

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

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Date of decision: 1st September, 2015

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W.P.(C) No. 7128/2015

KANACHUR ISLAMIC EDUCATION TRUST (R) Petitioner

Through: Mr. Nidhesh Gupta, Sr. Adv. with Mr.
Kaushal Gautam & Mr. Gagan Yadav,
Advs.

Versus

**THE MINISTRY OF HEALTH AND FAMILY WELFARE
AND ANR.**

..... Respondents

Through: Ms. Monika Arora, CGSC with Mr.
Harsh Ahuja and Ms. Saroj Bidawat,
Advs. for R-1.
Mr. Vikas Singh, Sr. Adv. with Mr. T.
Singhdev, Ms. Biakthansangi & Ms.
Puja Sarkar, Advs. for R-2.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The petition impugns the communication dated 15th June, 2015 of the respondent No.1 Ministry of Health & Family Welfare, Government of India (UOI) disapproving the application of the petitioner for establishment of a new medical college with effect from the academic year 2015-16. The petition also seeks a direction to the respondent No.2 Medical Council of India (MCI) to inspect the petitioner's College for establishment of new medical college for the academic year 2015-16 and a further direction to the

respondent to consider the compliances (of the deficiencies earlier pointed out) submitted by the petitioner.

2. The petitioner earlier approached the Supreme Court by way of W.P.(C) No.461/2015 with the same grievance as urged in this petition and after withdrawing the said petition on 24th July, 2015, filed this petition which came up first before this Court on 29th July, 2015. On the contention of the senior counsel for the petitioner that the application of the petitioner had been disapproved by the UOI without giving a fresh opportunity of hearing to the petitioner vis-à-vis the second negative recommendation made by the MCI, notice of the petition was issued. The UOI and the MCI have filed counter affidavits. The senior counsel for the petitioner and the senior counsel for the MCI have been heard. The counsel for the UOI adopted the arguments of the MCI.

3. The factual position not in dispute is as under:

A. In pursuance to the Scheme submitted by the petitioner to the UOI for establishment of a new medical college with an intake capacity of 150 students annually, the MCI on 29th and 30th December, 2014 inspected the petitioner Medical College and

vide its letter dated 21st January, 2015 to the UOI communicated the decision of its Executive Council not to issue letter of permission for establishment of a new medical college to the petitioner for the reason of the position of the petitioner medical college during the inspection having been found to be as under:

- “1. Deficiency of faculty is 15% as detailed in report.
2. Lecture Theaters: Facility for E class is not available.
3. Students’ Hostels: They are not furnished. Toilet facilities are inadequate. Mess is not available. Visitors’ room, A.C. study room with computer & Internet are not available.
4. Residents’ Hostels: They are not furnished. Toilet facilities are inadequate. Mess is not available. Visitors’ room, A.C. study room with computer & Internet are not available.
5. Nurses’ Hostels: They are not furnished. Toilet facilities are inadequate. Mess is not available. Visitors’ room, A.C. study room with computer and Internet are not available.
6. OPD: Injection room for males / females, Dressing room for males / females, plaster cutting room are not available. In Ophthalmology OPD, dark room, Refraction room, Dressing room / Minor procedure room are not available.
7. Audiometry & Speech Therapy are not available.
8. There were no major or minor Surgical operations on day of assessment.
9. There was no delivery – normal or Caesarean on day of assessment.
10. MRD: It is partly computerized.
11. OT: Although 5 OTs as required are available, one is not furnished, resulting in shortage of 1 OT.

12. ICUs: SICU, PICU/NICU are not available. There was no patient in ICU. There were only 2 patients in ICCU.
13. Labour Room: Eclampsia room is not available.
14. CSSD is not functional.
15. Anatomy department: Cooling chambers are not available. Cadavers are not available.
16. Biochemistry department: Laboratory is not furnished.
17. Other deficiencies as pointed out in the assessment report.”

A copy of the said letter was also forwarded to the petitioner with a request to submit a detailed point-wise compliance in respect of rectification of deficiencies aforesaid on or before 20th February, 2015, alongwith the fee for fresh inspection.

- B. The petitioner, on 13th February, 2015, submitted a compliance report to the MCI along with the fee for the second inspection and a second inspection of the petitioner was conducted on 9th April, 2015.
- C. It is the case of the petitioner in the writ petition itself that;
 - (i) The inspection team reached the petitioner’s College at about 9:00 A.M. in the morning and the Dean was asked to call the faculty members including the residents’ tutors for head count by 11:00 A.M.

- (ii) Many members of the Clinical Faculty and Senior and Junior Residents had just left the institution by 9:00 A.M. after night duty as they were given half-a-day post duty off and many others were busy attending the patients in the OPD's / ICU's and Casualty and some were busy operating in the OT and conducting deliveries in the labour theatre and some had gone for visits to urban and rural health care centers affiliated to the petitioner and some were on authorized leave on genuine reasons;
- (iii) Owing thereto, some of the faculty members could not be present for verification / head count and owing whereto deficiencies in faculty of 66.66% and shortage of Residents of 55.55% recorded.

D. The petitioner submitted a representation dated 13th April, 2015 to the MCI explaining the deficiencies in the number of residents and faculty and other deficiencies recorded along with documentary proof.

E. The MCI vide its letter dated 11th May, 2015 to the UOI communicated the decision of its Executive Committee, recommending disapproval of the Scheme for establishment of a new medical college submitted by the petitioner for the academic year 2015-16 for the following reasons:

- “1. Deficiency of faculty is 23.3% as detailed in report.
2. Shortage of Residents is 64.4% as detailed in report.
3. OPD: Institute has claimed attendance of 523 on day of assessment. However, around 200-250 attendance was observed as per estimate made on day of assessment.
4. Bed occupancy: Total occupancy 15% - i.e. 45 beds occupied – was observed at time of assessment.
5. NIL Special investigations like Ba, IVP were performed on day of assessment.
6. ICUs: No patients were available in ICUs on day of assessment.
7. Six faculty members as detailed in report were not considered as they had appeared for MCI assessment at another college in the current Academic Year.
8. Other deficiencies as pointed out in the assessment report.”

