

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

Date of decision: 28th May, 2015.

+ **W.P.(C) 5041/2015 & CM No.9119/2015 (for direction)**

**SHREE CHHATRAPATI SHIVAJI
EDUCATION SOCIETY & ANR**

..... Petitioners

Through: Mr. Rajshekhar Rao with Mr.
Abhinav Mukerji, Ms. Purnima
Krishna and Mr. Sameer Dawar,
Advs.

Versus

UNION OF INDIA AND ANR

..... Respondents

Through: Ms. Monika Arora and Mr. Abhishek
Choudhary, Advs. for UOI.
Mr. Vikas Singh, Sr. Adv. with Mr.
T. Singhdev, Adv. for R-2/MCI.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. This petition under Article 226 of the Constitution of India impugns Proviso (b) to Regulation 8(3)(1) (as it stands, after the amendment w.e.f. 16th April, 2010) of the "Establishment of Medical College Regulations, 1999" framed by the respondent No.2 Medical Council of India (MCI) in exercise of powers conferred by Sections 10A and 33 of the Indian Medical

Council Act, 1956. The petition also claims consequential reliefs concerning the two petitioners.

2. The writ petition came up before us first on 20th May, 2015, when the counsel for the respondent No.1 Union of India and the senior counsel for the respondent No.2 MCI appeared on advance notice. The petitioners, along with the writ petition have also filed an application seeking interim directions to the respondent No.2 MCI to inspect the "Institute of Medical Sciences & Research", Mayni, Satara, Maharashtra, a medical college established by the petitioner No.1 Shree Chhatrapati Shivaji Education Society and of which Society the petitioner No.2 Mr. Nitin B. Pawar is the Director. In a nutshell, the petitioners' Medical College, for the reason of the Regulation impugned in this petition, has not been considered for renewal of permission for admission of students in the academic year 2015-2016 and the purport of the petition is to have the petitioners' Medical College considered for renewal of such permission and the time whereof was stated to be till 15th June, 2015. In this light of the matter, we, with the consent of the counsels, on 20th May, 2015 heard the counsels finally on the petition itself and reserved judgment.

3. The petitioners were granted permission under Section 10A of the Medical Council Act for the establishment of the medical college aforesaid, from the academic year 2012-2013. The said permission was for a period of one year, renewable on a yearly basis. The petitioners, after getting renewal permission, admitted second batch of students for MBBS course to their Medical College in the academic year 2013-2014. It is the case of the petitioners that the respondents wrongly denied permission to the petitioners for admitting the third batch of students in the academic year 2014-2015, compelling the petitioners to litigate and during the pendency of which litigation, the Supreme Court vide order dated 18th September, 2014 in W.P.(C) No.469/2014 titled ***Hind Charitable Trust Shekhar Hospital Pvt. Ltd. Vs. Union of India*** permitted all medical colleges to admit students for the academic year 2014-2015 subject to filing an undertaking that all deficiencies earlier pointed out by the Central Government / MCI had been removed and on certain other conditions. The petitioners filed such an undertaking and complied with the conditions and thus admitted students in the academic year 2014-2015 also to their Medical College.

4. The petitioners applied for permission for admitting the fourth batch of students in the academic year 2015-2016. The Medical College of the

petitioners was inspected on 14th and 15th November, 2014. The report of the said inspection was considered by the Executive Council of the respondent No.2 MCI in its meeting held on 16th December, 2014, when it was noted that as per the report of the inspection, the medical college of the petitioners:

- (i) had deficiency, in faculty of 40.87% and in residents of 86.14%;
- (ii) had not conducted any workshop on Medical Education Technology during the year;
- (iii) had not awarded any credit hours for CME programmes;
- (iv) had accommodation available in the students hostel for 192 students only against the requirement of 300 and the hostel also did not have visitors room, A.C. study room with computer and internet and recreation room;
- (v) had a daily average of major surgeries of only seven per day and which was inadequate;
- (vi) had grossly inadequate workload in radiological investigations;

- (vii) had inadequate workload in histopathology;
- (viii) did not have Medical Records Officer;
- (ix) had other deficiencies listed in the inspection report.

The Executive Council of the respondent No.2 MCI accordingly decided to recommend to the Central Government, not to renew the permission for admission of fourth batch of students to the MBBS course in the Medical College of the petitioners in the academic year 2015-2016 and to apply the Proviso (b) to Regulation 8(3)(1) of the Regulations aforesaid to the Medical College of the petitioners.

