

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 30.5.2016

1. **LPA No.939 of 2016 (O&M)**

Panjab University and another Appellants.

Versus

Union of India and another Respondents.

AND

2. **LPA No.922 of 2016 (O&M)**

Gaurav Varshney and others Appellants.

Versus

Union of India and others Respondents.

CORAM: Hon'ble Mr. Justice S.S. Saron.
Hon'ble Mr. Justice Harinder Singh Sidhu.

Present: Mr. A.R. Sidhu, Senior Advocate with Mr. Suvir Sidhu,
Advocate for appellants in LPA No.939 of 2016 and
respondents No.5 and 6 in LPA No.922 of 2016.

Mr. Abhilaksh Grover, Advocate for the appellants in LPA
No.922 of 2016.

Mr. Chetan Mittal, Senior Advocate, Assistant Solicitor
General of India with Mr. Varun Issar, Advocate for
respondent No.1 – Union of India in LPA No.922 of 2016
and LPA No.939 of 2016.

Ms. Deepali Puri, Advocate for respondents No.2 and 3
in LPA No.922 of 2016.

Mr. Gurminder Singh, Senior Advocate with
Ms. Harpriya Khaneka, Advocate for Dental Council of
India - respondent No.2 in LPA No.939 of 2016 and
respondent No.4 - in LPA No.922 of 2016.

S.S. Saron, J.

This order will dispose of LPA No.939 of 2016 and LPA No.922 of 2016 as these arise out of the same judgment and order dated 24.5.2015 passed by the learned Single Judge in CWP No.9893 of 2016 and CWP No.9499 of 2016 respectively.

The facts, however, are taken from LPA No.939 of 2016 filed by Panjab University, Chandigarh.

The Panjab University, Chandigarh (appellant No. 1) ('Panjab University' - for short) filed CWP No.9893 of 2016 in this Court seeking quashing of the order dated 31.3.2016 (Annexure P-14) passed by the Union of India (respondent No.1) whereby the renewal of permission to allow admissions for the 2nd year of MDS Courses for the academic session 2016-17 in the five specialties had been declined; besides, the application/scheme for starting MDS Course in the specialty of Oral Pathology and Microbiology was disapproved. A further direction was sought against the respondents to allow the Dr. Harvansh Singh Judge, Institute of Dental Sciences and Hospital, Panjab University, Sector 14, Chandigarh (appellant No.2) ('Institute' - for short) to start the admission process for the academic year 2016-17 considering the time deadline being 31.5.2016 i.e. the last date up to which the students could be admitted or for modifying the time schedule as regards the appellant No.2 - Institute.

The appellant No.2 - Institute has been running in the Panjab University (appellant No.1) campus since 2006. According to the appellants, in view of an imminent need for providing a public funded quality oral health care to impart dental education and open

avenues for research in the field of Oral Health, a Dental Sciences Institute and Hospital was considered essential. Therefore, under the aegis of Panjab University (appellant No.1) with philanthropic donations from Dr. Harvansh Singh Judge, the Institute (appellant No.2) was established in April 2006. The Institute (appellant No.2), it is submitted, aims at providing excellent oral health care facilities to the general public in addition to undergraduate training to students. It has ability to generate ample research avenues in dental and medical sciences which can have a far reaching impact on not only oral but general health with special thrust on community healthcare and outreach programs for the children and the underserved population. The Institute (appellant No.2) comprises of a total 18 departments i.e. 9 dental and 9 medical; with 8 clinical and 11 pre-clinical and para-clinical laboratories. It has been providing services to around 250 to 300 patients every day in the various specialty clinics. A fully equipped diagnostic lab is functional at the Institute (appellant No.2), which is carrying out innumerable bio-chemical, histo-pathological and micro-biological tests at the Institute (appellant No.2) itself.

The academic course being offered at the Institute (appellant No.2) is BDS (Bachelor of Dental Surgery), which is a four years' course followed by one year of compulsory rotational internship with 100 students being admitted each year. The Institute (appellant No.2) is approved by Dental Council of India ('DCI' - for short) (respondent No.2) and Ministry of Health and Family Welfare, Government of India (respondent No.1) in accordance with the norms laid down by the Dentists Act, 1948 and

the Dentists (Amendment) Act, 1993 along with the regulations laid down in the Dental Council of India (Establishment of New Dental Colleges, Opening of New or Higher Course of Study or Training and Increase of Admission Capacity in Dental Colleges) Regulations, 2006 ('2006 DCI Regulations' - for short).

The Institute (appellant No.2) applied for permission to start Master of Dental Surgery ('MDS' - for short) Course, which as per procedure, on the recommendation of the DCI (respondent No.2), was granted by the Union of India (respondent No.1) in five specialties on 10.3.2015 (Annexure P-2). The first batch of the students was admitted in June 2015 in the five specialties for which permission to start the MDS Course was granted. Besides, the Institute (appellant No.2) desired to introduce MDS Course in fresh specialty of Oral Pathology and Microbiology for which application/scheme was submitted for approval by the respondents for the academic session 2016-17.

In terms of the DCI Regulations and communication from the Ministry of Health dated 30.3.2015 (Annexure P3-colly), the appellant No.2 - Institute was to obtain renewal permission from the Government of India for making admissions to the next batch of students in the courses for the academic year 2016-17. The appellant No.2 - Institute was inspected for renewal of Central Government permission for the 2nd year of MDS in the above mentioned specialties on 8th and 10th September 2015. The reports given were considered in the Executive Committee Meeting of the DCI (respondent No.2) on 30.9.2015. Certain deficiencies were pointed out *in tandem*. The primary deficiency that was mentioned

and which is now a matter of issue was that there was no regular appointed Principal in the appellant No. 2 - Institute. This was mentioned separately against all the five specialties for which permission had been granted earlier for the MDS Course.

