

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

Judgment Reserved on: 15.09.2015
% Judgment delivered on: 17.09.2015

+ **WP(C) 7855/2015**

DR. MGR EDUCATIONAL AND RESEARCH
INSTITUTE UNIVERSITYPetitioner

Versus

UNION OF INDIA AND ORS.Respondents

ADVOCATES WHO APPEARED IN THIS CASE:

For the Petitioner: Mr. J.S. Bhasin, Ms. Rashmi Priya, Mr. Nishant Shokeen and
Mr. Inderjeet Singh, Advocates

For the Respondents: Ms. Monika Arora, Mr Harsh Ahuja & Mr Gaurav Upadhyay,
Adv. for R-1 & 4
Mr. Vikas Singh, Sr. Advocate with Mr. T. Singhdev, Ms.
Biakthan Sangi and Ms. Puja Sarkar, Advocates for R-2/MCI
Mr. Ravinder Agarwal, Advocate for R-3

**CORAM :-
HON'BLE MR JUSTICE RAJIV SHAKDHER**

RAJIV SHAKDHER, J

WP(C) 7855/2015 AND CM No.15639/2015

Preface

1. This writ petition is directed against the communication dated 11.05.2015 issued by respondent no.2 i.e. the Medical Council of India (hereafter referred to as MCI) and communication dated 15.06.2015 issued by respondent no.1 i.e. the Union of India (hereafter referred to as UOI).

1.1 By virtue of the impugned communications, in effect, the petitioner's scheme for admittance of students to the MBBS Course upto a maximum extent of 150 candidates, for the academic year 2015-2016, has been rejected.

1.2 Pertinently, UOI's communication dated 15.06.2015 is pivoted on the recommendation of MCI contained in its letter dated 11.05.2015.

2. The challenge raised by the petitioner arises in the background of the following broad facts :-

2.1 The petitioner, which is constituted as a deemed university, was desirous of setting up a medical college by the name of ACS Medical College and Hospital (hereafter referred to as the 'ACS Medical College') as a constituent college. The respondent no.3 i.e. University Grants Commission (hereafter referred to as 'UGC') granted its in-principle, no objection to the proposal made for establishing a medical college under the ambit of the petitioner, provided it fulfilled the norms indicated therein, which included, the recognition / approval of the MCI; as also, the adherence to norms fixed by the MCI and the UGC. By virtue of this communication, it was also conveyed that the proposal submitted for this purpose would be examined by the UGC, with the help of a duly constituted committee, and that, the final decision taken in this behalf would be notified by the Government of India, on its advice in the matter.

2.2 It appears that the petitioner established the ACS Medical College and commenced admissions for the academic year 2008-2009, albeit

without the prior approval of either the UGC or the Ministry of Human Resources and Development (hereafter referred to as the 'MHRD').

2.3 Consequently, explanation was sought, to which, justification was supplied by the petitioner. Based on the justification given, *ex post facto* approval was given by the UGC, based on the recommendations of the expert committee set up by it to consider the said issue. Resultantly, the petitioner was given approval to bring ACS Medical College within its ambit for the academic year 2008-2009, with a caveat, that its performance would be reviewed annually for a period of three years, and thereafter, every five years. This decision of the UGC is reflected in the communication dated 30.09.2009 addressed to the MHRD.

2.4 The, no objection, given by the UGC was preceded by a letter of intent dated 20.06.2008 and a letter of permission dated 04.07.2008, issued by the UOI.

2.5 As a result of the above, ACS Medical College admitted students for the academic year 2008-2009. The students admitted in the academic year 2008-2009, since then, have completed their course, and those, amongst others, who qualified, have been issued degrees in that behalf.

2.6 I may only note that in a writ petition filed directly in the Supreme Court, being : WP (C) No.142/2006 titled, Viplav Sharma Vs. Union of India and Ors., a challenge has been laid to the petitioner's status as a deemed university alongwith other similarly circumstanced entities. The Supreme Court pending adjudication of the said writ petition has, I am told, directed status quo to be maintained vis-à-vis 44 institutions (which

includes the petitioner) vide order dated 25.01.2010. I am further informed that this order continues to obtain to date.

2.7 Continuing with the narrative, it appears that the MHRD (i.e. respondent no.4) vide communication dated 31.08.2010 rejected the UGC's recommendation for bringing ACS Medical College within the ambit of a deemed university due to pendency of proceedings in the Viplav Sharma's case. This communication was assailed by the petitioner by filing a writ petition directly in the Supreme Court, which, however, was withdrawn with liberty to approach the High Court.

2.8 Consequently, a writ petition, bearing no. WP(C) 20995/2010 was filed in the Madras High Court which, could not proceed further, as a stand was taken by the MHRD's counsel that the issue with regard to the petitioner's constitution as a deemed university was pending consideration in the Supreme Court in *Viplav Sharma*'s case.

2.9 The petitioner, thus, moved the Supreme Court for transfer vide TP No.512/2011. The Supreme Court, however, vide order dated 24.02.2012 disposed of the transfer petition, with a direction to the Madras High Court that it should dispose of the pending writ petition as expeditiously as possible, preferably, within three months from the date of communication of the order, without waiting for the result in *Viplav Sharma*'s case.

3. As a result of the aforesaid directions, the pending writ petition was heard by the single Judge of the Madras High Court who, vide order dated 09.11.2012, allowed the writ petition and quashed the communication

dated 31.08.2010 issued by the MHRD whereby, the petitioner's request to bring ACS Medical College within its ambit was rejected.

3.1 The matter was carried by the UOI in appeal to the Division Bench. The Division Bench vide order dated 15.04.2013, passed in appeal no.277/2012 and 256/2013, modified the single Judge's order with the following operative directions :-

“..20. In fine (sic), we are of the view that the positive direction given by the learned single Judge requires modification and the issue has to be remitted to the Ministry of HRD to consider the issue of bringing the ACS Medical College and Hospital, Chennai under the ambit of Dr. MGR Educational and Research Institute deemed to be University, and pass fresh orders after hearing the officials of the first respondent. The said exercise is directed to be completed by the Ministry of HRD, within a period of four weeks from the date of receipt of copy of this order. The claim of the students admitted during the academic year 2008-2009 is directed to be decided by the Medical Council of India depending upon the orders to be passed by the Ministry of HRD. In so far as the students admitted in the academic year 2009-2010 are concerned, it is open to the Medical Council of India to decide their rights as it deems fit, in the circumstances of this case..”

3.2 As a result of the aforesaid, the MHRD, vide order dated 23.05.2013, after recording the history of the case (which included its litigation history, as well) declared that ACS Medical College, would be a constituent unit, under the petitioner; albeit, as an off-campus centre, with effect from 01.04.2008, for the purposes of the UGC Act, 1956 (in short the UGC Act), for conduct of academic courses / programmes for only two academic years i.e. 2008-2009 and 2009-2010, subject to usual terms and conditions, as may be prescribed by the UGC, from time to time.

3.3 This declaration was prefaced by the MHRD by indicating therein, that it had exercised its powers under Section 3 of the UGC Act, and that, it was being made in the interest of students, who had already been admitted to the ACS Medical College for academic years 2008-2009 and 2009-2010. The said declaration though, was issued subject to caveats contained therein, which included, amongst others, the outcome of the decision in Viplav Sharma's case and the compliance with MCI regulations.