5. The Executive Council of the respondent No.2 MCI at the same time also concluded that the undertaking filed by the petitioners / their Medical College to the effect that all deficiencies had been removed and subject to filing of which undertaking the Medical College of the petitioners had by order aforesaid of the Supreme Court been permitted to admit the third batch of students in the academic year 2014-2015, was false because the deficiencies were found to have persisted. Accordingly, the Executive Council also decided to invoke the bank guarantee submitted by the petitioners' Medical College and to ask for a fresh bank guarantee.

6. The said decisions were communicated by the respondent no. 2 MCI to the Central Government vide letter dated 22nd December, 2014 with copy to the petitioners' medical college.

7. The Central Government vide its letter dated 13th January, 2015 to the petitioners' Medical College again communicated the decision taken in the meeting aforesaid of the Executive Council of the respondent No.2 MCI and in accordance with the first proviso to Section 10A(4) of the Medical Council Act, granted a hearing to the petitioners.

8. On the basis of the compliance/fulfillment, of the deficiencies pointed out by the MCI, reported by the petitioners in the said hearing, the Central Government vide letter dated 17th April, 2015 to the MCI asked the MCI to review/assess the compliance reported by the petitioners and furnish its recommendation.

9. The Executive Council of the respondent No.2 MCI in its meeting held on 29th April, 2015 considered the letter dated 17th April, 2015 of the Central Government and decided that the deficiencies found in the earlier inspection being substantial, under Proviso (b) to Regulation 8(3)(1) supra, the application of the petitioners' Medical College for renewal of permission to admit fourth batch of students to the MBBS course in the

academic year 2015-2016 was not required to be processed/considered further notwithstanding the compliance/fulfillment of deficiencies earlier found, reported by the petitioners as there is no provision to grant any opportunity for rectification of such substantial deficiencies, as the same cannot be rectified within a short period of time. The Executive Council of the MCI further noted that the inspection on 14th and 15th November, 2014 had been carried out by professors of eminence and high integrity, belonging to various Government Medical Colleges of the country, and their report had also been acknowledged by the Dean / Principal of the petitioners' Medical College and truthfulness and veracity of the contents of the report of the inspection which incorporated factual findings of independent persons in the presence of the Dean / Principal of the petitioners' Medical College could not be doubted. The Executive Council of the respondent No.2 MCI accordingly decided to and vide letter dated 11th May, 2015 to the Central Government reiterated its earlier recommendation to not to renew the permission for admission of the fourth batch of students in the petitioners' Medical College.

10. Hence, this petition, challenging Proviso (b) to Regulation 8(3)(1) supra alongwith the letters dated 17th April, 2015 and 11th May, 2015 supra

and seeking a direction to the respondents to grant renewal of permission for admission of fourth batch of MBBS students in the academic year 2015-2016 in the petitioners' Medical College.

11. The petition is before this Bench for the reason of challenge made therein to a statutory regulation. We will thus concern ourselves first with the said challenge.

12. The contention of the petitioners is:

(a) that the said Regulation is in contravention of Section 10A of the Medical Council Act, inasmuch as it vests decision making power in the respondent No.2 MCI which it otherwise does not possess under the Medical Council Act and thus interdicts the exercise of power by the Central Government under Section 10A of the Act;

(b) that the said Regulation is in violation of the principles of natural justice, inasmuch as it denies opportunity to the medical college to show compliance with the deficiencies found in the inspection and amounts to summary rejection of the application of a medical college for renewal of permission merely on the basis of report of the inspection;

(c) because the said Regulation is violative of the Fundamental Rights of the petitioners who have made an investment of Rs.90 crores in the infrastructure and staff of their Medical College.

13. Section 10A of the Medical Council Act dealing with permission for establishment of new medical college, new course of study, vide Sub-section (1) thereof prohibits establishment of a medical college or commencement of a new or higher course of study or training in a medical college or increase in admission capacity in any course of study or training in a medical college except with the previous permission of the Central Government obtained in accordance with the provisions thereof. Sub-section (2) requires the person desirous of establishing a medical college or commencing a new or higher course of study or training in a medical college or of increasing the admission capacity in any course in a medical college, to submit to the Central Government a scheme in the prescribed form and requires the Central Government to refer the said scheme to the respondent No.2 MCI for its recommendations. Sub-sections (3), (4), (7) & (8) of Section 10A, relevant for the present purpose, are as under:

*“(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 Government may, after considering the scheme and the recommendations of the Council under sub-section (3) and after obtaining, where necessary, such other particulars as may be considered necessary 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).

