

+THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 08.04.2015

+ W.P.(C) 7738/2014 & CM Nos. 18212/2014 & 20610/2014

**AMMA CHANDRAVATI EDUCATIONAL
& CHARITABLE TRUST AND ANR.**

..... Petitioners

versus

UNION OF INDIA & ANR.

..... Respondents

AND

+ W.P.(C) 7424/2014

**PONNAIYAH RAMAJAYAM INSTITUTE OF
SCIENCE & TECHNOLOGY TRUST**

..... Petitioner

versus

UNION OF INDIA & ANR.

..... Respondents

AND

+ W.P.(C) 9023/2014 & CM No. 20631/2014

**PADMASHREE DR. D.Y. PATIL MEDICAL
COLLEGE**

..... Petitioner

versus

UNION OF INDIA & ANR.

..... Respondents

Advocates who appeared in these cases:

For the Petitioners : Mr Amit Kumar and Mr A.H. Kharwanlong,
for petitioners in W.P.(C) 7738/2014.
Ms Aditya Dewan in W.P.(C) 9023/2014

For the Respondents : Mr Vikas Singh, Sr. Advocate with Mr T.
Singhdev, Mr Manan Khera and Mr Vishu
Agarwal for R2/MCI in W.P.(C) Nos.
7424/2014 & 7738/2014 & 9023/2014.

Mr Kirtiman Singh, CGSC with Mr Waize Ali Noor and Ms Prerna Shah Deo for UOI in W.P.(C)7738/2014.

Mr Amit Mahajan, CGSC for UOI in W.P.(C) No. 7424/2014.

Mr G. Umapathy in W.P.(C) No. 7424/2014.

Mr Suparna Srivastava with Ms Nishtha Sikroria and Mr Kumar Harsh for R-1 in W.P.(C) 9023/2014.

CORAM:-

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The principal controversy involved in these petitions is whether the decision of the Central Government to reject the applications filed by the petitioners for establishment of a medical college or increase intake of candidates, solely on the ground that the Essentiality Certificate/No Objection Certificate (hereafter 'EC/NOC') and/or the Consent of Affiliation certificate (hereafter 'CoA') were not filed along with the applications, is erroneous.

2. The last date for filing the applications for the academic year 2015-16 was 31.08.2014. According to the respondents, the applications were incomplete as one or more of the required enclosures did not accompany the applications. It is contended that even though the applications were filed prior to the cutoff date, the same being incomplete could not be treated as applications at all. Respondents contend that the deficiency in the applications could not be made up by the petitioners subsequently. And, even though all necessary documents were available with the respondents

subsequently, the same could not be taken into account while considering the applications filed by the petitioners. The petitioners have disputed the above contention. According to the petitioners, the applications along with the requisite documents were available with the Central Government prior to the cutoff date for forwarding the same to the Medical Council of India (hereafter 'MCI'); and, in these circumstances, the applications of the petitioners could not be rejected.

3. It is further contended on behalf of the petitioners that the last date for submission of applications was 30.09.2014 and not 31.08.2014 in terms of the *“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”* (hereafter ‘the Schedule’) specified under the Establishment of Medical College Regulations, 1999 (hereafter ‘the Regulations’). It was urged that the amended Schedule, which specified the last dated for submission of applications as 31st August was not notified and, thus, was not in force at the material time.

4. The petitioner in Writ Petition (W.P.(C) No.7738/2014) impugns an order dated 15.10.2014 passed by the Secretary, Ministry of Health and Family Welfare, Government of India (hereafter the ‘impugned order dated 15.10.2014’) whereby the application of petitioner no. 1 – Amma Chandravati Educational & Charitable Trust (hereafter ‘Amma Chandravati Trust’), for permission to establish ‘World College of Medical Sciences And Research’ at Village Gurawar, Tehsil and District Jhajjar, Haryana (hereafter ‘World College’) with effect from academic session 2015-16, was rejected.

5. Briefly stated, the facts necessary to consider the controversy in the petition (W.P.(C) No.7738/2014) are as follows:

5.1 Amma Chandravati Trust applied to the concerned State Government on 30.05.2014 for issuance of EC/NOC. Thereafter, on 11.08.2014, Amma Chandravati Trust applied to Pandit B.D. Sharma University of Health Sciences for issuance of CoA, however by letter dated 20.08.2014, the said University declined to issue the CoA in absenc of EC/NOC from the concerned State Government.

5.2 On 27.08.2014 Amma Chandravati Trust submitted the application, under Section 10A of the Indian Medical Council Act, 1956 (hereafter the 'IMC Act') to the Secretary (Health), Government of India (hereafter the 'Central Government'), for permission to establish World College with effect from academic session 2015-16.

5.3 Subsequently on 08.09.2014, Amma Chandravati Trust was issued the EC/NOC by the concerned State Government and the same was submitted to the Central Government on 17.09.2014. Amma Chandravati Trust was issued CoA on 29.09.2014 by Pandit B.D. Sharma University of Health Sciences and the said CoA, along with the EC/NOC dated 08.09.2014, were submitted to the Central Government on 30.09.2014.

5.4 The Central Government, by the impugned order dated 15.10.2014, rejected Amma Chandravati Trust's application dated 27.08.2014 on the ground that EC/NOC and CoA were not submitted along with the application on 27.08.2014 and were submitted after the cutoff date of 31.08.2014. However, Amma Chandravati Trust was granted liberty by the

Central Government to file a fresh application for the academic session 2016-17.

6. The petitioner in Writ Petition (W.P.(C) No.7424/2014) impugns a communication dated 15.10.2014 passed by the Central Government (hereafter the 'impugned communication dated 15.10.2014') whereby the application of petitioner – Ponnaiyah Ramajayam Institute of Science & Technology Trust (hereafter 'Ponnaiyah Trust'), for permission to establish 'Ponnaiyah Ramajayam Institute of Medical Sciences' at Manamai-Nallur (ECR), near Maamalurpuram, Thirukazugundram Taluk, Kancheepuram District, Chennai (hereafter 'PRIMS') with effect from academic session 2015-16, was rejected.

7. Briefly stated, the facts necessary to consider the controversy in the petition (W.P.(C) No.7424/2014) are as follows:

7.1 On 25.08.2014 Ponnaiyah Trust submitted the application to the Central Government for permission to establish PRIMS with effect from academic session 2015-16.

7.2 Ponnaiyah Trust was issued EC/NOC on 28.08.2014 by the concerned State Government and CoA on 30.08.2014 by Tamil Nadu Dr. M.G.R. Medical University. On 10.09.2014, Ponnaiyah Trust submitted the said EC/NOC and CoA to the Central Government.

7.3 The Central Government, by the impugned communication dated 15.10.2014, rejected Ponnaiyah Trust's application dated 25.08.2014 on the ground that EC/NOC and CoA were not submitted along with the

application on 25.08.2014 and were submitted after the cutoff date of 31.08.2014. However, Ponnaiyah Trust was granted liberty by the Central Government to file a fresh application for the academic session 2016-17.

8. The petitioner in Writ Petition (W.P.(C) No.9023/2014), *inter alia*, impugns communications dated 16.10.2014 and 11.12.2014 passed by the Central Government (hereafter the ‘impugned communications dated 16.10.2014 and 11.12.2014’) whereby the application of petitioner – Padmashree Dr. D.Y. Patil Medical College (hereafter ‘D.Y. Patil College’), for permission to increase the intake of students in MBBS category from 150 to 250 with effect from academic session 2015-16, was rejected.