The position is that a joint inspection of all the courses applied for either for renewal or fresh approval was conducted on 30.9.2015. The joint inspection report of the inspection team was submitted on 6.10.2015. One of the main deficiencies that was pointed out and is now to be considered, was that the post of Principal of appellant No.2 - Institute was lying vacant. It is mentioned that Dr. Ashish Jain had been shown as Principal of the appellant No. 2 - Institute but he was not a full time permanent appointee. Besides, he had been designated as Principal/Professor for a period of three years w.e.f. 26.12.2014. The same objection has been mentioned against the specialties for which either renewal or fresh permission was sought.

The DCI (respondent No.2) in its communications dated 6.10.2015 (Annexure P4-colly.) addressed to the Principal of the Institute (appellant No.2) in respect of the aforesaid five specialties submitted that the Executive Committee of the DCI in its meeting held on 30.09.2015 at New Delhi considered the Joint Inspection Report of the Council's Inspectors and after discussion and deliberations decided to ask the college authorities i.e. appellant No. 2 - Institute to fulfill the deficiency of there being no regular Principal appointed at the appellant No. 2 - Institute and to furnish compliance report to the DCI for furtherance in the matter. Similar

separate reports were given in respect of the specialties for which permission of renewal was sought.

The Panjab University (appellant No.1) vide its communication dated 7.1.2016 (Annexure P5) addressed to the Deputy Secretary, DCI submitted by attaching Annexure-I as reply of the University (appellant No. 1) and the orders dated 26.12.2014 as Annexure-2 to the objections. Annexure-I of the reply is a certificate issued in the following terms:-

"TO WHOM IT MAY CONCERN

The Principal of Dr. Harvansh Singh Judge, Institute of Dental Sciences & Hospital of Panjab University is appointed for the period of 3 years at a time by the University. At present, Professor Ashish Jain is thus the Principal-cum-Professor of the Institute. The Principal functions as the Head of the Dental Institute under the overall academic supervision of Dean University Instruction (DUI), Panjab University. The Dean University Instruction is like the Pro-Vice Chancellor in the Indian University system. There is no office of Pro-Vice Chancellor in the Panjab University, this role is performed by the Dean University Instruction, Panjab University. Vice Chancellor, Panjab University is the Chief Executive of the University, for the Departments/Centres/Institutes on the campus, off the campus and the colleges affiliated to it.

Sd/- Registrar"

Annexure-2 of the reply dated 07.01.2016 (Annexure P5) of the Panjab University contains office orders in terms of the Syndicate decision dated 26.10.2014. It is mentioned that the Vice-Chancellor of Panjab University has designated the faculty members as mentioned therein as Director/Hony. Director/Principal-cum-Professor/Chief Coordinator/Coordinator of the Departments/Institutes/Centres for the periods mentioned therein against each Departments/Institutes/Centres. Serial No. 11 of the said order relates to appellant No. 2 - Institute and against the column of, 'orders of the Vice Chancellor', it is mentioned that Professor Ashish Jain as Principal-cum-Professor for three years with immediate effect i.e. from 26.12.2014. The other deficiencies that were pointed out no longer survive as these have been complied with.

As regards the new MDS Course in the specialty of Oral Pathology and Microbiology, the DCI (respondent No. 2) conducted the inspection of the appellant No. 2 - Institute on 12.01.2016. It communicated back on 03.02.2016 (Annexure P6) pointing out certain deficiencies regarding equipment/staff; besides, for furnishing a copy of the appointment letter of the Principal since no regular Principal was appointed in the Institute.

The appellant No. 2 - Institute on 16.02.2016 (Annexure P7) furnished reply as regards the staff and equipment. Besides, Annexure-3 of the said reply is a certificate from the Registrar of Panjab University (appellant No. 1), which was furnished and is to the effect that the Principal of appellant No. 2 - Institute was appointed for a period of three years at a time by the University (appellant No. 1). At that relevant time, Professor Ashish Jain was

thus the Principal-cum-Professor of the appellant No. 2 - Institute. It is further mentioned that the Principal functions as the Head of Dental Institute under the overall academic supervision of the Dean University Instructions (DUI), Panjab University. The Vice Chancellor, Panjab University, it is mentioned, is the Chief Executive of the University for the Departments/Centres/Institutions on the campus, off the campus and the colleges affiliated to it. An excerpt from the minutes of the joint meeting of the Academic and Administrative Committees held on 08.02.2016 at 10:00 a.m. in the Committee-room was also forwarded regarding the consideration for the emergent appointment of Associate Professor in Oral Pathology and Oral Surgery. Dr. Ramandeep Kaur Saluja was recommended for appointment as Associate Professor in Oral Pathology while Dr. Vandana Chhabra and Dr. Geeta Kalra were recommended for appointment as Associate Professors in Oral Surgery. The Committee further resolved that the authorities be requested to process the appointments on urgent basis under the Regulations so that the appellant No. 2 - Institute may not lose MDS admissions for the year 2016.

In terms of letters dated 20.02.2016 (Annexure P8), the DCI (respondent No.2) reiterated to the Principal of the appellant No. 2 - Institute that there was deficiency of the Principal's appointment letter. This was mentioned against each of the five specialties for which extension of permission was sought and also in the specialty of Oral Pathology and Microbiology for which fresh approval was sought. It also vide letters dated 27.02.2016 (Annexure P9) recommended to the Secretary to the Government of

India, Ministry of Health & Family Welfare not to renew its permission and not allow admission for the 2nd year of MDS Course in the said five specialties and also disapprove the application/scheme to start a new course in the specialty of Oral Pathology and Microbiology on the ground that there was no appointment letter of permanent/regular Principal. The DCI (respondent No. 2) separately denied permission for starting MDS Course in Oral Pathology and Microbiology for the academic session 2016-17 for which approval was submitted.