F. UOI, vide impugned letter dated 15th June, 2015, communicated to the petitioner its decision to accept the recommendation of the MCI and accordingly disapproved the Scheme submitted by the petitioner for establishment of a new medical college for the academic year 2015-16.

4. Though as aforesaid, the contention of the senior counsel for the petitioner when the petition came up first was that the UOI was in violation of Section 10A(4) of the Indian Medical Council Act, 1956 (MCI Act) for the reason of having not granted an opportunity of hearing to the petitioner after the second negative recommendation dated 11th May, 2015 of the MCI but the petitioner in the petition neither pleaded the factum of hearing having been given by the UOI to the petitioner after the first negative recommendation dated 21st January, 2015 of the MCI nor the decision of the UOI thereon. No documents also in this regard were annexed to the petition. Upon the same being pointed out to the senior counsel for the petitioner, he on the subsequent date of hearing handed over in the Court a copy of the letter dated 20th February, 2015 of the UOI to the MCI informing that a Committee had been constituted for granting opportunity of personal hearing in case of disapproval recommendations of the MCI and which Committee had given personal hearing to the applicants on 9th, 10th and 12th February, 2015 and based on compliance submitted by the Colleges the Committee had with respect to the petitioner recommended as under:

“Recommended for review by MCI”

and requesting the MCI to review / assess the Scheme in light of the documents submitted by the petitioner, and to take appropriate necessary action for review and furnish recommendation accordingly.

5. It was the contention of the senior counsel for the petitioner:

- (a) That the petitioner, vide its letter dated 13th April, 2015 supra to the MCI had furnished the explanation for the various deficiencies found in the inspection on 9th April, 2015 and disclosed the correct state of affairs and had further recorded that the Dean of the petitioner Medical College upon being asked to sign the assessment report was surprised to find factual inaccuracies about bed occupancy and operative work / admission and discharge of patients, and though had requested for re-verification but was overruled and asked to sign it as it is, leaving him with no choice.
- (b) That a bare perusal of the impugned letter dated 15th June, 2015 of the UOI also shows that there is no application of mind on the part of the UOI as is required under Section 10A of the Act

and that the UOI has merely accepted the recommendation of the MCI.

- (c) That the UOI, after the personal hearing and the decision contained in the letter dated 20th February, 2015 supra asking the MCI to review its recommendation in the light of the compliance submitted by the petitioner of the deficiencies found in the first inspection, is not absolved of its duty and is not to thereafter simply be guided by the recommendation of the MCI and is required to apply its mind to see whether the negative report of the MCI thereafter is correct or not, after hearing the applicant medical college.
- (d) On the contrary, the UOI in the impugned letter dated 15th June, 2015 without any reason has in one line only accepted the recommendation of the MCI.
- (e) That a bare perusal of the reasons given by the MCI in the two recommendations would show that while the deficiencies pointed out after the first inspection were more infrastructural, the deficiencies pointed out in the second negative

recommendation, are not infrastructural, showing that the MCI was satisfied about the petitioner having the requisite infrastructure but are more operational viz. qua faculty, residents, bed occupancy and patient load.

- (f) Attention was invited to Section 10A(7) of the MCI Act and it was contended that bed occupancy of one day only cannot be the parameter and has to be judged for a period of time as per the records maintained by the hospital attached to the medical college.
- (g) Attention in this regard was invited to the Establishment of Medical College Regulations, 1999 (EMC Regulations) particularly to Regulation 7(d) requiring the recommendation of the MCI to be in Form-4 prescribed in the said Regulation and to Form-4 and it was contended that the recommendation of the MCI in the present case is not in the prescribed format.
- (h) Attention was also invited to the Assessor's Guide (For Undergraduate Assessment) 2015-16 of the MCI where, under "General Instructions" it is *inter alia* provided as under:

- “• The assessment process should be completed within the working hours of the institution i.e. starting from sharp 9:00 A.M. till 06:00 P.M. or closing time of college / hospital OPD as far as possible.”

And under “Verification of Teaching Faculty / Others”, it is *inter alia* provided as under:

- “3. Faculty attendance should be checked before 11:00 a.m. on the first day of assessment. Only faculty / residents who signed attendance sheet before 11 a.m. should be verified. No verification should be done for the faculty / residents coming after 11 a.m. If Junior Residents / Sr. Resident were on night duty in their own hospital, Dean / Director should be advised to call them by 12:00 Noon. In case it is reported that any doctor is conducting surgery / procedure, this must be physically verified by a member of the assessment team, and then should be considered as a teacher.”

- (i) Reliance was placed on ***Aditya Educational Society Vs. Union of India*** MANU/AP/0003/2014 and SLP preferred whereagainst was stated to have been dismissed *in limine*.
- (j) In the compilation of judgments handed over, copies of (i) ***Swami Devi Dayal Hospital and Dental College Vs. Union of India and Others*** (2014) 13 SCC 506, (ii) ***Sau. Mathurabhai Bhausahab Thorat Sevabhavi Trust Vs. Union of India*** (High Court of Bombay: W.P.No.5481/2015 dated 07.07.2015); (iii)

Shri Prakash Shrawanji Itankar Vs. State of Maharashtra (High Court of Bombay at Nagpur Bench: W.P.No.3562/2015 dated 08.07.2015); (vi) *Medical Council of India Vs. Shri Prakash Shrawanji Itankar* SLP (C) No.19504/2015 dated 24.07.2015; (v) *East Coast Railway Vs. Mahadev Appa Rao*, (2010) 7 SCC 678; (vi) *Kranti Associates (P) Ltd Vs. Masood Ahmed Khan* (2010) 9 SCC 496; (vii) *M.J. Sivani Vs. State of Karnataka* (1995) 6 SCC 289; (viii) *Ravi Yashwant Bhoir Vs. Collector* (2012) 4 SCC 407; and (ix) *Victoria Memorial Hall Vs. Howrah Ganatantrik Nagrik Samity* (2010) 3 SCC 732 were enclosed though except for *Swami Devi Dayal Hospital and Dental College*, reference to no other was made.

