

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.09.2015

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE M.VENUGOPAL

WRIT APPEAL No.1147 of 2015
M.P.No.1 of 2015

ANNAPOORANA MEDICAL COLLEGE [APPELLANT]
AND HOSPITAL REPLY ITS DEAN,
DR.P.M.SUBRAMANIAM M.D.(PATH)

vs.

1. THE SECRETARY (MEDICAL EDUCATION),
UNION OF INDIA
MINISTRY OF HEALTH AND FAMILY WELFARE
NIRMAN BHAWAN NEW DELHI - 110 001.
- 2 THE UNDER SECRETARY (MEDICAL EDUCATION)
GOVERNMENT OF INDIA
MINISTRY OF HEALTH AND FAMILY WELFARE
NIRMAN BHAWAN NEW DELHI - 110 001.
- 3 THE SCRETARY,
MEDICAL COUNCIL OF INDIA
POCKET -14 SECTOR-B
DWARAKA PHAS-I NEW DELHI - 110 077.

[RESPONDENTS]

Writ Appeal is filed under Clause 15 of Letters Patent,
against the order, dated 31.07.2015, made in M.P.No.2 of 2015 in
W.P.No.17985 of 2015.

M.P.No.2/2015:Petition filed praying and direct the 1st
Respondent herein to issue appropriate directions to the 3rd
respondent to carryout the compliance verification passed on the
rectification of the defects submitted to the Medical Council of
India and to the Central Government for grant of fourth renewal of
permission for conducting 5th batch of MBBS Degree course with an
annual intake of 150 students for the academic Year 2015-16 in the
Annapoorana Medical College and Hospital Sankari Main Road (NH-47)

Veerapandi Union, Kombadipatty, Salem - 636 308, Tamil Nadu.

W.P.No.17985/2015: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus Calling for records of the impugned letter No. U- 12012/466/2015-ME (P-II) dt 15.6.2015 issued by the 2nd respondent on the directions of the 1st respondent herein addressed to the petitioner Medical College and to quash the same as illegal, arbitrary and violative of the fundamental rights of the petitioner Medical College and consequently to direct the 1st respondent herein to issue appropriate Orders/Letter of Permission by invoking Section 10 A (4) of the Indian Medical Council Act 1956 for grant of fourth renewal of permission for conducting 5th batch of MBBS Degree Course with an annual intake of 150 students at Annapoorana Medical College and Hospital Sankari Main Road (NH-47) Veerapandi Union, Kombadipatty, Salem - 636 308, Tamil Nadu.

For Appellants : Mr.A.Ramesh,
Senior Counsel for
Mr.L.Swaminathan

For Respondents 1 & 2 : Ms.G.Hema, CGSC

For 3rd Respondent : Mr.V.P.Raman

JUDGMENT

(Judgment of the Court was delivered by S.MANIKUMAR,J)

Challenge in this Writ Appeal is to the order, made in M.P.No.2 of 2015 in W.P.No.17985 of 2015, dated 31.07.2015, by which, a learned single Judge has rejected the prayer for a direction to the Secretary, Medical Council of India, New Delhi, the 3rd respondent therein, to carry out the compliance verification, based on the rectification of the defects submitted to the Medical Council of India and to the Central Government, for grant of fourth renewal of permission for conducting the 5th batch of MBBS Degree Course with an annual intake of 150 students for the academic year 2015-16, in Annapoorana Medical College & Hospital, Sankari Main Road, (NH-47), Veerapandi Union, Kombadipatty, Salem 636 308.

2. Short facts leading to the appeal, are as follows:

Annapoorana Medical College and Hospital, Salem, was issued with a letter of permission, dated 08.06.2011, by the Board of Governors, in supersession of Medical Council of India, under Section 10A of the Indian Medical Council Act, 1956, for

establishment of a New Medical College at Salem, by Vinayaka Missions Research Foundation Trust (VMRF Trust), with an annual intake of 150 students for the academic year 2011-12.

3. When the college submitted an application for renewal for admission to the 2nd batch of 150 students for the academic year 2012-13, Medical Council of India noticed certain deficiencies. Inspection by the Assessors of Medical Council of India, New Delhi, was made on 15.02.2012 and 16.02.2012 respectively. An opportunity was given to the College to rectify the defects. Thereafter, a Compliance Verification Inspection was carried out on 16.06.2012. After verification, as to whether the deficiencies noticed were rectified to the satisfaction of Medical Council of India, permission was granted, for admission to the 2nd batch of 150 students, for the academic year 2012-13.

4. For renewal of permission to the 3rd batch of admission of 150 MBBS students, for the academic year 2013-14, Medical Council of India, carried out assessment of the Medical College on 15.04.2013 and 16.04.2013 respectively. The Secretary, Board of Governors, in supersession of Medical Council of India, by letter, dated 06.06.2013, conveyed the approval for renewal of permission to the 3rd batch of 150 students.

5. Insofar as the 4th batch of 150 MBBS students is concerned, for the academic year, 2014-15, application for renewal was submitted on 22.10.2013. Medical Council of India, after a gap of seven months and in contravention of the normal practice, assessed the appellant Medical College for renewal, only on 15.05.2014 and 16.05.2014 respectively, and noted down 14 deficiencies, which are minor in nature. On the basis of the Inspection Report, the Executive Committee of the Medical Council of India, passed a resolution on 03.06.2014, recommending rejection of the request of the appellant Medical College, for renewal of permission for the 4th Batch of 150 MBBS students, for the academic year 2014-15. The decision was communicated to the Central Government by the Administrative Officer of the Medical Council of India, on 10.06.2014. Deficiencies noted were rectified by the College and a compliance report, dated 19.06.2014, was also submitted. The Medical Council of India was requested to assess the Compliance Report.

6. However, on 04.07.2014, the appellant Medical College came to know, through the Website of the Ministry of Health and Family Welfare, New Delhi, 1st respondent, that the Medical Council of India had already recommended to disapprove the scheme for permission for renewal of seats in MBBS course, for the academic

year 2014-15. Central Government directed the College to submit a compliance report or to appear for personal hearing on 07.07.2014. In response to the communication, dated 04.07.2014, Dean of the Medical College personally appeared on 07.07.2014 and submitted the para-wise Compliance Report, on the deficiencies noticed and requested to grant renewal of permission to the Medical College.

7. In the mean while, the appellant Medical College approached the Delhi High Court, by way of a Writ Petition in W.P. (C)No.4277/14, challenging the disapproval for renewal of permission. The Court disposed of said Writ Petition on 14.07.2014, directing Medical Council of India, to consider the Compliance Report and to pass orders, on or before 15.07.2014. The appellant has contented that the Secretary (Medical Education), Ministry of Health and Family Welfare, New Delhi, 1st respondent herein, had not chosen to direct the Medical Council of India, to inspect the Medical College, though a rectification report, dated 19.06.2014, had already been submitted. However, the 1st respondent has bluntly accepted the recommendations of the Medical Council of India and through a letter, dated 15.07.2014, disapproved the scheme for permission for renewal of seats in MBBS, for the academic year 2014-15.

8. Being aggrieved by the same, W.P.No.21816 of 2014, was filed by the College. Vide order, dated 13.08.2014, this Court dismissed the writ petition, against which, W.A.No.1159 of 2014, has been filed. Vide common judgment, dated 11.09.2014, a Hon'ble Division Bench of this Court has disposed of the same, and while doing so, observed that,

"Except the appellant in W.A.No.1159 of 2014, all the others were found lacking in filing up of adequate beds which deficiency is fundamental in nature.....",

9. The Hon'ble Division Bench allowed the appeals, by directing the Central Government to pass appropriate orders, after affording an opportunity of hearing to the appellants therein. The appellant herein, is the one who had preferred W.A.No.1159 of 2014. Though the appellant-College appeared in person on 18.09.2014, before the Secretary, Medical Council of India, New Dehil, the 1st respondent and submitted a Compliance Report of rectifying 14 defects alleged to have been noticed by the Medical Counsel of India, no orders have been passed by the Central Government. Till today, renewal of admission for MBBS for the academic year 2014-15 has not been accorded to the Medical College.

10. Vide letter, dated 29.08.2014, Medical Council of India has invited the attention of the appellant-College to Section 4 of

the Establishment of Medical College Regulations, 1999, which provides for grant of prior permission from the Central Government on the recommendations of the Medical Council of India and informed the appellant College that assessment for renewal of permission for admission of fresh batch of students, for the academic year 2015-16, would be carried out by the Council Assessors, at any period of time, after 1st October, 2014, without further intimation, and requested the appellant Medical College to submit the Standard Inspection Forms A and B, Declaration Forms to the Council, on or before 15.09.2014.

11. Responding to the above, appellant Medical College, vide letter, dated 10.09.2014 submitted a hard copy of the duly filled Standard Inspection Form A & B, along with CD, containing the duly filled in Forms A & B and Faculty Declaration Forms, in the prescribed format to the Council for granting the 4th renewal of permission, for conducting the 5th Batch of MBBS Course, with an annual intake of 150 students, and requested the Secretary, Medical Council of India, to take necessary action for assessment of the Medical College in the fourth week of February 2015 and that the said letter was acknowledged on 15.09.2014, by the Medical Council of India.

12. Thereafter, the Medical Council of India assessed the physical/teaching facilities, available for renewal of permission for the 5th Batch of 150 MBBS Students, in the Medical College on 15.12.2014 and 16.12.2014 respectively. When the appellant Medical College was anticipating renewal of permission, the Under Secretary to Government of India, Ministry of Health and Family Welfare, New Delhi, 2nd respondent herein, sent a letter, dated 03.02.2015, to the Medical College, conveying the recommendations of the Medical Council of India for disapproval of renewal of permission for the 5th Batch of 150 MBBS students, and directed the appellant Medical College to appear in person on 12.02.2015, to present their case, against the rejection letter of the Medical Council of India, along with requisite information, in terms of Section 10-A(4) of the Indian Medical Council Act, 1956 and also enclosed the letter, dated 21.01.2015 of the Medical Council of India, addressed to the Secretary, Government of India, Ministry of Health and Family Welfare, New Delhi.

13. Upon perusal of the letter, dated 21.01.2015, appellant College came to know that the Executive Committee of the Medical Council of India, in its meeting held on 13.01.2015, after considering the Council Assessors Report (15.12.2014 and 16.12.2014), has taken on record 18 deficiencies and based on the same, the Executive committee of the Medical Council of India, decided to recommend to Central Government not to renew permission

for admission to the 5th Batch (150 Seats) of the appellant Medical College, for the academic year 2015-16 and further decided to apply Section 8(3)(1)(b) of the Establishment of Medical College Regulations (Amendment), 2010, Part II, dated 16.04.2010, which reads that,

"...College in the stage upto III renewal (ie., Admission of fourth batch) till recognition of the Institute for award of MBBS 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 greater than 70%, such an institute will not be considered for renewal of permission in that Academic year....."

14. The appellant-College has further submitted that the assessment report for the academic year 2015-2016 was a surprise to the College, as the minimum standard requirements, have been duly met in respect of buildings, infrastructural facilities, medical and allied equipments, faculty and staff. In order to abide by the letter, dated 03.02.2015, of the Under Secretary to Government of India, Ministry of Health and Family Welfare, New Delhi, 2nd respondent herein, the appellant-College, vide letter, dated 10.02.2015, requested for rescheduling of the hearing date, since the Dean of the Medical College was not fit to travel, due to illness. Accordingly, the 2nd respondent herein, vide letter, dated 05.03.2015, rescheduled the date of hearing on 13.03.2015, for hearing the version of the appellant Medical College.

15. On the said date, officials of the Medical College, appeared before the Ministry of Health and Family Welfare, New Delhi, ie., on 13.03.2015, and submitted a detailed Compliance Report, dated 12.03.2015, by answering to the defects, noticed by the MCI Assessors, during inspection, held on 15th and 16th December, 2014 respectively. He submitted two hard copies and one soft copy, as per the format, prescribed and requested the competent authority for renewal of permission.

16. The Under Secretary to the Government of India, Ministry of Health and Family Welfare, New Delhi, 2nd respondent herein, vide letter No.U-12012/1057/2015-ME (P-II)(Part-I), dated 24.03.2015, requested the Medical Council of India, to review/assess the scheme, in the light of the documents submitted by the appellant College, the compliance report and on the basis of the recommendations of the Committee constituted by the Central Government, with a request to take appropriate necessary action for review/assessment, and to furnish to the Medical Council of India, its recommendations to the Ministry.

17. It is the further case of the appellant Medical College that, though the Under Secretary to Government of India, Ministry of Health and Family Welfare, New Delhi, 2nd respondent herein, vide letter, dated 24.03.2015, has recommended the case of the appellant-College for review/assessment, by the Medical Council of India and that the said letter was also acknowledged, Medical Council of India had neither chosen to review/assess the appellant-College nor replied to the letter, dated 24.03.2015, of the Ministry of Health and Family Welfare, New Delhi, explaining the reasons, for not reviewing/assessing the case of the appellant by taking into consideration the compliance report or causing any further inspection, if required, for nearly 50 days.

18. The appellant-College has submitted a letter, dated 06.05.2015, to the The Secretary (Medical Education), Ministry of Health and Family Welfare, New Delhi and the Medical Council of India, New Delhi, respondents 1 and 3, respectively, stating that the alleged defects noticed by the Medical Assessors, during the inspection held on 15.12.2014 and 16.12.2014 respectively, have been rectified and though a compliance report, dated 12.03.2015, had already been submitted and acknowledged on 08.05.2015, there was no intimation from the Medical Council of India.