During this period, the DCI (respondent No.2), issued a notification dated 07.03.2016 (Annexure P10) in exercise of powers conferred by Section 10 A read with Section 20 of the Dentists Act, 1948 on the recommendations of DGHS (Director General Health Services) pursuant to the directions of the Hon'ble Supreme Court in its order passed in the case of **Ashish Ranjan v. Union of India and others** in W.P. No. 76 of 2015 on 24.03.2015 for framing time schedule. With the previous approval of the Central Government, the DCI amended the Dental Council of India (Establishment of New Dental Colleges, Opening of New or Higher Courses of Study or Training and Increase of Admission Capacity in Dental Colleges) Regulations, 2006. Accordingly, the Dental Council of India (Establishment of New Dental Colleges, Opening of New or Higher Courses of Study or Training and Increase of Admission Capacity in Dental Colleges) (8th Amendment) Regulations, 2016 ('Amendment Regulations' - for short) were issued, which came into force on the date of their publication in the Official Gazette i.e. 07.03.2016 (Annexure P10). A time schedule was framed for receipt of

applications for establishment of New Dental Colleges/increase of undergraduate seats/renewal of permission and processing of the applications by the Central Government and the DCI. Besides, a time schedule was framed for receipt of applications for opening higher course of study/increase of postgraduate seats/renewal of permission and processing of the applications by the Central Government and the DCI.

In the meanwhile, the Panjab University (appellant No.1) issued a letter dated 08.03.2016 (Annexure P11) to Dr. Ashish Jain mentioning therein that as per the office records, the Vice Chancellor had appointed him as Principal-cum-Professor of Dr. H.S. Judge Institute of Dental Sciences and Hospital for a period of three years with effect from the date of issuance of order No. 12109-50/ Estt.-I dated 26.12.2014 on terms and conditions as laid down under rules at page 613-18 of P.U. Cal. Vol.III, 2009 and Syndicate decision dated 26.10.2014 (Para 30).

Thereafter, fresh documents regarding the deficiency of appointment of Principal were submitted to the DCI (respondent No. 2) on various dates, i.e. 08.03.2016, 15.03.2016 and 23.03.2016. The Government of India in view of the recommendations of the DCI (respondent No. 2) for not renewing the permission to continue with the MDS Course in the five specialties and for disapproving the fresh approval that was sought for the course of Oral Pathology and Microbiology called the representative of the Panjab University (appellant No. 1) before the Hearing Committee on 16.03.2016.

An extract (Annexure P12) of the proceedings of the Hearing Committee held on 16.03.2016 has been placed on record.

A perusal of the same shows that three Professors, namely, Prof. Ritu Duggal, Prof. Pravesh Mehra and Prof. B. Srinivas heard the representatives of the Institute (appellant No. 2). During the course of hearing, it was explained on behalf of the Institute (appellant No.2) that they had designated one Professor as Principal for a period of three years. The post of Principal was a rotational post for three years amongst the faculty members. The details of compliance report were annexed for perusal. The representative of the Institute (appellant No.2) submitted written submissions to the Hearing Committee. The Hearing Committee, on perusal of the written submissions made by the Institute's representatives, observed that physical verification was required to confirm the claim made by the Institute's representatives and in view thereof, the Hearing Committee recommended that the Ministry may consider referring the case to the DCI for review.

A review was conducted by the DCI on 25.03.2016 and its letter was addressed to the Secretary of Government of India on 28.3.2016 (Annexure P-13). Serial No.9 to 14 of the said letter relate to the appellant No.2 - Institute for the various specialties. At the head of each of the items it is recorded that since the cut-off date for sending recommendation by the DCI to Government of India was 28.2.2016 which was already over, hence the Executive Committee after some discussion and deliberations recommends reiterating its earlier decision, i.e. there was no appointment letter of permanent/ regular Principal. Thereafter, it is also recorded that since the College (Institute) authority did not furnish an appointment of regular/permanent Principal on or before 28.2.2016

to the DCI by which date DCI was mandated to send its appropriate recommendation to the Government of India and they had now vide letters dated 23.3.2016, 15.3.2016 and 8.3.2016 confirmed the appointment of their Principal; therefore, the DCI had no objection if the Central Government considers and renews its permission under Section 10A (4) of the Dentist (Amendment) Act, 1993 for the academic session 2016-17.

The said communication dated 28.03.2016 (Annexure P13) of the DCI is clearly defective and self-contradictory inasmuch as on the one hand it was recommending reiterating its earlier decision for non-renewal and at the same time recommending for renewal.

The Government of India vide its impugned letter dated 31.3.2016 (Annexure P-14) did not take note of the later part of the observations of the DCI that it had recommended for grant of permission but took note of the fact that the DCI had not recommended for renewal as the Institute did not have a regular Principal. On the said basis, permission to renew the MDS Course in the five specialties and fresh approval in the specialty of Oral Pathology and Microbiology was declined to the Institute vide impugned letter dated 31.03.2016 (Annexure P14).

The DCI, however, vide its letter dated 21.4.2016 (Annexure P15) to the Secretary, Government of India clarified that the DCI in its communication dated 28.03.2016 (Annexure P13) inadvertently reiterated its earlier recommendations in the subject specialties of MDS Courses in respect of appellant No. 2 - Institute.