6. Per contra, it was the contention of the senior counsel for the MCI:
 - (i) That the MCI Act does not require MCI to carry out the compliance verification.
 - (ii) That earlier the Central Government, after receipt of negative recommendation of the MCI, used to communicate the reasons for negative recommendation to the applicant, to respond

thereto and which used to cause delay; to save time, MCI has started sending a copy of the negative recommendation to the applicant so that the applicant can respond thereto during the hearing before the Central Government.

- (iii) That the MCI Act has to be read along with the EMC Regulations.
- (iv) That it is the EMC Regulations which have vide Regulation 8(3) provided for opportunity and time to rectify the deficiencies which may be conveyed at any stage by the Central Government to the applicant College.
- (v) That the second inspection of the applicant is an integral part of the process of hearing under Section 10A(4) of the MCI Act.
- (vi) If it were to be held that after the second inspection the applicant has to be heard again, the process of hearing will not get over and would become an unending process.

- (vii) That no challenge can be made to the Report of the inspection unless *mala fides* or oblique/ulterior motives are imputed to the inspecting team and which is not the case here.
- (viii) That it is necessary for the MCI to check the faculty, bed occupancy, junior / senior residents and availability of all prescribed requirements / parameters in each inspection.
- (ix) The inspection teams comprise of three members picked up from different Government Medical Colleges.
- (x) That Section 10A(3) stage comprises of a paper inspection under Section 10A(3)(a) and a physical inspection under Section 10A(3)(b), with reference to Section 10A(7) being found only in Section 10A(3)(b) and being conspicuous by its absence in Section 10A(3)(a).
- (xi) ***Swamy Devi Dayal Hospital & Dental College*** was concerned with the question whether Section 10A deals with only scheme / application for establishment of new medical college or also with scheme / application for renewal of permission.

- (xii) That the deficiencies found in the petitioner Medical are not minor but such which show that the petitioner Medical College does not fulfill the prescribed / essential requirements / parameters.
- (xiii) That the Inspection Report is ordinarily to be trusted.
- (xiv) That MCI is a Body of experts and its recommendation carries a weight with the Central Government, unless a major flaw with the recommendation of the MCI is shown.
- (xv) Reliance is placed on (i) *Tata Cellular Vs. Union of India* (1994) 6 SCC 651; (ii) *Union of India Vs. K.G. Soni* (2006) 6 SCC 794; (iii) *Heinz India Pvt. Ltd. Vs. State of Uttar Pradesh* (2012) 5 SCC 443; and, (iv) *Seimens Akteingeselischafft & Seimens Ltd. Vs. Delhi Metro Rail Corporation Ltd.* (2014) 11 SCC 288 – to contend that judicial review is not of the decision but of the decision making process.

7. The senior counsel for the petitioner in rejoinder arguments contended:-

- (a) that the arguments of the MCI on the interpretation of Section 10A(3) and (4) are contrary to the dicta in *Swamy Devi Dayal Hospital & Dental College* supra;
- (b) that once the UOI, after hearing the petitioner, had directed the MCI to re-consider, the recommendation of the MCI on the basis of the first inspection is wiped out and the UOI cannot take a decision on the basis of the second recommendation of the MCI without giving an opportunity of hearing to the petitioner;
- (c) EMC Regulations also provide for 'Reconsideration' by the MCI upon being so required by the UOI and which remained to be considered in judgment dated 3rd July, 2014 of the Division Bench of this Court in W.P.(C) No.3976/2014 titled *Shree Chhatrapati Shivaji Education Society Vs. Medical Council of India*;
- (d) that the Form prescribed of the recommendation to be made by MCI provides for the MCI to list out the remedial and the non-remedial deficiencies; the same cannot have reference to the

Clauses (a) and (d) of the proviso to Regulation 8 of EMC Regulations which was introduced for the first time in August, 2014; and,

- (e) that the Form-4 prescribed in the Regulations, of recommendation to be made by MCI is mandatory, as is borne out from the use of the word “shall’ in Regulation 7 (d) of the EMC Regulations.

8. Most of the contentions addressed and recorded as aforesaid have been dealt with by me in judgment dated 20th August, 2015 in W.P.(C) No.5941/2015 titled ***Jamia Hamdard (Deemed University) Vs. Union of India*** where it has *inter alia* been held as under:-

15. I am also unable to accept the contention of the petitioners that Section 10A(3) of the IMC Act imposes any obligation on the MCI to, after inspection of the Medical College, and if finding any deficiencies therein, give any opportunity to the Medical College to rectify the defects. For the sake of convenience, Sections 10A(2) & (3) are reproduced herein below:

“10A(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.”

(A) A plain reading of the aforesaid provision shows, (i) that a person desirous of obtaining the permission of the Central Government for establishing a Medical College (and which has also been held by the Supreme Court in **Swamy Devi Dayal Hospital & Dental College** supra to include renewal of the permission to admit students in the subsequent year/s and recognition of the Medical College) is required to submit to the Central Government, a scheme in accordance with Clause (b) of sub-section (2) of Section 10A of the IMC Act; ii) said Clause (b) requires the said scheme to be in such form and to contain such ‘particulars’ as may be prescribed; iii) the MCI, in Regulation 3 of EMC Regulations has prescribed the form in which the scheme is to be submitted and the ‘particulars’ required to be contained therein; iv) sub-section (3) of Section 10A of the IMC Act empowers the MCI to, after receipt of such scheme, require the applicant to furnish such other particulars as may be considered necessary by the MCI and thereafter requires the MCI to, if the scheme is found to be defective and not containing the necessary ‘particulars’, give a reasonable opportunity to the applicant for making a written representation and in which representation, the applicant may rectify the defects, if any, pointed out by the MCI in the scheme, as provided in Clause (a) of sub-section (3); v) it is only thereafter, if the applicant, upon being given opportunity to rectify the defects pointed out by the MCI has so rectified the defects and the scheme is in the form and containing such particulars as are prescribed by the MCI, that Clause (b) of sub-