.....

(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 of study or training or accommodating the increased admission capacity have been provided or would be provided within the time-limit specified in the scheme;

(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.”

(emphasis added)

Sub-section (5) provides for deemed approval of the scheme by the Central Government, if within a period of one year from the date of submission thereof, no order thereon is communicated and Sub-section (6) provides for exclusion from the said period of one year of the time taken by the applicant in furnishing any particulars sought by the MCI or the Central Government.

14. In exercise of powers under Section 10A(2) (of prescribing the form of the scheme to be submitted) and Section 33 (empowering the respondent No.2 MCI to with the previous sanction of the Central Government make regulations providing *inter alia* for the form of scheme, the particulars to be given in such scheme, the manner in which the scheme is to be preferred and the factors to be considered under Section 10A(7)(g)), the "Establishment of Medical College Regulations, 1999" aforesaid have been framed.

15. As per Regulation 8(3)(1), the permission to establish a medical college and admit students is to be granted initially for a period of one year, to be renewed on early basis, subject to verification of the achievement of annual targets, till such time the establishment of the medical college and expansion of the hospital facilities are completed and a formal recognition

of the medical college is granted. It further provides that the Central Government may at any stage convey the deficiencies to the applicant and provide him an opportunity and time to rectify the deficiencies but with the following proviso:

“PROVIDED that in respect of

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

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

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

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

.....”

16. The counsel for the petitioners has argued that as per Section 10A of the Medical Council Act, the decision, whether to grant permission or not is of the Central Government and the role of the MCI is only to make a recommendation; hence, once the Central Government, after considering the initial recommendation dated 22nd December, 2014 of the respondent

No.2 MCI along with the representation made by the petitioners thereagainst, had vide letter dated 17th April, 2015 directed the respondent No.2 MCI to review its recommendation, it is not permissible for the respondent No.2 MCI to, relying on Proviso (b) to Regulation 8(3)(1) supra refuse to review its recommendation. It is further contended that the respondent No.2 MCI in the past had been abiding by such directions of the Central Government to review and has now erroneously, relying on the legal opinion of the Additional Solicitor General of India (referred to in the letter dated 11th May, 2015 supra of the MCI) decided not to consider the application for renewal of permission. It is further argued that Proviso (b) to Regulation 8(3)(1) prohibiting consideration even of the application for renewal of permission upon finding the deficiencies to be substantial, deprives the medical college from an opportunity to represent against the findings of the inspection. It is yet further contended that such opportunity having been provided to be given under Section 10A itself, could not have been taken away by way of Regulation.

17. Per contra, the senior counsel for the respondent No.2 MCI has controverted that Section 10A of the Medical Council Act contemplates providing any such opportunity. It is argued that MCI is under no

obligation to give any opportunity to the medical college to rectify the deficiencies. It is explained that since, while granting permission for admitting students of the first batch, the medical college and the hospital attached thereto is not required to have all the amenities and facilities which may be needed for imparting education for the subsequent years of the MBBS course, the same is not insisted upon; however, the medical college at the time of applying for subsequent renewals is required to fulfill whatsoever are the requirements for the subsequent years. It is contended that a medical college seeking permission to admit students to the fourth batch would be completing its strength of students at any given point of time and is required to be having all the prescribed amenities and facilities including in the hospital attached thereto and cannot be granted permission, if it is not so equipped. It is further explained that though under the Regulations supra, the Central Government, on receipt of a recommendation of refusal of renewal permission, is required to give an opportunity to the medical college to rectify the deficiencies but an exception is carved out for the stages of renewal permission for admitting students of third and fourth batches, if the deficiency is beyond the stipulated limit and in which case the application for renewal is not even required to be considered. It is

explained that where the deficiency is huge, the Regulations assess / presume that no purpose would be served in giving an opportunity to rectify the said deficiency, inasmuch as it cannot, in the short time available, be rectified. It is stated that deficiency of more than 20% in teaching faculty / Residents and of less than 70% bed occupancy in the attached hospital, inspite of the medical college having been in operation for three years, is treated as deficiency incapable of rectification in the short time available.