9. Briefly stated, the facts necessary to consider the controversy in the petition (W.P.(C) No.9023/2014) are as follows:

9.1 D.Y. Patil College was issued EC/NOC dated 28.02.2011 by the concerned State Government. On 29.02.2012, a corrigendum was issued by the concerned State Government clarifying therein that the said EC/NOC dated 28.02.2011 was valid for a period of three years from the date of issue i.e. till 28.02.2014. By a letter dated 03.02.2014, D.Y. Patil College applied to the concerned state government for extension of the validity period of the EC/NOC.

9.2 On 30.08.2014, D.Y. Patil College submitted the application dated 26.08.2014, along with the EC/NOC dated 28.02.2011 and the corrigendum dated 29.02.2012, to the Central Government seeking permission to increase the intake of students in MBBS category from 150 to 250 with

effect from academic session 2015-16. D.Y. Patil College also submitted to the Central Government, CoA dated 26.08.2014 issued by Padmashree Dr. D.Y. Patil University before the expiry of the cut-off date of 31.08.2014.

9.3 D.Y. Patil College was issued a fresh EC/NOC dated 03.09.2014 by the concerned State Government and the said EC/NOC was valid for a period of three years from the date of issue i.e. from 03.09.2014. D.Y. Patil College submitted the said EC/NOC to the Central Government on 05.09.2014.

9.4 The Central Government by the impugned communication dated 16.10.2014 rejected D.Y. Patil College's application on the ground that EC/NOC and CoA were not submitted along with the application and were received on 05.09.2014, after the cutoff date of 31.08.2014. However, D.Y. Patil College was granted liberty by the Central Government to file a fresh application for the academic session 2016-17.

9.5 Thereafter, by a letter dated 24.10.2014, D.Y. Patil College requested the Central Government to condone the delay of 5 days and consider its application for the academic session 2015-16. The Central Government by the impugned communication dated 11.12.2014 again rejected D.Y. Patil College's application on the ground that EC/NOC was not submitted along with the application and was received on 05.09.2014, after the cutoff date of 31.08.2014. The Central Government, however, clarified that the CoA dated 26.08.2014 was received within the cutoff date of 31.08.2014.

10. First and foremost, it would be necessary to address the controversy as to the applicable 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. By virtue of Ordinance 2 of 2010 dated 15.05.2010, the Medical Council of India was superseded by the Board of Governors. The Schedule specified under the Regulations was amended to read as under:-

“SCHEDULE

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

S.No	Stage of processing	Last Date
1.	Receipt of applications by the Council	From 1 st August to 30 th September (both days inclusive) of the year.
2.	Issue of Letter of Intent by the Council	Upto 30 th April
3.	Receipt of reply from the applicant by the Council for consideration for issue of Letter of Permission	Upto 31 st May
4.	Issue of Letter of Permission by the Council.	15 th June.

Note: The time schedule indicated above may be modified by the Central Government, for reasons to be recorded in writing, in respect of any class or category of applications.

Note: (1) The information given by the applicant in Part-1 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 issue letter of Intent.

(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 Medical Council of India.”

11. Admittedly, the above time schedule was in force for the academic years 2012-13 and 2013-14.

12. By a letter dated 30.01.2014, addressed by the Central Government to the President of MCI, the MCI was advised that the Central Government had approved the following time schedule which is required to be followed by MCI for processing of application under Section 10A of the IMCA Act, 1956:-

S. No	Stage of processing	Last Date
1.	Receipt of applications by the Central Govt.	From 1 st August to 31 th 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.	28 th February
4.	Issue of Letter of Intent by the	31 st March

	Central Government.	
5.	Receipt of reply from the applicant by the Central Government requesting for letter of permission	30 th April
6.	Receipt of Letter from Central Government by the Medical Council of India for consideration for issue of Letter of Permission.	15 th May
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

Note: The time schedule indicated above may be modified by the Central Government, for reasons to be recorded in writing, in respect of any class or category of applications.”

13. By a letter dated 10.02.2014, the MCI forwarded a copy of the draft notification for amendment of the Regulations. As per the draft notification, amended Schedule would come into force from the date of its publication in the Official Gazette. This notification was not accepted by the Central Government and by a letter dated 20.03.2014, addressed to the President MCI, MCI was advised that since it takes a considerable time for the notification to be published in the Gazette *“henceforth the date of any amendment notification shall be the date of Authentication by the Joint Secretary of this Ministry and the amendment shall come into force from that date”*. MCI was further directed to upload the notification on the website within 24 hours of receipt of the authenticated notification. With

respect to the Schedule in question, it was directed that the notification indicate that the same would “*come into force from the date of approval by Ministry of Health and Family Welfare, i.e. w.e.f. 30.01.2014.*”

14. Admittedly, the said notification was not published in the Official Gazette. The petitioners contended that in the absence of such publication the amended time schedule would not come into force. This is controverted by the learned counsel for the respondents and it is urged that there is no requirement that the Regulations made be notified in the Official Gazette. The learned counsel for the MCI pointed out the difference in the language of Sections 32 and 33 of the IMC Act and contended that if Parliament intended the publication of the Regulations in the Official Gazette to be mandatory, it would have specifically provided for the same.

15. It is not disputed that the amended schedule was approved by the Central Government on 30.01.2014. It is also not disputed that the amended schedule was upload on the MCI’s website and, thus, was made known to all applicants/prospective applicants. In addition, notices were also published in various dailies informing that the last date for receipt of applications was 31.08.2014 and that such applications were to be submitted to the Secretary to the Government of India, Ministry of Health and Family Welfare (Deptt. of Health).

16. It is relevant to note that whereas the earlier Schedule, which was applicable for the academic years 2013-14 and 2014-15, provided that the applications be received by the Council between 01.08.2014 to 30.09.2014; the amended schedule indicated that the applications were to be received by

the Central Government from 01.08.2014 to 31.08.2014. Concededly, the petitioners had addressed the applications to the Central Government and not to the Council. This, clearly, indicates that the petitioners were aware of the amended Schedule and had also acted in accordance therewith. In the circumstances, it would not be open for the petitioners to now contend that the amended Schedule was not enforced. Further, the logical sequitur to the petitioners' contention would be that their applications were addressed to the wrong authority and, thus, could not be considered as applications at all.

17. I also find force in the submission that if the Parliament desired publication of the Regulations in the Official Gazette to be mandatory and an inalienable condition for making the Regulations, it would have specifically provided for the same. The difference in the language of Sections 33 and 32 of the IMC Act is material and the opening words of Section 33 of the IMC Act, reads as: "*The Council may, with the previous sanction of the Central Government, make regulations generally to carry out the purposes of this Act...*". This is materially different from the language of Section 32(1) of the IMC Act, which provides that "*the Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.*" It is apparent from the above that whilst publication of the Rules in the Official Gazette was considered necessary, the legislature did not consider it so in respect of the Regulations to be framed under Section 33 of the IMC Act.

18. I am inclined to accept the contention of the respondents that the delay in the notification of the Official Gazette would not be fatal to the

amendment carried out to the Regulations. In addition, it is also relevant to note that Regulation 3 of the Regulations specifically mandates as under:-

“3. The establishment of a medical college – No person shall establish a medical college except after obtaining prior permission from the Central Government by submitting a Scheme annexed with these regulations.”

19. The opening note under the Scheme annexed with the Regulations reads as under:-

“SCHEME FOR OBTAINING PERMISSION OF THE CENTRAL GOVERNMENT TO ESTABLISH A MEDICAL COLLEGE.