19. Contentions have been made that the Approving Authority of the Scheme, viz., Ministry of Health and Family Welfare, New Delhi, 1st respondent, was quite conscious of the fact of Regulation 8(3)(1)(b) of the Establishment of Medical College Regulations (Amendment), 2010, Part II, dated 16.04.2010 and even after receipt of recommendations of the Medical Council of India, dated 21.01.2015, recommending disapproval of the scheme for 2015-16, Ministry of Health and Family Welfare, Government of India, through its letter, dated 05.03.2015, requested the Medical College to appear in person on 13.03.2015, along with the compliance report, submitted by the appellant College and hence, Clause 8(3)(1)(b) of the Establishment of Medical College Regulations (Amendment), 2010, Part II, dated 16.04.2010, cannot be invoked against the appellant Medical College, without reviewing/assessing the compliance verification as requested by the Central Government. W.P.No.16135 of 2015, has been filed by the appellant College to issue appropriate orders, for grant of fourth renewal of permission for conducting the 5th Batch of MBBS Degree Course, with an annual intake of 150 students.

20. After notice to the respondents therein, in the above writ petition, Medical Council of India is stated to have submitted a copy of the correspondence, dated 11.05.2015, addressed to the

Ministry of Health and Family Welfare, before this Court on 12.06.2015 and for the first time, after nearly three months, from the date of submission of the compliance report, dated 12.03.2015, the appellant College was informed of the legal opinion of the learned Additional Solicitor General of India, Government of India, relied on by the Medical Council of India.

21. It is the further contention of the appellant College that only on 12.06.2015, submission has been made by the learned counsel appearing for the Central Government that appropriate orders would be passed on 15.06.2015 and he has prayed for listing of the matter on 16.06.2015. Thus, when W.P.No.16135 of 2015, was subsequently taken up for hearing on 17.06.2015, the appellant-Medical College has been issued with the impugned letter No.U-12012/1057/2015-ME (P-II), dated 15.06.2015, issued by the Under Secretary to Government of India, Ministry of Health and Family Welfare, New Delhi, the 2nd respondent herein, rejecting the request of the appellant College for approval for admission of the 5th Batch of 150 MBBS Students, for the academic year 2015-16.

22. Rejection of approval is challenged in the present Writ Petition in W.P.No.17985 of 2015, by the appellant-College in which the appellant-College has also prayed for a direction to the Ministry of Health and Family Welfare, New Delhi, 1st respondent herein, to issue appropriate Orders/Letter of Permission, by invoking Section 10-A(4) of the Indian Medical Council Act, 1956, for grant of fourth renewal of permission for conducting the 5th batch of MBBS Degree Course, with an annual intake of 150 students.

23. Pending disposal of the Writ Petition No.17985 of 2015, in M.P.No.2 of 2015, the appellant-College has sought for a direction to the Ministry of Health and Family Welfare, New Delhi, 1st respondent herein, to issue appropriate directions to the Medical Council of India, to carry out the compliance verification, based on the rectification of the defects, submitted to the Medical Council of India, and for a direction to the Central Government, to grant the fourth renewal of permission to the College, for conducting the 5th batch of MBBS Degree Course, with an annual intake of 150 students, for the academic year 2015-16.

24. Material on record discloses that the Medical Council of India, 3rd respondent herein, has filed a reply affidavit, dated 30.06.2015, wherein, it is contended that the College was inspected in the presence of the Management, including the Dean/Principal of the College, who has signed the inspection reports, dated 15.12.2014 and 16.12.2014, respectively. Deficiencies noticed have been admitted. The same could not be rectified within the short

span of one or two months. The last date for the Medical Council of India to send its recommendation to the Central Government is 15.05.2015 and the last date for the Central Government to grant renewal of permission is 15.06.2015. Both the dates are already over and therefore, the Medical Council of India can neither reconsider nor carry out any fresh inspection of any medical college.

25. Placing reliance on the decisions of the Hon'ble Supreme Court in *State of Kerala v. T.P.Roshna* reported in 1979 SCC 580, *Medical Council of India v. State of Karnataka* reported in 1998 (6) SCC 131 and *Dr.Preeti Srivastava v. State of M.P.*, and placing reliance on Section 33 of the Indian Medical Council Act, 1956, Medical Council of India, 3rd respondent herein, has further submitted that it is empowered to frame regulations and also having the responsibility to discharge the duties to maintain the highest standards of medical education, throughout the Country.

26. Contentions have also been raised that the Hon'ble Apex Court in *Medical Council of India v. State of Karnataka* reported in 1998 (6) SCC 131, has held that the regulations of the Medical Council of India are binding and mandatory and that all the State enactments, rules and regulations framed by the Universities, etc., in relation to the conduct of the medical courses, to the extent they are inconsistent with the Act and the Regulations made thereunder by the Medical Council of India, are repugnant by virtue of Article 254 of the Constitution of India.

27. Setting out the procedure and the regulations to be complied with, for grant of permission for renewal and the statutory time limit, with reference to the statutory provisions in the Indian Medical Council Act, 1956 and the Regulations made thereunder and placing reliance on the decision made in *Mridul Dhar v. Union of India* reported in 2005 (2) SCC 65, Medical Council of India has further contended that strict adherence to each of the stages, mentioned therein, is an absolute imperative.

28. Reliance has also been on the decision of the Apex Court in *Union of India v. All India Children Care and Educational Development Society* reported in 2002 (3) SCC 649 and contentions have been made to the effect that the applications in all respects, as per the qualifying criteria laid down in the statutory regulations alone, deserve to be treated as applications under Section 10-A of the Indian Medical Council Act, 1956.

29. Before the Writ Court, contentions have been made that the time limit prescribed by the Hon'ble Supreme Court, as part of the statutory regulations, are applicable to all the Medical

Colleges and that the Medical Council of India cannot violate the same. Contentions have also been made that the Hon'ble Supreme Court, has held that violations would be viewed seriously. Statutory provisions, regulations made therein and the decisions of the Hon'ble Supreme Court, have to be strictly implemented. Time schedule set out in Mridul Dhar's case (cited supra), has been extensively considered with reference to other decisions of the Hon'ble Supreme Court.

30. The decision made in Medical Council of India v. Manas Ranjan Behera reported in 2010(1) SCC 173, has reiterated the direction passed in the case of Mridul Dhar's case. Priya Gupta's case has also been pressed into service. The subsequent decision of the Hon'ble Supreme Court in Maa Vaishno Devi Mahila Mahavidyala v. State of Uttar Pradesh reported in 2013 (2) SCC 617, regarding strict adherence to the time schedule, has been extracted. The decision of the Delhi High Court in W.P.(C)No.3976/2014 - Shree Chhatrapati Shivaji Education Society v. Medical Council of India, has also been pressed into service and contentions have been made that there cannot be assessment for making recommendations to the Central Government, after the last date for making recommendations.

31. Reverting to the case on hand, Medical Council of India has submitted that vide communication, dated 29.08.2014, the Medical Council of India has requested the appellant-College to submit the respective forms, along with the declaration forms to the Council Office, on or before 15th September, 2014, for granting 4th renewal of permission for conducting the 5th batch of MBBS Degree Course with annual take of 150 students to the appellant-College for the academic year 2015-16. The College has submitted that the scheme, dated 10.09.2014, which was received by the Medical Council of India on 15.09.2014.

32. Files pertaining to the appellant-Medical College was sent to the Assessment Cell of the Council on 28.10.2014 for appointment of assessors for inspection of the appellant-Medical College. The Medical Council of India, carried out the inspection of infrastructure, teaching faculty, clinical material and other physical facilities, available with the College, during the inspection on 15th and 16th December, 2014. The assessment report of the Medical Inspection, was placed before the Executive Committee of the Medical Council of India, in its meeting held on 13.01.2015. After discussion and deliberations, deficiencies were noticed.

33. Before the Writ Court, Medical Council of India has further submitted that since one of the deficiencies relate to the inadequacy of the teaching faculty and/or residents, which was found to be more than 20% and bed occupancy was found to be less

than 70%, invoking Clause 8(3)(1)(b) of the abovesaid Regulations, the decision of the Executive committee of the Council was communicated to the Central Government, vide Medical Council of India's letter, dated 11.05.2015. The Central Government has granted personal hearing on 13.03.2015. Compliance report is stated to have been filed before the Central Government. However, when the case of the appellant-College was re-considered by the Executive committee of the Medical Council of India, in its meeting and reiterating the decision taken earlier and sent its views on 11.05.2015, before the last date, ie., on 15.05.2015.

34. Before the Writ Court, Medical Council of India has also submitted that in case, where permission could not be granted before June 2015, the Central Government itself has filed I.A.No.11 of 2014 in Civil Appeal No.4318 of 2014, in the matter of Priya Gupta v. State of Chhattisgarh, inter alia, seeking extension of time schedule for the academic session 2014-15, for re-consideration of the schemes/applications of the medical colleges, after the last dates. According to the Medical Council of India, being the statutory authority, it is obligated to ensure proper functioning of the medical college and hence, there is no question of re-examination of the colleges, which was found unsatisfied under Regulation 8(3)(1)(b) of the abovesaid regulations.

35. After considering the material on record and submissions of the learned counsel appearing for the parties, the Writ Court, vide order, dated 31st July, 2015, at Paragraphs 8 and 9, has ordered as follows:

"8. This Court, in similar facts and circumstances, has dismissed M.P.No.3 of 2015 in W.P.No.18233 of 2015 filed by Madha Medical College and Research Institute, Chennai, vide order dated 29.07.2015. The Hon'ble Supreme Court of India in Manohar Lal Sharma v. Medical Council of India and Others [(2013) 10 SCC 60] has held that it is open to MCI to conduct surprise inspection and it is relevant to extract the following paras of the said judgment:

"24....MCI can conduct a surprise inspection as to whether deficiencies have been rectified and the compliance report to be accepted or not.

25. MCI, while deciding to grant permission or not to grant permission, is not functioning as a quasi-judicial authority, but only as an administrative authority. Rigid rules of natural justice are, therefore, not contemplated or envisaged.... A compliance report is called for only to ascertain whether the deficiencies pointed out were rectified or

not. If MCI is not satisfied with the manner of compliance, it can conduct a surprise inspection. After that, no further time or opportunity to rectify the deficiencies is contemplated, nor further opportunity of being heard, is provided.

26. We have already dealt with, in extenso, the deficiencies pointed out by the MCI team in its report dated 6-7-2013. In our view, the deficiencies pointed out are fundamental and very crucial, which cannot be ignored in the interest of medical education and in the interest of the student community. MCI and the College authorities have to bear in mind, what is prescribed is the minimum, if MCI dilutes the minimum standards, they will be doing violence to the statutory requirements. MCI is duty-bound to cancel the request if fundamental and minimum requirements are not satisfied or else the College will be producing half-baked and poor quality doctors and they would do more harm to the society than service. In our view, the infirmities pointed out by the inspection team are serious deficiencies and the Board of Governors of MCI rightly not granted approval for renewal of permission for the third batch of 150 MBBS students for the academic year 2013-2014."

9. In the light of the reasons assigned above coupled with the time limit/schedule, the prayed sought for by the petitioner cannot be granted. Hence, M.P.No.2 of 2015 in W.P.No.17985 of 2015 is dismissed. It is made clear that the observations made herein are only for the purpose of disposal of this petition and this Court has not touched upon the merits of the case of the petitioner as well as the respondents herein for the reason that the writ petition has to be adjudicated on its own merits."

36. Being aggrieved by the abovesaid order, Annapoorana Medical College and Hospital has filed this present appeal.

37. Mr.A.Ramesh, learned Senior Counsel, briefly submitted the facts of the case, referred to the relevant provisions of the Act, regulations framed, and the order impugned in the writ petition. Thereafter, citing the case of Indian Institute of Medical Sciences and Research, Jalna, Maharashtra, he submitted that the Medical Council of India has applied different yardstick in the matter of granting permission for renewal to the 5th Batch of MBBS course to the appellant, for the academic year 2015-16, in not conducting a fresh inspection, and pleaded violation of Article 14 of the Constitution of India, and hence, we directed Mr.V.P.Raman, learned counsel for the Medical Council of India to get

instructions.,

38. Reverting to the above, Mr.V.P.Raman, submitted that there was no discrimination, but the mistake committed by Medical Council of India was rectified, details of which, would be elaborated in the latter portion of this judgment.

39. Taking this Court through Section 10-A(2)(a) of the Indian Medical Council Act, 1956, Mr.A.Ramesh, learned Senior Counsel for the appellant College submitted that as per the said statutory provision, every person or medical college shall, for the purpose of obtaining permission, under Sub-Section (1), shall submit to the Central Government, a scheme, in accordance with the provisions of Clause (b) and that the Central Government shall refer the scheme to the Council for its recommendations.

40. He further submitted that as per Section 10-A(3), on receipt of the scheme by the Council, under sub-Section (2), the Council, may obtain such other particulars, as may be considered necessary by it, from the person or the Medical college concerned, and thereafter, it may,- (a) if the scheme is defective, and does not contain any necessary particulars, give a reasonable opportunity to the person or college concerned for making a written representation and it shall be open to such person or medical college, as the case may be, or rectify the defects, if any, specified by the Council; and (b) consider the scheme, having regard to the factors referred to in sub-section (7), and submit the scheme together with its recommendations thereon to the Central Government.

41. According to the learned Senior Counsel for the appellant College, scheme for renewal of permission for the academic year 2015-16, was submitted to the Central Government, on 10.09.2014. The Medical Council of India, has conducted inspection. However, when the Council appeared to have deliberated, had noticed certain defects. According to the learned senior counsel, if the scheme did not satisfy any required particulars, then as per Section 10-A(3) (a) of the Indian Medical Council Act, 1956, Medical Council of India ought to have provided a reasonable opportunity to the appellant-College, for making a written representation to the Council and if that opportunity had been given to the appellant College, deficiencies noted could have been rectified by the appellant-College, then and there and therefore, as per Section 10-A(3)(b) of the abovesaid Act, the Council has failed to adhere to the statutory provision.