18. To meet the argument of the petitioners of the impugned Regulation being contrary to the principles of natural justice, the counsel for the respondent No.2 MCI has placed reliance on *Manohar Lal Sharma Vs. Medical Council of India* (2013) 10 SCC 60 laying down, (i) that the permission is renewed every year subject to the medical college achieving the yearly target mentioned in "Minimum Standard Requirements for the Medical College for 150 Admissions Annually Regulations, 1999"; (ii) that the said standards / requirements are statutorily prescribed and MCI has no power to dilute statutory requirements; (iii) MCI, while deciding to grant permission or not to grant permission, is not functioning as a quasi-judicial authority but only as an administrative authority; (iv) rigid rules of natural justice are therefore not contemplated or envisaged; (v) that the deficiencies

which are fundamental and crucial cannot be ignored in the interest of medical education and in the interest of students community; (vi) that MCI and the college authorities have to bear in mind what is prescribed is the minimum; if MCI dilutes the minimum standards they will be doing the violence to the statutory requirements; (vii) that MCI is duty bound to cancel the request, if fundamental and minimum requirements are not satisfied or else the college will be producing half-baked and poor quality doctors and they will do more harm to the society than service; (viii) that an order refusing permission is not vitiated by violations of principles of natural justice, when no allegation of bias or *mala fide* has been attributed against the doctors who constituted the inspection team; (ix) that when the inspection team consists of doctors of unquestionable integrity and reputation, who are experts in the field, there is no reason to discard the report of such inspection.

19. The counsel for the respondent No.2 MCI has also relied on para 16 of *State of Kerala Vs. Kumari T.P. Roshana* (1979) 1 SCC 572 laying down that MCI is an expert body to control the minimum standards of medical education and to regulate their observance and on paras 24, 27 & 29 of *Medical Council of India Vs. State of Karnataka* (1998) 6 SCC 131

laying down that Regulations framed by the MCI under Section 33 of the Medical Council Act are to carry out the purpose of the Medical Council Act and have mandatory force and that it is the Medical Council which is primarily responsible for fixing standards of medical education and overseeing that the standards are maintained and that it is the MCI which in effect grants recognition and also withdraws the same.

20. The counsel for the petitioners in rejoinder has argued that the respondent No.2 MCI's understanding espoused above of the position is not supported by the Central Government which is the final decision making authority, as is abundantly clear from the Central Government's letter dated 17th April, 2015 directing MCI to, in the light of the compliance report submitted by the petitioners, review its recommendation of refusing renewal permission to the petitioners' Medical College. It is contended that if the Central Government also was of the view that the application of the petitioners' Medical College is not entitled to be considered at all, owing to the deficiencies pointed out in the inspection report, the Central Government would not have vide letter dated 17th April, 2015 directed the respondent No.2 MCI to review. It is yet further contended that the inspection report cannot be treated as a gospel truth and if the deficiency pointed out in the

inspection report is of the magnitude mentioned in Proviso (b) to Regulation 8(3)(1), the medical college cannot be deprived of a right to contend that the finding in the inspection report is faulty. Reliance is placed on *Azeezia Institute of Medical Sciences & Research Vs. Union of India* 2010 SCC Online Delhi 2509, where one of us (Justice R.S. Endlaw) held that when a statute confers a discretionary power to be exercised by competent authority, the Court cannot direct the competent authority to exercise discretion in a particular manner but can always direct the competent authority to exercise discretion vested in it in accordance with law. It is contended that to grant renewal permission or not is a discretionary matter and the medical college cannot be denied the right to demonstrate that it is entitled to discretion being exercised in its favour.

21. The senior counsel for the respondent No.2 MCI has added that the Central Government has not found any error with the stand of the MCI in the letter dated 11th May, 2015 supra.

22. We have considered the rival contentions. As aforesaid, we are in the first instance concerned with the challenge to the vires of the Regulation.

23. The counsel for the petitioners has been unable to demonstrate that the Proviso (b) to Regulation 8(3)(1) is inconsistent in any manner

whatsoever with the scheme of Section 10A of the Act. Though it was argued that Section 10A vests an opportunity in the medical college, inspite of being found to be deficient in the standards prescribed, to make up the deficiencies but the counsel for the petitioners could not point out any provision of Section 10A vesting such right in the medical college against the MCI.