section (3) requires the MCI to consider the same with regard to the factors prescribed in Section 10A(7); vi) clause (a) of Section 10A(7) requires the MCI to, while so considering the scheme satisfy itself, whether the proposed Medical College or the existing Medical College seeking to open a new or higher course of study of training would be in a position to offer the minimum standards prescribed by the MCI; similarly, Clause (c) of Section 10A(7) requires the MCI to, during the said consideration of the scheme satisfy itself, whether the necessary facilities in respect of staff, equipment, accommodation, training and other facilities to ensure proper functioning of the Medical College for which the scheme is submitted or the permission has been sought, are provided in the Medical College; similarly, Clause (d) of Section 10A(7) requires the MCI to, during the said consideration satisfy itself, whether adequate hospital facilities for the students are available and clause (f) of Section 10A(7) requires the MCI to, during the said consideration satisfy itself, as to the availability in the Medical College of the manpower prescribed; vii) a perusal of the form and the particulars to be mentioned therein, prescribed for submitting a scheme and / or for seeking renewal permission, recognition etc., shows that the application is required to state therein, the existence / availability in the Medical College of all the said factors; viii) it is to satisfy itself during the stage of consideration prescribed in Clause (b) of sub-section (3) of Section 10A, whether what the applicant has stated in its scheme exists on the spot or not that the physical inspection at the site of the Medical College is carried out by the MCI. The Supreme Court in **Manohar Lal Sharma** supra has held that such inspection, to be efficacious, ought to be a surprise inspection, to rule out the possibility of the applicant, on the date of the inspection, making available the requisite infrastructure, manpower, though it otherwise may not exist;

(B) The words “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” found in Clause (a) are conspicuous from their absence in Clause (b) of Section 10A(3) of

the IMC Act. The only inference therefrom is that the opportunity to make a written representation and to rectify the defects, is to be given at the stage of clause (a) of sub-section (3) of Section 10A when the MCI is evaluating the scheme to see whether all the particulars required to be filled up in the form prescribed have been filled up or not and whether all the documents required to be submitted are annexed to the scheme or not. The said is a stage of paper examination, to be performed in the offices of MCI, as distinct from the stage of on the spot inspection at the proposed medical college prescribed in clause (b) of sub-section (3) of Section 10A and which is to follow only after stage (a) is crossed. If the intention of the Legislature was that the MCI should grant an opportunity to the applicant, of making a written representation and rectify the defects found not only during paper inspection but also those found during the on the spot inspection of the medical college, there was no need for the Legislature to bifurcate the consideration of the scheme into Clauses (a) and (b) of sub-section (3) of Section 10A and the Legislature would have placed the words “give a reasonable opportunity and to make a representation and to rectify the defects” at the end of Clause (b).

(C) It may be noted that the EMC Regulations supra made by the MCI in exercise of powers under Section 10A and 33 of the IMC Act also, in Regulations 6 & 7, while providing for evaluation by the MCI and the report to be submitted by the MCI to the Central Government, provide for two stages of consideration i.e. of evaluating the application submitted and seeking further information, clarification, additional documents and thereafter carrying out of physical inspection to verify the information submitted by the applicant. The same also do not provide for an opportunity to represent or to make up the deficiencies found in the physical inspection to be given. No challenge has been made to the said Regulations on the ground of the same not providing for an opportunity, to rectify the defects found during the physical on the spot inspection, to be given.

*(D) As far as the reliance by the petitioners on **Swamy Devi Dayal Hospital and Dental College** supra in this regard is concerned, the well settled principle of reading a judgment as a*

*precedent is that a judgment is a precedent only on what falls for decision therein and not on what may be logically deducted / inferred therefrom and that observations made on matters which were not for decision do not constitute a precedent. Reliance, if any required in this regard may be made to conspectus of the case law in this regard noticed by the Division Benches of this Court in **Ashwani Suri Vs. M/s Ganga Automobiles Ltd. (in liquidation)** MANU/DE/3171/2012 and in **Housing and Urban Development Corporation Limited Vs. Leela Hotels Limited** MANU/DE/0623/2013, SLP (Civil) No.24474/2013 preferred whereagainst was dismissed on 21st August, 2013.*

*Reference in addition may be made to – **The State of Orissa Vs. Sudhansu Sekhar Misra** AIR 1968 SC 647; (ii) **Ambica Quarry Works Vs. State of Gujarat** (1987) 1 SCC 213; (iii) **Commission of Income Tax Vs. M/s Sun Engineering Works (P) Ltd.** (1992) 4 SCC 363; (iv) **Islamic Academy of Education Vs. State of Karnataka** (2003) 6 SCC 697; (v) **Union of India Vs. Chajju Ram** (2003) 5 SCC 568;*

*Subsequently also the Supreme Court has reiterated the same in (i) **Arasmeta Captive Power Company Pvt. Ltd. Vs. Lafarge India Pvt. Ltd.** (2013) 15 SCC 414; (ii) **Dr. Subramanian Swamy Vs. State of Tamilnadu** (2014) 5 SCC 75; (iii) **Deepak Bhandari Vs. Himanchal Pradesh State Industrial Development Corporation Ltd.** (2015) 5 SCC 518; (v) **Balwant Rai Saluja Vs. Air India Limited** (2014) 9 SCC 407; (v) **Dinubhai Boghabhai Solanki Vs. State of Gujarat** (2014) 4 SCC 626; (vi) **Chauharya Tripathi Vs. L.I.C.** (2015) 7 SCC 263; (v) **Madhya Pradesh Housing & Infrastructure Development Board Vs. B.S.S. Parihar** 2015 (8) SCALE 100.*

*The Supreme Court in **Swamy Devi Dayal Hospital and Dental College** supra was concerned with a recommendation made by the DCI, after carrying out inspection of the applicant College, to the Central Government, not to extend the permission to admit students to the academic session 2013-2014. It was the contention of the applicant Medical College that though the DCI had represented to the UOI against the said report but the UOI had*

