

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

Pronounced on: 05.05.2015

+ LPA 224/2015 & CM No.6871/2015 (*stay*)

MEDICAL COUNCIL OF INDIA Appellant
Through: Mr. Vikas Singh, Sr. Adv. with Mr. T. Singhdev, Ms. Manpreet Kaur & Mr. Manan Khera, Advs.

Versus

AMMA CHANDRAVATI EDUCATIONAL AND CHARITABLE TRUST AND ORS Respondents
Through: Mr. Amit Kumar, Adv. for R-1. Mr. Kirtiman Singh, CGSC with Mr. Waize Ali Noor, Ms. Perna Shan Deo & Mr. Gyanesh Bhardwaj, Advs. for UOI.

+ LPA 234/2015 & CM No.7063/2015 (*stay*)

MEDICAL COUNCIL OF INDIA Appellant
Through: Mr. Vikas Singh, Sr. Adv. with Mr. T. Singhdev, Ms. Manpreet Kaur & Mr. Manan Khera, Advs.

Versus

POONAIYAH RAMAJAYAM INSTITUTE OF SCIENCE & TECHNOLOGY TRUST & ANR Respondents
Through: Mr. Ganesan Umapathy & Ms. R. Mekhala, Advs. for R-1. Mr. Amit Mahajan, CGSC for UOI.

+ LPA 235/2015 & CM No.7093/2015 (*stay*)

MEDICAL COUNCIL OF INDIA Appellant
Through: Mr. Vikas Singh, Sr. Adv. with Mr. T. Singhdev, Ms. Manpreet Kaur, Mr. Vishu Agrawal & Mr. Manan Khera, Advs.

Versus

PADMASHREE DR D Y PATIL MEDICAL
COLLEGE & ANR

..... Respondents

Through: Mr. Aditya Dewan, Adv. for R-1.
Ms. Suparna Srivastava & Mr. Rahul Srivastava,
Advs. for UOI.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

J U D G M E N T

: Ms.G.ROHINI, CHIEF JUSTICE

1. By common order dated 08.04.2015, the learned Single Judge allowed W.P.(C) Nos.7738/2014, 7424/2014 & 9023/2014 which are filed with an identical prayer to declare the action of the Central Government in rejecting the applications filed by the petitioners for establishment of a medical college/increase of intake of candidates for the Academic Session 2015-2016 on the ground that the Essentiality Certificate issued by the State Government and/or the Consent of Affiliation Certificate issued by the concerned university were not filed along with the applications as erroneous, arbitrary and illegal.

2. In para 71 of the order under appeal, the learned Single Judge issued the following consequential directions:-

“71. For the above reasons, the petitions are allowed and the petitioners may forward their applications along with the prescribed fee to the Central Government within a period of two days. If the said applications are received by the Central Government on or before 10.04.2015, the

Central Government is directed to forthwith forward the applications to MCI. MCI shall consider the applications and make its recommendations within a period of four weeks thereafter. Because of paucity of time, there would not be enough time to afford the petitioners any opportunity to rectify the deficiencies, if any, found during the inspection and arrange a further inspection. Thus, if the petitioners are found to be non-compliant, their applications would stand rejected without affording them any further opportunity to rectify the same.”

3. Aggrieved by the said order, the Medical Council of India (arrayed as Respondent No.2 in all the writ petitions) preferred the present appeals.
4. The facts have been set out in the order under appeal in detail and, therefore, we are not repeating the same except to the extent necessary.
5. The petitioner in W.P.(C) No.7738/2014 (Amma Chandrawati Educational & Charitable Trust) proposed to establish a Medical College at Village Gurawar, State of Haryana from the Academic Session 2015-16. Similarly, the petitioner in W.P.(C) No.7424/2014 (Ponnaiyah Ramajayam Institute of Science and Technology Trust) proposed to establish an Institute of Medical Sciences at Manamai – Nallur (ECR), Kanchipuram Distt., Chennai w.e.f. Academic Year 2015-16. Accordingly, they made applications as provided under Section 10A of the Indian Medical Council Act, 1956 (for short MCI Act) seeking permission of the Central Government. The petitioner in W.P. 7738/2014 submitted the application on 27.08.2014 whereas the petitioner in W.P. No. 7424/2014 submitted the application on 25.08.2014. However, both the petitioners could not submit the Essentiality Certificate (EC/NOC) from the concerned State Government

and the Certificate of Affiliation (CoA) from the concerned University along with their applications, but the same were submitted subsequently on 30.09.2014 by the petitioner in W.P.(C) 7738/2014 and on 10.09.2014 by the petitioner in W.P.(C) No.7424/2014.