42. By inviting the attention of this Court to the list of colleges, recommended by the Medical Council of India, not to grant

renewal of permission for admission to MBBS course, for the academic year 2015-16, Mr.A.Ramesh, learned Senior Counsel for the appellant college submitted that in respect of a non-Governmental institution, viz., Indian Institute of Medical Science and Research, Jalna, Maharashtra State, which applied for renewal of permission for MBBS course, for the 3rd Batch, for the academic year 2015-16, initially, the Executive Committee of Medical Council of India, after considering the Council's Assessor's Report, noted certain deficiencies, which includes, shortage of residence, as 30%. Later on, Medical Council of India has reconsidered its earlier decision and decided to recommend for renewal. He therefore submitted that when Clause 8(3)(1)(b) of the Establishment of Medical College Regulations (Amendment), 2010, Part II, dated 16.04.2010, was applied to the abovesaid College, subsequently, permission to the said college, has been granted.

43. According to him, Medical Council of India has applied different yardstick, in the matter of granting renewal of permission, for admission of MBBS students, for the academic year 2015-16, to the appellant-College. He further submitted that the Medical Council of India, has failed, not only to adhere to the mandate, under Section 10-A(3)(a) & (b) of the Indian Medical Council Act, 1956, in providing an opportunity, to rectify the defects, but also violated Article 14 of the Constitution of India, when the abovesaid institution was given an opportunity to answer the deficiencies noticed.

44. Inviting the attention of this Court to Section 10-A(4) of the Indian Medical Council Act, 1956, learned Senior Counsel appearing for the appellant-College submitted that as per the said provision, the Central Government may, after considering the scheme and the recommendations of the Council, under sub-Section (3) and after obtaining, where necessary, such other particulars, as may be considered necessary, from the person or the college concerned, and having regard to the factors referred to in sub-Section (7), either approve (with such conditions, if any, as it may consider necessary) or disapprove the scheme, and any such approval shall be a permission under sub-Section (1) and hence, ought to have granted approval of the scheme, by considering the compliance report. It is the further submission of the learned Senior Counsel, that having received the compliance report, dated 12.03.2015, the Central Government ought to have either approved the renewal sought for, or for that matter, enforced the directions issued to MCI, vide letter dated 24.03.2015, to review/asses.

45. Referring to the proviso to Sub-Section (4) of Section 10-A of the Act, he submitted that no scheme shall be disapproved by the Central Government, except after giving the person or

college concerned, a reasonable opportunity of being heard.

46. Inviting the attention of this Court to the impugned letter No.U-12012/1057/2015-ME (P-II), dated 15.06.2015, Mr.A.Ramesh, learned Senior Counsel appearing for the appellant, further submitted that before disapproving the scheme, the Central Government ought to have given a reasonable opportunity of being heard, to the appellant. He submitted that thus there is a violation of Section 10-A(4) of the Act, in not giving any opportunity of being heard.

47. Referring to the letter of the Medical Council of India, dated 21.01.2015, addressed to the Secretary to the Government, Ministry of Health and Family Welfare, New Delhi, 1st respondent, in which, a reference has been made to Clause 8(3)(1)(b) of the Establishment of Medical College Regulations (Amendment), 2010, Part II, dated 16.04.2010, and the opinion of the learned Solicitor General of India, learned Senior Counsel for the appellant submitted that when the Medical Council of India, has decided to recommend to the Central Government, not to renew permission for admission of the 5th batch of 150 students, for the academic year 2015-16, opportunity should have been given.

48. It is the further contention of the learned Senior Counsel that though the Central Government was conscious of the existence of the abovesaid Regulation, it has independently considered the scheme, and in terms of the provision, contained in Section 10-A(4) of the abovesaid Act, 1956, decided to grant a personal hearing on 10.02.2015 and accordingly, personal hearing was also given on 13.03.2015. Thereafter, the Central Government, vide letter, dated 24.03.2015, directed the Secretary, Medical Council of India, New Delhi, 3rd respondent herein, to review/assess the scheme, in the light of the documents, submitted by the appellant-College and the compliance report and also requested the Medical Council of India, to consider the recommendations of the Committee, with a specific request to take appropriate necessary action, for review/assess and to furnish its recommendations to the Ministry. For all the 61 cases, mentioned in the letter, dated 24.03.2015, the Central Government has directed the Medical Council of India, to review/assess, as stated supra.

49. Learned Senior Counsel for the appellant further submitted that after the receipt of the letter, dated 24.03.2015, the Medical Council of India, should have sent a reply to the Central Government, immediately. If it had intended to apply Clause 8(3)(1)(b) of the Establishment of Medical College Regulations (Amendment), 2010, Part II, dated 16.04.2010, by stating that they would not inspect the Colleges, for renewal and that no

review/assessment of the schemes, would made on the basis of the documents submitted to the Central Government. But the Medical Council of India, slept over for nearly 50 days, till 11.05.2015 and appeared to have reiterated its earlier stand, not to grant renewal of permission, to the appellant college for the 5th batch of students for the academic year 2015-16.

50. Learned Senior Counsel for the appellant-College further submitted that the communication of the Medical Council of India, dated 11.05.2015, addressed to the Central Government, was kept behind the back of the appellant, for nearly 50 days and Medical Council of India, had never addressed any letter to the College, in this regard. He also submitted that only during the hearing of W.P.No.16135 of 2015, a copy of the abovesaid communication was furnished to the appellant.

51. Learned Senior Counsel appearing for the appellant further submitted that Clause 8(3)(1)(b) of the Establishment of Medical College Regulations (Amendment), 2010, Part II, dated 16.04.2010, cannot be put against the appellant-College, and even as per the said Regulation, the procedure to be followed for renewal of recognition shall be the same, as applicable for the award, of recognition, in which case, both the Medical Council of India, as well as the Central Government, ought to have adhered to the mandate, under Section 10-A(3) & (4) of the Medical Council of India Act, 1956 and provided an opportunity to the appellant-Medical College, to rectify the defects and that the Central Government ought to have provided a reasonable opportunity of being heard, before the scheme is disapproved.

52. According to the learned Senior Counsel, if the Medical Council of India, by its decision, dated 13.01.2015, had decided to recommend to the Central Government, not to renew the permission for admission for the 3rd batch of students of the Indian Institute of Medical Sciences and Research, Jalna, Maharashtra, by applying Clause 8(3)(1)(b) of the Establishment of Medical College Regulations (Amendment), 2010, Part II, dated 16.04.2010 and subsequently, if the Medical Council of India was of the opinion, that a mistake had been committed in not properly taking into consideration the percentage of deficiency in so far as Indian Institute of Medical Sciences and Research, Jalna, Maharashtra,, then the Medical Council of India ought to have applied the same yardstick, to other colleges also, including the appellant, to review its decision, on the basis of the particulars furnished, to the Central Government, forwarded and received by the Medical Council of India. According to him, similar opportunity has been denied to the appellant.

53. By referring to Clause 8(3)(1)(b) of the Establishment of Medical College Regulations (Amendment), 2010, Part II, dated 16.04.2010, pressed into service by the Medical Council of India, against the appellant college, learned Senior Counsel further submitted that when the procedure for renewal or recognition, as applicable to award of recognition, as per the said regulations, is same and wherever the council in its report, had not recommended the issue of letter of intent of a person or college, it may, upon being so, the Central Government can reconsider an application, taking note of the new or additional information, as may be forwarded by the Central Government to the Council, and that when the Medical council is mandated to submit his report, in the same manner, as prescribed for the initial report, to the Central Government, then the Council ought to have considered the compliance report of the appellant college, for renewal of admission for the 5th Batch o students for the academic year 2015-2016.

54. It is the submission of the learned Senior Counsel that when the Central Government, after receipt of the additional information or compliance report, dated 12.03.2015, has forwarded the required information, to the Medical Council of India, vide letter, dated 24.03.2015, it is mandatory on the part of the Medical Council of India, to have reviewed/assessed, the report and documents, as per the statutory provisions, under Section 10-A of the Act and even taking for granted, that Clause 8(3)(1)(b) of the Establishment of Medical College Regulations (Amendment), 2010, Part II, dated 16.04.2010, is applicable to the case of the appellant, for argument sake, yet, as per the mandate of the Act, Medical Council of India, ought to have been reviewed/assessed, by conducting an inspection. Having received the letter, dated 24.03.2015, Medical Council of India, without any just and reasonable cause, has unnecessarily delayed to send any reply, either to the Central Government or send any communication to the appellant College, thus violated, not only Section 10-A of the Medical Council of India Act, 1956, but there is also a violation of Section Clause 8(3)(1)(b) of the Establishment of Medical College Regulations (Amendment), 2010, Part II, dated 16.04.2010, in not considering the compliance report, dated 13.03.2015. He submitted that it is improper on the part of the the Medical Council of India, in holding the compliance report for 50 days and thereafter, forwarding its views, only on 11-05-2015, without assigning any valid reasons, as to why the recommendations of the Committee of the Central Government, compliance report, and the request to review/assess, were not considered, after the receipt of the compliance report, as well as the letter of the appellant college, dated 06.05.2015.

55. Learned Senior Counsel for the appellant further submitted that once the Medical council of India, has delayed the recommendations, violating statutory provisions, it would be improper to contend that inspection cannot be made to the institution, as it would be beyond the period, provided for, in the Schedule to the Act, and the decisions of the Hon'ble Supreme Court.

56. According to him, the Hon'ble Supreme Court has reiterated that there should not be unnecessary delay on the part of the authorities concerned, and in the case on hand, when the compliance report, dated 12.03.2015, submitted by the appellant college, had already been forwarded to the Medical Council of India, on 24.03.2015, with a request to review/assess, on the basis of the documents, furnished by the college, it is the duty of the MCI to have reviewed/assessed, by making an inspection if required and that it is not open to the Medical Council of India, to contend, as if, there was no laxity on its part and that there is no violation of the judgments of the Hon'ble Supreme Court. It is the submission of the learned Senior Counsel, that the Medical Council of India was solely responsible for the delay and that same cannot be put against the college, contending inter alia that after the scheduled date, there cannot be any fresh inspection or re-inspection.

57. Both the learned counsel appearing for the parties submitted that during the course of hearing, before the Writ Court, the decision of the Delhi High Court, in Shree Chhatrapati Shivaji Educational Society vs. Union of India, upholding the challenge to Clause 8(3)(1)(b) of the Establishment of Medical College Regulations (Amendment), 2010, Part II, dated 16.04.2010 and the subsequent directions issued by the Hon'ble Supreme Court in S.L.P. (C) Nos.16556-16557 of 2015, dated 02-07-2015, were brought to the notice of the Writ Court and even after taking note of the same, the Writ Court has declined to grant the prayer sought for in M.P.No.2 of 2015 in W.P.No.17985 of 2015.

58. On the above aspect, it is the contention of Mr.A.Ramesh, learned Senior Counsel appearing for the appellant submitted that when Clause 8(3)(1)(b) of the Establishment of Medical College Regulations (Amendment), 2010, Part II, dated 16.04.2010, has been considered in the above case and when the Hon'ble Supreme Court has granted directions, the said regulation should be construed as inoperative, for all the institutions and therefore, it would not be appropriate to apply the said regulation, against the appellant.

59. Inviting the attention of this Court to a recent order passed by the Hon'ble Supreme Court in Royal Medical Trust (Regd)

v. Union of India [W.P.(C)No.705 of 2014, dated 20.08.2015], learned Senior Counsel further contended that in the above batch of writ petitions, the Hon'ble Supreme Court considered three categories of colleges, viz.,

(1) Cases where new Medical Colleges are sought to be established for the first time and where such colleges are seeking appropriate permission to admit students to the first year of MBBS course,

(2) Cases where the existing approved Medical Colleges are seeking increase in intake of seats for admissions of students to the first year of MBBS Course,

(3) Medical Colleges seeking renewal of permission, who have already received permission in the previous year(s) either for establishing new Medical College or for increasing intake capacity of the existing Medical College. In this category of cases, the renewal for subsequent batches and for permission to admit students to the first year course is sought for.

While considering the mandate of the Medical Council of India and the Central Government, to take into account, the materials furnished by the respective colleges/institutions, for approval of admission/renewal and, in particular, the third category Institutions, seeking renewal for admission, the Hon'ble Supreme Court, has made it clear that the Medical Council of India and the Central Government are mandated to follow Section 10-A of the Indian Medical Council Act, 1956 and accordingly, issued directions.

60. In the light of the recent pronouncement of the Hon'ble Supreme Court in the above batch of writ petitions, learned Senior Counsel for the appellant-College submitted that it would not be appropriate for the Medical Council of India, to take a contrary stand, even after the pronouncement of the judgment of the Hon'ble Supreme Court, which cannot be construed as an interim order, without there being any discussion.

61. Laying stress on the inordinate delay of 50 days, caused by the Medical Council of India, in keeping the approval in darkness, and on consideration of the materials, in the compliance report, by both the Medical Council of India and Central Government, learned Senior Counsel submitted that the Medical Council of India has failed to review/assess. For the reasons stated supra, he prayed for inspection of the College by the Medical Council of India and submission of the report to its Central Government to pass orders, under Section 10-A of the Medical Council of India Act, 1956.

62. Per contra, Mr.V.P.Raman, learned counsel appearing for the Medical Council of India submitted that it is true, insofar as the 61 medical colleges/institutions, are concerned, inspection was made by the Medical Council of India, for approval/renewal and in respect of Indian Institute of Medical Science and Research, Jalna, Maharashtra, certain deficiencies were noticed. One of the deficiencies noticed during inspection, made on 23.02.2015 and 24.02.2015, respectively was that the shortage of residence was 30% and therefore, the Executive Committee, after considering the Council Assessor's Report, decided not to renew the 3rd batch of students for Indian Institute of Medical Science and Research, Jalna, Maharashtra, under Section 10-A of the Indian Medical Council Act, 1956 and applying Clause 8(3)(1)(b) of the Establishment of Medical College Regulations (Amendment), 2010, Part II, dated 16.04.2010, which states that if the deficiencies of the teaching faculty is more than 30%, then the College will not be considered for renewal. According to him, as per Clause 8(3)(1)(b), deficiency of teaching faculty or residence, should be more than 30% and only in such circumstances, an institution, need not be considered for renewal, but when the mistake in taking the abovesaid relevant factor, ie., the deficiency was only 30% and not more than 35%, came to light, Medical Council of India, corrected the same and after considering the particulars, granted approval for the said institute. However, in respect of all other institutions, it is the submission of the learned counsel for the Medical Council of India that by virtue of Clause 8(3)(1)(b), no fresh inspection has been made. He therefore submitted that there is no case of arbitrariness, discrimination and thus, violation of Article 14 of the Constitution of India.