3.4 The fact that the MHRD had confined its declaration to only two academic years, resulted in the petitioner being aggrieved, and consequently, this aspect of the declaration was challenged by way of a writ petition, being : WP(C) 674/2013. This writ petition was filed directly in the Supreme Court.

3.5 The MCI, though vide communication dated 01.10.2013, rendered a positive recommendation to the UOI, Ministry of Health and Family Welfare (in short, the MHFW) qua recognition of 2008-2009 batch of students, admitted to ACS Medical College.

3.6 However, in so far as the second batch of students (i.e. those who had been admitted in the academic year 2009-2010), was concerned, the MCI vide its earlier letter dated 12.09.2013, directed that those students be discharged.

3.7 The petitioner being aggrieved, challenged the said decision by way of fresh writ petitions, being: WP No.1959/1964/2928 of 2014. These writ petitions were instituted in the Madras High Court.

3.8 The single Judge of the Madras High Court, vide order dated 14.07.2014, allowed the writ petitions, and consequently, quashed the MCI's communication dated 12.09.2013. A direction was issued to the MCI to accord an opportunity of personal hearing to the petitioner, and thereafter, pass appropriate orders, within a period of 30 days.

3.9. Once again the matter was carried in appeal, though, this time by the MCI. The Division Bench, vide order dated 13.08.2014, confirmed the learned single Judge's order dated 14.07.2014. However, while doing so, the Division Bench observed that the "*findings rendered by the single Judge were not necessary*". This observation was rendered in the context that the relevance and applicability of MHRD's declaration dated 23.05.2013 and the earlier decision of the Division Bench, dated 15.04.2013, were matters which would require, according to the court, a consideration by the MCI while reconsidering the matter on remand.

4. Accordingly, the petitioner made a representation dated 26.08.2014 to the MCI.

4.1 In close proximity to the aforesaid events, the petitioner's pending challenge to the MHRD's declaration dated 23.05.2013 (whereby, it had restricted its scope to only two academic years i.e. 2008-2009 and 2009-2010, an aspect to which I have alluded to hereinabove), came up for consideration before the Supreme Court on 15.09.2014.

4.2 The Supreme Court vide order dated 15.09.2014 disposed of the writ petition (i.e. WP(C) 674/2013), filed in that behalf, with an observation

that the petitioner should pursue its representation submitted to the MHRD / UOI.

4.3 Evidently, the MHRD, vide a notification dated 25.09.2014, issued another declaratory order, broadly, to the effect that ACS Medical College shall be a constituent unit under the ambit of the petitioner for conducting academic courses / programmes from '**2014- 2015 onwards**' subject to usual terms and conditions, as may be prescribed by the UGC, from time to time. As in the earlier declaration of 23.05.2013, caveats were provided, inter alia, indicative of the fact that the decision was subject to the decision in **Viplav Sharma's** case, and was predicated on the petitioner having in place requisite clearances from MCI under extant regulations and applicable conditions.

4.4 The MCI, being aggrieved, by the decision of the Division Bench of the Madras High Court dated 13.08.2014, carried the matter in appeal to the Supreme Court.

4.5 The Supreme Court vide judgment dated 11.02.2015 passed in Civil Appeal Nos.1757-1759/2015, disposed of, the matter, with a slew of directions. These directions were issued keeping in mind the interest of the students, who had been granted admittance to the ACS Medical College, for the academic year 2009-2010. The Supreme Court observed, in no uncertain terms, that the admissions were unauthorised but refrained from visiting the students with what would have been otherwise the natural consequence, which is, that the admissions would have to be set aside. The directions issued by the Supreme Court are contained in paragraph 53 of the judgment. There are, in fact, six directions issued. The sum and

substance of these directions, was that, the students admitted by the ACS Medical College in the academic year 2009-2010 were directed to undergo, once again, final examination under the aegis of the State Health University, located outside the State of Tamil Nadu; preference in this behalf was given though to the Rajiv Gandhi University of Health Sciences, Bengaluru.

4.6 I am informed that the said direction as well as other directions issued by the Supreme Court were complied with, by the petitioner.

4.7 In so far as the present case is concerned, direction no.5 issued vide judgment dated 11.02.2015 is relevant, and therefore, for the sake of convenience, is extracted hereafter :-

“..(5). The MCI, the MH&FW, the UGC and the MHRD should take a joint inspection of the facilities in the College within a period of two months from today to ascertain and determine whether the College should be allowed to admit students in the academic year 2015-2016 and whether it provides necessary facilities as required by law and the regulations..”

4.8 It appears that in compliance with directions issued by the Supreme Court, vide its judgment dated 11.02.2015, the MCI carried out an assessment of physical and other teaching facilities to ascertain as to whether recognition / approval ought to be granted to the ACS Medical College. In addition, the MCI also sought to assess the standard of the examination held by the Rajiv Gandhi University of Health Sciences, Bengaluru, qua students of 2009-2010 batch.

4.9 This assessment was evidently carried out by the MCI's assessors on 18th and 19th March, 2015. The assessment report so generated was considered at the meeting of its Executive Committee, held on 27.03.2015. The resultant decision, which was taken by the Executive Committee of the MCI, was as follows :-

“...The Executive Committee of the Council considered the Council Assessors report (18th and 19th March, 2015) in compliance of order dated 11.02.2015 passed by the Hon'ble Supreme Court in CA Nos.1757-1759/2015 (arising out of SLP (C) Nos.32770-32772 of 2014) and noted the following :-

1. There are only 9 Major Surgical operations on day of assessment.
2. Number of deliveries is less. On day of assessment, there was only 1 stillbirth and 1 Caesarean section.
3. Cytopathology workload is only 7 on day of assessment.
4. ICUs : There was only 1 patient in ICCU on day of assessment.
5. Other deficiencies as pointed out in the assessment report.

In view of the above, the Executive Committee of the Council decided to recommend to the Central Government not to recognize / approve ACS Medical College and Hospital, Chennai u/s. 11(2) of the IMC Act, 1956 and further decided that the Institute be asked to submit the compliance for rectification of the above deficiencies within 01 month for further consideration of the matter...”

5. The MCI conveyed its recommendation to the Government of India, MHFW, vide its communication dated 01.04.2015 which, in brief was, not to recognize /approve the ACS Medical College under Section 11(2) of the Indian Medical Council Act, 1956 (in short, the IMC Act).

5.1 As would be noticed from the recommendations extracted above, the Executive Committee of the MCI also gave an opportunity to the petitioner to submit its compliance report i.e. carry out rectification of deficiencies pointed out by it, albeit within a period of one month, for further consideration of the matter.

5.2 It appears that apart from the assessment on 18th and 19th March 2015 carried out by the assessors of the MCI, a verification was carried out by a Joint Inspection Team, comprising of the representatives of the MHRD, UGC, MHFW and the MCI (hereafter collectively, as the 'J.I. Team'), as well. This inspection was carried out on 10th and 11th April, 2015.

5.3 Consequent to the inspection carried out by the MCI assessors and J.I. Team, the petitioner vide letter dated 11.04.2015 sought to bring to fore, the fact that all infrastructure facilities were available, and that, the assessors of the MCI, in their inspection carried out on 18th and 19th March, 2015, had reported that the deficiencies were minor in nature, and certainly, within permissible limits.