24. Section 10A(2) read with Section 33 (fa) & (fb) leaves it to the MCI to prescribe the form and the manner in which a scheme for establishment of a new medical college shall be submitted and the particulars which will be contained therein and the factors which will weigh with the MCI in sanctioning or rejecting the said scheme. MCI, in exercise of the said powers, first framed the "Establishment of New Medical Colleges, Opening of Higher Courses of Study and Increase of Admission Capacity in Medical Colleges Regulation, 1993" but which have since been superseded by the "Establishment of Medical College Regulations, 1999" and the "Opening of New or Higher Course of Study or Training (including Postgraduate Course of Study or Training) and Increase of Admission Capacity in any Course of Study or Training (including a Postgraduate Course of Study or Training) Regulations, 2000". The said Regulations prescribe for sanction to be given

for one year, to be renewed for three successive years, till the admission of fourth batch of students and thereafter till recognition is accorded and prescribe the standards to be met before sanction is accorded for the admission of first to fourth batch of students.

25. Section 10A(3) deals with the stage of consideration of the scheme by the MCI and requires "reasonable opportunity", to be given "for making a representation and to rectify the defects, if any, specified by the Council" and to thereafter submit the scheme together with its recommendations to the Central Government.

26. Section 10A(4) requires the Central Government to, while dealing with the scheme alongwith recommendation of the MCI to refuse permission, again give an opportunity of hearing to the applicant.

27. The question which arises for consideration is whether the Proviso (b) to Regulation 8(3)(1) providing for no opportunity to rectify the defects/deficiencies mentioned therein to be given is inconsistent with Section 10A(3) providing for the MCI to specify the defects and giving an opportunity to the medical college to rectify the defects. In our opinion, no. The reasons for our opinion are:-

A. Section 10A(3) enables (by use of the word 'may') and does not mandate (by not using the word 'shall') the MCI to, on receipt of scheme, obtain such other particulars as may be considered necessary by it for making its recommendation on the scheme. The Regulations provide for particulars and information required to be furnished in the scheme. If the scheme is not in accordance with the Regulations, there is nothing in Section 10A(3) which mandates the MCI to still make an attempt to enquire whether by seeking further particulars, the scheme can be in accordance with the Regulations. Discretion has been vested in the MCI to, upon not finding the scheme to be in accordance with the Regulations, make a recommendation for disapproval thereof or to, if so desires or considers, seek further particulars which may bring the scheme in accordance with the Regulations. No right is vested in the applicant to compel the MCI to make efforts to bring the scheme in accordance with the Regulations, inspite of the applicant having failed to do so.

B. Section 10A(3)(a) also requires the MCI to give only 'reasonable' opportunity to the applicant to make representation and to rectify the defects, again 'if any' specified by the MCI. It is thus not as if the MCI, even if upon finding the scheme to be defective and choosing to give an

opportunity to the applicant to rectify the defects, is required to give an 'unlimited' or a 'full' or 'complete' opportunity; even then it is required to give only a 'reasonable' opportunity.

C. There is no mandate in Section 10A(3)(a) to the MCI to specify the defects in the scheme. Thus it may, on finding defects, not specify the same and straight away proceed to recommend disapproval of the scheme.

D. Section 10A(3) thus, as distinct from vesting a right in the applicant, vests a discretion in the MCI to, even after finding the scheme forwarded to it by the Central Government to be not in accordance with the Regulations or defective or even after finding the medical college to be deficient, instead of recommending disapproval thereof, give an opportunity to the applicant medical college to give further particulars or to make a representation or to rectify the defects.

E. This becomes further evident from the contrast between the language of Section 10A(3) and (4). Section 10A(4) though in its main part leaves it to the Central Government to, while considering the scheme with recommendation of MCI, obtain from the applicant such particulars as may be considered necessary, but the first proviso thereto bars the Central Government from disapproving a scheme without giving a reasonable

opportunity of hearing to the applicant. Section 10A(4) thus vests a right of reasonable hearing in the applicant before the scheme submitted by it is disapproved by Central Government. There will be of course an element of discretion in the Central Government as to the extent of such hearing.

F. It is this discretion vested by Section 10A(3) and (4) in the MCI and the Central Government which is controlled or sought to be guided by Regulation 8(3)(1) supra. The main part thereof, in consonance with Section 10A(4) provides that “the Central Government may at any stage convey the deficiencies to the applicant and provide him an opportunity and time to rectify the deficiencies”. However the provisos (a) to (d) thereof limit such opportunity by specifying the deficiencies / defects for rectification whereof no opportunity and time to rectify will be given and existence whereof will lead to ‘non-consideration of the application for renewal permission’ for that year. The provisos (a) to (d) (of which we herein are concerned with proviso (b)) thus instead of taking away any right vested by Section 10A(3) and (4) in the applicant, as contended, limits the discretion vested by Section 10A(3) and (4) in the MCI and Central Government to inspite of finding deficiencies, give opportunity for rectification thereof.

