

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

W.P.NOS.19226 AND 19399 OF 2018

COMMON ORDER

Petitioners in both the writ petitions are institutions running Medical Colleges and the permissions granted to them for admission of 150 students in MBBS course, was renewed by the 1st respondent – Union of India, up to 2017-18. By two different proceedings dated 31.05.2018, the 1st respondent, based on the recommendations of the 2nd respondent – Medical Council of India (MCI), dated 20.04.2018, rejected to renew permission for admission of 4th and 3rd batches of 150 MBBS students in the respective colleges of the petitioners, and directed not admit any student in MBBS course for the academic sessions 2018 – 2019. Aggrieved by the same, present writ petitions have been filed.

2. Since the issue involved in both the writ petitions and the contentions raised are similar, they are heard analogously and are being disposed of by this common order.

3. In W.P.No.19226 of 2018, the 1st petitioner is GITAM Institute of Medical Sciences and Research and it is represented by its Principal and the 2nd petitioner – GITAM Institute of technology, which is deemed to be University, and it is represented by its Registrar. The case of the petitioners in this writ petition is that, the 2nd respondent – M.C.I., vide proceedings dated 22.06.2017, notified the 1st petitioner – institute, for assessment, for the purpose of renewal of admission for 4th batch of 150 MBBS seats. The Executive Committee of MCI, conducted assessment and submitted report to MCI pointing out certain deficiencies. Vide proceedings dated 01.11.2017, the said committee, communicated its recommendation to Ministry of Health and Family welfare, not to renew the permission, and a

copy of the same was forwarded to the 1st petitioner to comply with the deficiencies and to submit a detailed point wise reply within one month. The 1st respondent, vide communication dated 15.11.2017, granted opportunity of hearing as required under Section 10-A (4) of the Medical Council of India Act, 1956 (for short 'the Act'), fixing the date as 27.11.2017. 1st petitioner participated in the hearing and submitted its explanation along with documentary proof, disputing the deficiencies pointed by the Executive Committee, and stating that it has fulfilled all the requirements prescribed by the MCI under the Regulations. Vide proceedings dated 27.11.2017, the Hearing Committee of the Ministry, held that *'No major deficiencies of faculty, residents and infrastructure have been pointed out. Recommended for review by MCI.'* In pursuance of same, vide explanation dated 22.02.2018, the 1st petitioner has duly rectified the deficiencies. The assessors of the MCI conducted compliance verification inspection on 22.02.2018 for the 4th renewal, for grant of permission for admission of fresh batch of 150 students for the academic year 2018-19, and prepared a report on the said date, again pointing out certain deficiencies. As the compliance verification inspection conducted by the assessors of MCI was arbitrary, 1st petitioner immediately gave its disagreement objection on 22.02.2018 and submitted its representation to MCI and also to Oversight Committee constituted by Supreme Court. The Oversight Committee vide its letter dated 20.03.2018 opined that the representation of the 1st petitioner is self-explanatory and forwarded the same to MCI with a direction to examine the same and furnish suitable reply to the 1st petitioner with a copy to the said Committee within two weeks. The MCI vide letter dated 26.03.2018 intimated the Oversight Committee that the representation of the 1st petitioner has been considered by the Executive Committee in the

meeting dated 24.03.2018 along with compliance report dated 22.02.2018. Here, the grievance of the petitioner No.1 is that the MCI has not served a copy of its recommendation for rejection, as directed by Oversight Committee, but however on 01.05.2018 uploaded the minutes of the meeting dated 24.03.2018 on the web-site, recommending to the Central Government, for rejection of renewal. The further grievance of the petitioner is that as the minutes of the meeting dated 24.03.2018 was uploaded on 1.5.2018 i.e., after a period of about thirty five days, they were denied the opportunity to contest the decision of MCI at the earliest. Petitioners have filed W.P.(C)No.5236 of 2018 on the file of High Court of Delhi to quash the minutes dated 24.03.2018. Vide order dated 16.05.2018, the said writ petition was disposed of directing the 1st respondent to consider the representation of the petitioner prior to 20.04.2018. Subsequently on filing of a modification petition, Vide order dated 21.05.2018 in CM.No.21264/2018 in W.P.(C) No.5236 of 2018, the High Court of Delhi noted the submission of the 1st respondent that it will consider the representation of the petitioner made prior to 20.04.2018. In pursuance of the orders of the High Court of Delhi, the petitioners made representation dated 22.05.2018 to consider their earlier representation/ disagreement objections dated 22.02.2018 along with documentary proof. Eventually, the 1st respondent passed the impugned order dated 31.05.2018 rejecting the claim of the petitioners for renewal of permission for admission of 150 students in 4th batch of MBBS course. Hence the present writ petition.