It was clarified that since the cut-off date of sending appropriate

recommendations of the DCI to the Government of India for the MDS Courses for the academic session 2016-17 was 28.02.2016, which was already over on 25.03.2016, therefore, it was not feasible for the DCI to send its recommendations for renewal of permission for the second year MDS Course in the five specialties and for starting MDS Course in the specialty of Oral Pathology and Microbiology. However, the DCI informed the Government of India that the appellant No.2 - Institute vide letters dated 23.03.2016, 15.03.2016 and 08.0.2016 confirmed the appointment of their Principal. Therefore, the DCI had no objection if the Central Government considers and renews its permission under Section 10A (4) of the Dentist (Amendment) Act, 1993 for the academic session 2016-17. It was requested to the Central Government to ignore the reiteration of the earlier recommendations of the DCI in first paragraph of serial No. 4 to 9 in respect of appellant No. 2 - Institute. Despite the said clarification, the Government of India did not review its order dated 31.3.2016 (Annexure P-14).

No reply was filed by the respondents to the writ petition filed by the Panjab University and the Institute (appellants); however, in the connected writ petition filed by Gaurav Varshney and others (CWP No. 9499 of 2016 out of which LPA No. 922 of 2016 arises) a short reply by way of affidavit of Shri Pradip Kumar Pal, Under Secretary in the Ministry of Health and Family Welfare was filed.

In the said reply that has been filed, it is stated that the DCI vide its letter dated 27.02.2016 (Annexure R1/1) had recommended for disapproval for MDS schemes at the appellant No.

2 - Institute for the reason that there was no appointment letter of permanent/regular Principal. In pursuance thereof, the Institute was given a personal hearing before a Hearing Committee on 16.03.2016. On the recommendations of the Hearing Committee, the Government of India sent the report of the Hearing Committee along with compliance report of the Institute to the DCI for renewal/physical verification.

The DCI vide letter dated 28.03.2016 (Annexure R2/2 i.e. Annexure P12) reiterated its earlier decision. Based on the recommendations of the DCI, the Government of India conveyed its decision to disapprove the MDS schemes to the Institute on 31.03.2016. Thereafter, the DCI vide corrigendum dated 21.04.2016 (Annexure P13) stated that the Central Government may ignore the reiterations of the earlier recommendations of the DCI and also stated that the Central Government may consider and renew its permission and grant permission for starting MDS Course in the specialty of Oral Pathology and Microbiology under Section 10A (4) of the Dentists Act and the 2006 DCI Regulations for the academic year 2016-17.

It is submitted that the DCI changed its stand after the cut-off date. The Government of India is bound to adhere to the schedule contained in the 2006 DCI Regulations as amended by the Amendment Regulations where the last date of issue of permission was fixed as 31.03.2016, which was over. Therefore, permission for the MDS Course in the five specialties and fresh approval in the faculty of Oral Pathology and Microbiology could not be granted to the appellant No.2 - Institute. In view of the above, it is prayed

that the writ petition may be disposed of and the Court may be further pleased to pass such other and further order as it may deem fit and proper.

Mr. A.R. Sidhu, Senior Advocate with Mr. Suvir Sidhu, Advocate, for the appellants in LPA No. 939 of 2016 and Mr. Abhilaksh Grover, Advocate for the appellants in LPA No. 922 of 2016 have submitted that the matter is trivial in nature inasmuch as the appellant No.2 - Institute, which is a reputed institute of the city and has been running very well is sought to be closed down for the MDS Course for which permission is not being granted on a flimsy ground that there is no regular Principal. It is submitted that the Principal and Heads of Departments in the Panjab University (appellant No.1) are appointed on rotational basis for a period of three years. Their appointment cannot be said to be in any manner improper or for that matter irregular. It is contended that the appointment of Principal is in accordance with the Panjab University Calendar, which has statutory force. Mr. Abhilaksh Grover, Advocate, for the appellants in LPA No. 922 of 2016 has further submitted that the appellants in the said appeal are students of the Institute and they are not in any manner at fault, besides, they would suffer because of the misjudgment and errors on the part of the respondents in the said appeal.

Mr. Gurminder Singh, Sr. Advocate with Ms. Harpriya Khaneka, Advocate appearing for the DCI submits that in fact the Institute (appellant No.2) had a valid Principal who was appointed for a period of three years. In terms of the DCI letter dated 28.3.2016 (Annexure P13), the paragraph relating to not

recommending the permission and approval was inadvertently recorded. However, in the second paragraph it was stated that the DCI had no objection for grant of permission to run the MDS Course in the five specialties; besides, for grant of approval for the MDS Course in Oral Pathology and Microbiology, which was liable to be considered by the Government of India. It is submitted that the Government of India should have considered the matter for the grant of permission for the five specialties of MDS Course and also approval for the MDS Course in Oral Pathology and Microbiology.

Mr. Chetan Mittal, Sr. Advocate with Mr. Varun Issar, Advocate appearing for Union of India submits that keeping in view the time schedule that has been fixed by the 2006 DCI Regulations as amended by the Amendment Regulations, permission cannot now be granted as it could only be granted upto 31.3.2016. In support of his contention, learned Senior Counsel has placed strong reliance on a Supreme Court judgment in **Medical Council of India v. V.N. Public Health & Educational Trust & Others** Civil Appeal No.3964 of 2016 decided on 18.4.2016.

We have considered the entire matter and with the help of learned counsel appearing for the respective parties perused the records of the case.

The appellant No.2 - Institute has been successfully running since 2006. It imparts qualitative dental education in the eighteen departments i.e. nine dental and nine medical with eight clinical and eleven pre-clinical and para-clinical laboratories being run by it. It attends to about 250-300 patients daily in its various specialty clinics. It has a fully equipped diagnostic lab which is

functional and carries out innumerable biochemical, histopathological and microbiological tests at the Institute itself. It offers four years BDS (Bachelor of Dental Surgery) Course, which is followed by one year compulsory rotational internship with hundred students being admitted each year. The Institute is approved by the DCI and the Government of India in accordance with the norms laid down by the Dentists Act, 1948 and the Dentists (Amendment), Act, 1993 along with the 2006 DCI Regulations.