ALL APPLICATIONS UNDER THIS SCHEME SHALL BE SUBMITTED TO THE SECRETARY TO THE GOVERNMENT OF INDIA, MINISTRY OF HEALTH & FAMILY WELFARE, NIRMAN BHAVAN, NEW DELHI – 110 011 FROM 1ST AUGUST TO 31ST AUGUST (BOTH DAYS INCLUSIVE) OF ANY YEAR.”

20. Admittedly, Regulation 3 of the Regulations was not amended in 2010 pursuant to the supersession of the MCI by the Board of Governors. Even though, the Schedule was amended indicating that the applications would be received by the Council from 01.08.2014 to 30.09.2014; the note included in the Scheme annexed to the Regulations continued to read to the contrary. This repugnancy has also ceased to exist with the amended schedule coming into force from 30.01.2014.

21. In my view, the amended Schedule would be applicable w.e.f. 30.01.2014 for the reasons as stated above.

22. The next issue to be addressed is whether the failure on the part of the petitioners to enclose the EC and/or land ownership documents would be fatal to their applications. The learned counsel for the MCI referred to Form-I appended to the Regulations, which provided for the format of the application for permission to establish a new medical college. The said format also indicates a list of documents, which are required to be enclosed with the application. The said list of enclosures reads as under:-

“LIST OF ENCLOSURES:

1. Certified copy of Bye Laws/Memorandum and Articles of Association/ Trust deed.
2. Certified copy of Certificate of registration/ incorporation.
3. Annual reports and Audited Balance sheets for the last three years.
4. Certified copy of the title deeds of the total available land as proof of ownership.
5. Certified copy of zoning plans of the available sites indicating their land use.
6. Proof of ownership of existing hospital.
7. Certified copy of the essentiality certificate issued by the respective State Government/Union territory Administration.
8. Certified copy of the consent of affiliation issued by a recognized University.
9. Authorization letter addressed to the bankers of the applicant authorizing the Central Government./Medical Council of India to make independent enquiries regarding the financial track record of the applicant.

10. Other enclosures as per the various parts of applications. (Please indicate details).”

23. It was argued on behalf of MCI that the Form itself indicates that the EC issued by the State Government/Union Territory Administration must be enclosed along with the Form. And, as the applications furnished by the petitioners were not accompanied by the EC and/or title deeds of the total land, the applications were inchoate and were, therefore, liable to be rejected. The learned counsel for MCI contended that the Regulations were mandatory and, therefore, the decision of the Central Government to return the applications could not be faulted. He relied on the following decisions in support of his contention:

DCI v. SRM Institute of Science and Technology: (2004) 9 SCC 676;

Mridul Dhar & Anr. v. Union of India & Ors.: (2005) 2 SCC 65; and

Priya Gupta v. State of Chattisgarh: (2012) 7 SCC 433.

24. Section 10A of the IMC Act mandates that no person shall establish a medical college and/or no medical college shall either open a new higher course of study or increase its admission capacity, without the permission of the Central Government. By virtue of Section 10A(2)(a) of the IMC Act, any person desirous of establishing a medical college is required to submit a scheme to the Central Government. By virtue of Section 10A(2)(b) of the IMC Act, the said scheme is to be in such form and contain such particulars as may be prescribed.

25. The Regulations contain the format of the scheme as well as the necessary particulars which are required to be stated therein.

26. By virtue of Section 10A(2)(a) of the IMC Act, the Central Government is required to refer the scheme to MCI for its recommendations. Section 10A(3) of the IMC Act provides that the MCI may obtain such particulars as may be necessary from the person seeking to establish a medical college or the concerned medical college. Section 10A(3)(a) of the IMC Act specifically provides that if the scheme is defective or does not contain any necessary particulars, the person or the medical college concerned would be given a reasonable opportunity to rectify the defects, if any, specified by the MCI. MCI is required to submit the scheme along with its recommendations to the Central Government. The Central Government is, thereafter, required to either approve or disapprove the Scheme after obtaining the necessary particulars and after considering the recommendations of MCI. The proviso to Section 10A(4) of the IMC Act specifically provides that no scheme would be disapproved by the Central Government except after giving due opportunity to the college/person concerned, to be heard. Section 10A of the IMC Act is quoted below for ready reference:-

“10A. Permission for establishment of new medical college, new course of study etc. – (1) Notwithstanding anything contained in this Act or any other law for the time being in force,-

- (a) no person shall establish a medical college; or
- (b) no medical college shall-
 - (i) open a new or higher course of study or training (including a post-graduate course of study or training) which would enable a student of such course or training to qualify

himself for the award of any recognised medical qualification; or

- (ii) increase its admission capacity in any course of study or training (including a post-graduate course of study or training),

except with the previous permission of the Central Government obtained in accordance with the provisions of this section.

Explanation 1 - For the purposes of this section, "person" includes any University or a trust but does not include the Central Government.

Explanation 2 - For the purposes of this section "admission capacity" in relation to any course of study or training (including post-graduate course of study or training) in a medical college, means the maximum number of students that may be fixed by the Council from time to time for being admitted to such course or training.

(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.

(4) The Central Govt. 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 by it from the person or 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):

Provided that no scheme shall be disapproved by the Central Government except after giving the person or college concerned a reasonable opportunity of being heard:

Provided further 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).

(5) Where, within a period of one year from the date of submission of the scheme to the Central Government under sub-section (2), no order passed by the Central Government has been communicated to the person or college submitting the scheme, such scheme shall be deemed to have been approved by the Central Government in the form in which it had been submitted, and accordingly, the permission of the

Central Government required under sub-section (1) shall also be deemed to have been granted.

(6) 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.

(7) 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 position to offer the minimum standards 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 medical college or the existing medical college seeking to open a new or higher course of study or training or to increase its 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 accommodating the increased admission 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 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;
- (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 training by persons having the recognised medical qualifications;
- (f) the requirement of manpower in the field of practice of medicine; and
- (g) any other factors as may be prescribed.

(8) Where the Central Government passes an order either approving or disapproving a scheme under this section, a copy of the order shall be communicated to the person or college concerned.”

27. In exercise of powers under Section 33 of the IMC Act, the MCI has made the said Regulations which prescribe the form of the scheme and the required particulars. The Regulations also specify the schedule for accepting and processing the applications under Section 10A(1) of the IMC Act.

28. The question whether the schedule is mandatory or not is no longer *res integra*. The Supreme Court in **Mridul Dhar** (*supra*) had specifically directed that the “*time schedule for establishment of new college or to increase intake in existing college, shall be adhered to strictly by all concerned*”.

29. The only question to be addressed is whether the requirement that the EC and/or other documents must accompany the Form is mandatory or whether an applicant has an opportunity to provide the same prior to its registration. Indisputably, the Regulations are mandatory; Section 10A(2)(b) of the IMC Act mandates that the application be in such form and provide such particulars as prescribed. Plainly, it cannot be disputed that an applicant must provide the particulars as prescribed. And, it would also be necessary that the documents as indicated in the Regulations be submitted by an applicant. However, this is not a point in issue in these petitions. The limited controversy to be addressed is whether it is mandatory that the EC and/or other documents as listed in Form-I of the Regulations be submitted along with the Form. In my view, while it is mandatory that the documents as listed be provided, however a minor delay in providing the same or providing the same separately would not be fatal to the proposal. In my view, although the Schedule as specified under the Regulations is mandatory, the same must be read in a meaningful manner. The Schedule indicates the timelines that must be adhered to. The Supreme Court in a number of decisions has emphasized this aspect and it is no longer open for the petitioners to contend to the contrary. However, I am unable to accept that the timeline as indicated in the schedule must also be read to proscribe curing of defects at the initial stage or providing the required documents subsequent to the last date of filing and prior to the consideration of the applications for its registration. Surely, the concerned authorities would have the necessary play in joints to carry out the provisions of the IMC Act in a meaningful manner.