4. The case of the petitioner in W.P.No.19339 of 2018, which is Gayatri Videya Parishad Society, represented by its Secretary, is that pursuant to the earlier orders of the Supreme Court, it was granted

renewal for the academic year 2017-18, only on 10.08.2017. By representation dated 07.09.2017, petitioner sought time for a period of three months for inspection, for the purpose of renewal for the academic year 2018-19. But the Executive Council of MCI conducted surprise inspection of the petitioner – College on 10.10.2017, and pointed out certain deficiencies. Petitioner filed reply dated 11.10.2017, to each of the deficiencies pointed by the Executive Council stating its justification. But, vide proceedings dated 18.12.2017, the MCI, without considering the reply filed by the petitioner dated 11.10.2017, recommended to the 1st respondent not to renew the permission. The case of the petitioner is that it was not given opportunity to rectify the defects and submit compliance report, as required under Section 10-A (3) of the Act. In the personal hearing given to the petitioner on 09.01.2018, petitioner filed written reply along with material. Accordingly, the 1st respondent directed the MCI to reconsider its recommendations in the light of the compliance documents submitted by the petitioner. On 22.02.2018, the MIC conducted compliance verification assessment and submitted its report stating that the deficiencies pointed out in the earlier report were rectified, but again found certain new deficiencies, which according to the petitioner are in fact not existing and, which were not subject matter of earlier inspection. Therefore, the petitioner through the Dean of the College, filed objections to the assessment report. The case of the petitioner is that as new deficiencies were alleged, it should be given fresh opportunity to rectify the same as required under sub sections 3 and 4 of Section 10-A of the Act, but no opportunity was provided. Petitioner again submitted representation dated 23.02.2018. The further case of the petitioner is that in the meeting of the Executive Council of MCI, without considering the representation of the petitioner dated 23.02.2018 in detail, it was decided

to recommend to the 1st respondent not to renew the permission for the academic year 2018-19. Aggrieved by the same, petitioner filed representations dated to 30.03.2018 to Oversight Committee appointed by Supreme Court and another representation dated 11.04.2018 to the Central Government, pointing out the faults in MCI report. On 29.04.2018, the MIC conveyed to the petitioner, the Executive Council's decision, not to renew permission for the academic year of 2018-19. It is further stated that the decision of the Executive Council, is approved by the Oversight Committee. Eventually, by proceedings dated 31.05.2018 the 1st respondent rejected the application of the petitioner for renewal for the academic year 2018 -19. Hence the present writ petition.

5. Heard Sri SNiranjan Reddy, learned Senior Counsel for the petitioners in W.P.No.19226 of 2018, Sri D.Prakash Reddy, learned Senior counsel for petitioner in W.P.No.19399 of 2018 and Sri KLakshman, learned Assistant Solicitor General, for the respondents in both the writ petitions.

6. The contentions of the learned Senior Counsel appearing for petitioners in both the writ petitions, based on the averments made in the affidavits filed in support of writ petitions, are that the deficiencies pointed out by the Executive Council of the MCI in the inspection, have been objected to by the petitioners, with justification documents, but the same has not been considered. Learned counsel have taken this court though the details of deficiencies pointed out by the Executive Committee of MCI in the inspection reports, explanations/justifications of the petitioners with relevant documents to show that they are in fact not existing, or have been complied with, and the compliance verification inspection reports of the Executive Council.