63. As regards the interim order passed by the Hon'ble Supreme Court in S.L.P.(C) Nos.16556-16557 of 2015, dated 02.07.2015, in the matter of Shree Chhatrapati Shivaji Education Society v. Union of India, it is the submission of the learned counsel for the Medical Council of India that the same cannot be said to be a precedent to be followed in all similar cases. In this context, he referred to Articles 141 and 142 of the Constitution of India, and submitted that the extraordinary power under Article 142 of the Constitution of India cannot be exercised by this Court, considering the interim order in Shree Chhatrapati Shivaji case, as a precedent.

64. Reference has also been made to the decision in M.P.No.3 of 2015 in W.P.No.18233 of 2015, dated 29.07.2015, filed by Madha Medical College and Research Institute, Chennai. Mr.V.P.Raman, learned counsel for the Medical Council of India further submitted that when the prayer sought for, in M.P.No.3 of 2015 in

W.P.No.18233 of 2015, dated 29.07.2015, in the matter of Madha Medical College and Research Institute, Chennai, was rejected by this Court, the said College, having accepted the existence of Clause 8(3)(1)(b) and the position of law, under Article 142, has approached the Hon'ble Supreme Court, for appropriate directions and therefore, the appellant can only seek for orders from the Hon'ble Supreme Court.

65. Inviting the attention of this Court to the main prayer sought for, in the present writ petition and the interim direction in M.P.No.2 of 2015, Mr.V.P.Raman, learned counsel for the Medical Council of India further submitted that what is sought for in the Miscellaneous Petition, is beyond the scope of the prayer made in the main writ petition and, therefore, interim direction need not be granted.

66. Mr.V.P.Raman, learned counsel for the Medical Council of India, further submitted that having realised that Clause 8(3)(1)(b) of the Establishment of Medical College Regulations (Amendment), 2010, Part II, dated 16.04.2010, stands against them and in the absence of challenge to the same, Madha Medical College and Research Institute, Chennai, has now filed an appeal, against the order of the learned single Judge in M.P.No.3 of 2015 in W.P.No.18233 of 2015, dated 29.07.2015, to the Hon'ble Apex Court and therefore, the present appellant-College also ought to have moved the Hon'ble Apex Court, directly, instead of filing an appeal, more particularly, when the power under Article 142 of the Constitution of India, cannot be exercised by the High Court.

67. It is the further submission of Mr.V.P.Raman, that the Central Government, in its letter(s), did not direct the Medical Council of India, to make any inspection of the institutes, falls under Clause 8 (3) of the Establishment of Medical College Regulations (Amendment) 2010, Part II, dated 16.04.2010 and therefore, there was no need to inspect.

68. According to him, if, for any reason, the Central Government have not provided any opportunity to the appellant Medical College, before disapproving the scheme, remedy can be obtained only as against Central Government and, if, after considering the rival contentions, this Court is of the opinion that there was a violation of any statutory provision, there could only be a remand to the Central Government to adhere to the principles of natural justice, before passing an order under Section 10-A (4) of the Indian Medical Council Act, 1956.

69. According to him, in the light of the prayer sought for in the Writ Petition, inspection cannot be asked for as a matter of

right, when Clause 8 (3) stares on the face of the appellant, who had not chosen to challenge the said regulation.

70. It is also the contention of the learned counsel for MCI that Clause 8(3)(1)(b) of the said regulation does not fall foul of Section 10-A of the Act. Directions granted by the Hon'ble Supreme Court of India in the proceedings instituted by Shree Chhatrapati Shivaji Education Society v. Union of India, cannot ipso facto be extended to the appellant, who had not challenged the regulation.

71. Refuting the allegations of delay attributed against MCI, learned counsel submitted that the inspection of several colleges/institutions was conducted by MCI and deficiencies were noticed, in as many as 61 colleges/institutions. Accordingly, MCI decided to recommend to the Central Government not to renew permission for admission, sought for.

72. Inviting the attention of this Court to the time schedule for inspection, forwarding of reports etc., in the schedule, considered in Mirudal Dhar's case and in the subsequent decisions, Mr.V.P.Raman further submitted that as per the schedule, 15th May of every year is the last date, before which MCI should send its recommendations. According to him, on 11.05.2015 itself, MCI has communicated to the Central Government that the appellant college falls within Clause 8 (3) and, thus, is not entitled to seek for renewal.

73. It is also his contention that every year, across the country, many applications are submitted, seeking approval/renewal, increase in number of seats etc., and that considering the limited time provided for, under the Schedule, for making inspection, deliberation and submission of recommendation to the Central Government, the time gap in forwarding the report to the Central Government, in so far as the appellant college is concerned, cannot be said to have been caused intentionally, on the contra, it is well within the time schedule.

74. Placing reliance on a decision of the Hon'ble Supreme Court of India in Chintpurni Medical College and Hospital and Others, reported in 2014 (1) SCC 570, Mr.V.P.Raman, submitted that in the said case, pursuant to the directions of the High Court, inspection was conducted on 19.09.2012 and that the report of the Inspection Team was accepted by the Board of Governors on 21.09.2012. The Punjab and Haryana High Court directed that a fresh decision has to be taken by MCI after inspection, by its team of assessors for the next academic year 2013-2014, and in the event of success of inspection, with a further right to further assessment in case it is otherwise. The High Court, in the last paragraph of

the judgment, has further added as follows :

"We would, however, leave it to the appellant in case after inspection a case for renewal of permission is made out and if the deadlines of counselling and admission process so permit in the current academic year 2012-2013 to consider the case of the college accordingly."

The High Court remanded the matter back to the learned single Judge. MCI has challenged the order before a Hon'ble Division Bench and thereafter before the Hon'ble Supreme Court. After hearing the parties, the Hon'ble Supreme Court held that there was no impediment in granting permission for the 2013-2014 batch.

75. Based on the above judgment, it is the submission of the learned counsel for MCI, that, even taking for granted that any direction is given for permission for renewal for admission of students, it could be only for the next academic year, as the time schedule for inspection is already over. According to him, except the Hon'ble Supreme Court, time cannot be extended by any High Court.

76. Inviting the attention of this Court to the judgment in Mridul Dhar's case, learned counsel for Medical Council of India submitted that even in cases where the time schedule could not be complied with, Central Government alone can seek for extension and thus the Central Government filed I.A.No.11 of 2014, in Civil Appeal No.4318 of 2012, in the matter of Priya Gupta v. State of Chhattisgarh and others, and sought for time. Therefore, he submitted that it is always open to the Central Government to seek for appropriate directions from the Hon'ble Supreme Court, but the appellant, as a matter of right, cannot seek for extension.

77. By way of reply and inviting the attention of this Court to the decision of the Hon'ble Supreme Court of India, rendered in W.P.(C)Nos.441 and 448 of 2015, in the matter of DM Wayanad Institute of Medical Sciences v. Union of India and P.Krishna Das v. Union of India, Mr.A.Ramesh, learned Senior Counsel for the appellant submitted that when the petitioner therein invoked the jurisdiction of the Apex Court under Article 32 of the Constitution of India, challenging the refusal of the Medical Council of India, to recommend for renewal of permission for admitting the students for the academic year 2015-16, in the MBBS Course of the Institutes and the consequent refusal of the Union Government to renew such permission, after hearing the parties therein, the Hon'ble Apex Court has declined to entertain the petitions, on the grounds that rights claimed by the petitioners therein, are not fundamental rights and that the same cannot be agitated, directly before the

Apex Court, under Article 32 of the Constitution of India. While dismissing the writ petitions, the Hon'ble Apex Court has also observed that dismissal of the Writ Petitions, filed under Article 32 of the Constitution of India, would not prevent the petitioners therein, from agitating their grievances before the High Courts, having jurisdiction to deal with the matter. He therefore submitted that contentions to the contra, has to be rejected.

Heard the learned counsel for the parties and perused the materials available on record.

78. It cannot be disputed that educational institutions imparting medical education should satisfy the eligibility requirements for admission to medical courses in India. Serious aberrations have been noticed in the standards of medical education and, therefore, the Medical Council of India has a greater responsibility, in ensuring as to whether the standards of medical education are duly observed in all the institutions where permission is already granted by the Central Government. Medical Council of India has the powers to regulate maintenance of standards of medical education and observance. In the case on hand, Annapoorana Medical College and Hospital, Salem, the appellant herein, has been granted letter of permission on 08.06.2011 with an annual intake of 150 students for the academic year 2011-2012. Subsequently, when renewal of permission for admission to the second batch of 150 students in the said college was sought for, inspection has been made on 15.02.2012 and 16.02.2012 respectively and certain deficiencies have been noticed. The contention made in the present Writ Petition that earlier, the appellant college was provided with an opportunity for rectifying defects/deficiencies, has not been disputed. After verification of the compliance report, inspection has been carried out on 16.06.2012 by the assessors of the Medical Council of India and subsequently, on 20.06.2012, approval for renewal for admission to the second batch of 150 students for the academic year 2012-2013 has been granted. Likewise, for the third batch of 150 students, for the academic year 2013-2014, inspection has been carried out on 15.04.2013 and 16.04.2013 respectively, for the appellant-college and thereafter, on 06.06.2013, Medical Council of India has conveyed the approval for renewal of permission, for the third batch of 150 students for the academic year 2013-2014. For renewal of the fourth batch of students for the academic year 2014-2015, inspection has been done, but, by letter dated 15.06.2014, the Central Government has disapproved the scheme for renewal of admission for the academic year 2014-2015.

79. Material on record discloses that Writ Petition No.21816 of 2014 has been filed against the order dated 15.06.2014 and the

same has been dismissed. According to the appellant-College, as against the said order of dismissal, W.A.No.1159 of 2014, has been filed, wherein the a Hon'ble Division Bench has observed that except the appellant therein, all others were found lacking in providing adequate beds. It is the further contention of the appellant-College that so far, renewal for the academic year 2014-2015 has not been granted.

80. Material on record further discloses that in so far as renewal for the academic year 2015-2016 is concerned, the Medical Council of India, vide its letter dated 29.08.2014, has directed the appellant college to submit the Standard Inspection Forms A & B and Faculty Declaration Forms to the Council on or before 15th September, 2014. Accordingly, the appellant college has submitted the same along with its letter dated 10.09.2014. The said letter reads as follows :

ANNAPOORANA MEDICAL COLLEGE & HOSPITAL

Date : 10.09.2014

To
The Secretary,
Medical Council of India,
Pocket, 14, Sector-8,
Dwarka Phase-1,
New Delhi-110 077.

AMC&H, SLM/MEDICAL/MCI/Renewal of Per./2014, Dt.10.09.2014

Sir/Madam,

Sub : Medical Education - ANNAPOORNA MEDICAL COLLEGE & HOSPITAL, SALEM - Submission of the duly filled in Standard Inspection Forms - A & B and Faculty Declaration forms in the form of CD - Request for Assessment for the grant of 4th renewal of permission for conducting 5th batch of MBBS Degree Course with an annual intake of 150 seats for the academic year 2015- 2016 - Reg.

Ref : Your office Lr.No.MCI-34(41)/2014-Med.128071,
Dated 29.08.2014.

In response to your letter cited on the above subject, I am submitting herewith a hard copy of the duly filled in Standard Inspection Forms - A & B along with a CD containing the duly filled in Form A & B and Faculty Declaration Forms in the Prescribed

format for granting of 4th renewal of permission for conducting 5th batch of MBBS Degree Course with an annual intake of 150 Seats in our ANNAPOORANA MEDICAL COLLEGE & HOSPITAL, SALEM, TAMILNADU for the academic year 2015-2016.

Further, I wish to inform that our Annapoorana Medical College & Hospital, Salem, Tamilnadu will be ready for assessment in the Fourth week of February 2015 for the grant of 4th renewal of permission.

In view of the above facts, I request the Secretary, Medical Council of India to kindly take necessary action for assessment in the Fourth week of February 2015 for granting of 4th renewal of permission for conducting 5th batch of MBBS Degree Course with an annual intake of 150 Seats in our ANNAPOORANA MEDICAL COLLEGE & HOSPITAL, SALEM, TAMILNADU for the academic year 2015-2016.

Thanking you,

Yours faithfully,

Sd/-

DR.P.M.SUBRAMANIAM
DEAN

Encl.: 1.A hard copy of the duly filled in Standard Inspection Forms - A&B.

2.A CD containing the duly filled in Standard Inspection Forms - A&B and Faculty Declaration Forms."

81. It is further seen from the material on record that on 13th January, 2015, the Executive Committee of the Medical Council of India, New Delhi, has met, to consider the matter with regard to the assessment of physical and teaching facilities available in the medical colleges, seeking for renewal of permission for admission to various batches of MBBS Courses in the colleges.

82. It is the case of the appellant-College that the decision of the Executive Committee of the MCI was not communicated to the appellant college, but, vide proceedings, dated 03.02.2015, Government of India, Ministry of Health and Family Welfare (Department of Health and Family Welfare) has sent a letter to the Dean/Principal, Annapoorana Medical College and Hospital, Salem, appellant herein, intimating that MCI has recommended for disapproval of the undergraduate scheme for the academic year 2015-2016, and, as per the provisions contained in Section 10-A of the Act, it has been decided to grant an opportunity of hearing on 12.02.2015 at New Delhi. The college has been requested to appear in person or depute an authorised representative to represent the

case vis-a-vis the letter of the Medical Council of India, along with requisite documents on the specified date and time, failing which the scheme would be decided ex parte. The appellant college has been directed to bring two hard copies and one soft copy in MS Office document and the attached form. Letter of confirmation of participation was also requested to be sent.