30. There may be some delay in compliance with the timelines by an authority but that would not absolve the other authority to perform its functions and it would be incumbent on the other authorities to make up the delay. As an illustration, let us take a case where – for some reason justifiable or not - the MCI's recommendation is received on 3rd March instead of prior to 28th February (which is the last date for receipt of recommendations). Would it be open for the Central Government to state that as the recommendations have been received later than the last date specified in the Schedule, it needn't process the application any further? I think not; on the contrary, the Central Government would be obliged to take corrective measures and compensate for the delay by dealing with the recommendation and issuing the Letter of Intent within twenty eight days, instead of thirty one days, thereafter i.e. by 31st March (which is the last date for issuance of LOI). Thus although, the timelines must be strictly adhered to, the object of those timelines cannot be lost sight of.

31. According to the Schedule, the last date for receipt of applications is 31.08.2014 of the year preceding the academic year. Therefore, it is necessary that all persons desirous of establishing a new medical college must apply on or before 31.08.2014. As per the Schedule, the Central Government has to consider the application within a period of one month thereafter and forward the same to MCI on or before 30.09.2014. In the event that there is any defect in the application, the applicant could surely be given an opportunity to rectify the same. There is no statutory provision that precludes the Central Government from pointing out any defect in the application or permitting the applicants to provide any missing information.

It is necessary to bear in mind that the Regulations have been framed under Section 33 of the IMC Act which enables the MCI to “*make regulations generally to carry out the purposes of this Act....*” The Regulations are a piece of subordinate legislation and must be read to further the purposes of the IMC Act and not to frustrate the object for which they are framed.

32. The respondents' contention that the Central Government is bound to ignore the material placed before it if it is not accompanied with the application, cannot be sustained. In the facts of the present case, the documents required were available with the Central Government at the time when the applications of the petitioners were considered. In the circumstances, the fact that the documents were not filed along with applications would not be sufficient reason to ignore them completely.

33. The learned counsel for MCI has relied upon the decision of the Supreme Court in ***SRM Institute of Science and Technology*** (*supra*). In that case, the SRM Institute of Science and Technology had approached the High Court impugning the order of the Central Government rejecting its proposal to start MDS Course in six specialties. SRM Institute of Science and Technology further sought a direction to the Central Government to process its application without insisting on any permission or any EC from the State Government. The High Court passed an interim order directing the Central Government to complete the process of the application including inspection within a specified period. The Dental Council of India was directed to forward its recommendations to the Central Government. Thereafter, the writ petition was disposed of by directing the Dental Council of India to forward the inspection report to the Ministry of Health

and Family Welfare and the Central Government was directed to pass appropriate orders on the report of recommendation of the Dental Council. The orders passed by the High Court were impugned in the Supreme Court and in this context, the Supreme Court held that:

“...the High Court ought not to have made an interim order to process the application even in absence of the permission or essentiality certificate because the application will not be complete without being accompanied by permission or essentiality certificate by the State Government along with certain other documents. An incomplete application cannot be processed either by the Central Government or the Dental Council. The argument advanced on behalf of the respondents will set at naught the law that in certain cases the Courts need not insist on production of permission or essentiality certificate of the State Government, particularly, when the Regulations insist upon the same. To decide such a matter even in the absence of the Dental Council and the State Government as if they have no role to play in the matter...”

34. The essence of the reasoning is clear from the above passage. The Supreme Court had emphasized that an application which is incomplete could not be processed further. This cannot be read to preclude an applicant from supplying the necessary documents in order to complete the application and, thus, enable the respondents to process the same. Indisputably, an application cannot be processed further in absence of the necessary documents. However, that does not mean that the applicant is precluded from supplying the documents while the matter is still pending consideration and has not been rejected.

35. In my view, the aforesaid decision of ***SRM Institute of Science and Technology*** (*supra*) is not an authority for the proposition that the Central

Government should ignore the documents available with it only for the reason that they were not filed along with the application. The fact that an incomplete application cannot be processed does not necessarily mean that the applicant is precluded from curing the deficiencies. It is also relevant to note the final directions that were issued by the Supreme Court in ***SRM Institute of Science and Technology*** (*supra*); since the inspection had taken place pursuant to the interim order passed by the High Court, the Supreme Court directed that:

“It would be more appropriate to process the application on the first respondent furnishing the permission or essentiality certificate and other relevant documents as provided under the relevant regulations and the scheme framed for the purposes of filing an application for starting a new or higher course in the college. On furnishing such permission or essentiality certificate, the Dental Council and the Government of India shall take appropriate steps as provided under the relevant Act and Rules or Regulations.”

36. The Court further granted eight weeks time for SRM Institute of Science and Technology to furnish a permission/EC of the Government of India.

37. It is seen from the above, even though the Supreme Court had held that the application submitted by SRM Institute of Science and Technology without the EC was incomplete, it nonetheless, granted SRM Institute of Science and Technology time to produce the said EC for its application to be processed further. This, clearly, runs contrary to the arguments advanced by the respondents that an application which is not accompanied by the EC must be rejected even though that EC is available at the time of consideration of the application.

38. The learned counsel for MCI emphasized that by virtue of the decision of the Supreme Court in *Mridul Dhar (supra)* the Schedule as specified under the Regulations was mandatory. In *Mridul Dhar (supra)*, the Supreme Court was concerned with the question about giving full effect to the 15% all India quota of MBBS/BDS Courses by including all seats for working out the said quota and by strictly adhering to the time schedule for admissions. This is, clearly, indicated by paragraph 2 of the said judgment which reads as under:-

“2. The question whether the all-India quota of MBBS/BDS courses should be increased from its present 15% is one aspect but the real and main aspect to be considered is about giving full effect to the 15% quota by including all seats while working out 15% quota and by strictly adhering to the time schedule by the State colleges and institutions.”

39. The Supreme Court was of the view that any delay in adhering to the time schedule has an adverse effect on the admission process and directed as under:

“35. Having regard to the aforesaid, we issue the following directions:

1. All participating States and Union Territories' Boards of Secondary Education shall declare 10+2 result by 10th June of every year and make available the marksheets to the students by 15th June.

The aforesaid condition would not apply to West Bengal for the year 2005. As already noticed, West Bengal would make available to the students concerned the marksheets by 15-6-2005.

Heads of Boards would be personally liable to ensure compliance.

2. The timetable mentioned in notification dated 25-2-2004 shall be strictly adhered to by all concerned including States and Union Territories and results of State medical/dental entrance examination shall be declared before 15th of June.

3. The States/Union Territories shall complete the admission process of first round of State-level medical/dental college admission by 25th July i.e. a week before start of second round counseling or allotment of seats under all-India quota. The correct vacancy position shall be intimated by the Chief Secretary of the State/Union Territory to the DGHS by 26th July. It shall be verified by the Head of the institution/or Head of the medical institution/Health Department of the State.