7. The learned Senior counsel for the petitioners in W.P.No.19226 of 2018 submits that pursuant to the deficiencies pointed out by the Executive Committee of the Council in the assessment report dated 18th and 19th of August, 2017, petitioner No.1 submitted compliance report and the petitioner was provided opportunity under Section 10-A (4) Act. Considering the material on record, vide proceedings dated 27.11.2017, the Hearing Committee, found that there are no major deficiencies of faculty, residents and infrastructure and accordingly recommended for review by MCI. He further submits that the 1st petitioner herein, had duly rectified the defects, but the assessors of MCI, in the compliance verification inspection on 22.02.2018, pointed out certain deficiencies, which are in fact not existing, hence the petitioners filed their objections on 22.02.2018, with relevant material and also submitted representations to the Oversight Committee and to the MIC, and also approached the High Court of Delhi. The Oversight Committee, vide letter dated 20.03.2018 found that the representation of the petitioners is self-explanatory and while forwarding the representation of the petitioner, directed the MIC to consider the same and to furnish suitable reply to the petitioners. But the MIC, in pursuance of the directions of Oversight Committee dated 20.03.2018, has not issued reply to the petitioner No.1. He stated that the petitioners have filed detailed representation dated 26.02.2018 to the 1st respondent. But without considering the said representation and the documents produced by the petitioners, and recording any reasons, 1st respondent passed the impugned order dated 31.05.2018, merely noting that the deficiencies were pointed after physical verification by the Assessors of MCI, who are senior professors of Government Medical Colleges with experience and that the explanations submitted by the college do not sufficiently inspire confidence as to

absence of the deficiencies pointed out by MCI Assessors. He contents that the manner of discarding the explanation of the petitioners, without recording any reasons, is arbitrary and amounts to violation of principles of natural justice. He submits that proviso to Section 10-A (4) of the Act provides for giving of reasonable opportunity of being heard to the colleges, whose application for renewal, is sought to be rejected. But the 1st respondent, without affording the petitioners any opportunity of hearing, passed the impugned order rejecting the renewal of permission for the present academic year.

8. Learned Senior Counsel Sri D.Prakash Reddy, appearing for the petitioner in W.P.No.19399 of 2018, while reiterating the averments made in the writ affidavit, further submits that pursuant to the deficiencies pointed out by the Executive Committee, petitioner has filed compliance report and the MCI ordered for review. In the re-compliance verification assessment report dated 22.02.2018, the Executive Council noted that the deficiencies pointed out in the 1st inspection, are rectified, but pointed out certain new deficiencies. Without providing the petitioner opportunity to comply with the said deficiencies and without considering the explanation submitted by the petitioner, the 1st respondent, passed the impugned order. Learned Senior Counsel stated that before rejecting the renewal for the present academic year, no opportunity of hearing, as required under proviso to Section 10 A (4) of the Act, has been provided to the petitioner, and this amounts to violation of principles of natural justice and the impugned order is liable to be set aside and the claim of the petitioner may be directed to be re-considered for the present academic year, enabling them to take admissions at least for the second phase of counseling scheduled from 06.07.2018 to 08.07.2018.

9. In support of their contention that passing of the impugned order without providing opportunity of hearing to the petitioners, as required under Section 10-A(4) of the Act, amounts to violation of principles of natural justice, the learned Senior Counsel relied on the judgments of the Apex Court reported in *KANACHUR ISLAMIC EDUCATIONAL TRUST v. UNION OF INDIA*¹ and *SWAMY DEVI DAYAL HOSPITAL & DENTAL COLLEGE v. UNION OF INDIA*².

10. Learned Senior Counsel submits that the petitioners have filed representations immediately after the inspection by the Executive Committee and in W.P.No.19226 of 2018 pursuant to inspection reports, the petitioner have filed representation dated 22.02.2018 and the MIC vide letter dated 20.04.2018 recommended for rejection and the petitioners have filed representation and also approached the High Court of Delhi, but the 1st respondent passed the impugned order only on 31.05.2018 without considering their applications and recording any reasons. Similarly in W.P.No.19399 of 2018, the petitioner filed detailed representations dated 30.03.2018 and 11.04.2018 with supporting documents. But the impugned order was passed on 31.05.2018 i.e., after about more than a month. They submit that the impugned orders have been communicated to the petitioners only on 02.06.2018 and 08.06.2018 respectively. He stated that the cut off date for admissions as per the regulations is 31.05.2018 and the impugned orders are served after the cut-off date. In these circumstances, the fault lies on the respondents and hence they cannot be permitted to take the technical plea that since the cut-off date as per the regulations has already been over, the case of the petitioners cannot be considered for renewal. If this plea is

¹ (2017)15 SCC 702

² (2014)13 SCC 506

allowed to be taken, petitioners would be rendered remediless for the injustice caused to them. Since the petitioners are not at fault, the Central Government may be directed to re-consider the claim of the petitioner for the present academic year. Learned Senior Counsel, relying on the judgment of the Apex Court in *ASHA v. PT.BD. SHARMA UNIVERSITY OF HEALTH SCIENCES*³, submits that in the said case, where the meritorious candidate was denied admission and she pursued her remedies diligently and the respondents pleaded cut-off date, for denial of admission, the Apex Court held that cut-off date cannot be used as a technical instrument to deny admission to meritorious students. Learned counsel sought to apply same analogy to the claim of the petitioners.

