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

Reserved on: 08.09.2015

Pronounced on: 21.09.2015

% LPA 589/2015

+ HIMALAYAN INSTITUTE OF
MEDICAL SCIENCES

.....Appellant

Through: Mr.Ajit K.Sinha, Sr. Adv. with
Mr.Sanjeev Agarwal, Mr.Ekansh
Agarwal and Mr.Deepak Saxena,
Advs.

Versus

UNION OF INDIA & ANR.

...Respondents

Through: Ms.Monika Arora, CGSC with
Mr.Sumit Rajput, G.P., Mr.Harsh
Ahuja and Ms.Amrita Sharma,
Advs. for R-1

Mr.T.Singhdev, Ms.Puja Sarkar
and Mr.Biakthansangi, Advs. for
R-2

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. The present appeal is filed seeking to impugn the order of the learned Single dated 11.08.2015. The brief facts which led to filing of the writ petition are that the appellant is a recognised Medical College in Dehradun. The appellant was started in the year 1995 to impart medical education and since 2002 the appellant institution is stated to have been

recognised for 100 seats of MBBS. In the year 2012, the appellant decided to apply for increase in the number of MBBS seats from 100 to 150. Upon recommendations of respondent No.2/The Medical Council of India, the appellant was permitted to increase the MBBS seats to 150 for the Academic Year 2013-14 and thereafter for the Academic Year 2014-15.

2. That accordingly as per The Indian Medical Council Act, 1956 (hereinafter referred to as 'The IMC' Act) read with Establishment of Medical College Regulation, 1999 including the amendment of 2010, (hereinafter referred to as the 'Regulations') the appellant applied for renewal for permission for admission of the 3rd batch of MBBS students against the increased intake of 150 seats for the Academic Year 2015-16. Pursuant to the said application of the appellant, respondent No.2 Medical Council of India (Hereinafter referred to as MCI) conducted inspections for the said purpose on 12th and 13th December 2014. The team which carried out the inspection noted certain deficiencies. Accordingly, a notice dated 21.01.2015 was issued to the appellant. The notice informed the appellant that the Executive Committee of MCI considered the Inspection Report dated 12th and 13th December 2014 and noted the various defects and decided to recommend to the Central Government not to renew the permission for admission to the third batch of MBBS students with an increased intake for the Academic Year 2015-16 and further decided to apply Clause 8(3)(1)(c) of Establishment of Medical College Regulation (Amendment) 2010 (Part-II) for withdrawal of recognition granted under Section 11 (2) of the IMC Act. Pursuant to the above notice sent by respondent No.2 Respondent No.1 granted a hearing

on 12.2.2015 under section 10A(4) of the IMC Act. Pursuant to the hearing on 12.02.2015 respondent No.1 wrote to respondent No.2 regarding 65 medical colleges including that of the appellant. The said communication recommended to respondent No.2 for “review” in the case of the appellant. It is further averred in the petition that respondent No.2 conducted another inspection on 22.05.2015. In the said inspection respondent No.2 found that the deficiencies noted earlier have been rectified. Hence, it is urged that the appellant pursuant to the fresh assessment report of respondent No.2, qualified for renewal of permission for the increased intake of 150 seats in the MBBS Course.

3. The compliance verification report of respondent No.2 was also placed before the Executive Committee of respondent No.2 on 4.6.2015 when the Executive Committee decided to revoke the notice dated 21.01.2015 issued earlier under Clause 8(3)(1)(c) of the Regulations. Thereafter a communication was sent to Union of India by MCI on 11.06.2015 to the said effect. It is further urged that despite the above facts and the fact that no deficiencies survived, respondent No.1 vide order that was impugned in the Writ Petition dated 15.6.2015 denied the permission for renewal.

4. Hence, the Writ Petition was filed seeking a Writ of Certiorari to quash the impugned order of respondent No.1 dated 15.6.2015. A Writ of Mandamus was also sought to direct respondent No.1 to issue a fresh order to consider the renewal of permission for the increase intake of 150 seats in the 3rd batch of MBBS course for the Academic session 2015-16 upon due consideration of letter dated 11.6.2015 of MCI and to also direct respondent No.1 to issue permission for the increased intake within

the stipulated time to enable the appellant to admit students for the Academic Session 2015-16.