*declined renewal permission, without affording any hearing to the applicant College. The High Court, in the judgment against which the Supreme Court was approached held that Section 10A(4) deals only with the permission for establishing a Medical College and not with grant of renewal permission and thus the hearing required to be given by the UOI under Section 10A(4) is not applicable to the stage of seeking renewal of permission in successive years to admit students. The Supreme Court held that though heading of Section 10A suggests that it deals only with “permission for establishment of new medical college, new course of study” but a holistic reading thereof shows that the same applied even to the cases of renewal of such permission. It would thus be seen that the question with which the Supreme Court in **Swamy Devi Dayal Hospital and Dental College** supra was concerned was not whether Section 10A(3) requires the DCI to, after on the spot physical inspection of the applicant College and before making a recommendation to the UOI give an opportunity to the applicant College to rectify the deficiencies if any found in the inspection or to represent against the deficiencies found, if disputing the same. Though undoubtedly para 22.2 of **Swamy Devi Dayal Hospital and Dental College** supra records that Section 10A contemplates grant of opportunity of being heard at two stages but merely reproduces the language of Section 10A(3)(a) and which, there can be no dispute, does provide for an opportunity to represent and rectify the deficiencies. However, the opportunity to be given under Section 10A(3)(a) is to rectify the deficiencies in the particulars required to be given in the scheme / application and not an opportunity to rectify the deficiencies found in the on the spot physical inspection which follows such evaluation of the particulars stated, as held by me above. Also, unfortunately **Manohar Lal Sharma** supra remained to be noticed.*

(E) There is another aspect of the matter. It is not as if the time available after the dates prescribed for submitting the application and for recommendation / report to be submitted by the MCI is indefinite or endless. The said time is limited and if Section 10A were to be interpreted as providing for an

opportunity, to rectify the defects found during the on the spot physical inspection, to be given by the MCI and if the recommendation / report of the MCI remained negative, for an opportunity to be given again by the UOI, then I am afraid, adherence to the time schedule, in all likelihood, will pose problems. The applicant Medical College on the date of making an application is required to have the infrastructure and manpower prescribed. If it were to be held that for the sake of providing such opportunity at two stages i.e. by MCI as well as UOI, the application can be submitted well before the academic year for which permission is sought, it would entail requiring the application Medical College to have the infrastructure / manpower in existence well before required and would also not be feasible.

(F) It is also not as if the compliance of the principles of natural justice i.e. of giving an opportunity to rectify is inbuilt or essential before making a negative recommendation. Under the scheme of the IMC Act, MCI is only a recommendatory body and the decision is to be taken by the UOI. It has been held by the Supreme Court in **Nawabkhan Abbaskhan vs The State of Gujarat** (1974) 2 SCC 121 that not all violations of natural justice knock down the order with nullity and that in Indian constitutional law, natural justice does not exist as an absolute jural value but is humanistically read by courts into those great rights enshrined in Part III as the quintessence of reasonableness. Similarly in **Maneka Gandhi vs Union Of India** 1978 (1) SCC 248 it was held that what opportunity may be regarded as reasonable would necessarily depend on the practical necessities of the situation; it may be a hearing prior to the decision or it may even be a post-decisional remedial hearing; the audi alteram partem rule is sufficiently flexible to permit modifications and variations to suit the exigencies of myriad kinds of situations which may arise. Reference in this regard may also be made to **Sales Tax Bar Association (Regd.) Vs. Govt. of NCT of Delhi** 196 (2013) DLT 270; **Meenakshi College of Pharmacy & Research Centre Vs. All India Council For Technical Education** 201 (2014) DLT 422 and to **Danish Infratech Private Limited Vs. Delhi Cantonment**

Board AIR 2015 Delhi 38. *Seen in this light it would follow that MCI as recommendatory authority/body, before making recommendation is not required to satisfy the principle of natural justice inasmuch a provision therefor has been made before the Union of India entrusted with the decision to be taken on the said recommendation. It thus also follows that the recommendation cannot be said to be causing any prejudice to the applicant College.*

(G) *Thus, no error can be found in the MCI not giving any opportunity to the petitioners to, after the second inspection on 12th & 13th February, 2015, to rectify the defects found in the said inspection. I may however notice that the MCI, after the first inspection on 12th & 13th November, 2014, while making the negative recommendation to the UOI vide its letter dated 22nd December, 2014 in which deficiencies found were listed, marked a copy thereof to the petitioners and asked the petitioners to submit a report of having rectified the deficiencies. Not only so, upon the petitioners submitting such a report, the MCI, without waiting for the decision of the UOI under Section 10A(4), conducted the second inspection on 12th & 13th February, 2015. However it was explained that the same was done to utilize the time and without being required in law to do the same.*

16. *Though on first blush, the contention of the senior counsel for the petitioners, that under Section 10A(4) of the IMC Act a fresh hearing ought to have been given by the UOI to the petitioners before refusing the renewal permission on the basis of the report / recommendation of the MCI on the basis of second inspection conducted on 12th & 13th February, 2015, appeared to be attractive but on further consideration I am unable to find any merit therein also.*

A. *Section 10A(4) does not provide for multiple opportunities to rectify the defect and provides for only one opportunity therefor. The said opportunity was admittedly availed of by the petitioners. Merit is found in the contention of the senior counsel for the MCI, that the MCI while conducting a second inspection to verify the correctness of the representation of the applicant*

college of having removed the deficiencies found in the first inspection, cannot be expected to confine the second inspection only to deficiencies found in the first inspection and is necessarily required to conduct the inspection of the entire infrastructure and manpower prescribed. The senior counsel for the petitioners could not controvert the said position. Even otherwise, considering that Section 10A prohibits establishment of a new medical college or commencement of a new course or programme or increase of intake therein without the permission of the UOI and further considering that the IMC Act entrusts the MCI to evaluate the scheme/proposal submitted in this regard, I am of the view that the second inspection cannot be a restricted one. Cases are not unknown of the applicant colleges at the time of inspection, notwithstanding the so called surprise element, managing their affairs, particularly as to bed occupancy and manpower, to show that the prescribed requirements are fulfilled. The senior counsel for the MCI informed that notwithstanding the inspection being required to be a surprised one, news thereof often leaks. Thus, it cannot be said that the MCI, in the second inspection, is not required to report the fresh deficiencies if any found.