6. So far as the petitioner in W.P.(C) No.9023/2014 (Padmashree Dr. D.Y. Patil Medical College) is concerned, it is an existing institution with 150 intake of students in MBBS and it proposed to increase the intake from 150 to 250 w.e.f. Academic Session 2015-16. Accordingly, an application dated 30.08.2014 was made under Section 10A of the MCI Act seeking permission to increase the intake of students in MBBS category from 150 to 250 from Academic Year 2015-16. Along with the said application, the petitioner submitted the Essentiality Certificate issued by the State Government dated 28.02.2011. Though the said Essentiality Certificate was valid only upto 28.02.2014, the petitioner states that its request dated 03.02.2014 to issue a fresh Essentiality Certificate was still pending before the State Government and similarly its request for grant of Consent of Affiliation was also pending before Padmashree Dr. D.Y. Patil University and, therefore, an undertaking dated 28.08.2014 was submitted along with its application under Section 10A of the Act stating that the Essentiality Certificate as well as the Consent of Affiliation would be submitted as soon as they are received. It is also the case of the petitioner that the Essentiality Certificate for increasing the intake capacity from 150 to 250 seats was issued by the State of Maharashtra on 03.09.2014 and that the same was submitted to the Central Government on 05.09.2014. So far as the Consent of Affiliation is concerned, it is pleaded that the University had in principle

agreed to affiliate the proposed increase in seats from 150 to 250 and the said letter of the University dated 26.08.2014 was submitted to the Central Government along with the application dated 30.08.2014 itself.

7. The above said applications of the petitioners were rejected by the Central Government by separate orders passed on 15.10.2014 and 16.10.2014 on the ground that the Essentiality Certificate (EC/NOC) and Certificate of Affiliation (CoA) were not submitted along with the application but the same were submitted after the cut-off date of 31.08.2014. However, the petitioners were granted liberty to file a fresh application for the Academic Session 2016-17. Assailing the said orders of rejection, the petitioners filed W.P.(C) Nos. 7738/2014, 7424/2014 and 9023/2014. As mentioned above, all the three writ petitions were allowed by the order under appeal dated 08.04.2015 with a direction to the Central Government to forthwith forward the applications to the Medical Council of India (MCI) provided the applications are received by the Central Government on or before 10.04.2015 and that the MCI shall consider the same and make its recommendations within a period of four weeks.

8. The said order dated 08.04.2015 is under challenge in the appeals before us. At the outset, it is brought to our notice by the learned Standing Counsel for Union of India that the petitioner in W.P.(C) No.7738/2014 (Amma Chandrawati Educational and Charitable Trust) did not choose to forward its application along with the prescribed fees within the two day's time fixed in the order under appeal. The learned counsel appearing for the said petitioner/respondent No.1 in LPA No.224/2015 did not dispute the same and submitted that the petitioner is not pressing for the relief sought in

the writ petition. Therefore, we make it clear that W.P.(C) No.7738/2014 stood dismissed.

9. We shall therefore proceed to consider the correctness of the order under appeal only to the extent of the claims of the petitioners in W.P.(C) No.7424/2014 and W.P.(C) No.9023/2014 which are the subject matter of LPA Nos. 234/2015 and 235/2015 respectively.

10. It was contended by the writ petitioners before the learned Single Judge that though the requisite documents were not filed along with their applications, since the same were filed subsequently and that they were available with the Central Government prior to the cut-off date, i.e. 30.09.2014 fixed in the statutory time schedule for forwarding the applications to MCI for its recommendations, the rejection on the ground that the applications of the petitioners were incomplete is erroneous. It was also contended that the time schedule relied upon by the respondents for receipt of applications for establishment of new medical colleges / increase of intake was not enforceable since the said schedule which was prescribed by way of amendment to the Establishment of Medical College Regulations, 1999 (for short 'Regulations') was not published in the Official Gazette.

