme for renewal of a medical college, it cannot be said that the Central Government cannot refer the matter back to the MCI. Section 10A was held to be a composite provision dealing with both the scheme of establishment of a new medical college as also for renewal of permission following the dictum in ***Swami***

Devi Dayal Hospital and Dental College (*supra*). It was held that the final authority for approval being the Central Government, there is intrinsic power in such authority to call upon the MCI, the recommending authority, on matters which have been overlooked, by the latter or because of new or additional information brought to its notice by the College, which requires due consideration. This Court is inclined to respectfully agree with the said dictum.

15. In such circumstance, it cannot be said that there is no power on the Central Government to ask the MCI to review the decision taken. It is also incumbent upon the MCI, the recommending authority, on such direction being given by the final authority to reconsider the issue and state specifically as to the reasons why the negative recommendation at the earlier stage cannot be resiled from. It cannot also be the proposition that even the invocation of Article 226 would be frustrated merely because the MCI thought it fit to send a recommendation at the fag end of the period prescribed by the Hon'ble Supreme Court. The individual facts in the above writ petitions have to be considered in this perspective.

W.P.(C).No.21098 of 2015

16. A reading of Exhibit P1 and the requirements to be fulfilled, indicates that the requirement of 500 OPD attendance at the time of second renewal and the existence of five operation theatres is a must and the petitioner-college was found to fall short of the same for there being only 494 OPD and 4 operation theatres of which one was only a minor operation theatre. In fact, it is to be noticed that Annexure R2(b) inspection report of the CAs did not notice any such deficiencies. Annexure R2(b) specifically, in its summary of assessment, found that there are no deficiencies at all. However, a second surprise inspection is said to have been carried on 11.02.2015; the contention of the petitioner was that, the findings thereon were never relied upon. However, the authority of the MCI to carry out such a surprise inspection cannot be disputed, since though the first inspection report of the CAs did not notice any deficiency, on an overall assessment of the report and the disparities noticed thereunder, there could be a further inspection made. On such inspection, Annexure R2(d) report was prepared by the CAs, in which a shortage of 51.2% teaching faculty and a

shortage of Resident Doctors to the extent of 14.2% were noticed.

17. The petitioner cannot feign ignorance of such a report, especially since the Principal of the petitioner was present at the time of inspection and endorsed the report without offering any explanation on that count. True, the said deficiencies were not extracted in the recommendation denying extension of LoP as indicated at Exhibit P1. However, no fault can be found on the MCI, since Exhibit P1 was dated 12.02.2015 and the second surprise inspection was on 11.02.2015, just the previous day. Hence, even before the second report was placed before the MCI, the recommendation was sent to the Central Government. Though a procedural irregularity can be found in the same, that cannot efface the findings in the second inspection. Further, a third inspection was conducted on the direction of the Central Government when the report dated 17.04.2015 [Annexure R2(e)] was prepared. It is to be found that the deficiencies noticed in Exhibit P1 were found to have been rectified. But, the shortage of teaching faculty was found to be 75% and shortage of Resident Doctors at 88% in

Annexure R2(e) report. The petitioner's explanation is that there was a holiday declared for reason of a faculty member having died. The said explanation was found to be unsustainable.

18. Again, in Exhibit P6 as an explanation for the shortage of faculty and Resident Doctors on the third inspection, the Principal of the College specifically wrote so:

“In view of tragedy, the Chairman declared holiday for staff of the institution on Friday, 17.04.2015 for paying respect to the departed soul. Many of the faculty members had gone to console the bereaved family. Many of the inpatients were discharged for the weekend and the operation theatre list was small. The labour cases were waiting for the faculty to return after visiting the family of the departed colleague”.

This Court cannot but express its distress in the callous manner in which a medical college is being run, which has to have an attached hospital with requirements as stipulated by the MCI. The requirements to be fulfilled, as brought out by the MCI, specifically speaks of the percentage of patient in-take. The

requirement of treatment facilities with respect to the number of beds available, the operation theatres and so on and so forth cannot be said to be one merely mandating the presence of such infrastructure. What is intended by providing for such minimum requirement is that there should be sufficient patient in-take and treatment and procedures going on, so as to acquaint the students with the procedures and practises sufficiently, which is a part of the course curriculum. To imagine a situation where a medical college hospital is shut down for all practical purposes, even to condole the death of a faculty member, only indicates the meagre patient in-take and the requirements being satisfied only for name sake; with respect to the infrastructure provided.

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19. The petitioners herein too have excuses as to the shortage of faculty found on a particular day; one on the ground that the inspection was on a Friday and the other on the ground that an inter-collegiate competition was going on. As was noticed in the other writ petition, a medical college hospital cannot be said to be one where there could be a holiday

declared on the ground of an inter-collegiate competition/festival or there being a prevalence of shortage of staff previous to a week end, since hospitals are supposed to be functioning full-fledged, which alone would commend adequate training to be imparted to the students. A medical college and the hospital attached thereto, it is to be noticed, stands on a totally different footing from any other academic stream. It is to be stressed; any other academic stream, including other professional courses, could raise a valid ground of a holiday declared for explaining the absence of faculty or for participating in an inter-collegiate festival/competition. But, no hospital could be so closed down and the shortage of faculty and Resident Doctors on a working day would only indicate the minimum patient in-take and the absence of full-fledged treatment facilities and procedures being carried on in such hospitals.