11. Learned Senior Counsel, further relying on the judgments reported in *PRAVARA INSTITUTE OF MEDICAL SCIENCES v. UNION OF INDIA*⁴, *DR.D.Y.PATIL MEDICAL COLLEGE, HOSPITAL AND RESEARCH CENTRE vs. UNION OF INDIA*⁵, *SHRI DURGA MAA SHIKSHA vs. UNION OF INDIA*⁶, submitted that in appropriate cases, 1st respondent can grant permission for admission beyond the cut-off date, as the petitioners are not at fault, and denying the present claim of the petitioner, amounts to allowing premium on the illegal order passed by the 1st respondent.

12. With the above contentions, learned counsel sought to allow the writ petitions.

13. On the other hand, learned Assistant Solicitor General appearing for respondents submits that the Executive Committee of MCI, during the inspection of colleges, pointed out deficiencies. The said committee is comprised of senior doctors in Government colleges, having

³ (2012)7 SCC 389

⁴ (2017)5 AIR BOM R 60

⁵ W.p.No.9537 of 2017 dated 4.9.2017, High Court of Judicature at Bombay

⁶ W.P. (C). No.6955 of 2017 dated 22.08.2017, High Court of Delhi

vast experience and as they found deficiencies in inspection, the same were pointed out and in the compliance verification inspection, those deficiencies stood un-rectified and accordingly they made recommendations for rejection of renewal. The findings of the expert body, which have been taken into consideration by the 1st respondent, while passing the impugned orders, cannot be interfered with by this court under Article 226 of the Constitution of India. He stated the deficiencies have to be complied with and the same cannot be diluted and that the time schedule under the Regulations, has to be followed scrupulously. In this regard, the learned counsel relied on the judgment of the Apex Court in *IQ CITY FOUNDATION v. UNION OF INDIA*⁷.

14. Learned Assistant Solicitor General further submits that in both the writ petitions, initially when the Executive Committee decided not to recommend to the Central Government for renewal of permission and when the permission for renewal was sought to be rejected; as required under Section 10-A (4) of the Act, petitioners were given opportunity of hearing, and considering their representations/justifications and the documents/material submitted by them, the matters were recommended for review by MCI. Again, as the Executive Committee of the council found deficiencies, recommended for rejection of permission, and accordingly, the 1st respondent considering the report of MCI and material on record, rejected the claim of the petitioners. As the petitioners were already given opportunity of hearing and remanded for review, it cannot be said that Section 10 – A (4) of the Act, has been violated. He stated that petitioners cannot be given multiple hearings. In the present case, the respondents, in compliance of the principles of

⁷ (2017)16 SCC 249

natural justice and considering the opinion of the expert body, passed the impugned orders and hence the same cannot be interfered with.

15. Learned counsel further submits that the 1st respondent has to consider the cases of number of colleges for renewing approvals for the present academic year, and the petitioners in spite of considering their applications and giving opportunity, failed to comply with the deficiencies and hence the Executive Committee recommended for rejection, and the 1st respondent after considering their representations and the report of MCI dated 20.04.2018, could pass impugned orders only on 31.05.2018 and hence no delay can be attributed to the 1st respondent in passing the impugned orders.

16. Learned counsel submits that the MCI issued notification with regard to schedule for admission in medical colleges, with the previous sanction of the Central Government. As per the said notification Establishment of Medical College Regulations (Amendment), 2015, has been promulgated. Under the said Regulations 31st May of that academic year, shall be last date for grant of permission. The Apex Court in *ASHISH PANJAHN vs. UNION OF INDIA*⁸, has given stamp of approval to the aforesaid schedule and categorically observed that all the stakeholders follow the schedule in letter and spirit and not make any deviation whatsoever. He stated that when this court in W.A.No.405 of 2016 and batch dated 22.09.2016 directed for fresh counseling beyond cut-off date, on appeal, the Apex Court in *MEDICAL COUNCIL OF INDIA v. DR. MADEM APOORVA*⁹, set aside the same and held that such a directions shall not be given in future. The Apex Court in *MEDICAL*

⁸ I.A. No.7 and 8 in Writ Petition (Civil) No.76 of 2015 dated 18-01-2016

⁹ Special Leave to Appeal (C) Nos.19633/2016 dated 08.09.2016

COUNCIL OF INDIA vs. U.N. PUBLIC HEALTH AND EDUCATIONAL TRUST,¹⁰ held that High Court directing for fresh assessment after time schedule, is unsustainable.