5.4 Apart from the above, the petitioner shot of two other communications, dated 27.04.2015 and 28.05.2015, both of which were addressed to the MCI. While the first communication was the petitioner's response to the MCI's report dated 01.04.2015 whereby, it had recommended to the GOI/ MHRD that recognition /approval should not be given to the ACS Medical College, the second communication, was a rejoinder to the inspection conducted by the J.I. Team, on 10th and 11th April, 2015. Essentially, both communications were in the nature of compliance reports.

5.5 In addition to the above, the petitioner also made a representation dated 06.05.2015 to the UOI, pursuant to which, it was accorded a personal hearing on 29.05.2015, before a committee constituted for the said purpose.

5.6 The MCI, however, vide communication dated 11.05.2015, based on the result of the inspection conducted by the J.I. Team on 10th and 11th April, 2015, informed the GOI/MHFW that its Executive Committee had reached a decision that ACS Medical College should not be allowed to admit students in the academic year 2015-2016 under Section 10A of the IMC Act, and that, a further decision had been taken to apply clause 8(3)(1)(b) of the Establishment of Medical College Regulation (Amendment) 2010 (Part-II) dated 16.04.2010 (in short the '2010 Regulation'). Besides this, MCI also indicated that its Executive Committee had reached a decision to not recommend recognition of the ACS Medical College (which was otherwise under the remit of the petitioner), in terms of Section 11 (2) of the IMC Act. The said communication, however, had a footnote which, reads as follows :-

“...The committee also decided that the Institute be asked to submit the compliance for rectification of the above deficiencies within 01 month for further consideration to recognize ACS Medical College and Hospital, Chennai under the Dr. MGR Educational and Research Institute University u/s. 11(2) of the IMC Act, 1956...”

5.7 Based on the aforesaid recommendation, the GOI/MHFW issued a communication dated 15.06.2015 to the Principal /Dean of the ACS Medical College indicating therein that it had accepted the recommendation of the Executive Committee of the MCI to the effect that it ought not to admit students to the MBBS Course for the academic year 2015-2016. The ACS Medical College was put to notice that any admission made for the said

academic year would be treated as irregular and action would be initiated accordingly, under the IMC Act and regulations framed, thereunder.

5.8 The MCI, however, vide communication dated 14.07.2015, informed the Principal of the ACS Medical College that they had considered the compliance report dated 28.05.2015 and pursuant thereto, it had come to the conclusion that there was no satisfactory compliance with respect to point nos.1(a) & (b), 5, 6, 10 and 17-7(i), 7(ii), 7(iii), 7(vii) and 7(ix). The MCI's communication, however, as usual, ends with the note that the petitioner could submit a detailed point-wise satisfactory compliance report; albeit within 15 days of the date of dispatch of the said communication.

5.9. In response to the same, the petitioner despatched a letter dated 22.07.2015, setting out therein how it met the deficiencies pointed out in the MCI's letter dated 14.07.2015.

6. It appears the petitioner was not satisfied with the manner in which its plea for renewal of permission was being dealt by the respondents and therefore, it filed, once again, a petition under Article 32 of the Constitution with the Supreme Court; the said petition was registered as: WP(C) 457/2015. This writ petition was, however, dismissed as withdrawn by the Supreme Court, vide its order dated 24.07.2015 with liberty to the petitioner to approach the High Court, by way of a petition under Article 226 of the Constitution.

7. It is, in this background, that the present writ petition was filed; which was moved in the first instance on 18.08.2015. On the said date, notice was issued in the petition. Since then, pleadings in the matter stand completed.

SUBMISSIONS OF COUNSELS

8. Arguments on behalf of the petitioner were advanced by Mr. Bhasin while those on behalf of the MCI have been advanced by Mr. Vikas Singh, Sr. Advocate. Union of India is represented by Mr. Ravinder Agarwal.

9. Mr. Bhasin on behalf of the petitioner broadly articulated the assertions made in the writ petition. It was Mr. Bhasin's contention that the MCI was obliged in law to conduct a compliance inspection pursuant to two compliance reports submitted by it dated 28.05.2015 and 22.07.2015. It was further contended by Mr. Bhasin that the stand taken by the MCI and the UOI that since provisions of clause 8(3)(1)(b) of the 2010 Regulations had been invoked, it was not required to carry out verification of assertions made in the compliance report, was contrary to the provisions of Section 10A of the IMC Act and the law laid down by the Supreme Court in *Swami Devi Dayal Hospital and Dental College Vs. Union of India, (2014) 13 SCC 506* and by way of judgment dated 20.08.2015, passed in WP(C) 705/14, titled : *Royal Medical Trust (Regd.) and Anr. Vs. Union of India and Anr.*

9.1 It was also contended by Mr. Bhasin that clause 8(3)(1)(b) of 2010 Regulations was, in any event, not applicable to the instant case. The learned counsel submitted that the permission sought by the petitioner to admit 150 students in the academic year 2015-2016, would, in effect, if granted, relate to the third batch of students as after 2008-2009 when the first batch was admitted, and thereafter in the academic year 2009-2010 when the second batch was admitted, the ACS Medical College had not carried out any admissions. According to Mr Bhasin, if at all, Regulation

8(3)(1)(a) would be applicable and not Regulation 8(3)(1)(b) as sought to be contended by MCI

9.2 Mr. Bhasin further submitted that the very fact in the letters of 11.05.2015 and 14.07.2015 of the MCI, there is an exhortation to the effect that the petitioner should seek compliance of the deficiencies highlighted shows that the process of verification is on and has not been closed contrary to the argument of the MCI's counsel in court. Mr. Bhasin in support of his contentions, in addition to the judgments referred to above, has relied upon the following judgments and orders :-

- (i). Priyadarshini Dental College and Hospital Vs. Union of India, (2011) 4 SCC 623***
- (ii). Judgment dated 01.07.2015, passed by the High Court of Madhya Pradesh, in WP(C) 7521/2015, in the case titled : RKDF Medical College Hospital and Research Centre Vs. UOI and Anr.***
- (iii). Order dated 08.09.2015, passed by the Supreme Court in SLP(C) No.19513/2015, in the case titled : MCI Vs. RKDF Medical College Hospital and Research Centre and Ors.***
- (iv). Judgment dated 05.08.2015, passed in WP(C) 6699/2015, in the case titled : Career Institute of Medical Sciences and Hospitals and Anr. Vs. UOI and Anr.***
- (v). Order dated 24.08.2018, passed by the Supreme Court in SLP(C) Nos.23278-23279/2015, in the case titled : MCI Vs. Career Institute of Medical Sciences and Hospital and Ors.***
- (vi). Order dated 02.07.2015 passed by the Supreme Court in SLP(C) No.16556-16557/2015, in the case titled: Shree Chhatrapati Shivaji Education Society and Anr. Vs. UOI and Anr.***
- (vii). Judgment dated 13.08.2015, passed in WP(C) No.7101/2015, in the case titled : Medicity Institute of Medical Sciences (MIMS) and Anr. Vs. UOI and Anr.***

10. Mr. Singh, on the other hand, has said that the deficiencies pointed out by the MCI, in the report dated 11.05.2015, in effect, are of such nature that they cannot be cured in the short span of time, which is available to the petitioner. It is the learned counsel's submission that since the petitioner's case falls within the ambit of Regulation 8(3)(1)(b), no further opportunity can be given to the petitioner for rectification of deficiencies pointed out in the report dated 11.05.2015.