20. The ground raised by the petitioners herein is that they were never afforded a second opportunity and that the deficiencies noticed on second inspection were not allowed to be rectified. As pointed out by the learned Standing Counsel for the MCI, the MCI, by its Regulations of 1999, specifically

Regulation 8, speaks of grant of permission. By the Regulations so framed and the requirements to be fulfilled laid down; the MCI endeavours to prescribe minimum standards for carrying on an institution imparting medical education, herein at the graduate level. It is the existence of such minimum requirements which are examined by the CAs on the surprise inspections conducted. If there is a deficiency noticed by the CAs, the Central Government grants an opportunity to make such rectifications as also provides a further inspection by way of directing a re-consideration to the MCI.

21. However, even going by Exhibit P26 relied on by the learned counsel in W.P.(C).No.22771 of 2015, the observations of the Committee at the Government of India level has with respect to the various colleges listed thereunder issued different recommendations. While some have been recommended for renewal by MCI, some others have been recommended for compliance verification inspection by the MCI. In certain cases with a qualification as being “strongly recommended”. However, in the case of the petitioner and some others, it was directed that the “review” may be considered by

the MCI. The MCI, as per the requirement, provides so under Regulation 8(3)(1)(a) and (b):

“Grant of Permission

Regulation 8(3)(1)

PROVIDED that in respect of

- (a) Colleges in the stage upto II renewal (i.e. Admission of third batch):

If it is observed during any regular inspection of the institute that the deficiency of teaching faculty and/or Residents is more than 30% and/or bed occupancy is <60%, such an institute will not be considered for renewal of permission in that Academic Year.

- (b) Colleges in the stage from III renewal (i.e. Admission of fourth batch) till recognition of the institute for award of M.B.B.S. Degree:

If it is observed during any regular inspection of the institute that the deficiency of teaching faculty and/or Residents is more than 20% and/or bed occupancy is <70%, such an institute will not be considered for renewal of permission in that Academic Year”.

Hence, when such gross deficiency far below the minimum standards are detected, there can be no review or a second inspection, is the specific contention.

22. With respect to W.P.(C).No.21098 of 2015, it is to be noticed that the MCI has conducted three inspections. The first inspection did not notice any deficiency, since CAs specifically found that no deficiency exists. But, on an overall consideration of the report, the MCI noticed certain deficiencies which were indicated in Exhibit P1. The second surprise inspection conducted specifically noticed certain deficiencies, which the MCI has not relied upon in Exhibit P9 recommendation made on 11.05.2015. The third inspection conducted though found that many deficiencies noticed in Exhibit P1 were rectified, found other deficiencies on which the negative recommendation was made. Hence, it is not as if the College was not given any time to rectify the deficiencies. The second surprise inspection conducted was also in the presence of the Principal of the College and the Principal had specifically endorsed the assessment made, which the College was aware of. Even at the third inspection, the explanation of the College is that a holiday was declared. As has been found above, this Court is not convinced that, that alone could result in a fourth inspection being made or a review being directed to be carried

out by the MCI. W.P.(C).No.21098 of 2015, hence, would stand dismissed.

23. W.P.(C).No.22658 of 2015 is a case in which the College was up for the third renewal. The first inspection conducted on 13.12.2014 did not find any deficiencies and as was noticed, the Executive Committee of the MCI deferred the decision on renewal at its meetings held on 13.01.2015 and 31.01.2015 (Exhibits P7 and P8). A surprise inspection is said to have been conducted on 06.02.2015. Obviously the CAs were directed to carry out the inspection as per Exhibit P10 e-mail, which bears the time 2.17 p.m. on 06.02.2015. The CAs are said to have visited the premises on the said date in the afternoon. The report is seen produced as Annexure R2(a) by the MCI. In the case of the said college, the college was informed of the deficiencies by letter dated 12.02.2015, produced as Annexure R2(b) and no inspection was carried out later to that. The review directed by the Central Government was rejected by Annexure R2(C), again relying on the legal opinion of the learned Additional Solicitor General of India. The same was done on 11.05.2015, just prior to the last date for

giving recommendation and there was no inspection carried out to see whether there was any rectification of deficiencies as noticed in Annexure R2(a).

24. W.P.(C).No.22771 of 2015 also followed the opinion of the learned Additional Solicitor General of India in refusing to review the case of the petitioner. Therein also, the first inspection did not notice any deficiencies and when the second inspection noticed certain deficiencies, it was only proper that the petitioner was granted another opportunity of inspection.

25. However, it is to be noticed that in both the above writ petitions the recommendation of the MCI that is challenged is of 11.05.2015 and now we are in August, 2015. The delay in approaching this Court occurred, since the petitioners had approached the Hon'ble Supreme Court under Article 32 of the Constitution of India. The same stood dismissed by judgment in W.P.(C).Nos.441 of 2015 and 448 of 2015 dated 23.07.2015. Though there is sufficient explanation for delay, the delay as such caused; weighed with the scheme of approval, affiliation and admission of students stands against the discretionary

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connected cases

remedy under Article 226 of the Constitution being exercised. In
such circumstances, W.P.(C).Nos.22658 of 2015 and 22771 of
2015 would also stand dismissed.

Sd/-
K.Vinod Chandran
Judge.

vkul/-

[true copy]