B. If it were to be held that after each such inspection to verify whether the deficiencies pointed out in the earlier inspection had been removed or not and if fresh deficiencies were to be found, a fresh opportunity of hearing is to be given, it would become an endless exercise which cannot possibly be completed at least within the time schedule therefor laid by the Supreme Court and which would endlessly delay the commencement of the academic session. Interpretation of statute has to necessarily take all surrounding circumstances into account and cannot be in vacuum, making its working impractical. The Supreme Court in **The Municipal Corporation of Greater Bombay Vs. The Indian Oil Corporation Ltd.** AIR 1991 SC 686 held that a statute cannot be interpreted without taking into account the social, economic and political setting in which it is intended to operate and it is here that a Judge is called upon to perform a creative function; he has to inject flesh and blood in the dry skeleton provided by the legislature and by a process of dynamic interpretation, invest it

*with a meaning which will harmonise the law with the prevailing concepts and values and make it an effective instrument for delivering justice. Similarly in **Reserve Bank of India Vs. Peerless General Finance & Investment Company Ltd.** (1987) 1 SCC 424 it was held that interpretation must depend on the text and the context and in **Union of India Vs. Ranbaxy Laboratories** (2008) 7 SCC 502 it was held that the Court has not only to take a pragmatic view while interpreting a statutory provision but must also consider the practical aspect of it. Earlier also in **State of Kerala Vs. Unni** (2007) 2 SCC 365, it was held that where two interpretations are possible, the one which leads to the workability of the statute must be preferred. Reference in this regard may also be made to **The Executive Engineer Vs. Sri Seetaram Rice Mill** (2012) 2 SCC 108, **State of Himachal Pradesh Vs. Pawan Kumar** (2005) 4 SCC 350 (holding that a statute should be so interpreted as to avoid unworkable or impracticable results) and **The Forest Range Officer Vs. P. Mohammed Ali** 1993 Supp (3) SCC 627.*

C. *I therefore tend to agree with the contention of the senior counsel for the MCI that the second inspection is a part and parcel of the opportunity of hearing prescribed in Section 10A(4) of the Act.*

D. *I may however add a rider. There may be situations where in the light of the two inspection reports, a clarification may be deemed necessary by the UOI before it takes a decision. In such a case, the UOI would certainly be entitled to seek an explanation or if the time permits, direct further verification.*

Thus no fault can be found with the procedure followed by the MCI or the UOI on the grounds urged by the senior counsel for the petitioners.”

9. In the face of the view aforesaid already taken by me, qua **Swami Devi Dayal Hospital and Dental College** supra and the contention, that the

UOI is required to give a fresh hearing after the second inspection, the same contention of the senior counsel for the petitioner have but to be rejected.

10. However a three Judge Bench of the Supreme Court vide judgment dated 20th August, 2015 in W.P.(C) No.705/2014 titled ***Royal Medical Trust (Regd.) Vs. Union of India*** has also dealt with Section 10A of the MCI Act and having been pronounced on the same day as ***Jamia Hamdard (Deemed University)*** supra, was not considered therein. A copy of the said judgment has been placed by the counsel for the petitioner before me. What thus falls for consideration is, whether what has been held by me in ***Jamia Hamdard (Deemed University)*** is affected / overruled in any manner by ***Royal Medical Trust (Regd.)*** supra.

11. The senior counsel for the petitioner on enquiry in another matter in which arguments have since been heard has informed that the three Judges Bench aforesaid of the Supreme Court was constituted because, while some of the two Judges Bench of the Supreme Court had varied the schedule of admission approved of in ***Priya Gupta Vs. State of Chhattisgarh*** (2012) 7 SCC 433, others had held the same to be inalterable. However on further enquiry as to what had been held by the three Judges Bench in this regard,

the senior counsel for the petitioner contended that occasion for the three Judges Bench to pronounce thereon did not arise owing to it having held that the UOI is empowered by the 'Note' appended to the EMC Regulations to modify the time schedule, for reasons to be recorded in writing in respect of any class or category of applications.

12. However the senior counsel for the petitioner drew attention to paras 23, 27 and 29 of **Royal Medical Trust (Regd.)** supra, which are as under:-

*“23. While considering the Scheme under Section 10A of the Act, the MCI and the Central Government are required to have due regard to the factors referred to in sub-section (7) thereof. If the initial Scheme itself is found to be defective or is to be disapproved, sub-section (3)(a) and proviso to sub-section (4) of Section 10A oblige the MCI and the Central Government respectively to grant to the applicant reasonable opportunity to rectify the defects and of being heard. The Statute thus recognize that before any adverse decision is taken as regards the Scheme, the applicant must be afforded reasonable opportunity. This facet has been considered by this Court while dealing with issues under Section 10A of the Dentists Act in **Swami Devi Dayal**. It was laid down that the requirement of following the principles of natural justice is available at two stages, first where the Dental Council of India finds deficiencies during its inspection and secondly at the level of the Central Government before it passes any adverse orders after receipt of the recommendations by the Dental Council of India. The observations in **Swami Devi Dayal** while considering provisions of Section 10A of the Dentists Act which are pari material with Section 10A of the Act, must apply with equal force in relation to cases under the Act. In paragraphs 22.2 and 22.3 it was laid down in **Swami Devi Dayal** as under:-*

“22.2 It contemplates grant of opportunity of being heard at two stages. First stage would be at the level of DCI after the scheme is submitted to DCI under sub section (2) of Section 10A of the Act. Once it is found by the DCI that all the parameters for granting permission are met, it recommends the grant of approval of the scheme to the Central Government. In cases Scheme is found to be deficient, sub section (3) (a) of Section 10A of the Act casts an obligation on the part of the DCI to give a reasonable opportunity for making a written representation and also to rectify the deficiencies, if any, specified by the DCI. Second stage of adherence to the principles of natural justice is provided at the level of Central Government at the time when it has to take final decision, after the receipt of the recommendation sent by the DCI. This requirement of hearing is stipulated in proviso to sub section (4) of Section 10A, in the event the Central Government is proposing to disapprove the scheme.