An application was filed by the Institute (appellant No.2) seeking permission to start MDS Course, which as per procedure, on the recommendation of the DCI (respondent No.2), was granted by the Union of India (respondent No.1) in the five specialties on 10.3.2015 (Annexure P-2). The first batch of the students was admitted in June 2015 in the five specialties for which permission to start the MDS Course was granted i.e.:-

- (1) Oral and Maxillofacial Surgery: 2 seats
- (2) Conservative Dentistry and Endodontics: 3 seats
- (3) Periodontology: 3 seats
- (4) Orthodontics and Dentofacial Orthopedics: 3 seats
- (5) Prosthodontics & Crown and Bridge: 3 seats.

In this manner, there was an intake of a total 14 students in the aforesaid five specialties for the MDS Courses of session 2015. The permission that was granted on 10.3.2015 (Annexure P2) allowing the Institute (appellant No.2) to run MDS Courses in the aforesaid five specialties was to be renewed for the second year in the session 2016. Besides, the Institute (appellant No.2) desired to introduce MDS Course in fresh specialty of Oral

Pathology and Microbiology for which application/scheme was submitted for approval by the respondents. This as has been recounted above, was declined by the Government of India only on the specious ground that the Institute did not have a regular Principal. The Panjab University and the Institute (appellants) had represented from time to time mentioning therein that it had a regular Principal. However, the matter was not dealt with by the respondents with the attention that it deserved but was considered in a cursory and casual manner. It is to be noted that the Principal of the appellant No.2 - Institute in his communication dated 07.01.2016 (Annexure P5) to the Deputy Secretary, DCI had submitted a certificate of the Registrar, Panjab University to the effect that Prof. Ashish Jain at present was the Principal-cum-Professor of the Institute; besides, office orders issued on 26.012.2014 by the Vice Chancellor were placed on record as an annexure to the reply dated 07.01.2016 (Annexure P5). The said office order of the Vice Chancellor of the Panjab University mentions Prof. Ashish Jain as Principal-cum-Professor for three years with immediate effect i.e. from 26.12.2014. This was furnished in respect of all the five specialties for which permission for continuation of the Course was sought. The certificate issued by the Registrar of the Panjab University was again furnished by the Principal-cum-Professor of the appellant No.2 - Institute with his communication dated 16.02.2016 (Annexure P7). However, these communications were not given due attention by the DCI in terms of its objections dated 20.02.2016 (Annexure P8). The Panjab University vide letter dated 08.03.2016 (Annexure P11) to the

Principal-cum-Professor of appellant No.2 - Institute reiterated that as per office report, the Vice Chancellor had appointed him as Principal of appellant No.2 - Institute for a period of three years on the date of issuance of order dated 26.12.2014 on the terms and conditions as laid down under Rule at page 613-18 of Panjab University Calendar Vol.III, 2009 and Syndicate decision dated 26.10.2013 (Para 30).

The representatives of the appellant No.2 - Institute were given personal hearing by a Committee of three Professors, namely, Prof. Ritu Duggal, Prof. Pravesh Mehra and Prof. B. Srinivas constituted by the Government of India. The Institute representatives informed the Hearing Committee that one professor had been designated as Principal for a period of three years. The post of Principal was a rotational post for a period of three years amongst the faculty members. The compliance reports were annexed; besides, written submissions were made to the Hearing Committee. The Hearing Committee, on perusal of the written submissions made by the representatives of the appellant No.2 - Institute, observed that physical verification was required to confirm the claim made by the representatives of the appellant No.2 - Institute. It accordingly recommended that the Ministry may consider the case for referring a review by the DCI.

It is in the review that was conducted by the DCI in its meeting held on 25.03.2016 and conveyed to the Central Government vide communication dated 28.03.2016 (Annexure P13) that an anomalous and an undesirable situation was created. The DCI in terms of its said letter (Annexure P13) conveyed

contradictory and discrepant recommendations. The relevant paragraph of the letter dated 28.3.2016 (Annexure P13) insofar as it relates to appellant No.2 - Institute is as follows:-

Sr. No.	Name of the College	Recommendations
9.	Dr. Harvansh Singh Judge Institute of Dental Sciences and Hospital, Chandigarh	Since the cut-off date for sending recommendation by the DCI to GOI was 28.2.2016 which has already been over hence the Executive Committee after some discussions and deliberation recommends to reiterate its earlier decision as under: <u>Conservative Dentistry and Endodontics with 3 seats</u> The Executive Committee recommends to the Central Government not to renew its permission and not to allow admissions for 2nd year of MDS course in the specialty of Conservative Dentistry and Endodontics with 3 seats at Dr. Harvansh Singh Judge Institute of Dental Sciences and Hospital, Chandigarh for the academic session 2016-17 due to the following deficiencies:- 1. Staff :- Since there is no appointment letter of permanent/regular principal. Since the college authority did not furnish an appointment of regular/permanent Principal on or before 28.2.2016 to the DCI by which date DCI was mandated to send it appropriate recommendation to the GOI and they have now vide letter dated 23.3.2016, 15.3.2016 and 8.3.2016 confirmed the appointment of their Principal, therefore, the DCI has no objection if the Central Government consider and renew it permission under Section 10A (4) of the Dentist Amendment Act 1993 for the academic session 2016-17.

A perusal of the above, as already noticed, brings out the contradictory stands taken by the DCI. Similar is the position with respect to others specialties recorded from serial No.10 to 13 and for the fresh specialty of Oral Pathology and Microbiology at serial No.14. The Government of India (respondent No.1) vide impugned letter dated 31.03.2016 (Annexure P14) only noticed the recommendation of the DCI reiterating its earlier decision but did not advert to the later part that the DCI had no objection if the permission was granted.