5. By the impugned order the learned Single Judge noted the submission of the learned counsel for respondent No.2 that the second inspection carried out on 22.5.2015 by respondent No.2 was confined to the aspect of withdrawal of recognition granted to the appellant under section 11 (2) of the IMC Act and had nothing to do with the issue of increase in intake of the capacity of the appellant from 100 to 150 MBBS seats. The learned Single Judge also noted the judgment of the Division Bench of this Court in the case of *Shree Chhatrapati Shivaji Education Society vs. Union of India* in W.P.No.5041/2015 to further hold that proviso to Regulation 8(3)(1) bars reconsideration of the application for renewal of permission on finding of deficiencies mentioned therein. It further held that the Central Government in view of the said judgment which squarely applies to the facts of the present case could not have directed the respondent No.2 to reconsider the matter. The impugned order further concludes that the appellant while filing the Writ Petition failed to bring out the distinction between the proposal for withdrawal of recognition qua 100 seats for the MBBS programme and renewal of permission for increase in the intake of capacity of 150 students from 100; which distinction is clearly borne out from the documents on record. The impugned order also concludes that what was withdrawn by respondent No.2 vide its letter dated 4.6.2015 was the show cause notice issued earlier regarding recognition of 100 students and it had no bearing on the application for renewal of permission to admit additional 50 students. Hence, the writ petition was dismissed.

6. We have heard learned counsel for the parties and have gone through the record. Learned senior counsel appearing for the appellant relies upon the compliance verification assessment done by respondent No.2 on the re-inspection carried out on 22.05.2015 and the consequent communication of respondent No.2 dated 4.6.2015 to contend that on re-inspection respondent No.2 has observed that there is no deficiency surviving whatsoever. All the deficiencies noted in the earlier inspection dated 12th/13th December 2014 stand rectified. He submits that in these facts there was absolutely no reason for respondent No.1 to pass the impugned order dated 15.6.2015 declining renewal of permission for admission of the third batch for the Academic Year 2015-16 against the increased intake of 150 seats. He further submitted that the learned Single Judge has in the impugned order relied solely upon the judgment of the Division Bench of this court passed in ***Shree Chhatrapati Shivaji Education Society vs. Union of India (supra)*** which held that under Regulation 8(3)(1) of the Regulations in case any deficiencies are noticed, no opportunity to rectify the deficiencies need be given by respondent No.2. Reliance is placed on a subsequent judgment of the Division Bench of this High Court in W.P.(C) 6699/2015 titled as ***Career Institute of Medical Sciences and Hospitals vs. Union of India*** dated 05.08.2015 where this Bench had while considering the judgment in the case of ***Shree Chhatrapati Shivaji Education Society vs. Union of India (supra)*** stated that it requires further consideration on some of the larger issues which are stated in the said judgment. Hence, it is urged that the learned Single Judge has erroneously relied wholly on the judgment passed by the Division Bench of this court in the case of ***Shree***

Chhatrapati Shivaji Education Society vs. Union of India (supra).

7. Learned counsel appearing for respondent No.2 has, however, strenuously urged that the second inspection carried out by respondent No.2 on 22.5.2015 has nothing whatsoever to do with the application of the appellant for enhancement of intake from 100-150 seats in the MBBS course. He urges that the said inspection was carried out in connection with the notice issued under Clause 8(3)(1)(c) of the Regulations for revoking the recognition of the appellant college. He further submits that communication dated 4.6.2015 issued by respondent No.2 also categorically deals with revocation of the notice issued under the said clause of the regulations and does not deal with application for enhancement of 50 MBBS seats by the appellant. He also submitted that the petition is silent about the letter dated 01.04.2015 which was sent by respondent No.2 to respondent No.1. By the said letter, respondent No.2 relying upon the opinion of the learned Additional Solicitor General had opined that respondent No.2 is not under the statutory provisions bound to take any further steps pursuant to the first inspection carried out in the premises of the appellant regarding enhancement of medical seats from 100 to 150. Hence, he submits that the appellant is mixing up two different aspects and trying to create a needless confusion and the impugned order has been correctly passed by the learned Single Judge.