22.3 The expression “opportunity of being heard” occurring in this proviso would mean that the material that goes against the applicant and is to be taken into consideration, is to be supplied to the applicant within an opportunity to make representation. For this purpose either the report of the DCI itself can be supplied or atleast the deficiencies pointed out in the report have to be communicated by the Central Government to the applicant with an opportunity to furnish its comments thereupon. At that stage while giving its reply, if the applicant claims personal hearing, such a personal hearing should also be accorded.”

27. The MCI and the Central Government have been vested with monitoring powers under Section 10A and the Regulations. It is expected of these authorities to discharge their functions well within the statutory confines as well as in conformity with the

Schedule to the Regulations. If there is inaction on their part or non-observance of the time Schedule, it is bound to have adverse effect on all concerned. The affidavit filed on behalf of the Union of India shows that though the number of seats had risen, obviously because of permissions granted for establishment of new colleges, because of disapproval of renewal cases the resultant effect was net loss in terms of number of seats available for the academic year. It thus not only caused loss of opportunity to the students' community but at the same time caused loss to the society in terms of less number of doctors being available. The MCI and the Central Government must therefore show due diligence right from the day when the applications are received. The Schedule giving various stages and time limits must accommodate every possible eventuality and at the same time must comply with the 44 requirements of observance of natural justice at various levels. In our view the Schedule must ideally take care of :

(A) Initial assessment of the application at the first level should comprise of checking necessary requirements such as essentiality certificate, consent for affiliation and physical features like land and hospital requirement. If an applicant fails to fulfill these requirements, the application on the face of it, would be incomplete and be rejected. Those who fulfill the basic requirements would be considered at the next stage.

(B) Inspection should then be conducted by the Inspectors of the MCI. By very nature such inspection must have an element of surprise. Therefore sufficient time of about three to four months ought to be given to the MCI to cause inspection at any time and such inspection should normally be undertaken latest by January. Surprise Inspection would ensure that the required facilities and infrastructure are always in place and not borrowed or put in temporarily.

(C) Intimation of the result or outcome of the inspection would then be communicated. If the infrastructure and facilities are in order, the concerned Medical College should be given requisite

permission/renewal. However if there are any deficiencies or shortcomings, the MCI must, after pointing out the deficiencies, grant to the college concerned sufficient time to report compliance.

(D) If compliance is reported and the applicant states that the deficiencies stand removed, the MCI must cause compliance verification. It is possible that such compliance could be accepted even without actual physical verification but that assessment be left entirely to the discretion of the MCI and the Central Government. In cases where actual physical verification is required, the MCI and the Central Government must cause such verification before the deadline.

(E) The result of such verification if positive in favour of the Medical College concerned, the applicant ought to be given requisite permission/renewal. But if the deficiencies still persist or had not been removed, the applicant will stand disentitled so far as that academic year is concerned.

*29. The cases in hand show that the Central Government did not choose to extend the time limits in the Schedule despite being empowered by Note below the Schedule. Though the Central Government apparently felt constrained by the directions in **Priya Gupta** it did exercise that power in favour of Government Medical Colleges. The decision of this Court in **Priya Gupta** undoubtedly directed that Schedule to the Regulations must be strictly and scrupulously observed. However, subsequent to that decision, the Regulations stood amended, incorporating a Note empowering the Central Government to modify the stages and time limits in the Schedule to the Regulations. The effect of similar such empowerment and consequential exercise of power as expected from the Central Government has been considered by this Court in **Priyadarshini**. The Central Government is thus statutorily empowered to modify the Schedule in respect of class or category of applicants, for reasons to be recorded in writing. Because of subsequent amendment and incorporation of the Note as aforesaid, the matter is now required to be seen in the light of*

*and in accord with **Priyadarshini** where similar Note in pari materia Regulations was considered by this Court. We therefore hold that the directions in **Priya Gupta** must now be understood in the light of such statutory empowerment and we declare that it is open to the Central Government, in terms of the Note, to extend or modify the time limits in the Schedule to the Regulations. However the dead line namely 30th of September for making admissions to the first MBBS course as laid down by this Court in **Madhu Singh** and **Mridul Dhar** must always be observed.”*

and contended that the view taken by me in **Jamia Hamdard (Deemed University)** is no longer good law.

13. The senior counsel for the MCI of course contended to the contrary.

14. A complete reading of the dicta of the Supreme Court in **Royal Medical Trust (Regd.)** supra shows that the same is not in reference to the facts of any one case. Rather, as informed, the matter for consideration before the three Judge Bench of the Supreme Court was only the power of the Court to vary time schedule for admission which as per **Priya Gupta** supra was inalterable. However the Supreme Court undoubtedly has pronounced on Section 10A and the procedure thereunder to be followed by the MCI and UOI.

15. The Supreme Court in the aforesaid judgment, in the initial part of para 23 reproduced hereinabove, has recorded that if the initial scheme itself

is found to be defective, sub-section 3(a) and proviso to sub-section 4 of Section 10A oblige MCI and the Central Government respectively to grant to the applicant reasonable opportunity to rectify the defects and of being heard. The Supreme Court thus, consciously avoided reference therein to Section 10A(3)(b) which on a plain reading thereof does not provide for the MCI to grant any opportunity to the applicant College. Undoubtedly the Supreme Court in the latter part of para 23 as also in para 27 has observed that the principles of natural justice are available at two stages. However the reference to the two stages in my humble opinion would be to the stage under Section 10A(3)(a) and 10(4) and not to the stage under Section 10(3)(b).

16. Upon the same being put to the senior counsel for the petitioner, he of course contended that there are no two stages in Section 10A(3) and only one stage. It was his contention that the three Judge bench, by holding that the observance of the principle of natural justice is to be two stages, has held that MCI is required to give an opportunity to fulfill the deficiencies found in the inspection. It is his contention that the opportunity to rectify the deficiencies found in the inspection has to be given by the MCI under Section 10A(3) as well as by the UOI under Section 10A(4).