11. The latter contention with regard to the enforceability of the time schedule was rejected by the learned Single Judge since Section 33 of the Medical Council Act, 1956 which empowers the MCI to make the Regulations with the previous sanction of the Central Government, does not provide for publication in the Official Gazette. Accordingly, the learned Single Judge held that the amended time schedule has come into force with

effect from 30.01.2014, i.e. the date on which the Central Government approved the amendment to the Regulations.

12. So far as the other issue, i.e. whether the failure on the part of the petitioners to submit the EC/NOC and CoA along with their applications was fatal and whether the Central Government was justified in rejecting the applications of the petitioners on the said ground is concerned, the learned Single Judge opined that though the said time schedule is mandatory and shall be adhered to strictly, a minor delay in providing the documents or providing the said documents separately would not be fatal. It was also opined by the learned Single Judge that in the event of any defect in the application, the applicant could be given an opportunity to rectify the same and that there is no statutory provision which precludes the Central Government from pointing out any defect in the application or permitting the applicants to provide any missing information. Since the deficient documents were subsequently filed by all the petitioners and that same were available with the Central Government at the time when their applications were considered, the learned Single Judge held that the fact that documents were not filed along with the applications would not be a sufficient reason to ignore them completely.

13. The Medical Council of India/Appellant assailed the correctness of the said conclusion of the learned Single Judge contending that the same is contrary to the settled legal position that strict adherence to the time schedule prescribed under the Regulations is mandatory and that no application can be processed after the cut off date fixed in the Schedule. It is also contended that neither the Central Government nor the MCI can

consider an incomplete application as on the last date of submission of application and that an incomplete application is liable to be returned at the threshold as provided in Establishment of Medical College Regulations, 1999. The further contention is that the petitioners were obligated to submit to the Central Government their applications complete in all respects i.e. together with all the mandatory documents specified in Form-1 appended to the Regulations i.e. the Format of application for permission of the Central Government to establish a new medical college and that the deficient documents submitted after the last date of submission of applications i.e. 31.08.2014 cannot be taken into consideration since the same would defeat the very purpose of strict adherence to the time schedule.

14. It is relevant to note that as per Section 10A (1) of the MCI Act, no person shall establish a medical college or no medical college shall increase its admission capacity in any course of study or training except with the previous permission of the Central Government obtained in accordance with the provisions of the said Section.

15. Sub-section (2) and sub-section (3) of Section 10A of the MCI Act provide for the procedure for submission of the scheme/application for such permission and processing of the same by the Central Government and the MCI. Section 10-A of MCI Act, to the extent relevant may be reproduced hereunder for ready reference:

10A. Permission for establishment of new medical college, new course of study etc. –

(1) xxx xxx xxx

(2) (a) Every person or medical college shall, for the purpose of obtaining permission under sub-section (1), submit to the Central Government a scheme in accordance with the provisions of clause (b) and the central Government shall refer the scheme to the Council for its recommendations.

(b) The Scheme referred to in clause (a) shall be in such form and contain such particulars and be preferred in such manner and be accompanied with such fee as may be prescribed.

(3) On receipt of a 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 to rectify the defects, if any, specified by the Council.

(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.

xxx xxx xxx

16. In exercise of the powers conferred by Section 10A read with Section 33 of the MCI Act, the Medical Council of India made the Establishment of Medical College Regulations, 1999 which deal with the procedure for making the application seeking permission to establish a medical college and the processing of the same. The said Regulations *inter alia* prescribed the Form and particulars to be contained in the scheme/application referred

to in Section 10A (2) (a) of the MCI Act. The scheme/application for obtaining permission to establish a new medical college shall be in Form I annexed to the Regulations. Further, under Clause (3), it is mandatory to submit the applications to the Central Government from 01st August to 31st August (both days inclusive) of any year. It is also relevant to refer to the qualifying criteria prescribed under the Regulations and the same is reproduced hereunder for ready reference:

2. QUALIFYING CRITERIA –

The eligible persons shall qualify to apply for permission to establish a medical college if the following conditions are fulfilled:-

1. that medical education is one of the objectives of the applicant in case the applicant is an autonomous body, registered society or charitable trust.
2. that a suitable single plot of land measuring not less than 25 acres is owned and possessed by the person or is possessed by the applicant by way of 99 years lease for the construction of the college.
3. **that Essentiality Certificate in Form 2 regarding No objection of the State Government/Union Territory Administration for the establishment of the proposed medical college at the proposed site and availability of adequate clinical material as per the council regulations, have been obtained by the person from the concerned State Government/Union Territory Administration.**
4. **that Consent of affiliation in Form-3 for the proposed medical college has been obtained by the applicant from a University.**
5. that the person owns and manages a hospital of not less than 300 beds with necessary infrastructural facilities

capable of being developed into teaching institution in the campus of the proposed medical college.