83. In response to the letter dated 03.02.2015, the Dean of the appellant college has requested for rescheduling of hearing fixed on 12.02.2015, on the ground of illness. Subsequently, the personal hearing was given to the appellant college on 13.03.2015, on which date, the appellant college has submitted the compliance report, for renewal of permission for the fifth batch of 150 students for the academic year 2015-2016.

84. Thereafter, the Central Government has considered the compliance reports of the colleges and vide letter dated 24th March, 2015, has requested the Medical Council of India, New Delhi, to review/assess the schemes, in the light of the documents submitted by the colleges/applicants, in compliance and recommendations of the Committee, with a request to take appropriate necessary action(s) for review and furnish its recommendations accordingly to the Ministry immediately.

85. Sum and substance of the request made by the Government of India, Ministry of Health and Family Welfare, in its letter dated 24th March, 2015, to the Secretary, Medical Council of India, is as follows :

"Sub : Establishment of New Medical College/Increase of MBBS seats/Permission for Renewal of MBBS course at existing Medical Colleges for the academic year 2015-16 - Hearing granted to applicant/Medical Colleges where MCI has recommended for disapproval of scheme - Reg.

I am directed to refer to the subject noted above and to say that as per the proviso under Section 10 (A) (4) of IMC Act, 1956, a committee has been constituted for granting opportunity of personal hearing of Ministry in case of disapproval/non-renewal recommendations of the Council in case of PG courses for the year 2015-16. The Committee has given personal hearing to the authorised representative of the Medical colleges/applicants on 11th, 12th and 13th March, 2015. Based on the compliance submitted by the colleges concerned in support of their claim, the Committee has recommended for review/assessment

of the following schemes by MCI. The compliance report submitted by the colleges concerned in original along with recommendation of the committee and its observation is also sent herewith as per detail given below....."

86. In view of the above, the Medical Council of India is requested to review/assess the schemes, in the light of the documents, submitted by the Colleges/applicants in compliance and the recommendations of the Committee with the request to take appropriate action for review and furnish its recommendations to this Ministry immediately.

87. From the above letter, dated 24th March, 2015, it could be further deduced, that, in terms of Section 10 (A) (4) of the Act, after considering the scheme, recommendations of the Council as per Sub-section (3), which states that after obtaining, where necessary, such of the particulars as may be necessary, from the person or college concerned, and having regard to the factors referred to, in Sub-section (7), the Central Government could have either approve the schemes with such conditions, if any, as it may deem consider necessary or disapprove the scheme and any such approval shall be a permission under Sub-section (1), the Central Government has requested MCI to renew/assess the scheme.

88. At this juncture, it is relevant to consider that both the Medical Council of India and Central Government have to take into consideration Sub-section (7) of Section 10-A of the Medical Council of India Act, 1956. As per the said Sub-section, the Council, while making its recommendations under clause (b) of sub-section (3) and the Central Government, while passing an order, either approving or disapproving the scheme under sub-section (4), shall have due regard to the following factors, namely,

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

(b) whether the person seeking to establish a medic course of study or training or to increase it admission capacity has adequate financial resources;

(c) whether necessary facilities in respect of staff, equipment, accommodation, training and other facilities to ensure proper functioning of

the medical college or conducting the new course or study or training or accommoda capacity, have been provided or would be provided within the time-limit specified in the scheme;

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

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

(f) the requirement of manpower in the field of practice of medicine; and any other factors as may be prescribed.

(g) where the Central Government passes an order either approving or disapproving a scheme under thi of the order shall be communicated to the person or college concerned."

89. From the above statutory provisions, prima facie, it could be deduced, that notwithstanding the recommendations of the Council, having regard to the factors contained in Sub-section (7) of Section 10-A, the Central Government, under Section 10-A (4) of the Act, is empowered either to approve with such conditions if any as it may consider necessary or to disapprove the scheme and such approval, shall be a permission under Sub-section (1).

90. In the case on hand, the Central Government has not passed any orders under Sub-section (4), directing approval or disapproval of the scheme, but, after considering the compliance reports of the medical colleges/applicants, the Committee, constituted for the purpose of providing an opportunity of personal hearing and to consider the compliance reports, in terms of Sub-section (4) of Section 10-A, has recommended for review/assess of the schemes, by MCI. As per Sub-section 2-A, every person or medical college shall, for the purpose of obtaining permission under sub-section (1), submit to the Central Government a scheme, in accordance with the provisions of clause (b), and the Central Government shall refer the scheme to the Council for its recommendations.

91. In the present case, earlier, the scheme has already been referred to the Medical Council of India, for its recommendations,

and the Executive Committee of the Medical Council of India, after considering the scheme, submitted by the medical colleges/applicants for establishment of new medical colleges/increase of MBBS Seats/permission for renewal of MBBS Course for the academic year 2015-2016, decided to recommend not to grant permission.

92. It is the contention of Mr.V.P.Raman, learned counsel appearing for the Medical Council of India that if the appellant-College was aggrieved over the order made in M.P.No.2 of 2015 in W.P.No.17985 of 2015, dated 31.07.2015, in which, the interim prayer sought for, has been rejected, the appellant ought to have moved to the Hon'ble Supreme Court, like in the case of Madha Medical College and Research Institute. But as rightly pointed out by Mr.A.Ramesh, learned Senior Counsel appearing for the appellant that assuming that the appellant-College moves the Hon'ble Supreme Court directly, there is no certainty that either the Union of India or the Medical Council of India, would concede for Special Leave to be granted, contrary to the judgment in W.P.(C)Nos.441 and 448 of 2015, in the matter of DM Wayanad Institute of Medical Sciences v. Union of India and P.Krishna Das v. Union of India, in which, the Hon'ble Supreme Court, has dismissed the said writ petition, on the ground that the relief claimed does not fall under Article 32 of the Constitution of India, or for that matter, the Hon'ble Supreme Court would entertain the appeal.

93. Contention of the learned Senior Counsel for the appellant is that the interim order of the Hon'ble Supreme Court in S.L.P.(C) Nos.16556-16557 of 2015, dated 02.07.2015, in the matter of Shree Chhatrapati Shivaji Education Society v. Union of India, could be considered, as an order, applicable to all the institutions, irrespective of the fact, as to whether Clause 8(3) (1)(b) of the Establishment of Medical College Regulations (Amendment) 2010, Part II, dated 16.04.2010, is challenged or not. Shree Chhatrapati Shivaji Education Society has challenged Clause 8 (3)(1)(b) of the Establishment of Medical College Regulations (Amendment) 2010, as ultra vires of the Act. After contest, the Delhi High Court, upheld the validity of the Regulation. When the correctness of the same was tested, the Hon'ble Supreme Court, vide order, dated 02.07.2015, has directed the Medical Council of India, to inspect the said college and submit a report, before the Hon'ble Supreme Court, in a sealed cover. The Hon'ble Supreme Court further directed that the said exercise should be done by the Medical Council of India, within a month's time, from the date of the order.

94. Though in M.P.No.3 of 2015 in W.P.No.18233 of 2015, dated 29th July, 2015, the learned single Judge of this Court has observed

that the interim order passed in S.L.P.(C) Nos.16556-16557 of 2015, dated 02.07.2015, directing the Medical Council of India, to conduct inspection, is purported to have been passed, under Article 142 of the Constitution of India, having regard to the time schedule prescribed, held that this Court cannot pass such an order, that too, on the facts and circumstances of the case. Going through the order made in M.P.No.3 of 2015 in W.P.No.18233 of 2015, dated 29th July, 2015, considered in M.P.No.2 of 2015 in W.P.No.17985 of 2015, dated 31.07.2015, we are of the view that the learned single Judge has rejected the prayer sought for in M.P.No.3 of 2015 in W.P.No.18233 of 2015, as well as the prayer in M.P.No.2 of 2015 in W.P.No.17985 of 2015, on the grounds, inter alia that the Hon'ble Supreme Court has set out a specific time schedule and that applicability of the order made in S.L.P.(C) Nos.16556-16557 of 2015, dated 02.07.2015, to the case on hand, has not been considered in detail. According to Mr.V.P.Raman, learned Standing Counsel for the Medical Council of India, the abovesaid interim order, is not a precedent to be followed. He has relied on a decision of the learned single Judge, in W.P.No.11896 of 2011, dated 24.08.2015. At this juncture, we are not inclined to delve into the controversy.

95. The contention of the learned Senior Counsel for the appellant-College is that the Central Government, as well as the appellant-College was kept in darkness, after the letter, dated 24.03.2015, of the Under Secretary to the Government, Ministry of Health and Family Welfare, 2nd respondent herein, wherein, he has requested the Secretary to the Government, Medical Council of India, to review/assess the scheme, in the light of the documents submitted by the appellant-College, along with the compliance report and the recommendations of the Committee, with a request to take appropriate necessary action, for review and furnish its recommendations to the Ministry immediately.

96. Three things are clear from the letter, dated 24.03.2015. Firstly, in terms of Section 10-A(4) of the Indian Medical Council Act, 1956, the Central Government, after considering the scheme and the recommendations of the Council, under sub-Section (3) has decided to obtain, where necessary, such other particulars, as may be considered necessary, by it, from the person or college concerned, that is, the compliance report, which has been submitted on 13.03.2015. The second thing is that the Government of India, Ministry of Health and Family Welfare, New Delhi, has constituted a Committee, to verify the particulars, as may be required necessary, for either approving (with such conditions, if any, as it may consider necessary) or disapproving the scheme. Thirdly, the Committee constituted by the Government has, prima facie, found

that it is not a case for disapproval of the scheme. But the Committee constituted by the Central Government, has recommended for review/assess of the scheme, by the Medical Council of India, with reference to the compliance report and the documents submitted by the Colleges concerned.

97. Had the Central Government thought it fit to disapprove the scheme, it could have been done so. But from the recommendations of the Committee constituted by the Central Government, and the subsequent decision of the Central Government to address the Medical Council of India, to renew/assess, it could be deduced that the Central Government has decided to take the assistance of the Medical Council of India, to make assessment of the compliance report. At this juncture, this Court deems it to extract the dictionary meaning of the word, "review" and "assess"

98. In Oxford Dictionary, meaning of the word, "review" is defined as, "A formal assessment of something with the intention of instituting change if necessary." In Macmillon Dictionary, the word "review" is defined as "the process of studying or examining a situation, policy or idea again in order to decide whether it is suitable or satisfactory." In Merriam-Webster Dictionary, "review" defines as, "an act of carefully looking at or examining the quality or condition of something or someone : examination or inspection."

99. Review indicates re-examination of the proceedings, already concluded for the purpose of preventing the result, which appears not to be based on the exercise of unbiased and reasonable judgment. Review by the authority on the administrative side, means re-examination of the entire records in contra distinction that that what the meaning of the word, "review" in the statute. Statutes, which enumerate grounds for review of judicial decision.

100. The meaning of the term 'Review', as per the Chambers Dictionary is, a looking back, retrospect; a reconsideration; a survey; a revision; a critical examination; etc. According to Burton's Legal Thesaurus, the word 'Review' means, investigation, judicial reconsideration, recapitulation, reconsideration, reinquiry, scrutiny, second examination, study, survey etc. It also denotes to mean, brood over, check thoroughly, comment upon, criticize, critique, deliberate, describe, digest, epitomize, examine, look over, make corrections, make improvements, mull over, notice critically, overlook, recapitulate, recheck, reconsider, reexamine, rehearse, reiterate, remember, restate briefly, retell, retrace, revise, reword, run over, scrutinize, skim, study, sum up,

summarize, survey, view retrospectively, weigh.

101. Similarly, the meaning of the word 'assess', as per the Chambers Dictionary is, to tax or fine, to fix the value or profits of, for taxation; to estimate, judge, evaluate (eg. a person's work, performance, character). According to Burton's Legal Thesaurus, the word 'assess' means, apprise, ascertain, calculate, calibrate, compute, consider, count, determine, estimate, evaluate, fix the value, gauge, judge, measure, mensurate, mete, rate, reckon, set, value, value, weigh.

102. Longman Dictionary of Contemporary English denotes the meaning of the word 'Review' as, a careful examination of a situation or process. Likewise, the word 'Assess', means, to make a judgment about a person or situation after thinking carefully about it.

103. According to Encarta World English Dictionary, the meaning of the word 'Assess' is, to examine in order to judge or evaluate. 'Review', it means, to examine to make sure that it is adequate, accurate, or correct. To consider, study or check again; to discuss or examine again; Re-examination- another look at or consideration of.

104. According to Wharton's Law Lexicon, the word 'Review' means, the act of looking, offering something again with a view to correction or improvement. Lily Thomas v. Union of India, 2000 (6) SCC 224. Literally and even judicially means, re-examination or re-consideration. Basic philosophy inherent in it is the universal acceptance of human fallibility, S.Nagaraj v. State of Karnataka, 1993 Supp (4) SCC 595 (619). Constitution of India, Art.137. Consideration, inspection, or re-examination of a subject or thing, Black's Law Dictionary, 7th Edn., p.1320.

105. When both the Central Government as well as the appellant-College did not receive any communication from the Medical Council of India, in response to the letter, dated 24.03.2015, the appellant-Medical College, has sent a letter, dated 06.05.2015, to both the Secretary to the Government, Ministry of Health and Family Welfare, 1st respondent herein, and the Secretary, Medical Council of India, 3rd respondent herein, stating that the defects, if any, noticed by the Assessors of the Medical Council of India, have been duly complied with.

106. In its letter, dated 06.05.2015, the appellant-College

has requested the Secretary to the Government, Ministry of Health and Family Welfare, to issue appropriate instructions, to the Medical Council of India, to conduct a Compliance Inspection/Verification, as deemed fit and proper, at the earliest date, for grant of 4th renewal of permission for conducting the 5th Batch of MBBS Degree course, with an annual intake of 150 seats at the College, for the academic year 2015-16 and requested the Secretary, Medical Council of India, to conduct/carry out Compliance Verification Inspection at an earliest convenient date, for the said grant, in lieu of rectification of defects noted/pointed by the MCI Assessors.