G. Significantly, the provisos aforesaid are to the part of Regulation 8(3)(1) which, in consonance with Section 10A(4) vests the discretion in Central Government to give opportunity and time to the applicant to rectify the defects conveyed. Thus it is the Central Government which, by the provisos aforesaid is precluded from ‘considering the applicant medical college for renewal permission’ for that academic year. However, by ‘precluding consideration even of the application for renewal permission’, MCI also is precluded from giving an opportunity under Section 10A(3).

H. In our opinion, where a statute confers a discretion in a statutory body and / or the Government and also empowers such statutory body and / or Government to make Regulations for exercise thereof, a Regulation providing for situations in which discretion will not be exercised, cannot be said to be inconsistent with the statute and bad for this reason. Thus, the provisos (a) to (d) of Regulation 8(3)(1) laying down the deficiencies on finding which the application for renewal permission shall not be considered i.e. no opportunity to make up the deficiencies will be given, neither by the MCI nor by the Central Government cannot be said to be *ultra vires* Section 10A(3) and (4) which themselves confer absolute discretion as

aforesaid on MCI to straightaway recommend disapproval of scheme upon finding it deficient in any manner.

I. It is not as if the deficiencies mentioned in provisos (a) to (d) supra can be the only deficiencies at the stage of renewal permission with which the said provisos are concerned. A perusal of the “Establishment of Medical College Regulations, 1999” and the “Minimum Standard Requirements for the Medical College for 150 Admissions Annually Regulations, 1999” show a plethora of annual targets to be met at the stages of renewal permission with which provisos (a) to (d) are concerned. The proviso (b) provides for non-consideration of renewal permission only in two situations i.e. when deficiency in teaching faculty and / or residents is more than 20% of the minimum prescribed OR when the bed occupancy is less than 70% of that prescribed. For all other deficiencies, opportunity to rectify can be given.

J. We find the aforesaid to be reasonable. At the time of seeking renewal permission to admit fourth batch of students, the Medical College is seeking to achieve its full student strength and is thus required to meet all the minimum standards prescribed and for meeting which it has already been given three years time since its establishment. If in the said three years even, it has not been able to not only have the minimum teaching faculty /

residents and bed occupancy but the deficiencies are of as much as more than 20% and 70% respectively then, no error is found in the Central Government and the MCI in the Regulations stipulating that such medical college will not be considered for renewal permission in as much as there is only a short time available for consideration of renewal permission and in that short time deficiencies in excess of 20% in teaching faculty and less than 70% bed occupancy, which could not be achieved in previous three years, cannot be made up. Accordingly, it will also fulfill the test of “reasonable opportunity” mentioned in Section 10A(3). Non-giving of opportunity / time to cure defects / deficiencies which are not curable in the time available cannot be said to be deprivation of “reasonable opportunity”.

K. We find a good discussion in this respect in *Aditya Educational Society Vs. UOI* MANU/AP/0003/2014 and in *Muthukumaran Educational Trust Vs. The Secy. to Government* MANU/TN/1346/2014 to which unfortunately neither counsel referred. Of course, the Regulations were not under challenge in these cases.

L. Thus irrespective of the general principle whether a power to regulate discretion vested by statute to give an opportunity to rectify defects/ deficiencies before granting or refusing permission would include power to,

in Regulations specify the deficiencies for which no power to rectify will be given, we, in the context of the MCI Act and the Regulations framed thereunder, find that such power is included. We cannot be unmindful of the large number of applications with which Central Government / MCI are flooded annually and the mammoth work involved in consideration thereof. When the experts in the MCI have assessed that deficiencies in excess of 20% in teaching faculty and of 70% in bed occupancy are such which are incapable of being cured in the short time and have provided so in the Regulations made with the previous sanction of Central Government, it would not be correct for the Courts to say that since opportunity to cure other deficiencies is given, opportunity to cure such deficiencies should also be given.

M. Moreover, the deficiencies in teaching faculty and bed occupancy are fundamental and crucial and cannot be ignored and are such which would certainly affect the quality of education and if inspite thereof permission is granted would result in the college producing half-baked and poor quality doctors.