(emphasis supplied)

17. That apart, the following Schedule has been appended to the Regulations prescribing the time schedule for receipt of applications and processing of the same by the Central Government and the Medical Council of India.

Schedule

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

S.No.	Stage of Processing	Last Date
1	Receipt of applications by the Central Govt.	From 1 st August to 31 st August (both days inclusive) of any year
2	Receipt of applications by the MCI from Central Govt.	30 th September
3	Recommendations of Medical Council of India to Central Government for issue of Letter of Intent.	31 st December
4	Issue of Letter of Intent by the Central Government.	31 st January
5	Receipt of reply from the applicant by the Central Government requesting for Letter of permission.	28 th February
6	Receipt of Letter from Central Government by the Medical Council of India for consideration for issue of Letter of Permission.	15 th March
7	Recommendation of Medical Council of India to Central Government for issue of Letter of Permission.	15 th June
8	Issue of Letter of Permission by the Central Government.	15 th July

18. So far as the permission for starting higher courses or for increase of the admission capacity in MBBS / higher courses in the existing medical colleges / institutions is concerned, a different set of Regulations called the Opening of a New or Higher Course of Study or Training (including Post-Graduate Course of Study or Training) and Increase of Admission Capacity in any Course of Study or Training (including the Post-Graduate Course of Study or Training) Regulations, 2000, are made by the Medical Council of India prescribing the scheme referred to in Section 10A (2)(a) of the MCI Act for the purpose of establishment of a new course or increase of admission capacity in any course of study by an existing college. Part II of the said Regulations specifically deals with the permission to increase the admission capacity in the existing medical colleges. Clause (2) read with Appendix II of the said Regulations provides for the format of application, the list of enclosures to be submitted along with the application and etc.

19. It is not disputed by the learned counsel for both the parties that the time schedule for receipt of applications and processing of the same by the Central Government and the MCI for permission to increase the admission capacity is the same as prescribed for the permission for opening new medical colleges.

20. Coming to the cases on hand, it is not in dispute that the applications of the petitioners for permission were received by the Central Government within the cut-off date prescribed in the Schedule, i.e. 31.08.2014. However, the said applications were incomplete since the petitioners could not enclose the two mandatory documents required to be furnished along with the applications. Admittedly, the said documents were subsequently

furnished by the petitioners and according to them, the Central Government ought to have accepted the same since they were received by the Central Government before 30.09.2011 i.e. the cut-off date prescribed for referring the applications by the Central Government to the MCI. The contention of the MCI is that the time schedule prescribed is mandatory and as held by the Supreme Court in *Priya Gupta v. State of Chhattisgarh*, (2012) 7 SCC 433 and *Mridul Dhar v. Union of India*, (2005) 2 SCC 65, strict adherence to the same is essential. It is also contended that the Regulations being mandatory, it is obligatory on the part of the petitioners to furnish all the documents and the particulars as prescribed in the Regulations while seeking permission for establishment of a new medical college or increase of the intake in any course in the existing college.

21. The learned Single Judge though took note of the settled principle of law that adhering to the prescribed time schedule is mandatory to ensure that the admission process is not delayed, opined that the authorities would have the necessary play in joints to carry out the provisions of the Act in a meaningful manner and therefore if there is any defect in the application, the applicant could be given an opportunity to rectify the same and that the timelines as indicated in the schedule cannot be read as prohibiting the concerned authorities from providing an opportunity at the initial stage to cure the defects by furnishing the required documents subsequent to the last date of filing and prior to the consideration of the application for its registration. The learned Single Judge further observed that the directions issued in *Mridul Dhar* (supra) and *Priya Gupta* (supra) to strictly adhere the time schedule and that no permission would be granted after the cut off date

adversely affecting the admission process does not preclude the Central Government from taking note of the documents which were placed before it, though subsequently, while considering whether to forward the applications to MCI or not. The learned Single Judge thus concluded that the Central Government was in error in assuming that it is bound to reject the applications of the petitioners even though all the relevant documents were available at the time of consideration for reference to MCI, only for the reason that some of the documents that were to be filed by the petitioners along with their applications were not enclosed.