8. It may be necessary to first have a look at some of the correspondence that has taken place between respondents No.1 and 2. A perusal of the notice dated 21.01.2015 issued by respondent No. 2 shows that it notes about the inspection dated 12th/13th December, 2014 and notes the defects and then notes that the Executive Committee had

decided (a) to recommend to the Central Government to not renew the permission for admission of the 3rd batch for MBBS students against the increased intake from 100 to 150 and (b) in compliance of clause 8(3) (1) proviso (c) of the Regulations issue a show cause notice as to why recommendation for withdrawal of recognition be not made for the Undergraduate and Post Graduate courses which are recognised under section 11(2) of The IMC Act. The relevant portion of the said letter reads as follows:-

“In view of the above, the Executive Committee of the Council decided to recommend to the Central Govt. not to renew the permission for admission of 3rd Batch of MBBS students against the increased intake i.e. from 100-150 of Himalayan Institute of Medical Sciences, Dehradun under HIHT University, Dehradun u/s 10A of the IMC Act, 1956 for the academic year 2015-2016 and further decided to apply clause 8(3)(1)(c) of Establishment of Medical College Regulation (Amendment), 2010 (Part II), dated 16th April, 2010 which reads as under :-

8(3)(1).....

In view of above, it was decided not to consider the institute for processing applications for postgraduate courses in the current Academic year (i.e. 2015-16) and to issue show cause notice 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 recognized u/s 11(2) of the IMC Act, 1956 alongwith direction of stoppage of admissions in permitted postgraduate courses....”

9. Pursuant to the above communication of respondent No.2 dated

21.01.2015, respondent No.1 issued a notice for hearing dated 3.2.2015 for hearing on 12.2.2015 under section 10A(4) of the IMC Act. The relevant portion of the said notice reads as follows:-

“Subject: - Renewal of Permission for 3 Batch of 100 to 150 seats for the academic year 2015-16

Sir,

I am directed to enclose herewith MCI's letter No. MCI-37(1)(R1-123) (UG) /2014-Med./151164MCI-37(1)(R1-123)(UG)/2014-Med./151164 date 21.01.2015 on the subject mentioned above, whereby the council has recommended for disapproval of your under-graduate scheme for the academic year 2015-16.

2. In pursuance to the provisions contained in section 10(A)(4) of IMC Act, 1956, it has been decided to grant you hearing on 12.02.2015.”

10. Thereafter on 20.02.2015 pursuant to the hearing dated 12.2.2015 respondent No.1 has written to respondent No.2 recommending the case of the appellant for review. The subject of the said communication reads as follows:-

“Subject: Establishment of New Medical College/Increase of MBBS seats/Permission for Renewal of MBBS courses at existing Medical applicant/Medical Colleges where MCI has recommended for disapproval of schemes-reg.”

The recommendations pertain to several colleges. Qua the appellant the recommendation reads as follows:-

54	Himalayan Institute of Medical Sciences, Dehradun	Renewal	Recommended for review by MCI
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11. It is clear from a perusal of the notice for hearing and the aforesaid communication dated 20.02.2015 that Union of India/respondent No.1 was only dealing with the enhancement of the number of seats from 100 to 150 and was not in any manner dealing with the issue regarding withdrawal of recognition granted under Section 11(2) of the IMC Act under regulation 8(3)(1)(c).

12. Reference may also be had to a communication written by respondent No.2 to respondent No.1 dated 1.4.2015 to which there is no reference in the writ petition. By the said communication dated 1.4.2015 respondent No.2 responded to the request of respondent No.1 UOI dated 20.02.2015 for review of the case of the appellant. The said communication states the decision of the Executive Committee of respondent No.2 MCI which has reiterated the earlier decision not to renew permission for admission to the 3rd batch of MBBS against increased intake from 100 to 150 MBBS Seats of the appellant college and to issue show cause notice for withdrawal of recognition. The said finding was recorded on the opinion of the learned Additional Solicitor General dated 14.3.2015 which states that in case respondent No.2 has invoked regulation 8(3)(1)(a), 8(3)(1)(b) and 8(3)(1)(c) of the Regulations after an inspection by the assessors of respondent No.2, there is no statutory provision authorising respondent No.2 to process the same further.