10.1 In this behalf, Mr. Singh, laid stress on the findings noted in the 11.05.2015 report of the MCI which, inter alia, is indicative of the fact that the deficiency qua faculty is 22% while deficiency qua residents is, 59.15%. Besides these two major deficiencies, it also highlights the fact that bed occupancy is less than 70%. In other words, according to the learned counsel since deficiency in teaching faculty and / or residents was, more than 20%, and /or the bed occupancy was less than 70%, the ACS Medical College could not be considered for renewal of permission qua the academic year 2015-2016. In support of his submissions, the learned senior counsel relied upon the judgment dated 28.05.2015, passed by a Division Bench of this court in **WP(C) 5041/2015**, titled : ***Shree Chhatrapati Shivaji Education Society and Anr. Vs. Union of India and Anr.*** Besides this judgment, reliance is also placed by the MCI on the following judgments and orders :-

(i). Order dated 10.08.2015, passed in SLP(C) No.22472/2014, titled : Medical Council of India Vs. Subharti Medical College Meerut.

(ii). Judgment dated 31.08.2015, passed in Padamashree Dr. D.Y. Patil Medical College Vs. Medical Council of India and Anr.

(iii). Order dated 02.09.2015, passed in SLP (C) No.16258-59/2015, titled Medical Council of India Vs. Akash Education and Development Trust and Ors.

(iv). Order dated 02.09.2015, passed in SLP (C) 14880/2015, titled : Medical Council of India Vs. AI Millat Foundation Trust and Ors.

(v). Order dated 03.09.2015, passed in SLP (C) NO.22472/2014, titled : Medical Council of India Vs. Subharti Medical College, Meerut.

(vi). Judgment dated 03.09.2015, passed in Medical Council of India Vs. Subharti Medical College Meerut.

(vii). Order dated 04.09.2015, passed in SLP (C) No.24081/2015, titled : Medical Council of India Vs. Mala Reddy Institute of Medical Sciences and Ors.

(viii). Judgment dated 01.09.2015, passed in the case titled : Kanachur Islamic Education Trust (R) Vs. The Ministry of Health and Family Welfare and Anr.

(ix). Orders dated 01.09.2015 and 02.09.2015, passed in the case titled: Saraswati Medical College vs. Union of India and Anr.

REASONS

11. Having heard the learned counsel for the parties and perused the record, according to me, what was emerged, is as follows :-

(i). The petitioner has been given permission to continue as a deemed university vide notification dated 25.09.2014 issued by the MHRD from “2014-2015 batch onwards”.

(ii). The first batch of the students for the academic year 2008-2009 have already passed out.

(iii). In respect of 150 students admitted to MBBS course in 2008-2009, UOI / MHWF issued a notification dated 01.10.2013 whereby, the medical qualification accorded to them by the ACS Medical College, under the ambit of the petitioner, was recognized.

(iv). Pursuant to the judgment of the Supreme Court dated 11.02.2015, rendered in CA No.1757-1759/2015, students admitted in the academic year 2009-2010 have taken their exam, albeit under the aegis of Rajiv Gandhi University Health Sciences, Bengaluru.

(v). By virtue of the very same judgment dated 11.02.2015 of the Supreme Court, two inspections were held. The first inspection was held by the assessors of the MCI on 18th and 19th March, 2015 while, the second inspection was held by the J.I. Team on 10th and 11th April, 2015. In respect of the first inspection, a report dated 01.04.2015 was generated whereas, in respect of the second inspection, report dated 11.05.2015 was issued by the MCI.

(vi). There is a wide variation in the deficiencies found in the two reports, dated 01.04.2015 and 11.05.2015. The petitioner has, admittedly, filed compliance report with the MCI, dated 27.04.2015 and 28.05.2015 whereupon, the MCI has sent its response dated 14.07.2015.

(vii). All three reports dated 01.04.2015, 11.05.2015 and 14th July, 2015, end with a note that the petitioner could approach the MCI, within the stipulated time span, with necessary rectifications of the deficiencies

pointed out. In respect of the first two reports, the time allotted for this purpose is one (1) month whereas, in the third report, the petitioner has been given 15 days time.

(viii) In MCI's letter dated 14.07.2015, it is noted that there is dissatisfaction with respect to the following points : 1(a) and (b), 5, 6, 10, 17-7(i), 7(ii), 7(iii), 7(vii) and 7(ix). These unliquidated deficiencies emerge from report dated 11.05.2015. The report dated 11.05.2015 was generated pursuant to J.I. Team inspection, which was in turn, focussed on whether or not renewal permission ought to be given to ACS Medical College for academic year 2015-2016.

(ix) The petitioner, as required by the MCI, has submitted its compliance report dated 22.07.2015 to the MCI.

(x). The MCI, since then, has not carried out, any compliance verification, because of which the petitioner first approached the Supreme Court and after having withdrawn its writ petition, as indicated above, approached this court, in August 2015.

11.1 The aforesaid would show that not only was there a wide variation in the reports submitted by the MCI dated 01.04.2015 and 11.05.2015, there is also a narrowing of the number of deficiencies. This fact is evident on perusal of communication issued 14.07.2015 issued by the MCI. As to whether or not the deficiencies pointed out in the communication dated 14.07.2015, would result in denial of permission to the petitioner with regard to its request to admit students to the academic year 2015-2016 is concerned, can only be known after a compliance verification exercise is

carried out, by the MCI. In that sense, the reliance by Mr. Singh, on the deficiencies with regard to faculty and / or residents, as adverted to in the report dated 11.05.2015, may not be appropriate till such time a compliance verification is carried out. Furthermore, as indicated above, in each of the three reports generated by the MCI, it has itself, called upon the petitioner to submit a compliance report, within a given time span.

11.2 The argument of Mr. Singh, in this behalf, that leeway given to the petitioner to submit its compliance report, is only for the purposes of keeping the issue of recognition open, may not be wholly correct as, the period within which these reports were required to be submitted, is extremely short. As a matter of fact, in the last report dated 14.07.2015, the MCI gave only 15 days time to the petitioner to submit a compliance report. Even if, I were to accept, for the moment, the stand taken by the MCI, in this behalf, what cannot be lost sight of, which is a point raised by the petitioner, is that in the first year of admission, only non-clinical subjects, such as, Anatomy, Physiology and Biochemistry are taught. The students for 2008-2009 batch, have already passed out. The students for the batch, 2009-2010 would have also gone through the first year course. Concededly, UOI / MHFW has recognized the degree issued by the petitioner to the batch of students, who were admitted to 2008-2009 course. If, the stand taken by the MCI is accepted, the logical conclusion one would reach is, that ACS Medical College did not even have the wherewithal which includes infrastructural facilities, equipment, clinical material and faculty to undertake even the first year MBBS course.