22. In arriving at the said conclusion, the learned Single Judge relied upon the decision in *Royal Medical Trust v. Union of India*, (2013) 12 SCALE 145 and a decision of the Division Bench of the Kerala High Court in *MCI v. S.R. Education and Charitable Trust & Anr.*, [W.A. No.1967/2014 dated 23.01.2015].

23. In *Royal Medical Trust* (supra) the appellant therein was desirous of establishing a new medical college and it was issued the Essentiality Certificate by the State Government which was valid for the academic years 2011-12 and 2012-13. However, its application for grant of Affiliation Certificate was kept pending before the Kerala University of Health Sciences (KUHS). Since the deadline for submitting the application for permission under Section 10A of the MCI Act for the academic year 2013-14 was about to expire, the appellant submitted an application to the Central Government on 20.08.2012 without enclosing the Affiliation Certificate. The said application was referred by the Central Government to the Medical Council of India on 28.08.2012. Thereafter, the KUHS issued the

Affiliation Certificate on 01.11.2012 and immediately the appellant furnished the same to the MCI. However, the MCI rejected the appellant's application on the ground that it was incomplete due to non-submission of the affiliation certificate. The appellant's writ petition and writ appeal were dismissed by the High Court of Kerala observing that the MCI was justified in not registering the application since it was incomplete in terms of statutory regulations. On appeal, the Supreme Court while setting aside the orders of the High Court, directed the MCI to register the appellant's application for the academic year 2013-14 and consider the same on merits observing as under:

“13. In the instant case, the appellant mindful of the aforesaid directions of this Court, had applied in due time adhering to the statutory timelines. Its application in terms of necessary documents was in fact complete but for the affiliation certificate from KUHS which was awaited by the appellant even after several reminders for its issuance to KUHS pressing upon the urgency of the matter. Since the appellant was not at fault but constrained due to the delay on the part of KUHS, the Council was expected to have appropriately considered the facts and circumstances of the case pleaded by the appellant and thereafter, reached a conclusion one way or the other on its merits instead of functioning in such mechanical manner by rejecting the application filed by the appellant and, thereafter, forwarding it to the Central Government with its adverse recommendations....”

24. The learned Single Judge opined that the decision in *Royal Medical Trust* (supra) wherein it was held that the Central Government does not have to act in a mechanical manner would squarely apply to the petitions on hand.

25. The learned Single Judge also placed reliance upon *SR Education and Charitable Trust & Anr.*, (supra) wherein a Division Bench of the Kerala High Court while considering a case where an application filed for establishing a medical college was not accompanied by the Essentiality Certificate and that the application was rejected on that ground by the Central Government, held that as the documents were produced immediately and the Central Government had sufficient time to consider their applications in order to forward the same to the MCI, it is always open to issue appropriate directions under Article 226 of the Constitution, of course keeping in mind the time schedule which has to be complied by all concerned. The contention on behalf of the MCI that delayed directions would cause substantial prejudice to them as they will not be in a position to complete the formalities of verification within the time schedule was not accepted by the Division Bench observing that merely for the reason that such directions may cause some inconvenience to MCI, the petitioners cannot be denied the benefit of consideration of their applications. The SLP No.5294/2015 preferred by the MCI against the said decision of the Division Bench of the Kerala High Court was dismissed by the Supreme Court by order dated 20.02.2015 observing that considering the peculiar facts of the Special Leave Petition, there is no reason to interfere with the impugned orders.

26. On the basis of the above noticed two decisions, the learned Single Judge concluded that if all the relevant documents are available with the Central Government, by the date of consideration of the application, it is incumbent upon the Central Government to refer the application to MCI.