107. The letter, dated 06.05.2015, has been communicated to both the abovesaid authorities. Copy of the said letter, has been submitted to the Under Secretary, Ministry of Health and Family Welfare, New Delhi, 2nd respondent. Even after the receipt of the abovesaid letter, there is no response, either from the Medical Council of India or the Central Government, which issued the letter, dated 24.03.2015.

108. Emphasis is made on the time schedule, prescribed by the Hon'ble Supreme Court of India in Mridul Dhar v. Union of India and others reported in 2005 (2) SCC 65 and Priya Gupta v. State of Chhattisgarh reported in 2012 (7) SCC 433 and other similar decisions, wherein, the Hon'ble Supreme Court has reiterated that directions of the Apex Court have to be strictly complied with. Suffice to extract the time schedule fixed by the Hon'ble Supreme Court,

"The time schedule for the receipt of applications for establishment of new medical colleges and processing of the applications by Central Government and the Medical Council of India is fixed under the schedule to 1999 Regulations. The said schedule is as under:-

SCHEDULE FOR RECEIPT OF APPLICATIONS FOR ESTABLISHMENT
OF NEW MEDICAL COLLEGES AND PROCESSING OF THE
APPLICATIONS BY THE CENTRAL GOVERNMENT AND THE MEDICAL
COUNCIL OF INDIA

	Stage of Processing	Last date
1	Receipt of applications by the Central Govt.	From 1st August to 31st August (both days inclusive) of any year
2	Receipt of applications by the MCI from Central Govt.	30th September

	Stage of Processing	Last date
3	Recommendations of Medical Council of India to Central Government for issue of Letter of Intent	31st December
4	Issue of Letter of Intent by the Central Government	31st January
5	Receipt of reply from the applicant by the Central Government requesting for Letter of Permission	28th February
6	Receipt of Letter from Central Government by the Medical Council of India for consideration for issue of Letter of Permission	15th March
7	Recommendations of Medical Council of India to Central Government for issue of Letter of Permission	15th June
8	Issue of Letter of Permission by the Central Government	15th July

Note: (1) The information given by the applicant in Part-I of the application for setting up a medical college that is information regarding organization, basic infrastructural facilities, managerial and financial capabilities of the applicant shall be scrutinized by the Medical Council of India through an inspection and thereafter the Council may recommend issue of Letter of intent by the Central Government.

(2) Renewal of permission shall not be granted to a medical college if the above schedule for opening a medical college is not adhered to and admissions shall not be made without prior approval of the Central Government."

109. In Priya Gupta v. State of Chhattisgarh reported in 2012 (7) SCC 433, the Supreme Court, at Paragraphs 40, 41, 42, 45, 46, 46.2 to 46.3, 47, 47.1 to 47.3, 78, 78.4 and 78.5, held as follows:

"40. 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.

41. 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.

42. The Medical and Dental Councils of India, the Governments and the Universities are expected to act in tandem with each other and ensure that the recognition for starting of the medical courses and grant of admission are strictly within the time frame declared by this Court and the regulations. It has come to the notice of this Court that despite warnings having been issued by this Court and despite the observations made by this Court, that default and non-adherence to the time schedules shall be viewed very seriously, matters have not improved. Persistent defaults by different authorities and colleges and granting of admission arbitrarily and with favouritism have often invited criticism from this Court.

.....

45. The maxim *Boni judicis est causas litium dirimere* places an obligation upon the Court to ensure that it resolves the causes of litigation in the country. 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 *stricto 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.

46. 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:

46.1. 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 15th July of each calendar year for the relevant academic sessions of that year.

46.2 The Medical Council of India shall, immediately thereafter, issue appropriate directions and ensure the implementation and commencement of admission process within one week thereafter.

46.3 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.

.....

47. All these directions shall be complied with by all concerned, including Union of India, Medical Council of India, Dental Council of India, State Governments, Universities and medical and dental colleges and the management of the respective universities or dental and medical colleges. Any default in compliance with these conditions or attempt to overreach these directions shall, without fail, invite the following consequences and penal actions:-

47.1. Every body, officer or authority who disobeys or avoids or fails to strictly comply with these directions stricto sensu shall be liable for action under the provisions of the Contempt of Courts Act. Liberty is granted to any interested party to take out the contempt proceedings before the High Court having jurisdiction over such Institution/State, etc.

48.2. The person, member or authority found responsible for any violation shall be departmentally proceeded against and punished in accordance with the Rules. We make it clear that violation of these directions or overreaching them by any process shall

tantamount to indiscipline, insubordination, misconduct and being unworthy of becoming a public servant.

48.3. Such defaulting authority, member or body shall also be liable for action by and personal liability to third parties who might have suffered losses as a result of such default.

.....

78. Accordingly, we order as follows: -

.....

78.4. With all the humility at our command, we request the High Courts to ensure strict adherence to the prescribed time schedule, process of selection and to the rule of merit. We reiterate what has been stated by this Court earlier, that except in very exceptional cases, the High Court may consider it appropriate to decline interim orders and hear the main petitions finally, subject to convenience of the Court. We may refer the dictum of this Court in the case of Medical Council of India v. Rajiv Gandhi University of Health Sciences [(2004) 6 SCC 76, para 14] in this regard.

78.5. We have categorically returned a finding that all the relevant stakeholders have failed to perform their duty/obligation in accordance with law. Where the time schedules have not been complied with, and rule of merit has been defeated, there nepotism and manipulation have prevailed. The stands of various authorities are at variance with each other and none admits to fault. Thus, it is imperative for this Court to ensure proper implementation of judgments of this Court and the regulations of the Medical Council of India as well as not to overlook the arbitrary and colourable exercise of power by the concerned authorities/colleges."

सत्यमेव जयते

110. In Maa Vaishno Devi Mahila Mahavidyala v. State of Uttar Pradesh & Ors., reported in 2013 (2) SCC 617, the Supreme Court, at Paragraphs 81 to 84, held as follows:

"81. Lastly, the question which is required to be discussed in light of the facts of the present cases is adherence to the Schedule. Once the relevant Schedules have been prescribed under the Regulations or under the Judge made law, none, whosoever it be, is entitled to carve out exceptions to the prescribed Schedule. Adherence to the Schedule is the essence of granting admission in a fair and transparent manner as well as to

maintain the standards of education. The purpose of providing a time schedule is to ensure that all concerned authorities act within the stipulated time. Where, on the one hand, it places an obligation upon the authorities to act according to the Schedule, there it also provides complete clarity to other stakeholders as to when their application would either be accepted and/or rejected and what will be the time duration for it to be processed at different quarters. It also gives clear understanding to the students for whose benefit the entire process is set up as to when their examinations would be held, when results would be declared and when they are expected to take admission to different colleges in order of merit obtained by them in the entrance examinations or other processes for the purposes of subject and college preference.

82. We are constrained to reiterate with emphasis at our command that the prescribed schedules under the Regulations and the judgments must be strictly adhered to without exceptions. None in the hierarchy of the State Government, University, NCTE or any other authority or body involved in this process can breach the Schedule for any direct or indirect reason. Anybody who is found to be defaulting in this behalf is bound to render himself or herself liable for initiation of proceedings under the provisions of the Contempt of Courts Act, 1971 as well as for a disciplinary action in accordance with the orders of the Court. In the case of Parshavanath Charitable Trust & Ors., v. All India Council for Technical Education & Ors. (Civil Appeal @ SLP(C) 26086 of 2012), decided on the same date, this Court held as under :

"29... Time schedule is one such condition specifically prescribed for admission to the colleges. Adherence to admission schedule is again a subject which requires strict conformity by all concerned, without exception. Reference in this regard can be made to Ranjan Purohit and Ors. v. Rajasthan University of Health Sciences & Ors., [(2012) 8 SCALE 71] at this stage, in addition to the judgment of this Court in the case of Medical Council of India v. Madhu Singh [(2002) 7 SCC 258]."

83. Undoubtedly, adherence to Schedule achieves the object of the Act and its various aspects. Disobedience results in unfair admissions, not commencing the courses within the stipulated time and causing serious prejudice to the students of higher merit resulting in defeating

the rule of merit.

84. We may very clearly state here that we adopt and reiterate the Schedule stated by this Court in the case of College of Professional Education (supra) in relation to admission as well as recognition and affiliation. This obviously includes the commencement of the courses in time. However, in order to avoid the possibility of any ambiguity, we propose to state the schedule for recognition and affiliation in terms of the NCTE Regulations 2009 and the judgment of this Court in the case of College of Professional Education."

111. What is stressed in Maa Vaishno Devi Mahila Mahavidyala's case (cited supra), is that adherence to the schedule is the essence of granting admission in a fair and transparent manner, as well as to maintain standards of education. When the Medical Council of India has withheld the recommendations of the Committee of the Central Government to review/assess, for 50 days and sent its recommendations just 4 days before the last date, ie., on 15.05.2015 and when the Central Government has rejected the request on the last date, ie., on 15.06.2015, keeping the Medical Council of India's recommendations for nearly one month, it cannot be said that they have acted in a fair and transparent manner.

112. From 24.03.2015, the Medical Council of India has not responded. However, it has contended that before the time schedule, i.e., 15.06.2015, it has submitted its recommendations to the Central Government and therefore, there is no violation of time schedule. As pointed out by Mr.A.Ramesh, learned Senior Counsel for the appellant, between 24.03.2015 and 11.06.2015, there were 50 days. For the delay in sending the suitable reply, the reason assigned by the Medical Council of India, is that there were too many applications across the country and therefore, it cannot be said that too many applications across the country for verification and that needs to be verified and therefore, it cannot be said that there was any intentional delay.

113. Thus, it could be seen that for nearly 50 days, the Medical Council of India has been holding the compliance report of the College and also the request of the Central Government to review/assess, in the light of the documents submitted by the College, in the compliance report and the recommendations of the Committee, with the request to take appropriate necessary action for review/assess and furnish its recommendations to the Ministry. After holding the compliance report and the documents, for nearly

50 days, 4 days before the last date for submitting the recommendations, the Medical Council of India has sent a letter on 11.05.2015, to the Central Government, not to grant permission of renewal.

114. Communication of the Medical Council of India, produced before the Writ Court and taken on record, shows that the Medical Council of India has reiterated the opinion of the Additional Solicitor General of India, on the applicability of Clause 8(3)(1)(b) of the Establishment of Medical College Regulations (Amendment) 2010, Part II, dated 16.04.2010.

115. Order of rejection of the Central Government, dated 15.06.2015, impugned in the writ petition and stated to have served in the Court on 17.06.2015, makes it clear that the Central Government has decided to accept the recommendations of the Medical Council of India, not to renew the permission for the 5th Batch of 150 students for the academic year 2015-16. The order has been passed on the last date, i.e., 15th July of the year, in terms of the time schedule.

116. As rightly pointed out by Mr.A.Ramesh, learned Senior Counsel for the appellant-College, the Central Government, which issued the letter, dated 24.03.2015, to the Medical Council of India, for review/assess, has not given any reason, as to why, the said letter has not been acted upon by the Medical Council of India and the steps taken by the Central Government in directing the Medical Council of India, to renew/assess. The Central Government, which recommended for review/assess, has remained silent, on this aspect. But The Medical Council of India has reiterated the earlier recommendations.

117. As per Section 10-A(2)(a) of the Indian Medical Council Act, 1956, whenever the Central Government receives the scheme under Sub-Section (1) of Section 10-A(1), it has a duty to refer the same to the Medical Council of India for recommendations. Section 10-A(3) states that the Council may obtain such other particulars, as the case may be considered necessary, by it, from the person or the Medical College concerned and thereafter, it may, if the scheme is defective and does not contain any necessary particulars, give a reasonable opportunity to the person or the College concerned, for making a written representation and it shall be open to such person or medical college to rectify the defects,

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

118. Proviso to Clause 8(3)(1)(b) of the Establishment of Medical College Regulations (Amendment) 2010, Part II, dated 16.04.2010, states that in respect of the colleges, in the stage from III renewal (ie., Admission of fourth batch) till recognition of the institute for award of MBBS 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 less than 70%, such an institute will not be considered for renewal of permit in that academic year.

119. As per Clause 8(3) of the said regulations, the procedure for renewal of recognition, shall be the same, as applicable for award of recognition. Dealing with the aspect on re-consideration, Regulation 8(3) states that whenever the Council in its report, has not recommended the issue of letter of intent, to the person, it may upon being so, required by the Central Government, to re-consider the application and take into account, new or additional information, as may be forwarded by the Central Government. The Council shall, thereafter submit its report, in the same manner, as prescribed in the initial report.

120. A combined reading of Section 10-A of the Indian Medical Council Act, 1956 and Clause 8(3)(1)(b) of the Establishment of Medical College Regulations (Amendment) 2010, Part II, dated 16.04.2010, in our considered opinion, makes it clear the Central Government can consider an application, even if the Medical Council of India, in its initial report, has not recommended for issuance of letter of intent and that it should be equally applicable for renewal. The purpose of obtaining particulars, which are necessary for grant of letter of intent, would be defeated, if the Medical Council of India, maintains the earlier stand, without there being any verification of the compliance, which the Central Government, in his letter, dated 24.03.2015, has recommended the Medical Council of India, to review/assess. Even if the Medical Council of India, had desired to maintain the same stand, when the Committee of the Central Government, has decided to forward the compliance report and requested the Medical Council of India to review/assess, atleast a reply should have been given to the Central Government or the College Concerned.

121. Proviso to Section 10-A(4) states that nothing in this sub-Section shall prevent any person or medical college, whose scheme has not been approved by the Central Government to submit a fresh scheme and the provisions of this section shall apply to such scheme, as if such scheme has been submitted for the first time under sub-section (2). Sub-Section 6 of Section 10-A, in computing the time limit specified in sub-section (5), the time taken by the person or college concerned, submitting the scheme, in furnishing any particulars called for by the council, or by the Central Government shall be excluded.