13. It is the stand of respondent No.2 that the inspection carried out on 22.5.2015 had nothing whatsoever to do with the enhancement of the number of seats with the appellant college to 150 for the Academic Year

2015-16 but concerned the show cause notice issued regarding withdrawal of recognition and that the decision of respondent No.1 UOI dated 15.6.2015 rejecting the application of the appellant for enhancement of seats was pursuant to the said communication dated 1.4.2015 of respondent No.2 MCI.

14. What follows is that respondent No.2 MCI has dealt with the case based on the fact that there were two proceedings one regarding enhancement of seats and the second regarding withdrawal of recognition. The second inspection dated 22.5.2015 and the communication dated 4.6.2015 of MCI pertain only to withdrawal of recognition. Issue of enhancement of seats stood concluded by communication dated 1.4.2015 of MCI followed by letter dated 15.06.2015 of UOI.

15. However, respondent No.1 UOI has dealt only with the issue of enhanced seats. The notice inviting the appellant for a hearing on 12.2.2015 and subsequent communication dated 20.2.2015 show that the hearing pertained only to the application of the appellant for enhancing the number of seats.

16. We are not concerned with the needless confusion of one or two proceedings. These proceedings pertain to the scheme of the appellant for 3rd year for enhancement of MBBS seats to 150 from 100 for the year 2015-16. The fact of the matter is that in the inspection that was carried out on 22.05.2015 the deficiencies that were noted in the earlier inspection dated 12/13th December 2014 had been rectified by the appellant. In this context, the deficiencies that were pointed out in the first inspection on 12/13th December 2014 may first be noted. The

relevant portion of the communication dated 21.01.2015 sent by respondent No.2 reads as follows:-

“The Executive Committee of the Council considered the Council Assessors report (12th & 13th December, 2014) and noted the following:-

1. Shortage of Residents in 30.71% as detailed in report.
2. Central Library: It is not air-conditioned.
3. Workload of special investigations like Ba, IVP is NIL on day of assessment.
4. RHTC: It is very small and congested. There is no place for teaching. Separate blocks for accommodation of boys & girls are not available. Facilities for cooking a dining are not available. Specialists’ visits are not organized. Cold chain equipment is not available. Survey registers are not maintained. There are no activities under National health Programmes.
5. Other deficiencies as pointed out in the assessment report.”

17. On 22.05.2015 the second inspection took place. The relevant portion of the inspection report reads as follows:-

“Sr. No	Deficiencies reported from GOI/MCI	Remarks of the Assessors after the assessment
1	Shortage of Residents is 30.71%	Shortage of Residents is 0.95% Deficiency rectified.
2.	Central Library : it is not air-conditioned	Central Library is air-conditioned. Deficiency rectified.
3.	Workload of special investigation like Ba. IVP is NIL on the day of assessment.	Workload on special investigations like Ba. IVP is total 17 (OPD -10 and IPD -07) on the day of assessment i.e. 22/05/2015. Workload of MRI is 18 (OPD -13 and IPD -05). Deficiency rectified.
4.	RHTC: it is very	Deficiency rectified.

	small and congested. There is no place for teaching. Separate blocks for accommodation of boys & girls are not available. Facilities for cooking and dining are not available. Specialists' visits are not organized. Cold Chain equipment is not available. Survey registers are not maintained. There are no activities under National Health programs.	
5.	Other	-----

18. Hence, clearly there are no deficiencies now left.

19. In our opinion the stand of respondent No.2 that the inspection that took place on 22.05.2015 has no concern with the enhancement of seats sought by the appellant is in the facts and circumstances misplaced. The respondent No. 2 is taking a very pedantic stand. We may for a moment look at the observations of the Supreme Court in the case of ***Royal Medical Trust (Regd.) & Anr. vs. Union of India & Anr. dated 20.08.2015 in W.P.(C) 705/2014***. In para 27 the Supreme Court gave a Schedule. The relevant portion of the Schedule reads as follows:

“27.

(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.”