27. Shri Vikas Singh, the learned senior counsel appearing for the MCI vehemently contended that accepting the documents after the cut-off date prescribed in the schedule would offend Article 14 of the Constitution of India. To substantiate the said submission, the learned senior counsel cited *Ramana Dayaram Shetty v. International Airport Authority of India and Ors.*, (1979) 3 SCC 489, *Ashok Kumar Sharma and Ors. v. Chander Shekhar and Anr.*, (1997) 4 SCC 18, *Alka Ojha v. Rajasthan Public Service Commission and Anr.*, (2011) 9 SCC 438 and *Rakesh Kumar Sharma v. State (NCT of Delhi) and Ors.*, (2013) 11 SCC 58.

28. The above said decisions were cited before the learned Single Judge also while advancing the contentions on the same lines on behalf of MCI. However, the learned Single Judge distinguished all the said decisions observing that the same were rendered in the context of competing claims whereas the applicants under Section 10A of the MCI Act are not engaged in a competitive process. The learned Single Judge thus was of the view that no prejudice would be caused to any other person even if the required documents are filed subsequent to the last date for application.

29. We find it difficult to agree with the reasoning of the learned Single Judge. As held in *Ashok Kumar Sharma* (supra), an advertisement or notification issued/published calling for applications constitutes a representation to the public and the authority issuing it is bound by such representation. Reiterating the above settled principle of law, it is further explained in *Rakesh Kumar Sharma* (supra) –

“22. It also needs to be noted that like the present appellant there could be large number of candidates who

were not eligible as per the requirement of rules/advertisement since they did not possess the required eligibility on the last date of submission of the application forms. Granting any benefit to the appellant would be violative of the doctrine of equality, a backbone of the fundamental rights under our Constitution. A large number of such candidates may not have applied considering themselves to be ineligible adhering to the statutory rules and the terms of the advertisement.”

30. It is no doubt true that in the present cases, no competing claims are involved, however, if it were known that it is permissible to submit the documents even after the cut-off date fixed for filing the applications, other similarly placed persons could also have applied without enclosing the mandatory documents. Therefore, we find substance in the submission of the learned senior counsel appearing for the MCI that consideration of the applications which were incomplete by the cut-off date (31.08.2014) fixed for filing the applications under Section 10A of the MCI Act would result in granting the benefit to some while similarly situated others are denied of the same.

31. It may be reiterated that the permission sought by the petitioners is for the Academic Year 2015-16. As per the Schedule prescribed under the Regulations for receipt of applications for establishment of new medical colleges/increase of intake in the existing medical colleges and processing by the Central Government and the MCI, 31.08.2014 is the last date for receipt of applications by the Central Government and 30.09.2014 is the last date for receipt of applications by the MCI from the Central Government. Admittedly, all the petitioners submitted their applications before the cut-off

date i.e. 31.08.2014, but they were incomplete since EC/NOC and CoA, which are the mandatory documents as per the provisions of the Regulations, were not enclosed. However, all the petitioners submitted the said documents after 31.08.2014 but before 30.09.2014. Be it noted that the Central Government under the Schedule is required to consider the applications and forward to MCI on or before 30.09.2014.

32. Since the mandatory documents were very much available with the Central Government by 30.09.2014 i.e. the cut-off date fixed under the Schedule for reference to the MCI, the contention of the writ petitioners is that the action of the Central Government in refusing to refer the scheme/application submitted by them to MCI is arbitrary, illegal and contrary to the statutory provisions.

33. On the other hand, the contention of the learned senior counsel appearing for the MCI/appellant is that the compliance with the form of the scheme and the particulars as prescribed in the Regulations is the condition precedent for referring the scheme to the MCI under Section 10A(2)(a) of the MCI Act and that the power to reject the incomplete applications, i.e. the applications which fail to comply with the threshold requirements, is implicit from the language of Section 10A(2)(a) of the MCI Act. It is also submitted by the learned senior counsel that having regard to the magnitude of consideration of the applications received by the Central Government for permission under Section 10A, it is humanly impossible to keep the applications pending till 30.09.2014 i.e. the last date for reference to MCI for their recommendations. The further contention is that the whole purpose of fixing 31.08.2014 as the cut-off date for receiving the applications by the

Central Government would be rendered meaningless if the applicants are permitted to furnish the missing documents even after the cut-off date.