122. Reading of the whole provision of Section 10-A, makes it clear that even if the scheme is not approved by the Central Government, still it is open to the person/college to submit a fresh scheme, with all particulars, as may be necessary and such scheme has to be treated, as if, it was given for the first time, under sub-Section (2). As observed earlier, when the statutory provisions, enable the person/college to submit a fresh scheme, even after the disapproval by the Central Government, we are of the considered opinion that it cannot be contended that the word "May" used in sub-Section 10(3) of the Act, is only directory and not mandatory, taking shelter under Clause 8(3)(1)(b) of the abovesaid Regulation. Had the Medical Council of India considered the compliance report along with the recommendations of the Committee of the Central Government and decided against the college, in terms of proviso to Section 10-A(4), (5) and (6) of the Medical Council of India, then the College could still submit a fresh scheme, within the time provided for, which has to be treated, as if, it was given for the first time. In the case on hand, instead of fresh scheme, it is the compliance report.

123. As per sub-Section (7) of Section 10-A of the Indian Medical Council Act, 1956, the Council, while making its recommendations, under Clause (b) of sub-Section (3) and the Central Government, while passing an order, either approving or disapproving the scheme, under sub-Section (4), shall have due regard to the factors mentioned in sub-Section (7) of Section 10-A.

124. The Medical Council of India, has considered the initial scheme for renewal of permission of admission of the students for the academic year 2015-16 and decided to recommend to the Central Government not to renew the permission. On the other hand, the Central Government, who is the competent authority, to pass orders, under Section 10-A(4) of the Act, either approving or disapproving the scheme, has decided to recommend to the Medical Council of India, for review/assess the compliance report, the documents and

requested the Medical Council of India, to submit its report.

125. Sub-Section (7)(c) & (d) of Section 10-A of the Indian Medical Council Act, 1956, makes it clear that the Council, while making its recommendations, under Clause (b) of sub-Section (3) and the Central Government, while passing an order, either approving or disapproving the scheme, under sub-Section (4), shall have due regard to the factors, as to whether, necessary facilities in respect of staff, equipment, accommodation, training and other facilities to ensure proper functioning of the medical college or conducting the new course of study or training or accommodating the increased admission capacity have been provided or would be provided within the time limit specified in the scheme and as to whether adequate hospital facilities, having regard to the number of students likely to attend such medical college or course of study or training or as a result of the increased admission capacity, have been provided or would be provided within the time limit specified in the scheme.

126. The scheme submitted by the appellant-Medical College should also satisfy the time schedule, prescribed by the Hon'ble Supreme Court in *Mridul Dhar v. Union of India* and others reported in 2005 (2) SCC 65. As per Section 10(3), the Council may obtain such other particulars as may be considered necessary by it, from the person or the Medical college concerned, and thereafter, it may,- (a) if the scheme is defective and does not contain any necessary particulars, give a reasonable opportunity to the person or college concerned for making a written representation and it shall be open to such person or medical college or rectify the defects, if any, specified by the Council; and (b) consider the scheme, having regard to the factors referred to in sub-section (7), and submit the scheme together with its recommendations thereon to the Central Government.

127. What is contemplated in Sub-Section (7) of the Section 10-A of the Act, is whether, the person/medical college, who has submitted a scheme, for the proposed medical college or the existing medical college, etc., has provided necessary facilities in respect of staff, equipment, accommodation, training and other facilities to ensure proper functioning of the medical college or conducting the new course or study or training or accommodating the increased admission capacity, have been provided or would be provided within the time-limit specified in the scheme. From the expression, "have been provided" or "would be provided within the time specified in the scheme", it is mandatory on the part of both the Medical Council of India and the Central Government, to

ascertain, as to whether, the College has already provided the facilities or would provide the facilities, within the time specified in the scheme.

128. From the reading of the letter, dated 03.02.2015, of the Central Government, it could be deduced, the Central Government, who is the competent authority to grant renewal for permission for the subsequent batches, has specifically directed the appellant-College to represent the case vis-a-vis the letter of the Medical Council of India, along with the documents. While that be the position, it is not known, as to why, in the impugned order of rejection, dated 15.06.2015, the Central Government has not assigned any reasons, on this aspect. From the letter, dated 03.02.2015, it could be deduced that the Central Government, having acted in terms of Section 10-A(4) of the Act, made the Colleges, to legitimately expect and believe that their compliance reports would be considered and acted upon. Subsequently, they have also requested the Medical Council of India, to review/assess. At this juncture, this Court deems it fit to extract few decisions on the aspect of legitimate expectation.

(i) In Union of India Vs. Hindustan Development Corporation, reported in 1993 (3) SCC 49, the Apex Court, at paragraphs 33 to 35 has explained the nature, scope and applicability of the doctrine of legitimate expectation. The Supreme Court, held that the doctrine of legitimate expectation is confined, only to a right of fair hearing, before a decision is taken and it cannot be a basis or foundation, conferring an absolute right to claim the relief itself. At paragraphs, 33 to 35, the Supreme Court has held as follows:-

"Legitimate expectation gives the applicant sufficient locus standi for judicial review. The doctrine of legitimate expectation is to confined mostly to right of a fair hearing before a decision which results in negating a promise or withdrawing an undertaking is taken. The doctrine does not give scope to claim relief straightaway from the administrative authorities as no crystalised right as such is involved. The protection of such legitimate expectation does not require the fulfilment of the expectation where an overriding public interest requires otherwise. In other words, where a person's legitimate expectation is not fulfilled by taking a particular decision, then decision-maker should justify the denial of such expectation by showing some overriding public interest. Therefore, even

if substantive protection of such expectation is contemplated, that does not grant an absolute right to a particular person.

(ii) In *S.Periasamy v. Government of Tamil Nadu*, reported in (2000) 4 CTC 365, this Court, at paragraph 31.15, has held as follows:-

"31.15. The denial of legitimate expectation is, undoubtedly, a ground for challenging the decision of the Government. But if such denial could be justified by showing overriding public interest, the Court would not interfere on the ground of change in Government policy. In other words, while considering the grant of relief on the ground of legitimate expectation, where a decision is alleged to be arbitrary, male fide, irrelevant, unreasonable or unfair, as complained by the petitioners herein, the Court is still restrained to interfere with such powers of the Government in the matter of policy decisions merely on the ground of legitimate expectation, if the overwhelming public interest could be scanned through. The legitimate expectation', for legal purposes, cannot be the same as anticipation; it is different from a wish or desire or a vow nor it amounts to a claim or demand on the ground of a right. However earnest and sincere a wish a desire or a hope may be, however confidently one may look to them to be fulfilled, such wish, desire or hope, by themselves, cannot amount to an assertable expectation and a mere disappointment does not attract legal consequences. A pious hope even leading to a moral obligation, cannot amount to a legitimate expectation. Legitimacy of an expectation can be inferred only if it is found on a sanction of law or custom on an established procedure followed in regular and natural sequence. Again, it is distinguishable from a genuine expectation. Such expectation should be justifiably legitimate and protectable, as observed by, the Apex Court in *Union of India v. Hindustan Development Corporation*, AIR 1994 SC 989. Every such legitimate expectation, does not, by itself, certify into a law; nor it comes out to a right in the conventional sense. It is therefore necessary to first decide whether the legitimate expectation claimed by the petitioner is genuine and protectable. To make it genuine, the person who claims legitimate expectation, should not have contributed for denial of the same.

(iii) The same principles have been re-affirmed in *Auto Service Station Vs. DDA*, reported in 2009 (1) SCC 180, wherein, at

paragraphs 32 and 33, the Supreme Court, has held that the doctrine of legitimate expectation arises, when an administrative body by reason of a representation or by past practice, or conduct aroused an expectation, which it would be within its powers to fulfil unless some overriding public interest comes in the way. The Supreme Court further held that a person who bases his claim on the doctrine of legitimate expectation in the first place, has to satisfy that he has relied on the said representation and the denial of that expectation has worked to his detriment. The court can interfere only if the decision taken by the authority was found to be arbitrary, unreasonable or in gross abuse of power or in violation of principles of natural justice and not taken in public interest. But a claim based on mere legitimate expectation without any thing more cannot ipso facto give a right to invoke these principles.

129. If the word "May" used in sub-Section (3) has to be construed as directory, in the light of Clause 8(3)(1)(b) of the Establishment of Medical College Regulations (Amendment), 2010, Part II, dated 16.04.2010, then sub-Section (7) of Section 10-A would be diluted, and there is no need to assess, as to whether, the person or the College, had already provided the facilities/factors, in sub-Section (7) or would provide the scheme, within the time limit specified in the scheme. Thus, sub-Section (4) of Section 10-A of the Act, makes it clear that the Central Government, after considering the scheme, the recommendations of the Council and after obtaining necessary particulars and having regard to the factors, as referred to sub-Section (7) of Section 10-A, either approve (with such conditions, if any, as it may consider necessary) or disapprove the scheme.

130. The word 'may', used in sub-section 10 (A) (3) of the Act, should be given the meaning to achieve the purpose for which the legislation has envisaged. On principles of purposive construction, this Court deems it fit to consider a decision made in Government Of A.P. vs St. Mary'S Educational Society reported in 2001 (4) ALT 444, wherein, the Andhra Pradesh High Court held as follows:

"19. As per the rule of "purposive construction", the Parliament is presumed to intend that in construing an Act the Court, by advancing the remedy which is indicated by the words of the Act for the mischief being dealt with, and the implications arising from those words, should aim to further every aspect of the legislative purpose, construction which promotes the remedy Legislature has provided to cure a particular mischief. In Section 304 of Statutory Interpretation by

Francis Bennion dealing with nature of purposive construction, it is stated:

"A purposive construction of an enactment is one which gives effect to the legislative purpose by-

(a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose (in this Code called a purposive-and-literal construction), or

(b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose (in the Code called a purposive-and-strained construction)."

In the same section, it is further stated:

"When Judges speak of a purposive construction, they usually mean to refer to what this Code calls a purposive - and strained construction. Thus we find Staughton, L, referring to the 'power of the Courts to disregard the literal meaning of an Act and to give it a purposive construction, A-G of Newzealand v. Ortiz, (1982) QB 349. Lord Diplock spoke of 'competing approaches to the task of statutory construction - the literal and the purposive approach' Kammins Ballrooms Co. Ltd., v. Zenith Investments (Torquay) Ltd., (1971) AC 850. Nevertheless a purposive construction must obviously be in all cases a construction which gives effect to the legislative intention, whether or not the statutory language needs to be strained to achieve this. Most often a purposive construction, in the true sense, will be a literal construction.

In Carter v. Bradbeer, (1975) 1 WLR 1204, Lord Diplock observed that 'if one looks back to the actual decisions of the House of Lords on questions of statutory construction over the last 30 years one cannot fail to be struck by the evidence of a trend away from the purely literal towards the purposive construction of statutory provisions. The matter was summed up by Lord Diplock in this way-

".....I am not reluctant to adopt a purposive construction where to apply the literal meaning of the legislative language used would lead to results which would clearly defeat the purposes of the Act. But in doing so the task on which a Court of justice is engaged remains one of construction, even where this involves reading into the Act words which are not expressly included in it. In Kammins Ballrooms Co. Ltd., v. Zenith Investments (Torquay) Ltd., (1971) AC 850 provides an instance of this; but in that case the three conditions that must be fulfilled in order to justify this course

were satisfied. First, it was possible to determine from a consideration of the provisions of the Act read as a whole precisely what the mischief was that it was the purpose of the Act to remedy; secondly, it was apparent that the draftsman and Parliament had by inadvertence overlooked, and so omitted to deal with, an eventuality that required to be dealt with if the purpose of the Act was to be achieved; and thirdly, it was possible to state with certainty what were the additional words that would have been inserted by the draftsman and approved by Parliament had their attention been drawn to the omission before the Bill passed into law. Unless this third condition is fulfilled any attempt by a Court of justice to repair the omission in the Act cannot be justified as an exercise of its jurisdiction to determine what is the meaning of a written law which Parliament has passed" Jones v. Wortham Park Settled Estates, (1980) AC 74.

Thus, it is quite clear that an interpretation must in the last resort either be literal or strained. A purposive construction must be either purposive-and-literal or purposive-and-strained. The third type of construction is non-purposive-and-literal. A construction is purposive-and-literal (a) where the literal meaning is clear and reflects the purpose or (b) where the literal meaning is grammatically ambiguous and one of the possible grammatical meanings reflects the purpose. The purposive-and-literal is the commonest construction, for usually a literal construction and a purposive construction lead to the same result. Dillon LJ in R v. Poplar Coroner, (1993) QB 610, has opined that a construction where the purposive factor was allowed too much weight in departing from the literal meaning has been called 'over-purposive'."

131. It should be understood in the context and consequences that flows from the manner in which the power has to be exercised. The word 'may' used in section 10 (3) should serve the cause for which the section is incorporated. Contextual significance is relevant, while interpreting the word 'may'. Dominant and pervasive control of the Central Government in maintaining the standards of Medical education and regulating the same, with the assistance of MCI, cannot be whittled down, solely on the basis of MCI recommendations. No doubt there is a collective responsibility. Needless to State that an administrative decision is subject to judicial review on three heads, illegality, irrationality and procedural impropriety. A decision taken by the authority can be questioned on the grounds

- (a) decision has been taken in bad faith
- (b) decision is taken on irrational or irrelevant considerations
- (c) decision has been without following the procedure which is imperative in nature.

132. Case of MCI and Central Government, certainly fall under the third category. When the decision of the Central Government, is based on technical or expert knowledge, letter dated 24.03.15, should have been responded immediately.

133. Though the Medical Council of India, has heavily banked on Clause 8(3)(1)(b) of the Establishment of Medical College Regulations (Amendment), 2010, Part II, dated 16.04.2010, framed in exercise of the powers, conferred under the Indian Medical Council of Act, 1956, going through the statutory provisions of the Indian Medical Council Act, 1956, prima facie, we are of the view that the statute would prevail over regulations.