4. It shall be the responsibility of all concerned including Chief Secretaries of each State/Union Territory and/or Health Secretaries to ensure compliance with the directions of this Court and requisite time schedule as laid down in the Regulations and non-compliance would make them liable for requisite penal consequences.

5. All seats in all-India quota must be fully disclosed giving details of the date of recognition/renewal to DGHS before a date to be notified by DGHS and the same shall be duly published.

6. By 31st October, the States, through the Chief Secretaries/Health Secretaries shall file a report in regard to admissions, with the DGHS giving details about the adherence to a time schedule and admission granted as per the prescribed quota. The recalcitrant States, particularly officers personally will have to face the consequences for violation.

7. The DGHS shall file by 31-1-2005 report in regard to feasibility of conducting counseling through the process of video-conferencing.

8. The DGHS shall file report within three months on the aspect of Section 10-A seats being subjected to 15 per cent all-India quota and about the increase of the quota from 15 per cent to 20 per cent.

9. The DGHS shall also file a report within three months on the aspect of constitution of High-Powered Committee/ombudsman.

10. The seats allotted up to 15th July, shall also be subjected to the respective State quotas.

11. If any private medical college in a given academic year for any reason grants admission in its management quota in excess of its prescribed quota, the management quota for the next academic year shall stand reduced so as to set off the effect of excess admission in the management quota in the previous academic year.

12. The time schedule for grant of admission to postgraduate courses shall also be adhered to.

13. For granting admission, the merit determined by competitive examination shall not be tinkered with by making a provision like grant of marks by mode of interview or any other mode.

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

15. Time schedule provided in the Regulations shall be strictly adhered to by all concerned failing which the defaulting party would be liable to be personally proceeded with.

16. Copy of the judgment shall be sent to the Chief Secretaries of all the States/Union Territories for compliance.”

40. There is no dispute or controversy with regard to the direction, which requires that the time schedule provided for establishment of new college be adhered to; it is not disputed that the concerned authorities must comply with the timelines as indicated in the schedule. The Central Government has to accord the permission by 15.07.2015 and no later. Any delay in grant of permission would, undisputedly, adversely affect the admission process. However, the controversy in the present case is not regarding the mandatory nature of the Schedule or that the same has to be adhered to. The point in issue is whether an applicant can supply a necessary document prior to its application being returned and/or considered for being forwarded to MCI. In my view, the decision of the Supreme Court in ***Mridul Dhar*** (*supra*) does not support the MCI's contention that the Central Government cannot permit an applicant to provide the necessary documents after the application has been filed and the Central Government is bound to reject an application even though it has all relevant documents available with it at the time of consideration, only for the reason that one or more documents were not filed along with the application.

41. In my view, the decision in ***Priya Gupta*** (*supra*) also does not support the MCI's contention. In that case, the admission of two students who were admitted to MBBS Course for the academic year 2006-07 in Government NMDC Medical College, Jagdalpur (hereafter 'Jagdalpur College') was cancelled. The said action was assailed by the said students before the High Court of Chattisgarh. The said petitions were rejected; the High Court held that the petitioners therein had been granted admission ignoring more meritorious and suitable candidates and, thus, declined to

grant any relief. This led the said students to approach the Supreme Court. The Court noted that the appellants had appeared in a medical test conducted by the State of Chattisgarh for the academic year 2006-07. The results of that test were declared in July 2006. The first Counseling Session was held on 21.07.2006. After the first Counseling Session was over, the State Government by a letter dated 14.08.2006 granted permission to commence admissions to the Jagdalpur College for the academic year 2006-07. Out of 50 seats, 48 seats were offered for admission and two seats were kept for All India quota. It was stated that on 30.09.2006, Director Medical Education had directed that the vacant seats should be filled up from the merit list and the candidates should be contacted over telephone and if contact was not possible, admission should be granted to available candidates on that date itself. The appellants before the Supreme Court were granted admission against two vacant seats. It was alleged that the directions to grant admissions were forged. In the given facts, the Supreme Court was of the view that the admission of the appellants therein was an example where admissions had been granted in violation of the procedure and were arbitrary. It is in that context the Court noted the decision in ***Mridul Dhar*** (*supra*) and emphasized the need to adhere to the Schedule as any delay in the same affects the admission process. The Court observed that *“it is clear that adherence to the principle of merit, compliance with the prescribed schedule, refraining from midstream admissions and adoption of an admission process that is transparent, non-exploitative and fair are mandatory requirement of the entire scheme.”* The Supreme Court proceeded to examine the adverse consequences of the non-adherence to the prescribed schedule and listed its disadvantageous as under:-

“41. Inter alia, the disadvantages are:

(1) Delay and unauthorised 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 *Muskan Dogra v. State of Punjab* [(2005) 9 SCC 186] .

(2) Midstream 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. In the aforesaid context, the Supreme Court issued several directions in rem for the strict compliance by all concerned. The relevant extract of the said judgment is quoted below:-

“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.

46.4. Any medical or dental college, or seats thereof, to which the recognition/approval is issued subsequent to 15th July of the respective year shall not be included in the counseling to be conducted by the authority concerned and that college would have no right to make admissions in the current academic year against such seats.

46.5. The admission to the medical or dental colleges shall be granted only through the respective entrance tests conducted by the competitive authority in the State or the body of the private colleges. These two are the methods of selection and grant of admission to these courses. However, where there is a single Board conducting the State examination and there is a single medical college, then in terms of Clause 5.1 of the Medical Council of India Eligibility Certificate Regulations, 2002 the admission can be given on the basis of 10+2 exam marks, strictly in order of merit.

46.6. All admissions through any of the stated selection processes have to be effected only after due publicity and in consonance with the directions issued by this Court. We vehemently deprecate the practice of giving admissions on 30th September of the academic year. In fact, that is the date by which, in exceptional circumstances, a candidate duly selected as per the prescribed selection process is to join the academic course of MBBS/BDS. Under the directions of this Court, second counseling should be the final counseling, as this Court has already held in *Neelu Arora v. Union of India* [(2003) 3 SCC 366] and third counseling is not contemplated or permitted under the entire process of selection/grant of admission to these professional courses.

46.7. If any seats remain vacant or are surrendered from all-India quota, they should positively be allotted and admission granted strictly as per the merit by 15th September of the relevant year and not by holding an extended

counseling. The remaining time will be limited to the filling up of the vacant seats resulting from exceptional circumstances or surrender of seats. All candidates should join the academic courses by 30th September of the academic year.

46.8. No college may grant admissions without duly advertising the vacancies available and by publicising the same through the internet, newspaper, on the notice board of the respective feeder schools and colleges, etc. Every effort has to be made by all concerned to ensure that the admissions are given on merit and after due publicity and not in a manner which is ex facie arbitrary and casts the shadow of favouritism.

46.9. The admissions to all government colleges have to be on merit obtained in the entrance examination conducted by the nominated authority, while in the case of private colleges, the colleges should choose their option by 30th April of the relevant year, as to whether they wish to grant admission on the basis of the merit obtained in the test conducted by the nominated State authority or they wish to follow the merit list/rank obtained by the candidates in the competitive examination collectively held by the nominated agency for the private colleges. The option exercised by 30th April shall not be subject to change. This choice should also be given by the colleges which are anticipating grant of recognition, in compliance with the date specified in these directions.”