20. Hence, as per the aforesaid judgment of the Supreme Court, compliance could be accepted even without actual physical verification in certain facts and circumstances. In the present case, the facts show that the compliance has been reported in a inspection carried out by MCI. We see no reason why the appellant should be penalised on mere technicalities as to whether the inspection that was carried out on 22.05.2015 pertained to enhancement of seats as requested by the appellant or pertained to the show cause notice for withdrawal of the recognition granted under Section 11(2) of the IMC Act. The fact of the matter is that the deficiencies noted in the first inspection no longer exist. It will be highly unfair and unjust to ignore the findings recorded by the second inspection on a technical plea that the same was conducted by MCI only for the purpose of dealing with the issue of show cause notice for withdrawal of recognition and cannot be used for the scheme for

enhancement of seats.

21. We are also persuaded to accept the findings of the second inspection for another reason. Section 10A (4) of the IMC Act provides that before a scheme is disapproved, a reasonable opportunity of being heard shall be given to the person or the college concerned.

22. Section 10A(4) of IMC Act reads as follows:-

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

.....

(4) The Central Govt. may after considering the scheme and the recommendations of the Council under sub-section (3) and after obtaining, where necessary, such other particulars as may be considered necessary by it from the person or college concerned, and having regard to the factors referred to in sub-section (7), either approve (with such conditions, if any, as it may consider necessary) or disapprove the scheme, and any such approval shall be a permission under sub-section (1):

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

....”

23. The legal position that a hearing is to be granted before disapproval of any scheme is no longer res integra. In the latest judgment of the Supreme Court in the case of *Royal Medical Trust (Regd.) & Anr. vs. Union of India & Anr.* (supra), a Three-Judge Bench of the Supreme Court held as follows:-

“23.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

recognizes that before any adverse decision is taken as regards the Scheme, the applicant must be afforded reasonable opportunity. ...”

24. In the present case, the manner in which the hearing was granted by UOI renders the hearing completely nugatory. The notice for hearing pertains to the enhancement of seats sought by the appellant. Pursuant to the hearing that took place, UOI has taken a decision recommending review by MCI. The order is not a speaking order, but obviously the concerned authority was persuaded by the appellant to direct a review by MCI on the facts of the case. MCI has in its communication dated 01.04.2015 taken the stand, based on an opinion of the learned Additional Solicitor General, that it is not obliged under the statutory provisions to process the matter further and reiterated its earlier decision to recommend to UOI not to renew the permission for admission to the third batch of MBBS for the increased intake. Hence no review was done by MCI. UOI has thereafter on 15.06.2015 accepted the said recommendations of MCI dated 01.04.2015. These facts clearly show that the hearing that took place pursuant to the show cause notice on 12.05.2015 was rendered an empty formality. The hearing cannot be said to be an effective hearing. This is so as a decision was taken in the hearing. Without implementing it, the scheme of the appellant is simply rejected.

25. The parameters of a hearing as envisaged under Section 10A (4) of the IMC Act was dealt with by the Supreme Court in the case of ***Swamy Devi Dayal Hospital and Dental College vs. Union of India & Ors., AIR 2014 SC 284***. The Supreme Court elaborated the expression opportunity of being heard as used in Section 10A(4) as follows:-

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

(a) Section 10A applies to the cases of renewal of permission as well;

(b) 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.

(c) 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.”

26. The above legal position was stated while interpreting the Dental Council of India Act, 1948. This has however been applied to MCI by the

Supreme Court in the case of *Royal Medical Trust (Regd.) & Anr. vs. Union of India & Anr. (supra)*.

27. The issue is as to whether the hearing so granted can be termed as a proper hearing. The object of a hearing is stated in *Olga Tellis & Ors. vs. Bombay Municipal Corporation & Ors., AIR 1986 SC 180*. The judgment dealt with the rights of persons who live on pavements and elaborated the rule of hearing as follows:-

“47. The proposition that notice need not be given of a proposed action because , there can possibly be no answer to It, is contrary to the well-recognized understanding of the real import of the rule of hearing. That proposition overlooks that justice must not only be done but must manifestly be seen to be done and confuses one for the other. The appearance of injustice is the denial of justice. It is the dialogue with the person likely to be affected by the proposed action which meets the requirement that justice must also be seen to be done. Procedural safeguards have their historical origins in the notion that conditions of personal freedom can be preserved only when there is some institutional check on arbitrary action on the part of public authorities. (Kadish, "Methodology and Criteria in Due Process Adjudication - A Survey and Criticism," 66 Yale L.J. 319, 340 [1957]) The right to be heard has two facets, intrinsic and instrumental. The intrinsic value of that right consists in the opportunity which it gives to individuals or groups, against whom decisions taken by public authorities operate, to participate in the processes by which those decisions are made, an opportunity that expresses their dignity as persons. (Golberg v. Kelly 397 U.S. 254, 264-65 [1970] right of the poor to participate in public processes).