134. In a recent decision of the Hon'ble Supreme Court in Royal Medical Trust (Regd) v. Union of India [W.P.(C)No.705 of 2014, dated 20.08.2015], the Hon'ble Supreme Court consider the cases, arising out of the communications, issued by the Central Government, recommending disapproval for the academic year 2014-15. In these petitions, after conducting inspection of the respective Medical Colleges the Medical Council of India (MCI for short) had found infirmities or inadequacies in the infrastructure, facilities and faculty. The respective claimants then claimed that they had rectified the shortcomings and asked for compliance verification. But the Central Government and/or the MCI refused to undertake any fresh inspection for verification, for want of adequate time. That being the common feature in all these petitions, they were heard together and disposed by a common judgment. The cases were classified as,

(1) Cases where new Medical Colleges are sought to be established for the first time and where such colleges are seeking appropriate permission to admit students to the first year of MBBS course,

(2) Cases where the existing approved Medical Colleges are seeking increase in intake of seats for admissions of students to the first year of MBBS Course,

(3) Medical Colleges seeking renewal of permission, who have already received permission in the previous year(s) either for establishing new Medical College or for increasing intake capacity of the existing Medical

College. In this category of cases, the renewal for subsequent batches and for permission to admit students to the first year course is sought for.

After considering the rival submissions of the learned counsel for the parties, statutory provision under Section 10-A r/w. Section 33 of the Indian Medical Council of India and Clause 8(3)(1)(b) of the Establishment of Medical College Regulations (Amendment), 2010, Part II, dated 16.04.2010, time schedule for receipt of applications and the decisions of the Hon'ble Apex Court in Priyadarshini Dental College and Hospital v. Union of India reported in 2011 (4) SCC 623, Priya Gupta v. State of Chhattisgarh reported in 2012 (7) SCC 433 and Swamy Devi Dayal Hospital and Dental College v. Union of India reported in 2014 (13) SCC 506, at Paragraphs 25 and 26, ordered as follows:

"25. As regards cases of renewal, it was laid down in Priyadarshini that the process of decision making for grant of fresh or initial permission for establishment of a new college is exhaustive and elaborate when compared to such decision making in regard to grant of renewal of permission for the four subsequent years. It was further stated that before grant of initial permission the aspects whether the institution would be in a position to offer the minimum standards of education in conformity with the Act and Regulations and whether the institution has adequate resources and whether the institution has provided or will be able to provide within the time limit specified in the Scheme all the required facilities and faculty are required to be considered and scrutinized very closely. On the other hand for the purposes of grant of renewal what is required to be considered is whether the prescribed faculty and infrastructure is available. Considering renewal cases on a parameter distinct and different from that relating to establishment of a new college for the first time, it was observed that the entire process of verification and inspection relating to renewal ought to be done well in time so that the existing colleges have adequate and reasonable time to set right the deficiencies or offer explanation to the deficiencies.

26. In the light of the aforesaid facets namely that the Scheme under Section 10A may itself contemplate stage wise achievement of annual targets and the requirements of reasonable opportunity to be afforded not only at the initial stage but also in cases of subsequent renewal and further that the opportunity must be afforded at both the stages namely by the MCI as well as by the Central Government, the Schedule under the

Regulations must accommodate and provide for adequate time limits to take care of such eventualities. The Schedule which was brought in force by way of an amendment dated 21.09.2012 unfortunately does not provide for such stage wise consideration. It simply gives four stages without indicating any time limits to ensure grant of such reasonable opportunity in case the decisions of disapproval are taken against the applicants. It also does not speak of any compliance verification. The pattern that emerges in the present cases is common and consistent in that the inspections were undertaken in and around April/May 2014 and the letters of disapproval were sent by the Central Government on or about 15th July, 2014. Though the compliance was reported, no verification in that behalf was undertaken."

135. The appellant falls under Category 3 of the Colleges, i.e., seeking renewal for admission in the next batches. Contentions of Mr. Ramesh learned Senior Counsel, deserves consideration, in that, the Medical Council of India has failed to provide a reasonable opportunity to the appellant college, and thus failed to adhere to the mandate of Section 10-A (3) of the Act. As observed, though MCI had received the Compliance report, and also the recommendations of the Committee to renew/assess, MCI has not acted upon, on the request of the Central Government, as per their letter, dated 24.03.2015. Central Government is the competent authority to decide the approval or renewal for permission to the colleges, and Medical Council of India is a body, created under the Act, to assist the Central Government. When a request has been made by the Central Government to renew/assess, MCI, seemed to have kept quiet, for nearly 50 days.

136. Contention of MCI is that there is no need to provide an opportunity to the colleges, if they fall under regulation 8 (3) of MCI Regulations, cannot be countenanced for the reason, that the Central Government has already decided to call for a compliance report, from the colleges, vis-a-vis, the earlier recommendations of MCI. When the competent authority has decided to consider the materials submitted by the colleges vis-a-vis, the recommendations of MCI, and when the Central Government, through its Committee, has recommended the case of the appellant, to review, taking note of the compliance report, MCI, being an authority to assist the Central Government, in the matter of granting permission or renewal, as the case may be, the Medical Council of India ought to have considered the compliance report, and submitted its

recommendations.

137. The contention of the learned counsel for MCI is that the interim prayer sought for is beyond the scope of the main prayer and hence, it should not be granted. The main prayer is to quash the impugned letter No.U-12012/1057/2015-ME (P-II), dated 15.06.2015, issued by the Second Respondent on the directions of the First Respondent herein addressed to the petitioner medical college and the interim prayer in M.P.No.2 of 2015 is for a direction to the Secretary, Medical Council of India, New Delhi, the 3rd respondent therein, to carry out the compliance verification based on the rectification of the defects submitted to the Medical Council of India and to the Central Government, for grant of fourth renewal of permission for conducting 5th batch of MBBS Degree course with an annual intake of 150 students for the academic year 2015-16, in Annapoorana Medical College & Hospital, Sankari Main Road, (NH-47), Veerapandi Union, Kombadipatty, Salem 636 308.

138. In the matter of granting permission or renewal, under Section 10(A)(4) of the Medical Council of India Act, 1956, the Central Government is the competent authority and as per 10(A)(2) and (3) of the Act, MCI is the authority to inspect the institutions and submit its recommendations, and if there are any deficiencies, to call for the applicant to submit such other particulars as may be necessary. The Central Government requires the recommendation of MCI, to exercise their powers under Section 10(A)(4) of the Act and therefore, it cannot be contended that, the interim prayer sought for, is totally alien to the main prayer. If the contentions of MCI are to be accepted, then there is no need for any inspection by MCI, to find out as to whether the applicants satisfy the requirements of sub section 7 of Section 10(A) of the Act.

139. Medical Council of India Act, 1956 lays down adjective, incidental and definite procedure to be followed by MCI and the Central Government, as the case may be, for granting the substantive relief in Section 10(A)(4). Incidental or ancillary power of the Central Government is to obtain a report or recommendation from MCI. Inspection of the college is incidental to the dispute, relating to rejection or non consideration of the materials furnished by the appellant college in proper perspective and with promptitude. Point of reference to MCI, for inspection is linked and connected to grant or refusal by the Central Government. Reading of Section 10(A) would indicate chain of events. Powers are granted to the Central Government to grant or refuse, approval or renewal, based on the report and thus inspection, has relation to or in connection with the main prayer. For the above reasons,

we are not inclined to accept the contention of the learned counsel for MCI, that the prayer made in the miscellaneous petition is beyond the scope of the main writ petition. Needless to State that Court can also mould the relief and issue appropriate directions. If the basis of grievance has been sufficiently disclosed openly and the relief sought is one among others specified as incidental or ancillary to the main relief, and the Court had the power to grant it, then appropriate orders may be issued.

140. By referring the matter to MCI, the Central Government has requested MCI, to have an in depth examination of the facts and circumstances and record a conclusion. Inspection and recommendations are legislative functions of MCI. After sending a letter dated 24.03.2015, the Central Act, ought not to have remained silent, as if it was an empty formality. When the statute itself contemplates MCI to call for details from the colleges, inspection and recommendation of MCI, being duties to be performed by MCI enabling Central Government to grant or disapprove, it cannot be contended that relief sought for in the Miscellaneous Petition is not incidental or ancillary to the main prayer or for that matter beyond the scope of the writ petition.

141. Keeping the compliance report for nearly 50 days, without any action on the recommendation of the Central Government to review / assess on the basis of the recommendations of the committee constituted by the Central Government, it is not open to the Medical Council of India, to contend that, it has acted promptly, within the time schedule provided in the Act and as laid down by the Hon'ble Apex Court.

142. When there is a fault on the part of the respondents in processing the application with enormous delay and if no reasonable opportunity is given to the college, to comply with the deficiencies, then it should be construed that it is the authorities who have failed to adhere to the time schedule and for that reason, it is the view of this Court, the authorities should not be permitted to take shelter under the judgments of the Supreme Court, which time and again, the Apex Court has reiterated that time schedule has to be followed by them.

143. Non compliance of the statutory provisions, is apparent on the face of record. The word 'recommend' suggests satisfaction by MCI, of the factors in Sub Section 7 and Section 10(A) of the Act. By incorporating sub-section (3) and (4) to Section 10 (A) of the Medical Council of Act, legislature has applied both "balancing and necessity", tests, to be followed by all stake holders. Right

to pre-decisional hearing is provided for in sub-section 10(A) (4) of the Act.

144. Though the learned single Judge, following the Mridul Dhar v. Union of India and others reported in 2005 (2) SCC 65, Priya Gupta v. State of Chhattisgarh reported in 2012 (7) SCC 433 and Manohar Lal Sharma v. Medical Council of India and Others reported in (2013) 10 SCC 60, has rejected the interim prayer, sought for, in M.P.No.2 of 2015 in W.P.No.17985 of 2015, dated 31.07.2015, in the light of the discussion and decisions, stated supra, more particularly, the recent decision in Royal Medical Trust (Regd) v. Union of India [W.P.(C)No.705 of 2014, dated 20.08.2015], We are inclined to interfere with the impugned order, made in this appeal. Accordingly, the order made in M.P.No.2 of 2015 in W.P.No.17985 of 2015, dated 31.07.2015, is set aside. The Secretary, Medical Council of India, New Delhi, 3rd respondent herein, is directed to consider the compliance report, dated 13.03.2015 and the recommendation of the Committee of the Central Government, in letter, dated 24.03.2015, to review/assess the scheme, in the light of the documents submitted by the appellant-College, in the compliance report, dated 13.03.2015, by causing inspection of the appellant-College, within a period of one week, from tomorrow, i.e., on 04.09.2015 and submit a report to the Secretary to the Government, Ministry of Health and Family Welfare, New Delhi, 1st respondent herein, within the abovesaid period, who, on receipt of the said report, shall pass orders, in accordance with Section 10-A(4) of the Indian Medical Council Act, 1956, as early as possible and not later than, one week, from the date of recommendation, after inspection by the Medical Council of India and if for any reason, the Central Government proposes to disapprove the scheme, provide an opportunity to the appellant-College, within the said period of one week, in compliance with the principles of natural justice, set out in the said provision, Section 10-A(4) of the Indian Medical Council Act, 1956.

145. In the result, the Writ Appeal is allowed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

Dixit/skm/ars

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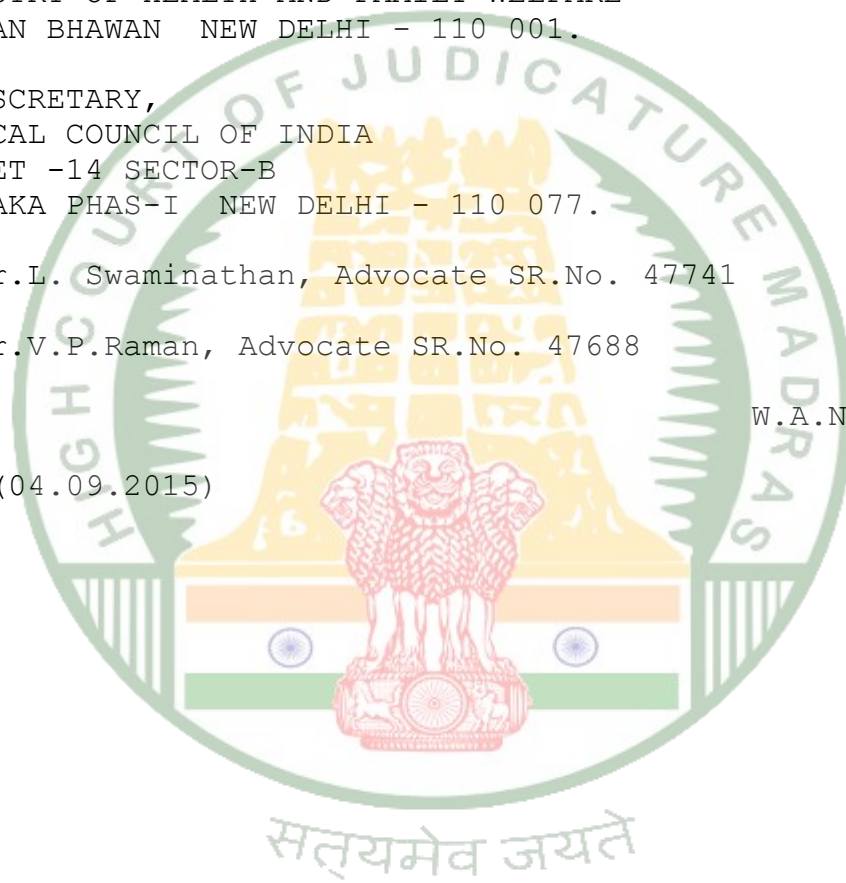
1. THE SECRETARY (MEDICAL EDUCATION),
UNION OF INDIA
MINISTRY OF HEALTH AND FAMILY WELFARE
NIRMAN BHAWAN NEW DELHI - 110 001.
- 2 THE UNDER SECRETARY (MEDICAL EDUCATION)
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2CCs to Mr.L. Swaminathan, Advocate SR.No. 47741

1 CC to Mr.V.P.Raman, Advocate SR.No. 47688

GGK (CO)
PSI, PMK (04.09.2015)

W.A.NO.1147 OF 2015



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