43. It is apparent from the above that the discussions, as well as the directions issued, were in the context of the admission process. It is common ground that the Schedule must be adhered to and no approval would be issued after 15th July, of the relevant year. Would this preclude the Central Government from taking note of the documents, which are placed before it, while considering whether to forward the applications to MCI or not? I think not. There is no dispute that the Central Government was required to examine the applications and forward the same to MCI

before the prescribed date. However, under the pretext of the following the Schedule, the Central Government cannot refuse to consider the relevant material while deciding whether to forward the applications to MCI. In the present case, the Central Government had received the applications within time; the applications were in the required format and contained the particulars prescribed; most of the enclosures were also provided along with the applications; and one or more documents which were deficient were forwarded to the Central Government prior to the last date of forwarding the same to MCI. Thus, the Central Government had all applications complete in all particulars and the necessary documents while considering the same. But, refused to do so as one or more of the relevant documents were not filed along with the application. In my view, the decision of the Supreme Court in *Priya Gupta (supra)* does not assist the respondents insofar as the present controversy is concerned.

44. The learned counsel for MCI referred to the decision of the Supreme Court in **Educare Charitable Trust v. Union of India and Anr.: 2013 X AD (S.C.) 485** and contended that the said decision concluded the issues against the petitioners. In that case, the Educare Charitable Trust (hereafter 'EDC'), which had established a Dental College, applied for increasing the capacity of the Dental College from 50 to 100 seats from the academic year 2013-14. The scheme for the same was rejected by the Central Government by an order dated 31.12.2012 and this led EDC to approach the Kerala High Court by way of a writ petition, which was dismissed. In that case, the scheme was submitted to the Central Government on 08.08.2012 i.e. within the prescribed period. However, at the material time, the petitioner had not

been granted recognition of the BDC Course with 50 seats i.e. the existing capacity. Such recognition was a precondition for considering the scheme of enhanced intake. The last date for forwarding the application by the Central Government to the Dental Council of India for approval of the scheme was 31.12.2012. Although the EDC had submitted the scheme in time, it had failed to submit the essential documents prior to the last date for forwarding the application by Central Government to the Dental Council of India (hereafter 'DCI'). It is important to note that in that case, the Central Government had issued various letters calling upon the petitioner therein to obtain the necessary recognition. This recognition was sent on 07.01.2013 which was notified on 23.01.2013.

45. In the backdrop of the aforesaid facts, the Supreme Court held that it was not possible to accept the request of the petitioner for a change in the schedule as the last date for admission of the students was 15.07.2013 and that date had expired long time ago (the decision was rendered by the Supreme Court on 17.09.2013). It is relevant to note that the Supreme Court also observed that the application filed by the appellant therein was incomplete and as per Regulation 20 of the Dental Council of India (Establishment of New Dental Colleges, Opening of New or Higher Course of Study or Training and Increase of Admission Capacity, in Dental Colleges) Regulations, 2006 (hereafter 'DCI Regulations') incomplete applications were liable to be returned by the Central Government. However, the Supreme Court also accepted the contention that had the recommendation been forwarded by the DCI prior to December 2012, the Central Government would have acted thereon. This is clear from the

paragraph 9 of the said judgment, the relevant extract of which is quoted below:-

“9. No doubt, instead of returning the application, the Central Government gave chances to the petitioner to obtain the recognition from DCI and furnish the same to it. Mr. Patwalia may be correct, to some extent, that had such a recommendation been forwarded by the DCI before December 2012, probably Central Government would have acted thereupon. It is also correct that the Governing Council in its meeting held on 27/28 November 2012 approved the case of the petitioner and sent the same to the Central Government only on 7.1.2013. However, merely from these facts, the blame cannot be foisted upon the DCI. It has been duly explained by the DCI that there are about 40 Members of the Governing Council spread throughout the country. The Governing Council meets twice a year and in every meeting the business transacted by the Governing Council is huge. After the meeting, minutes are to be prepared in respect of all the items in the agenda. By the time minutes are prepared, the Members go back to their respective places of residence. Getting signatures of the Members of the Council is, therefore, a time consuming process. It was pointed out also by the learned counsel for the DCI, which could not be disputed by the petitioner, that 40 days time is earmarked for sending the recommendation to the Central Government, after it is approved by the Governing Council. In the instant case, the Governing Council did its job within the stipulated time. Therefore, there is no delay in sending its approval to the Central Government on 7th January 2013.”

46. The Supreme Court had clearly held that if the applications were incomplete as on the date of the application, the same could be returned. However, the Supreme Court found no fault with the proposition that had the relevant recognition been granted prior to the cut of date of forwarding the application to DCI, the Central Government would have considered the

same. It follows from the above facts that although incomplete applications may be returned for want of the necessary documents, there would be no error on the part of the Central Government if it considers all the documents that are available with it while considering the question whether to forward the application or not.

47. The Supreme Court highlighted the aspect that the applications could be made only if the eligibility criteria were satisfied. Thus, the lack of recognition of the existing capacity would relate back to the date of application. However, the question, whether a recognition prior to the last date of forwarding the scheme to DCI would substantially comply with the eligibility criteria neither arose in the facts of the said case, nor was considered.

48. It is also important to note that DCI Regulations, which were considered by the Supreme Court in *Educare Charitable Trust (supra)* are materially different from the Regulations that are applicable in the present case. In terms of Regulation 18 of the DCI Regulations, applications for increase in admission capacity at the undergraduate or postgraduate level are required to be made by the Dental College to the Central Government. Regulation 20(2) of DCI Regulations expressly provides that “*Incomplete application or scheme will not be accepted and will be returned by the Central Government to the applicant along with enclosures and processing fee.*” Unlike the above scheme, there is no provision in the Regulations, which postulates the Central Government to return incomplete applications. However, Regulation 5 of the Regulations provides that MCI would return

incomplete applications to the Central Government. The said Regulation is quoted below:

“5. REGISTRATION:

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

49. It is apparent from the above, that the question whether the application is to be returned on account of being incomplete has to be considered by MCI. This occasion did not arise as the Central Government did not forward the applications to MCI.

50. In the case of Ponnaiyah Trust – W.P.(C) 7424/2015 both the EC as well as the CoA by the Tamil Nadu Dr. M.G.R. Medical University were granted prior to 31.08.2014. Thus, the Ponnaiyah Trust was, indisputably, eligible prior to the said cutoff date. In the case of Amma Chandravati Trust the said trust applied for an EC from the State Government of Haryana on 30.05.2014, however the same was issued after much follow up only on 08.09.2014. Although the said trust had applied to Pandit B.D. Sharma University for CoA, the same was rejected for want of an EC. As the EC was granted on 08.09.2014, the CoA by

the university also followed thereafter and was submitted to the Central Government on 30.09.2014. Clearly, the delay was not within the control of the petitioner and this fact could be considered by Central Government prior to rejecting the application.

51. In the case of D.Y. Patil College, the application for increase in the intake was submitted in time along with all documents including an EC. However, the validity of the EC had expired. Although D.Y. Patil College had applied for a fresh EC on 03.02.2014 and had followed up with the State Government for its issuance, the same was issued on 03.09.2014, that is, after seven months of the application. Clearly, the delay was not on account of D.Y. Patil College. Undisputedly, the said EC was forwarded to the Central Government on 05.09.2014 and, thus, was available with the Central Government at the time of considering the application.