Whatever its outcome, such a hearing represents a valued human interaction in which the affected person experience at least the satisfaction of participating in the decision that vitally concerns her, and perhaps the separate satisfaction of

receiving an explanation of why the decision is being made in a certain way. Both the right to be heard from, and the right to be told why, are analytically distinct from the right to secure a different outcome; these rights to interchange express the elementary idea that to be a person, rather than a thing, is at least to be consulted about what is done with one. Justice Frankfurter captured part of this sense of procedural justice when he wrote that the "Validity and moral authority of a conclusion largely depend on the mode by which it was reached.... No better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and opportunity to meet it. Nor has a better way been found for generation the feeling, so important to a popular government, that justice has been done". *Joint Anti-fascist Refugee Committee v. McGrath* 341 U.S. 123. At stake here is not Just the much-acclaimed appearance of justice but, from a perspective that treats process as intrinsically significant, the very essence of justice", (See "American Constitutional Law" by Laurence H. Tribe, Professor of Law, Harvard University (Ed. 1978, page 503).

The instrumental facet of the right of hearing consists in the means which it affords of assuring that the public rules of conduct, which result in benefits and prejudices alike, are in fact accurately and consistently followed.

It ensures that a challenged action accurately reflects the substantive rules applicable to such action; its point is less to assure participation than to use participation to assure accuracy.”

28. Similarly, on the concept of a fair hearing, the Supreme Court in the case of *Union of India & Ors. vs. Shiv Raj & Ors.*, **AIR 2014 SC 2242** in the context of Section 5A of the Land Acquisition Act, 1894 stated as follows:-

“9. Therefore, Section 5A of the Act 1894 confers a valuable right in favour of a person whose lands are sought to be acquired. It is trite that hearing given to a person must be an effective one and not a mere formality. Formation of opinion as regard the public purpose as also suitability thereof must be preceded by application of mind having due regard to the relevant factors and rejection of irrelevant ones. The State in its decision making process must not commit any misdirection in law. It is also not in dispute that Section 5A of the Act, 1894 confers a valuable important right and having regard to the provisions, contained in Article 300A of the Constitution of India has been held to be akin to a fundamental right.”

29. In the present case in spite of the fact that pursuant to the hearing, UOI directed a review by MCI, nothing was done. The purpose of the hearing was lost and the exercise of hearing was reduced to a mere formality. In the absence of proper hearing, the order impugned in the writ petition, namely, the order dated 15.06.2015 by which the scheme of the appellant was rejected is rendered illegal and contrary to Section 10A (4) of the IMC Act. The same is liable to be quashed on this ground alone.

30. On the issue as to whether at this stage in September it would be redundant to grant any relief to the appellant, reference may again be had to the judgment of the Supreme Court in the case of ***Royal Medical Trust (Regd.) & Anr. vs. Union of India & Anr. (supra)*** relevant portion of which reads as follows:-

“29. 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.”

31. The dead line which the Supreme Court states is 30.09.2015 for making admission for the first MBBS course.

32. Accordingly, we quash the communication dated 15.06.2015 issued by the Union of India and W.P.(C) No.6778/2015 shall stand disposed of with a direction to respondent No.1 to forthwith consider the application of the appellant/writ petitioner for enhancement of seats from 100 to 150 for the Academic Year 2015-16 keeping in view the inspection report of MCI dated 22.05.2015.

33. The order of the learned Single Judge dated 11.08.2015 is accordingly set aside and the appeal is allowed on the above terms.

**(JAYANT NATH)
JUDGE**

(CHIEF JUSTICE)

SEPTEMBER 21, 2015

n/rb