A clarification dated 21.4.2016 (Annexure P15) was issued by the DCI that it had inadvertently reiterated its earlier recommendations in the subject specialties of MDS Courses in respect of appellant No. 2 - Institute. In this connection, it was clarified that since the cut-off date of sending appropriate recommendations by the DCI to the Government of India for the MDS Courses for the academic session 2016-17 was 28.02.2016 which was already over on 25.03.2016, therefore, it was not feasible for the DCI to send its recommendations for renewal of permission for the second year MDS Course in the five specialties and for starting MDS Course in the specialty of Oral Pathology and Microbiology at appellant No.2 - Institute for the session 2016-17. However, the DCI informed the Government of India that the appellant No.2 - Institute vide letters dated 23.03.2016, 15.03.2016 and 08.0.2016 confirmed the appointment of their Principal. Therefore, the DCI had no objection if the Central Government considers and renews its permission under Section 10A (4) of the Dentist (Amendment) Act, 1993 for the academic session

2016-17. It was requested to the Central Government to ignore the reiteration of the earlier recommendations of the DCI in first paragraph of serial No. 4 to 9 in respect of appellant No. 2 - Institute. Despite the said clarification, the Government of India did not review its order dated 31.03.2016 (Annexure P14).

From the above, it is evident that though the Institute (appellant No.2) had a regular Principal, however, according to the Government of India at this stage nothing could be done as the time schedule fixed by the 2006 DCI Regulations as amended by the Amendment Regulations which were notified on 07.03.2016 (Annexure P10) provided 31st May as the last date for the issue of letter for permission by the Central Government. Therefore, at this stage, the Central Government was unable to issue the necessary letter granting permission to renew the five specialties for the second academic year; besides, grant approval for the fresh MDS Course of Oral Pathology and Microbiology to the appellant No. 2 - Institute.

It is to be noticed that in fact in the year 2015-16 when permission was granted by the Government of India for the first year in respect of the five specialties for which renewal is now sought for the second year, Dr. Ashish Jain who is now the Principal of the Institute (appellant No.2) was also then the Principal. At that time also i.e. for the first year in respect of the five specialties the DCI had made recommendations to the Government of India to start the MDS Course with five specialties for which renewal was sought. The Government of India accordingly granted the necessary permission to the Institute (appellant No.2) to start the

MDS Course in the five specialties i.e. (i) Conservative Dentistry and Endodontics (ii) Oral and Maxillofacial Surgery (iii) Orthodontics and Orofacial Orthopedics (iv) Periodontics and (v) Prosthodontics and Crown and Bridge. The Institute (appellant No.2) had also intimated by its certificate that Dr. Ashish Jain was Principal-cum-Professor for three years with effect from 26.12.2014.

During the course of hearing, the appellants filed an affidavit of Col. G.S. Chadha (Retd.), Registrar Panjab University, Chandigarh. It is stated that Dr. Ashish Jain, Principal-cum-Professor of the Institute (appellant No.2) joined the Institute as Professor in Periodontics Department with effect from 05.04.2010. Prior to this, he worked as a Professor in BRC Dental College, Panchkula from 12.12.2006 to 30.04.2008, as a Professor-cum-Head of Department in Swami Devi Dayal Dental Hospital and College, village Golpura, Tehsil Barwala, Panchkula, Haryana from 01.05.2008 to 01.04.2010. He was appointed as officiating Principal-cum-Professor of the Institute (appellant No.2) with effect from 09.04.2012. His appointment as Principal-cum-Professor for a period of three years was confirmed with effect from 26.12.2014 till date in consonance with the statutes and rules of the University and in due compliance with the norms of DCI. It is submitted that the Principal of the Institute (appellant No.2) has the required experience of eight years as a Professor i.e. from 12.12.2006 till 26.12.2014 thus he was appointed as Principal-cum-Professor.

As regards the time schedule framed in terms of the 2006 DCI Regulations, it may be noticed that Regulation 4 thereof reads as under:-

"4. Proposals or schemes for establishing a new dental college, or opening a new or higher course of study or training or increasing the admission capacity, in the dental college:-

- (1) The proposals or schemes for establishing a new dental college, or opening a new or higher course of study or training or increasing the admission capacity, in the dental college, as the case may be, shall be made or submitted to the Central Government for obtaining its permission under the Act in the Form I, Form 2 and Form 3 respectively, annexed to these regulations.
- (2) The scheme or the proposal under sub-regulation (1) and processing thereof shall be submitted within the time-schedule as provided in the Schedule annexed to these regulations."

In terms of the Regulation 4 (2), the scheme or the proposal under sub-regulation (1) and processing thereof is to be submitted within the time-schedule as provided in the Schedule annexed to the 2006 DCI Regulations.

The Time Schedule for receipt of the applications for opening or to increase the admission, capacity in respect of under Graduate (BDS) and the postgraduate (MDS) Dental Courses and its processing by the Central Government and the DCI is as follows:-

Sr. No.	State of Processing	Time Schedule for BDS	Time Schedule for MDS
1	2	3	4
1.	Receipt of applications by the Central Government	From 1 st Aug to 30 th September (both days inclusive of any year	From 1 st May to 30 th June (both days inclusive) of any year
2.	Forwarding of application by the Central Government to the Dental Council of India for technical scrutiny	Upto 31 st December	Upto 31 st July
3.	Recommendation of DCI to the Central Government	Upto 15 th June	Upto 28 th February
4.	Issue of Letter of Permission by Central Government	Upto 15 th July	Upto 31 st March

Note:

(1): If any clarification is sought by the Central Govt. on the recommendation of the Council, the same will be furnished by the Council forthwith, if necessary, after conducting inspection.

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

Note (2) of the time schedule as emphasized above, may be modified by the Central Government for reasons to be recorded in writing, in respect of any class or category of applications. This gives some room and leverage to the Central Government to modify the time schedule in respect of any class or category of applications.