52. In **Royal Medical Trust v. Union of India and Anr.**: 2013 (12) SCALE 145, the Supreme Court had considered a case where an application was made in time but the CoA (which is one of the answer document) was submitted beyond the cutoff date. In the said circumstances, the Supreme Court noted the earlier decisions in ***Mridul Dhar*** (*supra*) and ***Priya Gupta*** (*supra*) and held that the applications could not be rejected in a mechanical manner. The relevant extract from the said judgment is quoted below:-

“4. It is pertinent to mention here that after the deadline for application for the academic year 2013-2014, KUHS had

issued the affiliation certificate which was sought for by the appellant on 01.11.2012, whereafter the appellant supplied the same to the Council for its consideration. However, the Council rejected the application for academic year 2013-2014 on the ground *inter alia* that the application filed by the appellant though submitted in time is incomplete application in terms of the various statutory regulations due to non submission of affiliation certificate on 08.10.2012.

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9. It is neither in dispute nor can it be disputed by the Council that the appellant herein had filed an application before KUHS for grant of affiliation certificate well in time. It is apparent from the record that the said affiliation certificate was not furnished to the appellant in time inspite of sending reminders to KUHS to furnish the affiliation certificate *inter alia* bringing to its notice the urgency involved in the matter. For the reasons best known to it, as we have already mentioned, KUHS did not furnish the said certificate to the appellant. This prompted the appellant to make an application before the Central Government for registration of its application lest the cut off dates prescribed by the statutory regulations would have expired and the appellant in that case would have been remediless in light of the dictum of this Court in the case of Mridul Dhar Vs. Union of India & Ors., (2005) 2 SCC 65 and Priya Gupta v. State of Chattisgarh, (2012) 7 SCC 433 requiring strict adherence to the said prescribed deadlines.

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12. 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 delay on part of KUCH, 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. In our considered opinion, this aspect of the matter ought to have been noticed by the Writ Court in Writ Petition as well as the Writ Appeal. Since that has not been done, in our considered view, we cannot sustain the impugned judgment and order passed by the High Court.

13. Accordingly, while allowing the appeal, we direct the Council to register the application for the academic year 2013-2014 and thereafter, proceed with the matter on its merits in accordance with Act and Rules thereto within 15 days time from today. The higher authority, after receipt of the recommendations made by the Council, will act upon such recommendations and pass appropriate orders in accordance with law as expeditiously as possible, at any rate within a month's time from today."

53. Plainly, the decision of the Supreme Court in ***Royal Medical Trust*** (*supra*) would squarely apply to the present petitions.

54. The learned counsel for MCI contended that the decision of the Supreme Court in ***Royal Medical Trust*** (*supra*) was not good law since the same has been not followed subsequently. He further submitted that the said order was passed under Article 142 of the Constitution of India and the said power was not available to a High Court. It was submitted that the said decision could not be considered as a precedent and, therefore, ought not to be followed by this Court.

55. I am unable to accept the aforesaid contentions. The decision of the Supreme Court in ***Royal Medical Trust (supra)*** has clearly held that while considering the applications, the Central Government does not have to act in a mechanical manner. The contention that the said decision cannot be considered as a precedent and/or ought not to be followed by this court is also not sustainable. The Supreme Court had unequivocally expressed its opinion that the decision of the High Court could not be sustained as the High Court had not taken note of the relevant aspect of the matter. Thus, following the view of the Supreme Court in ***Royal Medical Trust (supra)***, if all relevant documents are available with the Central Government, it is incumbent upon the Central Government to refer the application to MCI.

56. The High Court of Kerala has also expressed a similar view. In **SR Education and Charitable Trust v. Union of India and Ors.: W.P.(C) 26350/2014**, the Hon'ble Single Judge of the Kerala High Court had considered the question where an application filed for establishing a medical college was not accompanied by EC by the State. In that case, the application was filed on 27.08.2014, but was not accompanied by a valid EC. The same was forwarded to the Central Government on 29.09.2014. The Central Government rejected the application made by SR Education and Charitable Trust on the ground that the essentiality certificate was not provided before the cutoff date along with the application. The Court observed that *"by producing the essentiality certificate on 29.09.2014, the petitioner has only cured the defects"* and held that this is within the ambit of the scheme of Regulations framed under Medical Council of India as contemplated under Section 10A of the IMC Act. The Court further

directed the petitioner therein to resubmit the application within 10 days and directed respondent no.1 to forward the application to MCI. The said decision was challenged by MCI before a Division Bench of the Kerala High Court. In **Medical Council of India v. SR Education and Charitable Trust & Anr.**: WA. No. 1967/2014 decided on 23.01.2015, the Division Bench upheld the decision of the single Judge and held as under:-

“7. Having regard to these factual situation and the arguments raised on either side, it is true that in Mridul Dhar case (supra), a three-Judge Bench of Supreme Court had emphasized about the strict adherence to the time schedule. In Priya Gupta case (supra), the Supreme Court held that the MCI, Government of India, the State Government or the University or other selected bodies have no power of relaxing, varying or disturbing the time schedule or the procedure for admission as provided in the judgment of the Supreme Court and the MCI Regulations. However, it is evident that in Royal Medical Trust case (supra), the Supreme Court, having referred to the restrictions imposed in Mridul Dhar (supra) and Priya Gupta (supra), observed that, since the appellant had applied in due time adhering to statutory time line, direction was issued. The present are not cases in which the applications were filed out of time. Facts involved in these cases also indicate that the petitioners had filed applications during the previous years as well and since the MCI recommendations were not obtained within time, they could not start the College or to enhance the seats. Apparently, petitioners in these cases produced certain documents which are related to the previous year. However, they produced the current documents immediately thereafter and the Central Government had sufficient time to consider their applications in order to forward the same to MCI. Such

an exercise has not been done by the Central Government which clearly amounts to arbitrariness. Therefore, these cases also are instances where the applications were submitted in time and the defects, if any, were cured within a few days. Under such circumstances, we are of the view that the learned Single Judge was justified in issuing the directions which are impugned herein. We are unable to accept the argument of the learned counsel for the MCI that the judgment in Royal Medical Trust case (supra) is per incuriam. Under exceptional circumstances, it is always open for this Court in exercise of power under Article 226 to issue appropriate directions, of course, keeping in mind the time schedule which has to be complied by all concerned.

8. The learned counsel for the MCI points out that delayed directions will cause substantial prejudice to them as they will not be in a position to complete the formalities of verification within the time schedule which is fixed every year. But, that by itself shall not be a reason to deny consideration of the applications which are forwarded within time. Applications are not to be rejected without proper scrutiny. It is evident in these cases that the defect pointed out had been cured and was available with the Central Government. Therefore, merely for the reason that such directions may cause some inconvenience to MCI, will not be a reason to deny the benefit of consideration of application submitted by the petitioners.”

57. A Special Leave Petition preferred by MCI against the decision of the Division Bench of the Kerala High Court in WA. No. 1967/2014 has also been dismissed.

58. In addition to the judgments referred above, the learned counsel for MCI has also referred to the following orders/judgments passed by the Supreme Court in support of the contention that delayed applications could be processed only for the following academic year:

Medical Council of India v. Indian Medical Association and Ors.:
SLP(C) No. 14305/2013 dated 22.05.2013;

Board of Governors, Medical Council of India v. Index Medical College, Hospital and Research Centre and Anr.:SLP(C) No. 13465/2013 dated 05.08.2013;

Medical Council of India v. NKP Salve Institute of Medical Science and Anr.:SLP(C) No. 7846/2014 dated 14.03.2014;

Sinhgad Technical Education Society and Anr. v. UOI and Ors.: W.P.(C) No. 172 OF 2014 dated 09.05.2014; and

Medical Council of India v. Society for Advancement of Environmental Science and Ors.: SLP(C) No. 14759/2014 dated 02.07.2014

59. The facts pertaining to the above cases are not readily available. *Indian Medical Association (supra)* was disposed of with the following directions:-

“However, the pending application of the respondent no.1- College for the academic year 2013-14 shall be considered for the next academic year i.e. 2014-15.”