11.3 Mr. Singh, in the course of his arguments, did convey that augmentation of facilities is, an on-going process and therefore, till an institution reaches the prescribed level, full recognition is kept in abeyance. Therefore, one would gather from submissions made on behalf of the MCI that the petitioner is not ripe as yet, for full recognition; though I must indicate that the petitioner contests this position. However, would it follow from the same that the ACS Medical College is not in a position to admit students in the academic year 2015-2016? This aspect has a factual connotation. It is not the case of the MCI before me, that there has been a degradation of the infrastructural facilities which were available when the first batch of students was admitted. In other words, ACS Medical College would not be in a position to impart medical education and professional skill of a level which should be available to a first year student. If that is the position, then, the MCI has enough powers under the IMC Act to step in and take corrective measures. It should in those circumstances perhaps recommend that ACS Medical College should be closed down. However, that is not the stand MCI before me. Understandably so, as the assets created cannot perhaps be allowed to go waste.

11.4 The argument of Mr. Singh, based on the judgment of the Division Bench, in the *Shree Chhatrapati Shivaji's* case, to my mind is untenable for two reasons. First, on facts, which is, that the impugned communication issued by the MCI in that case did not make any provision for submission of compliance report, by the concerned institution. At least, that fact is not revealed on a reading of the judgement. Second, which is, an aspect which touches upon the issue of law, is that, in *Shree Chhatrapati Shivaji's* case, the judgment of the Supreme Court in the case

of *Swamy Devi Dayal* was not brought to the notice of the Division Bench. On the aspect of adherence to the principles of natural justice, the Supreme Court made pertinent observations in paragraph 13 to 15. In sum, after quoting precedents of its own court, which included the judgment in the case of *A.K. Kraipak Vs. Union of India*, (1969) 12 SCC 262 and *Swadeshi Cotton Mills Vs. Union of India*, (1981) 1 SCC 664, the Supreme Court concluded that unless a statutory provision specifically or by necessary implication, excludes the application of principles of natural justice, it would generally be read into the provisions of the statute, particularly when such an order results in adverse civil consequences for the affected party. The court went on to state that even in the absence of a specific provision of giving a hearing, hearing is required to be given in such cases unless specifically excluded by a statutory provision. The court applied the proviso to sub-section (4) to Section 10A of the IMC Act, to the permissions for “*renewal*” as well by liberally construing the provisions of the said Section. In the facts of the said case, the court categorically stated that Section 10A required the concerned authorities (in that case, the Dental Council of India and the Central Government) to follow the principles of natural justice at two stages. In the first stage, the principles of natural justice were required to be followed by the DCI upon deficiencies being discovered while, examining the facilities in the concerned institute, and thereafter, at the second stage, by the Central Government before passing any adverse orders; being the final administrative authority vested with powers to pass orders qua such like permissions.

11.5 In this context, reference may be had to the following paragraphs obtaining in *Swamy Devi Dayal*'s case of the judgment :-

22. We, accordingly, sum up the legal position, touching upon the issue, on the interpretation of Section 10A(4) of the Act, as below:

22.1 Section 10A applies to the cases of renewal of permission as well;

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 case Scheme it 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.

23. As in the present case, since no such opportunity of being heard the requirement of proviso to Sub-section (4) of Section 10A of the Act was not afforded to the Petitioner, the decision dated 30th March 2013 of the Central Government warrants to be set aside on this ground alone.

24. Notwithstanding the aforesaid discussion clarifying the position in law on this aspect which goes in favour of the Petitioner, other circumstances appearing in this case desist us from giving the relief to the Petitioner that is claimed by it in so far academic session 2013-2014 is concerned. The effect of the aforesaid view taken by us would be to set aside the orders dated 30th March 2013 passed by the Central Government rejecting the request of renewal. However, from that it would not automatically follow that direction can be issued to the Central Government to accord such a permission. This Court could only remit the case to the Central Government to pass appropriate orders after giving hearing to the Petitioner. However, it is too late for the Central Government to re-examine the issue for the current academic session. Fact remains that as per the report of the DCI, there are deficiencies. Deficiencies are not limited to the number of minor and major surgeries which are required to be performed by a College for second renewal. The argument of the Petitioner that while calculating the number of surgeries, both PG and UG surgeries are to be taken into consideration was countered by Mr. Rakesh Khanna, learned ASG. This is, therefore, an aspect which the Central Government is supposed to examine. However, there are other deficiencies mentioned by the DCI also in its report.

25. With respect to Oral Scheme the DCI found the following deficiencies:

(i) Clinical training is not upto the mark.

(ii) Back volumes are not available for last ten years.

(vi) No. of cases operated in GA and LA are inadequate.

26. As far as Ortho Scheme is concerned, the deficiencies noted in the report of DCI are as follows:

(i) University affiliation letter dated 27.3.2013 from Pt. B.D. Sharma University states that the college does not comply for the removal of deficiencies.

(ii) There is deficiency of number of journals.

(iii) Irregular supply of journals.

(iv) Back volumes are available only from 2011.

(v) There is deficiency of clinical material.

(vi) Inspectors have pointed out that the clinical material in the specialty and the OPB are not tallying.

27. As per DCI report, deficiency in the Laboratory maintained by the Petitioner was also found in respect of the specialties of Oral scheme. It is stated by the DCI that the Dental Institutions are supposed to maintain the Library at two levels. One is called a Central Library which is mainly maintained by UG level and other is maintained by PG in each and every specialty department. The DCI inspected each specialty and report is submitted by the Inspector in respect of each specialty. The deficiency has been pointed out in respect of the specialty of Oral stream that the Petitioner does not have the back volumes of journals for the last 10 years. Thus, DCI reported that despite repeated inspections, the deficiencies have been found. In respect of Ortho scheme as well similar deficiencies are pointed out. Therefore, this Court cannot issue any mandamus straightaway and the Petitioner is required to give its satisfactory explanation qua the aforesaid deficiencies to the Central Government. However, the time has run out in so far current year is concerned. The session in respect of PG streams started on 15th July 2013. The necessary admissions have already been given to the students in different

colleges. On remitting the matter, some time will have to be given to the Central Government as well for taking a fresh decision. If that is also taken into account, by the time decision is taken, the present academic session would have progressed significantly. This Court in number of cases highlighted the importance of the cut off date for starting of courses impressing upon that such deadline should not be extended. (See: *Priya Gupta v. State of Chhattisgarh* (2012) 7 SCC 433 and *Maa Vaishno Devi Mahila Mahavidyalaya v. State of U.P.* (2013) 2 SCC 617)...”

11.6 Furthermore, in *Shree Chhatrapati Shivaji*’s case, the Supreme Court has admitted the special leave petition (SLP) vide order dated 02.07.2015. This fact, I am bringing to fore as great emphasis was placed by the MCI’s counsel on the said judgment. The submission would have had weight, but for what is noted hereafter especially with regard to the view of another Division Bench, in a latter case. Continuing with the narrative, by the said order (i.e. order dated 02.07.2015), the Supreme Court has further directed the MCI to inspect the concerned college and submit the report, in a sealed cover. Judgment of the Division Bench in *Shree Chhatrapati Shivaji*’s case, however, has not been stayed. Another Division Bench of this court, as indicated above, in the case of *Career Institute*’s case, distinguished the Division Bench’s judgment in *Shree Chhatrapati Shivaji*’s case by noting that the judgment of the Supreme Court in *Swamy Devi Dayal*’s case was not cited, before it. The observations in paragraph 20 of the judgment, which reads as follows, being pertinent, are extracted hereinafter :-

“.....20. Admittedly, the decision of the Supreme Court in *Swami Devi Dayal Hospital and Dental College (supra)* was not cited before the Division Bench and the above conclusion in *Chhatrapati Shivaji (supra)* was arrived at without taking

note of the ratio laid down therein with regard to the adherence to the principles of natural justice under Section 10A(4) of the Act in the event the Central Government proposes to disapprove the scheme. Though there was no reference to a provision similar to Regulation 8(3)(1) of the Regulations, having regard to the settled legal position that statutory Regulations cannot be in conflict with the provisions of the parent Act, it appears to us that the ratio laid down in *Swami Devi Dayal Hospital and Dental College (supra)* applies to all cases of rejection including rejection on application of proviso (a) to (d) of Regulation 8(3)(1)...”