The Schedule as has been framed was considered by the Hon'ble Supreme Court in the case **Royal Medical Trust (Regt.) and another v. Union of India and another**, (2015) 10 SCC 19 it was noticed that in **Priyadarshini Dental College and Hospital v. Union of India** (2011) 4 SCC 623 the Supreme Court considered the implications of a similar such Schedule annexed to the Regulations of the Dental Council of India. Note 2 of the Schedule to the Regulations of the Dental Council of India (as reproduced above) it was observed enabled the Central Government for reasons to be recorded in writing to modify the Schedule in respect of any class or category of applications. In the said case, the Central Government did not choose to extend the time-limits in the Schedule despite being empowered by Note below the Schedule. The Central Government apparently felt constrained by the directions in **Priya Gupta v. State of Chhattisgarh**, (2012) 7 SCC 433. It was held that the decision in Priya Gupta's case (supra) undoubtedly directed that the Schedule to the Regulations must be strictly and scrupulously observed. However, it was held that subsequent to the said decision, the Regulations stood amended, incorporating a Note empowering the Central Government to modify the stages and time limits in the Schedule to the Regulations. The effect of similar such empowerment and consequential exercise of power as expected from the Central Government was considered in Priyadarshini's case (Supra). The Central Government it was observed is thus statutorily empowered to modify the Schedule in respect of class or category of applicants, for reasons to be recorded in writing. It was held that directions in

Priya Gupta must now be understood in the light of such statutory empowerment and it was declared that it was 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 deadline, namely 30th September for making admissions to the first MBBS Course as laid down by the Supreme Court in **Medical Council of India v. Madhu Singh** (2002) 7 SCC 258 and **Mridul Dhar v. Union of India** (2005) 2 SCC 65 must always be observed.

Therefore, it is evident that for the purposes of admissions to the course in question, the Schedule that has been enacted must be strictly adhered to. The last date of admissions of students to the five specialties for which permission to continue with the course for the second year and for admission for the specialty of Oral Pathology and Microbiology for which approval was sought is 31.05.2016. There is to be no change to the said date of admissions to the courses. The permission to renew the five specialties and for the specialty of Oral Pathology and Microbiology for which approval was sought, the Institute (appellant No.2) in fact did not commit any default inasmuch as it had applied within time; besides, it had a Principal who was appointed on rotational basis for a period of three years from 26.12.2014. It is only that the DCI (respondent No. 2) was time and again mentioning that the Institute (appellant No.2) did not have a regular Principal. During the course of hearing, it was submitted by learned counsel for the respondents that the Panjab University (appellant No.1) had been showing Shri Ashish Jain as being designated as Principal-cum-Professor of the appellant No.2 - Institute whereas he should have

been appointed as such. The same i.e. as to whether Shri Ashish Jain was designated as Principal or appointed in fact is not of much consequence as he in fact was indeed functioning as Principal and he is to continue as such for a period of three years from 26.12.2014. In fact, even the Hearing Committee of the Government of India that had personally heard the representatives of the appellant No.2 - Institute recorded in its proceedings on 16.03.2016 (Annexure P12) that it found merit in the compliance report and recommended to the Ministry that it may consider referring the case to the DCI for physical verification and review. It is then the DCI that committed the error of giving contradictory reports in its communication dated 28.03.2016 (Annexure P13), which was later corrected by it on 21.04.2016 (Annexure P15). However, by that time, the Government of India had issued the impugned letter dated 31.03.2016 (Annexure P14), which it did not wish to review in view of the time schedule. This in our view would result in gross injustice to an academic course of MDS that has already been running and merely for the fault of the DCI while conveying its decision to the Central Government vide its letter dated 28.03.2016 (Annexure P13) contradictory and discrepant recommendations were made.

The administrative decision dated 31.03.2016 (Annexure P14) taken by the Government of India being based on contradictory and discrepant reports of the DCI contained in the same communication dated 28.03.2016 (Annexure P13) is subject to judicial review. The power of judicial review is available to Superior Courts in respect of matters falling within the realm of

public law. Judicial review is not to be mistaken for an appeal which is a statutory right and can be invoked in accordance with statutory provisions. In judicial review it is to be kept in mind that the Court is not concerned with the decision that is taken by the authority nor concerned with the merits of the decision as the Courts do not substitute their decision in place of the impugned decisions taken by the authority. The Court, however, is concerned with the decision making process. The grounds on which judicial review of an administrative decision is subjected to, have been delineated upon by the Courts as illegality, irrationality and procedural impropriety. Besides, the dictate of law is that every administrative action must be reasonable. The principle of reasonableness has been applied by the Courts in every administrative decision and it comprises of three elements, i.e. (i) that the administrative authority should take all relevant facts into consideration; (ii) it should exclude all irrelevant facts from consideration; and (iii) the decision should neither be perverse nor irrational. A perverse decision would be an improper and contradictory decision but in the context of administrative decision it symbolizes a decision not supported by any evidence and an irrational decision would be an absurd and illogical decision, which no person properly advised on the facts of the case would come to.

Applying the test to the present case, it is to be noticed that the impugned decision dated 31.03.2016 (Annexure P14) is a decision where the authority has not taken all the relevant facts into consideration nor excluded the irrelevant facts; besides, it is based on such materials on record which are self-contradictory and

discrepant, therefore, cannot be said to be supported by any evidence. The letter dated 28.03.2016 (Annexure P13) of the DCI relating to the appellant No.2 - Institute as has been highlighted above on the one hand recommends reiteration of its earlier decision not to renew its permission and not to allow admission for the second year for the MDS Course in the five specialties as there is no appointment letter of a permanent/regular Principal. At the same, it mentions that the DCI has no objection if the Central Government considers and renews its permission. The Central Government in its impugned decision dated 31.03.2016 (Annexure P14) has not adverted to and taken into account the entire material that was placed before it and relevant for its decision making process nor did it exclude the irrelevant material which clearly breached the test of reasonableness and that vitiates the impugned decision.