34. We have given our thoughtful consideration to the above-noticed rival submissions. We may, at the outset, point out that a combined reading of Clause (a) and Clause (b) of Section 10A(2) shows that the Central Government is bound to refer the scheme/application to the MCI for its recommendations only where the scheme is submitted in the form prescribed in the Regulations containing the particulars specified therein and accompanied with the fees prescribed. It is also clear that at that stage the Central Government is not under an obligation to give an opportunity to the applicant to cure the defects, if any. Though sub-section (3) of Section 10A empowers the MCI to give an opportunity to the applicant to rectify the defects, if any, in the scheme, it is significant that sub-section (2) does not provide for the same. Therefore, the Central Government cannot be found fault with if the incomplete applications are rejected at the threshold. As rightly pointed out by the learned senior counsel for MCI, such power of rejection is implicit under Section 10A(2).

35. However, the applications of the petitioners were not rejected by the Central Government before 30.09.2014, but they were rejected only on 15.10.2014 and 16.10.2014. The specific case of the petitioner in W.P.(C) No.7424/2014 that the deficient documents were submitted by it to the Central Government on 10.09.2014 has not been disputed. So far as the petitioner in W.P.(C) No.9023/2014 is concerned, the Essentiality Certificate was submitted on 05.09.2014 and there appears to be a dispute

with regard to the submission of the Certificate of Affiliation from the concerned University.

36. Be that as it may, the fact remains that though the petitioners failed to submit the mandatory documents along with their applications, the same were submitted after 31.08.2014 but before 30.09.2014. No material could be placed before this court by the Central Government with regard to the actual date on which the applications of the petitioners were considered by it in terms of Section 10A(2) of the MCI Act nor the plea of the petitioners that their applications were taken up by the Central Government for consideration only after the deficient documents were furnished, is disputed. Therefore, the only question that requires consideration is whether the Central Government is justified in refusing to consider the documents subsequently submitted by the petitioners merely on the ground that they failed to enclose the same to their respective applications.

37. The provisions of the MCI Act as well as the Regulations made thereunder mandate the reference of the scheme/application for the recommendations of the Council only where the scheme/application is complete in all respects. Further, the Regulations themselves provide that the documents in question i.e. the Essentiality Certificate and the Certificate of Affiliation shall be submitted along with the application seeking permission under Section 10A of the MCI Act. Therefore, admittedly the applications of the petitioners were incomplete by the date of their submission and even by 31.08.2014, i.e., the cut-off date prescribed under the Schedule for receipt of applications by the Central Government.

38. In the light of the mandatory provisions of the MCI Act and the Regulations made thereunder, it cannot be held that the Central Government is bound to give an opportunity to the applicants to submit the deficient documents and for the said purpose the consideration of the applications under Section 10A(2) shall be kept pending till the cut-off date, i.e. 30.09.2014. Such interpretation would undoubtedly render the time schedule unworkable and impracticable.

39. However, when the deficient documents are available with the Central Government as on the date of consideration of the applications for reference to the MCI for their recommendations, it appears to us that nothing precludes the Central Government to consider the applications on merits. Rejection of the applications in such circumstances merely on the ground that the said documents were not submitted along with the applications may not be proper since such pedantic approach does not serve any purpose. Therefore, we too agree that the Central Government in appropriate cases may exercise the discretion in favour of the applicants and consider the applications which are complete in all respects by the date of consideration under Section 10A(2) of the MCI Act. Such consideration in our considered opinion cannot be found fault with since the same would not affect the adherence to the statutory time schedule. However, the question with which we are concerned in the present case is whether the failure of the Central Government to exercise such discretion can be held to be erroneous and contrary to law and whether a positive direction can be issued by this court to consider the applications of the petitioners particularly at the fag end of the statutory time schedule.

40. As noticed above, the learned Single Judge in the order under appeal directed that the Central Government shall now forward the applications of the petitioners to MCI and that the MCI shall consider the same and make its recommendations within a period of four weeks thereafter. It may be pointed out that though the writ petitions were filed in November, 2014, the same could be disposed of only now and the order under appeal came to be passed on 08.04.2015, at the fag end of the statutory schedule. Only two steps, i.e. recommendation of the MCI for Letter of Permission which has to be done on or before 15.06.2015 and the issuance of Letter of Permission by the Central Government before 15.07.2015 remain under the schedule as of today. The time prescribed for recommendations of the Medical Council of India after making due inspections for examining the sufficiency of the facilities proposed in the scheme, expired long back on 31.12.2014.