(emphasis is mine)

11.7 The Division Bench thus, in *Career Institute*’s case directed fresh inspection for verification of compliance report.

11.8 Against the judgment in *Career Institute*, an SLP was filed, which was, however, dismissed by the Supreme Court vide order dated 24.08.2015, passed in SLP No.23278-23279/2015. The Supreme Court, as a matter of fact, while declining to entertain the SLP, granted three weeks to MCI to comply with the interim directions of verification issued by the Division Bench of this court. I may only indicate that I have been informed by the counsel for the MCI that the judgments in *Chhatrapati Shivaji* and *Career Institute* have been referred to a larger bench. There is, however, no stay on the operation of the judgment in *Career Institute*’s case.

11.9 Therefore, in the context of the ratio of the judgment delivered in *Swamy Devi Dayal*’s case, it cannot be argued that the principles of natural justice need not read into clause 8(3)(1)(a) to (d). There is, in fact, no express exclusion of either personal hearing or verification of the facts as

articulated in the compliance report. What clause 8(3)(1)(a) and (b) provide for, is that, if the deficiency relating to teaching faculty and / or residents, as also in respect of bed occupancy, is found to be beyond the required standard, then, renewal permission cannot be considered, for that particular academic year. It does not, to my mind, prevent the MCI from examining the claims of institutions that the deficiencies, as reported, with regard to availability of faculty, residents, or even bed occupancy, were not accurate or have been removed/ liquidated since the time the inspection took place.

12. I must, at this stage, deal with a submission raised on behalf of MCI that once deficiencies with regard to teaching faculty and/or residents or bed occupancy is found to be beyond the prescribed parameters, then no compliance verification is required to be conducted. In this behalf, the MCI, as indicated above, has sought to place reliance on 2010 regulation and, in particular, regulation 8(3)(1)(b). For the sake of convenience, the relevant part of the said regulation is extracted hereinafter:

“....8 (3)(1). The permission to establish a medical college and admit students may be granted initially for a period of one year and may be renewed on yearly basis subject to verification of the achievements of annual targets. It shall be the responsibility of the person to apply to the Medical Council of India for purpose of renewal six months prior to the expiry of the initial permission. This process of renewal of permission will continue 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. Further admissions shall not be made at any stage unless the requirements of the Council are fulfilled. The Central Government may at any stage convey the

deficiencies to the applicant and provide him an opportunity and time to rectify the deficiencies.

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.

(c) Colleges which are already recognized for award of M.B.B.S. degree and/or running Postgraduate Courses:

If it is observed during any regular inspection of the institute that the deficiency of teaching faculty and/or Residents is more than 10% and/or bed occupancy is < 80 %, such an institute will not be considered for processing applications for postgraduate courses in that Academic Year and will be issued show cause notices as to why the recommendation for withdrawal of recognition of the courses run by that institute should not be made for Undergraduate and Postgraduate courses which are 16 recognized u/s 11(2) of the IMC Act, 1956 along with direction of stoppage of admissions in permitted Postgraduate courses.

(d) Colleges which are found to have employed teachers with faked / forged documents:

If it is observed that any institute is found to have employed a teacher with faked / forged documents and have submitted the Declaration Form of such a teacher, such an institute will not be considered for renewal of permission / recognition for award of M.B.B.S. degree / processing the applications for postgraduate courses for two Academic Years – i.e. that Academic Year and the next Academic Year also. However, the office of the Council shall ensure that such inspections are not carried out at least 3 days before upto 3 days after important religious and festival holidays declared by the Central/State Govt.

(2) The recognition so granted to an Undergraduate Course for award of MBBS degree shall be for a maximum period of 5 years, upon which it shall have to be renewed.

(3) The procedure for ‘Renewal’ of recognition shall be same as applicable for the award of recognition.

(4) Failure to seek timely renewal of recognition as required in sub-clause (a) supra shall invariably result in stoppage of admissions to the concerned Undergraduate Course of MBBS at the said institute.....”

12.1 A close perusal of regulation 8(3)(1) would show that it contemplates permission for grant of establishing a medical college, and for that purpose, initially permission may be granted for one year and, thereafter, it may be renewed on yearly basis subject to verification of the achievement of the annual targets.

12.2 The person seeking such permission for renewal is required to apply to the MCI, at least six months prior to the expiry of the initial permission. The process of “renewal of permission” is required to continue till establishment of the medical college and the expansion of hospital facilities are completed and, a formal recognition is granted to the concerned medical college.

12.3 Admissions, however, by the medical college, at any stage, are dependent on the fulfilment of requirements stipulated by MCI.

12.4 The Central Government, which is the final authority, vested with the power to grant permissions, both for establishing a new college and for issuance of renewal permissions, is empowered to convey deficiency to an applicant “*at any stage*” and thereupon, provide such an applicant an opportunity and time to rectify the deficiencies.

12.5 There are four provisos to the main regulation 8(3)(1). Provisos (a) and (b) relate to undergraduate course in MBBS. Proviso (a), broadly, provides that if upon, “*regular inspection*” of the concerned institute, deficiency of teaching faculty and/or residence is more than 30% and/or the bed occupancy is less than 60% then, such an, institute will not be “*considered*” for renewal of permission in that academic year.

12.6 The said proviso, however, applies to colleges seeking renewal permission upto the second renewal stage i.e. involved with admission of the third batch. Similarly, proviso (b), which pertains to a college seeking third renewal i.e. concerning admission of the fourth batch – provides that if, upon “*regular inspection*” deficiency of the institute in relation to teaching faculty and/or residents is more than 20% and/or bed occupancy is less than 70%, such institute, will not be considered for renewal of permission in that academic year. Proviso (c) applies to post-graduate course, while proviso (d) applies to an institute which employs teachers by taking recourse to fake or forged documents.

12.7 A conjoint and harmonious reading of the regulation would show that in the main part of regulation 8(3)(1), the Central Government is empowered to convey the deficiencies to the applicant i.e. the concerned institute/ college “*at any stage*”, and that, thereafter, it is obliged to provide opportunity to rectify the deficiencies. Since, the Central Government, does not have the necessary wherewithal it relies upon the expertise of the assessors employed by the MCI. The main part of regulation 8(3)(1) also recognizes the fact that the grant of renewal of permission is a process in continuum, which progresses till such time formal recognition is granted to the concerned institute/ medical college. The provisos kick-in only when on a regular inspection deficiencies of the kind provided therein are found, if such deficiencies remain then, the concerned institute/ medical college, cannot be considered for renewal of permission in that particular academic year.