28. The only other ground of challenge to the Regulation i.e. of the same being violative of the principles of natural justice, in our view is fully covered by the dicta of the Supreme Court in *Manohar Lal Sharma* supra.

29. We may in this regard notice that the petitioners nowhere in the petition or in the arguments have made allegations of bias or vindictiveness against the team of experts who inspected the Medical College of the petitioners and found the deficiencies therein to be beyond the limit mentioned in proviso (b) to Regulation 8(3)(1) which disentitled the medical college from consideration even of its application for renewal permission. It is also not the case of the petitioners that the said team of experts imputed the deficiency, owing to ulterior motives. In this light of the matter, we see no reason to hold that an opportunity of hearing or rectification is required to be given with respect to the report of the inspection. In a given case, where a case of bias or vindictiveness or inspection report being guided by extraneous factors is made out, it may be considered whether, an opportunity of hearing is to be given. But the scope of such hearing would be confined to whether any case for rejecting the inspection report which has found such deficiencies is made out. Mere making of unsubstantial allegations would not entitle consideration of application for renewal

permission. Even if a case for rejecting the inspection report is established, it would call for another inspection.

30. No other argument on the aspect of vires of the Regulation has been raised.

31. The challenge to the vires of proviso (b) to Regulation 8(3)(1) therefore fails.

32. Once the challenge to the vires of the Regulation fails and it is held that the respondent No.2 MCI was within its power to, on the basis of the report of the inspection of the petitioners' Medical College on 14th and 15th November, 2014, not consider the application of the petitioners for renewal permission further, in our view, it would matter not whether the Central Government, after considering the objections of the petitioners to the recommendation of the MCI of refusal of permission, had directed the MCI to review its recommendation. As aforesaid, once the vires of the Regulation is upheld, then the direction contained in the letter dated 17th April, 2015 of the Central Government to the MCI to review its recommendation, being contrary to the Regulation, would be of no avail. The Central Government is as much bound by the Regulation, made with

previous sanction of Central Government, as the MCI. The scope of hearing under Section 10A(4) in cases where MCI has found proviso (b) to Regulation 8(3)(1) to be applicable would be confined to considering whether MCI has misread the inspection report as reporting deficiencies in teaching faculty and bed occupancy or that the report of the inspection is biased or vindictive or influenced by extraneous considerations. Only upon being satisfied of the existence of the said ground, could Central Government have directed the MCI to review its recommendation. That is not the case here.

33. We may notice that the letter dated 17th April, 2015 supra of the Central Government is qua not only the petitioners' medical College but all the medical colleges under consideration. While against the petitioners' medical college the observation is "recommended for review by MCI", against some other medical colleges the observations are (a) "MCI has not specified what documents are not furnished by the college. Such arbitrary approach is not acceptable. Ministry may instruct MCI to conduct assessment of college"; (b) "recommended for compliance verification by MCI"; (c) "strongly recommended for compliance verification by MCI"; (d) "the college is now under newly established Health University. It may be

offered one last opportunity to furnish the required documents”; (e) “the Government College is located in LWE affected area. The authorities are facing genuine difficulties in acquiring and retaining faculty. Recommended for review by MCI”. It is thus evident that the Central Government also has not found any error on the part of MCI in reading the report of inspection as reporting deficiencies in term of proviso (b) to Regulation 8(3)(1) and there being no challenge thereto.

34. The direction of the Central Government to the MCI to review, when under the Regulation the application of the petitioners for renewal permission is not to be considered further, would not vest any right in the petitioners to seek mandamus against the MCI to review. This Court, in exercise of writ jurisdiction, would not issue a direction contrary to the statutory Regulation challenge to vires whereof has failed.

35. It matters not that the Central Government / MCI, inspite of Regulation 8(3)(1) having come into force on 16th April, 2010 may not have in the past applied the same. The same can neither affect the unambiguous language of the Regulation nor vest any right in any one for same treatment.

36. It cannot also be lost sight of that the petitioners could admit third batch of students, notwithstanding being not eligible therefor according to the MCI, under the general order of the Supreme Court and according to the MCI by furnishing a false undertaking.

37. Save for the aforesaid, no other argument on merits has been raised.

38. We therefore do not find any merit in the petition, which is dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

CHIEF JUSTICE

MAY 28, 2015

‘bs’