41. The learned senior counsel appearing for the MCI, while placing reliance upon *State of Kerala v. T.P. Roshana*, (1979) SCC 580, *MCI v. State of Karnataka*, (1998) 6 SCC 131 and *Dr. Preeti Srivastava v. State of M.P.*, (1999) 7 SCC 120 and emphasising the importance of the maintenance of highest standards of medical education and the responsibility of the MCI to ensure that the standards are satisfied in all respects by the proposed institutions, submitted that making the recommendations to Central Government for issue of Letter of Intent is a time consuming process. The learned counsel points out that even under the statutory schedule, three months time is given to the MCI to make its recommendations.

42. It may be true that there is need for additional medical assistance in our country and that the infrastructure created and the investment made by the petitioners for training a significant number of doctors would remain unutilized for one year if their applications for the Academic Session 2015-16 are not considered. However, in our considered view, the same cannot be a ground to issue directions at this stage to consider their applications at the fag end of the Schedule fixed for the Academic Year 2015-16. As a matter of fact, the schedule for the Academic Year 2016-17 is also about to commence from 01.08.2015. That being so, the implementation of the directions issued by the learned Single Judge far behind the statutory time schedule is impracticable and also does not serve any public purpose.

43. In *Educare Charitable Trust v. Union of India and Anr.*, (2013) X AD (SC) 485, the Supreme Court in identical circumstances held that no relief can be granted to the applicant therein observing as under:-

“8. As per the aforesaid time-schedule, the applicant-college desirous of increasing the admission capacity is to submit the application from 1st August to 30th September. This was done by the petitioner. However, what was found that the petitioner was not meeting the qualifying criteria as on that date because with respect to existing admission capacity, it had not been recognized so far. The applications are to be forwarded by the Central Government, once they are found to be in order and meeting the qualifying criteria laid down in Regulation 19, by 31st October in respect of BDS course. This time was extended upto 31st December in this year. After an application is forwarded to the DCI, DCI is supposed to evaluate the scheme for increasing admission capacity as per the procedure laid down in Regulation 21 which lays down that the DCI is required to ascertain the

desirability and prima facie feasibility for increasing the admission capacity at the Dental College. It is also required to satisfy itself about the capability of the Dental College to provide necessary resources and infrastructure for the scheme. DCI is even required to conduct physical inspection of the college before forming an opinion as to whether the applicant satisfies the condition of feasibility of increasing the admission capacity. This process, naturally, is time consuming. As per the time-schedule referred to above, time upto 15th June is given for the DCI to make recommendation to the Central Government. Such a report containing its recommendation is to be given in terms of Regulation 22. Thereafter, Central Government is required to go into the said recommendation and if it is found that applicant-college deserves the permission to increase the admission capacity, Letter of Permission is to be issued by 15th July. This time frame is to ensure timely admissions of students.

9. Having regard to the above, it is not possible to accede to the request of the petitioner to change the time-schedule when the last date for admitting the students, which was July 15, 2013, expired long ago. If the Central Government forwards the application to the DCI at this juncture, DCI shall hardly have any time to look into the feasibility of the scheme as per the requirements contained in Regulation 21. We have to keep in mind that in the schedule annexed to the Regulations 2006, six to eight months time is given to the DCI for this purpose. We are, thus, of the view that the High Court did not commit any error in holding that in the given circumstances mandamus could not be issued to the Central Government to exercise its discretionary powers in a particular manner to modify the time-schedule. Sanctity to the time-schedule has to be attached. It is too late in the day, in so far as present academic session is concerned, to give any direction. - This Court has highlighted the importance of cut off date for starting the

professional courses, particularly medical courses, and repeatedly impressed upon that such deadline should be tinkered with. (See: **Priya Gupta Vs. State of Chhattisgarh** (2012) 7 SCC 433 and **Maa Vaishno Devi Mahila Mahavidyalaya Vs. State of U.P.** (2013) 2 SCC 617).”

44. For the aforesaid reasons, we are unable to uphold the directions issued for processing the applications of the petitioners and, therefore, we are constrained to set aside the same.

45. In the result, the order under appeal is set aside and the appeals shall stand allowed.

48. In the facts and circumstances of the case, there shall be no order as to costs.

CHIEF JUSTICE

RAJIV SAHAI ENDLAW, J.

MAY 05, 2015

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