12.8 What does not follow though that the power of the Central Government to convey deficiencies, and thereupon, to give an opportunity for rectification of the same, is taken away. If, such an interpretation is given to the provisos then, it will take away in entirety the power conferred on the Central Government under the main provision. Under the frame work so established both under the IMC Act and the Regulations, MCI is only a delegatee of the power of recognition and / or renewal which ultimately vests in the Central Government. Furthermore, if, the interpretation as sought to be given by the MCI to proviso (a) and (b) of regulation 8(3)(1) is given, it will be contrary to the provisions of Section 10A of the IMC Act, which itself contemplates grant of opportunity to the concerned institute/ college at two stages; an aspect which I have already

discussed hereinabove. The MCI, has cited several judgements to contend to the contrary. However, some of these judgements either overlook the principles set forth in *Swamy Devi Dayal's* case or, are those, which did consider the ratio of the judgement in *Swamy Devi Dayal's* case in its correct perspective and sought to distinguish it. The latter approach may no longer, hold good, to my mind, in view of the judgement of a Bench of three-Judges of the Supreme Court in *Royal Medical Trust's* case. The relevant observations, whereby the Supreme Court in *Royal Medical Trust's* case reiterated the view taken in *Swamy Devi Dayal's* case, are set out hereinbelow to emphasise this aspect of the matter :

“.... 24. The Scheme under Section 10A, with due regard to the factors referred to in sub-section (7), may contemplate putting in place necessary facilities at a later point of time. Paragraphs 7(b) and 8(3) of the Regulations also speak of defining and achieving annual targets respectively. Naturally, it needs to be assessed and verified whether such annual targets are achieved or not. The timely assessment is integral to the Scheme itself and the MCI and the Central Government are therefore obliged and required to conduct renewal inspections every year so as to ensure that the establishment of the Medical College and expansion of hospital facilities are completed in time and in accordance with the Scheme. In Swamy Devi Dayal it was observed that the provision requiring such opportunity being given to the applicant applies not only at the initial stage when permission for establishment of new College is under consideration but must apply even in cases of subsequent **renewal** of such permission. In our view, the ratio in Swamy Devi Dayal must apply as regards cases of renewal under the Act.

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

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

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

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 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.

(emphasis is mine)

12.9 As a matter of fact, a Division Bench of the Madhya Pradesh High Court in ***RKDF Medical College's*** case has dealt with this very argument raised by MCI. As indicated above, the Supreme Court, in a SLP filed by MCI (SLP No. 19513/2015), in that case, has directed inspection of RKDF Medical College and submission of the report in a sealed cover. There is, I am told, no stay on the operation of the judgement of the Madhya Pradesh High Court.

13. I may indicate that, at the fag end of the submissions, advanced on behalf of the MCI, a compilation of following interim orders and judgements was handed over to the court :-

Order dated 10.08.2015, passed in SLP No. 22472/2014, titled: ***MCI vs Subharti Medical College Meerut***; judgement dated 31.08.2015, passed in SLP(C) NO. 15043/2015, titled: ***Padamsshree Dr. D.Y. Patil Medical College vs Medical Council of India & Anr***; order dated 02.09.2015, passed in SLP(C) No. 16258-59/2015, titled: ***MCI vs Akash Education &***

Development Trust & Ors.; order dated 02.09.2015, passed in SLP No. 14880/2015, titled: *MCI vs Al Millat Foundation Trust & Ors.*; judgement dated 03.09.2015 in *MCI vs Subharti Medical College Meerut*; order dated 04.09.2015, passed in SLP(C) No. 24081/2015, titled: *MCI vs Mala Reddy Institute of Medical Sciences & Ors.*; judgement dated 01.09.2015, passed in WP(C) No. 7128/2015, titled: *Kanachur Islamic Education Trust vs Ministry of Health & Family Welfare & Anr.*; orders dated 01.09.2015 & 02.09.2015, passed in WP(C) 8385/2015, titled: *Saraswati Medical College vs UOI & Anr.*

13.1 To my mind, the benchmark is presently set by the judgment of the Supreme Court in *Royal Medical Trust* case. Therefore, an elaborate discussion qua other judgments and / or orders is not required except those which are discussed hereafter.

13.2 Amongst the judgement cited, one of the judgements relied upon is a judgement of the Supreme Court in *Padamshree Dr. D.Y. Patil Medical College* case. This was a judgment which was delivered after the judgment in *Royal Medical Trust* was pronounced. A perusal of paragraph 22 of the judgement of the Supreme Court in the said case, establishes that the court has reiterated the principle set forth in the *Royal Medical Trust* case. The SLP, in this case, was dismissed only on the ground that the statutory time schedule was already over, and that, it would not be appropriate to take a decision in that behalf in the current academic year 2015-16.

13.3 This was a case where the petitioner-institute had made an application for increase of intake of capacity for the MBBS course from 150 to 250, for the academic year 2015-2016. The said application was made on 30.08.2014. However, the application was not accompanied by an

essentiality certificate. Since, the essentiality certificate was received from the Government of Maharashtra, on 03.09.2014, it was submitted to the Central Government only on 05.09.2014. The Central Government returned the application on the ground that the essentiality certificate and the consent of affiliation was not submitted with the proposal dated 01.09.2014. As the last date for submitting duly completed application, was 31.08.2014, the petitioner-institute was advised that it should submit a fresh application for the succeeding academic year i.e. academic year 2016-2017.

13.4 The Single Judge, in a writ petition filed by the petitioner-institute, granted relief, while the Division Bench reversed the decision on the ground since the prescribed time was over, the application, could not be considered for academic year 2015-2016.

13.5 Quite clearly, on facts, the judgement of the Supreme Court is distinguishable, as no such plea is taken by MCI in this case.

13.6 The judgement of a Single Judge of this court, passed in ***Kanachur Islamic Education Trust*** may also not help the cause of MCI as it pertained to a challenge laid to rejection of an application for establishment of a new medical college. There was, therefore, quite clearly, no discussion on the scope and ambit of regulation 8(3)(1)(a) and (1)(b), which relates to renewal permissions granted by MCI. Furthermore, in this case a SLP has been preferred by Kanachur Islamic Education Trust, which is numbered as : SLP 2565/2015. Vide order dated 09.09.2015, the Supreme Court has issued notice in the SLP.

13.7 Furthermore, the judgement of the Division Bench of this court in the case of ***Career Institute of Medical College & Hospitals & ANr. Vs UOI & Anr.*** , does not seem to have been brought to the notice of the learned single Judge in ***Kanachur Islamic Education Trust case***.

13.8 In so far as the judgement dated 20.08.2015, passed in WP(C) No. 594/2015, titled: ***Jamia Hamdard (Deemed) University vs Union of India***, is concerned, it clearly could not have dealt with the judgement of the Supreme Court in ***Royal Medical Trust*** case, as it was pronounced on the same date i.e. 20.08.2015. This aspect is referred to in paragraph 10 of the judgement in the case of ***Kanachur Islamic Education Trust*** case.

14. On facts, the position which obtains in this case is as follows:

14.1 Pursuant to the judgement of the Supreme Court dated 11.02.2015, MCI conducted, as indicated above, an inspection on 18th and 19th March, 2015, in respect of recognition/ approval of ACS Medical College. In respect of the same, a compliance report was filed by ACS Medical College on 27.04.2015. Concededly, the deficiencies pointed out in the report dated 01.04.2015 were comparatively of a minor nature.