17. I am, for the reasons given in *Jamia Hamdard (Deemed University)*, unable to read *Royal Medical Trust (Regd.)* to be laying down as is contended. Rather, *Royal Medical Trust (Regd.)* also in para 27 has identified two stages of Section 10A(3) i.e. of 'initial assessment' dealt with in sub para-A of para 27 and of 'physical inspection' dealt with in sub para B of para 27. The Supreme Court had no occasion to consider, whether the opportunity to rectify mentioned in Section 10A(3)(a) is to be read in Section 10A(3)(b) also. It cannot be lost sight of that a judgment of the Court is not to be interpreted like a statute and is to be interpreted as laying down only what arose for decision therein and not what may be logically deduced therefrom. A reading of the contentions urged by the counsels and as recorded in *Royal Medical Trust (Regd.)* does not show that any such contentions were for adjudication.

18. The Supreme Court, in *Haryana Financial Corporation vs M/S Jagdamba Oil Mills* 2002 (3) SCC 1996 reiterated that judgments of Courts are not to be construed as statutes; to interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define; Judges interpret statutes, they do not interpret judgments; their words are not

to be interpreted as statutes. It was further reiterated that judicial utterances are made in the setting of the facts of a particular case and circumstantial flexibility, one additional or different fact may make a world of a difference between conclusions in two cases. The same view was reiterated in ***Deepak Bhandari Vs. Himachal Pradesh State Industrial Development Corporation Ltd*** (2015) 5 SCC 518 where it was in addition reiterated that reliance on the decision without looking into the factual background of the case before it, is clearly impermissible; it is not everything said by a Judge while giving a judgment that constitutes a precedent; Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Again in ***Madhya Pradesh Housing and Infrastructure Development Board Vs. B.S.S. Parihar*** MANU/SC/0789/2015 it was reiterated that broad resemblance to another case is not at all decisive; observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context.

19. I am therefore humbly of the opinion that the view taken by me in ***Jamia Hamdard*** (Deemed University) remains unaffected by ***Royal Medical Trust*** (Regd.)

20. A comparison of the deficiencies, for the reason whereof the negative recommendations dated 21st January, 2015 and 11th May, 2015 were made by the MCI, shows that the deficiency in faculty is common to both; while in the first, deficiency was of 15%, in the second, it was 23.3%. Though undoubtedly in the list of deficiencies forming the basis of the first negative recommendation, deficiency in residents and which in the second negative recommendation was as high as 64.4% does not find mention but a perusal of the letter dated 23rd May, 2015 of the petitioner to the UOI filed as Annexure-P15 by the petitioner shows that the petitioner did not controvert that at the time of verification (head count) at 11:00 AM on the date of second inspection, the residents were not present. Rather it sought to explain away their absence.

21. To the extent the senior counsel for the petitioner sought to factually controvert the factual report of the inspection, I am of the view that the same cannot be permitted. After all, neither the MCI nor the UOI nor this Court can personally visit each and every applicant College to verify the actual position. The report of the inspection team has to be necessarily relied upon. There is no reason for this Court to doubt the said report of the inspection team when no ulterior motives have been attributed or pleaded vis-a-vis any

of the members of the inspection team. There is no reason for this Court to presume that the reporting is factually incorrect. It cannot be lost sight of that there is a vast difference between what may be shown to exist on paper and what may actually be existing. If it were to be held that the approval has to be granted merely on paper assessment, there would have been no need to provide for the physical inspection. As already opined by me in *Jamia Hamdard (Deemed University)* supra, cases of applicant colleges claiming compliance with all the requirements, having serious deficiencies affecting education to be imparted therein are not uncommon. It is for this reason only that the Supreme Court in *Manohar Lal Sharma Vs. Medical Council of India* (2013) 10 SCC 60 has cautioned about the grant of approval to medical colleges which would churn out half-baked doctors.

22. I am therefore not inclined to enter into the controversy whether the report of inspection is factually correct or not inasmuch as the said question in any case, even if to be decided, cannot be decided without the examination and cross examination of witnesses and for which this is not the appropriate fora.

23. That brings me to the contention of the senior counsel for the petitioner, of the recommendation of the MCI being not in the prescribed form.

24. I have perused the writ petition and do not find the petitioner to have taken the said ground, neither in any of the representations made nor in the grounds in the writ petition. Of course, the same is a legal plea which can be permitted to be raised even without any factual basis but in none of the cases which have come up before me I have found the recommendation of the MCI to be in any different form than as in the present case. It may be highlighted that even the first negative recommendation dated 21st January, 2015 of the MCI is not as per Form-4 prescribed in the EMC Regulations and the petitioner in its representation thereagainst also nowhere found fault therewith on the said ground. What follows therefrom is that the said Form has consistently been given a go by, not only by the MCI but also by the applicant medical colleges, both being perhaps of the view that from non compliance thereof no prejudice is caused to anyone. Merely because the Regulation 7(d) uses the word 'shall' cannot be interpreted as requiring the recommendation of the MCI to be necessarily in Form-4. Even otherwise, a perusal of Form-4 shows that what all is prescribed to be stated therein is

covered by the report of inspection which is always enclosed to the recommendation made by the MCI.

25. As far as the contention of the senior counsel for the petitioner, of the Form-4 requiring the MCI to state whether the deficiencies are remediable or not, the MCI by adopting the practice of directly forwarding a copy of its negative recommendation to the applicant medical college with a request to report compliance has fulfilled the said requirement also. What we are concerned with here is the fact that notwithstanding the said opportunity, the deficiencies remained.

26. Though the impugned letter dated 15th June, 2015 of the UOI undoubtedly does not give any reason for accepting the recommendation of the MCI but once the statute being the MCI Act constituted MCI as an expert body to make recommendations to the UOI, no fault can be found in the action of the UOI if finding the recommendation to be acceptable, merely accepting the same without reiterating the reasons which prevailed with the MCI for making a negative recommendation.

27. No merit is thus found in the petition which is dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 1, 2015

‘gsr’/‘pp’