60. In that case the application was filed on 30.05.2012 i.e. after the last date of filing the application. The affiliation was granted by the University

on 04.06.2012, that is, after the last date for forwarding the application and thus the facts of the said case are materially different from the facts of the present cases. However, it is relevant to note that in that case the Supreme Court did not hold that the application filed was non est or was liable to be ignored. It is the MCI's contention that an incomplete application is no application at all and, therefore, cannot be considered. The order of the Supreme Court does not support this contention.

61. In *Index Medical College, Hospital and Research Centre (supra)* the last date for submission of application and relevant documents was 31.05.2012. The certificate of affiliation, which was a necessary document, was not filed along with the said application. The certificate of affiliation was filed subsequently as is evident from the fact that it was dated 07.02.2013. Clearly, this was beyond the last date fixed for forwarding the application to MCI. The facts of that case are, thus, materially different from the facts of the present cases.

62. In the case of *NKP Salve Institute of Medical Science (supra)*, the High Court had by an order dated 24.02.2014 directed the University to provide the affiliation and had issued further orders for conduct of inspection. In that case, the necessary documents were not available with the Central Government at the time of consideration of the application. The decision of this case is also not applicable to the controversy at hand.

63. In the case of *Sinhgad Technical Education Society (supra)* the affiliation letter were issued by Maharashtra University of Health Sciences between 15.03.2014 and 21.03.2014 i.e. much beyond the last date fixed for

forwarding the application to MCI. In the facts of that case, the Supreme Court held that it would not be appropriate to direct MCI to consider the appellants claims for permission to start new courses as well as increase in the seats in the postgraduate courses for the academic year 2014-15.

64. In *Society for Advancement of Environmental Science (supra)*, the Counsel for MCI confirmed that the application would be considered as a valid application for the next year and thus, the appeal was disposed of by directing MCI to hold an inspection by October 2015 for the academic year 2015-16.

65. The learned senior counsel appearing for the MCI was specifically asked whether in any of the above cases, the applicants had provided the necessary documents prior to the cutoff date for the Central Government to refer the applications to MCI. The learned counsel for MCI could not answer the said query in the affirmative. Thus, the aforementioned decisions would not be of any assistance to the respondents.

66. It was next contended on behalf of the MCI that accepting documents after the cutoff date would offend Article 14 of the Constitution of India. He relied upon the following decisions of the Supreme Court in support of his contention:

Ramana Dayaram Shetty v. International Airport Authority of India & Ors.: (1979) 3 SCC 489;

Ashok Kumar Sharma & Ors. v. Chander Shekhar & Anr.: (1997) 4 SCC 18; and

Rakesh Kumar Sharma v. State (NCT of Delhi) & Ors.: (2013) 11 SCC 58

67. In my view, the aforesaid contention also cannot be accepted. The aforesaid decisions were rendered in the context of competing claims. In the case of **Ramana Dayaram Shetty** (*supra*) the controversy involved tender conditions. The Supreme Court held that the standard of eligibility as laid down in the notice for tender could not be altered arbitrarily as the same would amount to denying an equal opportunity to those who did not submit their tender on account of the eligibility conditions. In **Ashok Kumar Sharma** (*supra*), the Supreme Court held that permitting candidates who do not fulfill the requirement to appear for interview for appointment to the post of Junior Engineer in the Services of Jammu and Kashmir State, was impermissible. The principle that eligibility conditions for appointment to a post of Junior Engineer could not be altered after the last date of application was reiterated in **Rakesh Kumar Sharma** (*supra*). In all those cases, the change in the eligibility conditions after the last date of application/tender were held to be arbitrary as it would amount to discrimination against those who felt bound by the conditions and, therefore, did not apply. Clearly, change in eligibility conditions in cases involving a competitive process, would subvert the competitive process to the prejudice of those who did not participate on account of the eligibility criteria. This principle may not be applicable where there is no prejudice caused to any other person. The applicants under Section 10A of the IMC Act are not engaged in a competitive process where selection of one would oust the other. Thus, even if the eligibility conditions are relaxed, in public

interest, the same may not fall foul of Article 14 of the Constitution of India. However, it is not necessary to examine this contention in further detail in view of the conclusion that the Regulations do not prohibit the Central Government to consider any document filed in furtherance to the application subsequent to the last date for application prior to the same being considered by the Central Government.

68. There is yet another aspect that needs to be noted. The letters of rejection were issued by the Central Government to the petitioners on 15.10.2014. The Central Government under the schedule was required to consider the applications and forward the same on or before 30.09.2014. Therefore, the Central Government was required to take the decision to forward the application or return the same on or before 30.09.2014. In the event of rejection - as in the case of the petitioners – the application ought to have been returned immediately after the Central Government had considered the same.

69. It was last contended on behalf of the MCI that no direction for considering the application ought to be granted at this stage as conducting inspections and organising teams involves a logistic exercise and it would not be possible for MCI to do so at a short notice.

70. A perusal of the Schedule indicates that the applications have to be received by MCI on or before 30.09.2014; MCI is obliged to make its recommendations to the Central Government for issue of a letter of intent on or before 28.02.2015; the Central Government is required to issue the letter of intent by 31.03.2015; the applicant has to submit a request for the

letter of permission by 30.04.2015; the Central Government has to, thereafter, send the letter for consideration of the issue of permission before 15.05.2015. The final recommendation of MCI for issue of letter of permission is to be made by 15.06.2015 and the last date for issue of final permission is 15.07.2015. Although there would be some inconvenience to MCI if the above timelines are compressed, however this is far outweighed by the public interest that would be served. The ECs issued to the petitioners indicate dismal doctor population ratios in the respective states and the need for additional medical assistance cannot be understated. In the given circumstances to permit the infrastructure created and the investment made, for training a significant number of doctors, to remain unutilised for one year is difficult to contemplate. This aspect also persuaded the Supreme Court, in **Hind Charitable Trust Shekhar Hospital Pvt. Ltd. v. Union Of India & Ors.** : Writ petition (civil) no. 469 of 2014, to issue directions under Article 142 of the Constitution of India to MCI. The relevant extract of the Supreme Court order issued on 18 September, 2014 reads as under:

“Looking at the peculiar facts and circumstances of the case and, especially, when several seats for medical admission are likely to remain vacant for the academic year 2014-15, we are of the view that these matters require urgent consideration and we are giving these interim directions under the provisions of Article 142 of the Constitution of India. There is one more reason for passing this interim order. We are conscious of the fact that number of physicians in our country is much less than what is required and because of non-renewal of recognition of several medical colleges, our citizens would be deprived of a good number of physicians and therefore, we are constrained to pass this order, whereby at least there would be some increase in the number of physicians after five years. We are

running against time because the last date for giving admissions to MBBS Course for the academic year 2014-15 is 30th September, 2014.

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.

72. Subject to the recommendations of MCI, the Central Government shall issue the letter of intent within a period of one week thereafter. The applications shall be processed in accordance with law and if the same are accepted, the final permission shall be issued not later than 15.07.2015.

73. The petitions are disposed of with the aforesaid directions. The pending applications also stand disposed of. No order as to costs.

VIBHU BAKHRU, J

APRIL 08, 2015
RK