14.2 Pursuant to the JI team carrying out an inspection on 10th and 11th April, 2015, a report dated 11.05.2015 was generated by MCI, which according to MCI, pertained to ascertainment of the fact as to whether requisite physical and teaching facility were in place in ACS Medical college for grant of renewal permission in respect of academic year 2015-2016. Pertinently, after noting the deficiencies, the MCI not only adverted to regulation 8(3)(1)(b), but also, called upon the petitioner to submit a

compliance report within one month to consider its “*recognition*” under Section 11(2) of the IMC Act. This approach could not be understood as, quite clearly, during the course of the argument the counsel for the MCI took the stand that the inspection carried out on 18th and 19th March, 2015, which resulted in generation of report dated 01.04.2015 related to the aspect of recognition, and that, the subsequent report dated 11.05.2015 related to whether or not renewal permission for academic year 2015-2016 ought to be granted to the petitioner.

14.3 Pursuant to the report of 11.05.2015, the petitioner filed its compliance report dated 28.05.2015, which clearly addressed issues raised in the recognition inspection (conducted on 18th and 19th March, 2015) as also, those which were brought to fore in the joint inspection (conducted on 10th and 11th April, 2015).

14.4 This communication was followed by a communication dated 29.05.2015 addressed to UOI/ MHFW, where opportunity for personal hearing was sought. In response to the letter dated 28.05.2015, MCI issued a response dated 14.07.2015, whereby it narrowed down the deficiencies to the following points:

14.4 (i). Point No. 1(a) & (b), 5, 6, 10 & 17-7(i), 7(ii), 7(iii), 7(vii) & 7(ix).

14.5 It is not disputed before me that the outstanding deficiencies, which are referred to in MCI’s letter dated 14.07.2015, are those which are contained in MCI’s report dated 11.05.2015, which deals with purported deficiencies found on joint inspection by the JI team for ascertainment as to whether or not renewal permission for academic year 2015-2016 ought

to be given to the petitioner. Therefore, in these circumstances, the argument advanced on behalf of MCI that the deficiencies pointed out in the 11.05.2015 report related only to the aspect of recognition and that even if they are liquidated, the petitioner's case for renewal of permission for academic year 2015-2016 will not be considered, is not understood. This is especially so as there are no two reports generated by MCI qua deficiencies, which are attracted to recognition of ACS Medical College and the other, which pertain to grant of renewal permission to the said college for academic year 2015-2016. Since, MCI itself granted fifteen (15) days leeway for compliance, I cannot fathom as to how the MCI can take a stand that it will not carry out a compliance verification as the deficiencies found in the report dated 11.05.2015 are beyond the parameters prescribed in regulation 8(3)(1)(b).

14.6 In the written submissions filed, an argument has been taken that the deadline for the grant of renewal permission expired on 15th July of this year. Pertinently, this was not an argument taken when arguments were opened on behalf of the MCI. If this argument was available to the MCI, it ought to have been raised as an preliminary objection. Be that as it may, in my view, this argument is an argument which cannot be entertained, at this stage, as the facts set out above would show that on 11.05.2015 a month's time was granted to the petitioner to file a compliance report. The petitioner did the needful by filing a compliance report well within the prescribed period; despite which no compliance verification has been carried out. The MCI has, as indicated above, only generated a report dated 14.07.2015.

14.7 The decision of the Central Government dated 15.06.2015, which has been impugned is based on the recommendation and the report of the MCI dated 11.05.2015. Since, in my view, the failure on the part of the MCI to carry out compliance verification is bad in law, the impugned decision of the Central Government, will also stand vitiated.

14.8 There is no gainsaying that the MCI is the expert in the field, which has the necessary wherewithal to report as to whether there are compliances. Institutions which do not come up to the prescribed standards, undoubtedly, create a difficult situation which results in professionals being turned-out, who are not equipped to deal with their patients. As the record would show MCI and the Central Government has enabled the setting up of the ACS Medical College by giving it the necessary permissions as a result of which, one batch of students has already passed out from the said institution. The MCI, therefore, needs to take a position as to whether or not the deficiencies pointed out, are of such egregious nature that ACS Medical College cannot undertake an MBBS course for academic year 2015-2016 in accordance with the prescribed standards. The fact that the deficiencies have got narrowed down, to what is indicated in the 14.07.2015 communication of MCI would demonstrate, at least, prima facie, that it is not a defunct institution. The communication also indicates that it is not as if, it is an open and shut case and therefore, no verification need be carried out. To my mind even in such cases principle of natural justice cannot be cast away. Principles of natural justice, as reiterated by this court, time and again, establish that a person is required to be heard as often it emerges after hearing is accorded to an aggrieved party, that what seemed like an open and shut case was,

actually, a case which deserved relief. The observations by a Division Bench of this court, vide judgment dated 19.12.2008, passed in **WP(C) 6974/2008**, titled: **Moser Baer India Vs. Additional Commissioner of Income Tax** (of which, I was a Member) has cited with approval, the observations of Megarry J. in **John Vs. Rees, (1969) 2 All. ER 274**, being apposite are extracted hereinbelow :-

“...In **John vs Rees, (1969) 2 All. ER 274**, Megarry J, best illustrates the point as to why it is important to give a personal hearing especially in such like matters. The relevant extract reads as follows:-

“It may be that there are some who would decry the importance which the courts attach to the observance of the rules of natural justice. “When something is obvious,” they may say, “why force everybody to go through the tiresome waste of time involved in framing charges and giving an opportunity to be heard? The result is obvious from the start.” Those who take this view do not, I think, do themselves justice. As everybody who has anything to do with the law well knows, the path of the law is strewn with examples of open and shut cases which, somehow, were of unanswerable charges which, in the end, were completely answered; of inexplicable conduct which was fully explained; of fixed and unalterable determinations that, by discussion, suffered a change. Nor are those with any knowledge of human nature who pause to think for a moment likely to underestimate the feelings of resentment of those who find that a decision against them has been made without their being afforded any opportunity to influence the course of events...”

15. Therefore, having regard to the aforesaid factual and legal position, obtaining in the present case, the following directions are issued:-

(i) The impugned communication dated 11.05.2015 of the MCI and that of the Central Government dated 15.06.2015, are set aside.

(ii) The MCI would carry out a compliance verification within one week from today. The manner of carrying out verification is left to the discretion of the MCI.

(iii) The report generated on the completion of the verification, and the recommendation of MCI in that behalf, will be transmitted by it, immediately thereafter, to the Central Government.

(iv) The Central Government, thereafter, in accordance with the provisions of the IMC Act, will take appropriate decision in the matter on the aspect of the petitioner's request for grant of permission to admit students to the MBBS course (having a maximum intake of 150 seats) for the academic year 2015-2016, qua its constituent i.e. ACS Medical College, within three days.

15.1 These time lines are set as, I am informed, that the entire exercise requires to be completed on or before 30.09.2015.

16. The petition and the pending application are disposed of, in the aforesaid terms, leaving parties to bear their own costs.

RAJIV SHAKDHER, J.

SEPTEMBER 17, 2015

yg/kk