The ratio of the judgment in the case of Medical Council of India v. V.N. Public Health & Educational Trust & others (Supra) strongly relied upon by learned Senior Counsel appearing for the Union of India is inapplicable to the facts of the present case. In the said case, V.N. Public Health and Educational Trust ('Trust' - for short) submitted an application for establishment of a new medical college from the academic year 2016-17. An application was made to the competent authority of the Central Government which was forwarded to the Medical Council of India ('MCI' - for short). The MCI noticed that the Essentiality Certificate issued by the Government of Kerala in favour of the Trust was not valid as it was not in accordance with the format prescribed by the Establishment

of the Medical College Regulations, 1999. Regard being had to the nature of the Essentiality Certificate and the decision of the Supreme Court in Royal Medical Trust (Registered) v. Union of India (Supra), the MCI decided to recommend to the Central Government to disapprove the application submitted by the Trust for establishment of a new medical college. The Government of India called upon the Trust to appear before the Committee to explain its stand. The Trust failed to appear before the concerned Committee on the date fixed and the matter was decided ex parte. The Trust being aggrieved by the issuance of an invalid certificate by the State of Kerala and disapproval of its scheme for establishment of a new medical college from the academic year 2016-17 approached the High Court of Kerala by way of writ petition. A learned Single Judge observed that in the light of renewal application and the renewed Essentiality Certificate it was of the view that the petitioner's application for establishment of a new medical college shall not be rejected on account of any deficiency that existed in the renewed certificate. The Essentiality Certificate was taken note of and it was observed that in view of the fresh Essentiality Certificate that had been issued and submitted, the first respondent shall consider the application and take a decision after hearing the petitioner and do the needful in accordance with law.

Against the said order, the MCI preferred an appeal before a Division Bench and it was submitted that the directions for fresh approval was not possible to be adhered to on account of the time schedule. The appeal was, however, dismissed. The Hon'ble Supreme Court held that the Essentiality Certificate that was

initially issued was a conditional certificate, which could not be regarded as the requisite certificate inasmuch as the conditions which were essential to the certificate were required to be fulfilled. On the basis of such a certificate, the MCI was not expected to approve the application submitted by an education institution. It had clearly communicated that the prescribed format stipulated that adequate clinical material as per the MCI norms 'is available'. Thus, the availability had to be *in praesenti*, and was not to be a condition to be satisfied at a later stage. Therefore, it is at a later stage the conditional Essentiality Certificate that was initially filed was got corrected and revalidated.

In the present case, however, Dr. Ashish Jain has been working as a regular Principal since 26.12.2014 and he is to continue for a period of three years from the said date. On the basis of the said appointment in the previous session 2015-16, permission was granted to the Institute (appellant No.2) to start the MDS Course in the five specialties in which renewal has been sought for the session 2016-17. Besides, the Panjab University (appellant No.1) had submitted orders that he had been designated as a Principal. The Hearing Committee also on 16.3.2016 (Annexure P12) recommended that the Ministry may consider referring the case to DCI for physical verification and review. In the review made on 28.03.2016 (Annexure P13) the DCI made contradictory recommendations. The Government of India, however, vide impugned order dated 31.03.2016 (Annexure P14) adopted the communication for not recommending the course even though the DCI on 21.04.2016 (Annexure P15) had clarified its stand.

Therefore, it is only due to an error of the DCI that permission to start the course was not given for which there is no fault of the appellants or the students. The learned Single Judge gave weightage to the fact that the time schedule was liable to be adhered to and the appellants despite being granted opportunities to clarify that appellant No. 2 - Institute had a regular Principal did not furnish the same. In fact, as has already been delineated upon above, the position is quite different and there have been mere errors that were committed. The said order dated 31.03.2016 (Annexure P14) in the circumstances is invalid and is liable to be declared as such.

The Government of India even in its reply filed by Shri Pradip Kumar Pal, Under Secretary, Ministry of Health and Family Welfare in the case of Gaurav Varshney and others (CWP No. 9499 of 2016 out of which LPA No. 922 of 2016 arises) in its prayer clause did not pray for dismissal of the writ petition, but prayed that the petition may be disposed of and the Court may be further pleased to pass other and further orders as it may deem fit and proper. Therefore, it is evident that but for the error, the permission would have been granted. The error being invalidated it is to be taken that necessary permission has been granted by the Central Government to the appellant No. 2 - Institute for renewal of five specialties of the MDS Course and the fresh approval for the Oral Pathology and Microbiology Course.

In the circumstances, the Letters Patent Appeals (i.e. LPA No. 939 of 2016 and LPA No.922 of 2016) are allowed. The judgment and order dated 24.05.2016 passed by the learned Single

Judge in CWP No.9893 of 2016 and CWP No.9499 of 2016 are set aside and the order dated 31.03.2016 (Annexure P14 in LPA No.939 of 2016 and Annexure P10 in LPA No.922 of 2016) is also set aside and quashed and the writ petitions filed by the respective appellants in the two petitions are allowed as prayed for.

Keeping in view the deadlines of 31.05.2016 which is tomorrow for making admissions, the appellants in LPA No.939 of 2016 i.e. Panjab University and Dr. Harvansh Singh Judge Institute of Dental Sciences and Hospitals, Panjab University shall make admissions to the five specialties/courses in which renewal had been sought and the specialty for which fresh approval was sought for the academic session 2016-17 in accordance with law and rules and on the basis of merit after holding counselling.

There shall be no order as to costs.

(S.S. Saron)
Judge

(Harinder Singh Sidhu)
Judge

30.5.2016
Amit/ramesh

Note: Whether to be referred to the Reporter: Yes/No.