17. With regard to cases, in which directions were given beyond 31st of May, learned Assistant Solicitor General submits that those are the cases in which directions were issued by Apex Court under Article 32 of the Constitution of India and not under Article 226 by High Court.

18. From the above the first contention of the learned Senior Counsel for the petitioners is that before rejecting renewals, the explanations submitted by the petitioners and the relevant material have not been considered and no reasons have been recorded.

19. From a perusal of the material on record it goes to show that petitioners in W.P.No.19226 of 2018 filed a detailed representation dated 26.02.2018 giving justification for deficiencies pointed out by assessors in compliance verification report dated 22.02.2018 along with documentary proof. In the impugned order, the 1st respondent only noted that the averments of the 1st petitioner, and discarded the same, holding as under:

“8. Whereas, the Ministry noted that the deficiencies were pointed out after physical verification by the Assessors of MCI who are senior Professors of Government Medical Colleges with vast experience. The explanation submitted by the college do not sufficiently inspire confidence as to absence of the deficiencies pointed out by MCI Assessors.”

20. While recoding the above finding, the explanation of the petitioners giving justification along with documentary proof, has not been considered and no reasons have been recorded. Thus the rejection of renewal without considering the material documents produced by the

¹⁰ (2016) 11 SCC 216

petitioners and recording any reasons, amounts to violation of principles of natural justice.

21. In W.P.No.19399 of 2018, the facts which are already noted above, disclose that the MIC conducted inspection on 10.10.2017 and pointed out certain deficiencies and the petitioner filed its reply dated 11.10.2017 and by proceedings dated 18.12.2017 MCI sent recommendation to the Government not to renew the permission for the present academic year. Pursuant to hearing and reply filed by the petitioner, the 1st respondent directed MCI to reconsider the recommendations in the light of compliance documents submitted by the college. On 22.02.2018 MIC conducted compliance verification assessment and submitted report stating that the deficiencies pointed out in the first inspection were rectified, but pointed out certain new deficiencies.

22. It is to be seen that when new deficiencies were pointed out in the compliance verification assessment, as per section 10(3) of the Act, petitioner shall be given fresh opportunity to submit compliance report. But before passing the impugned order, petitioner was not given opportunity. The Apex Court in Royal Medical Trust case in W.P.No. (C) 705 of 2014 dated 20.08.2015, laid down certain guidelines. The said guidelines were also noted in the impugned order. Clause (B) of the said guidelines, stipulates that *“Intimation of the result of 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.”* The

impugned order does not disclose that the petitioner was given sufficient time to report compliance. This circumstance also militates against the respondents.

23. Furthermore, the petitioner in this writ petition, has made a detailed representation dated 23.02.2018 to MIC with proof of not having any shortages pointed out in the inspection and also made similar representation before the 1st respondent. A reading of the impugned order goes to show that the 1st respondent has not considered the said representation of the petitioner and only considering the recommendations of the MIC dated 20.04.2018, and without recording any reasons, passed the impugned order rejecting the claim of the petitioner for renewal to the present academic year.

24. A reading of the impugned orders in both the writ petition goes to show that the representations of the petitioners' along with documentary proof, have not been taken into considerations and no reasons were recorded for discarding the same. The 1st respondent is discharging quasi judicial function. Therefore, principles of natural justice require, recording of reasons and the rejection cannot be in a mechanical manner, without application of mind to the material available on record.

25. The next contention of the learned counsel for the petitioners is that the petitioners have not been given opportunity of hearing before passing the impugned orders of rejection for renewal of permission for admission of students in the present academic year.

26. Opportunity of hearing is provided under Section 10-A (4) of the Act. The said provision is extracted as under:

Section 10 A (4): The Central Government may, after considering the scheme and the recommendations of the Council under sub-section (3) and after obtaining, where necessary, such other particulars as may be considered necessary by it from the person or college concerned, and having regard to the factors referred to in sub-section (7), either approve (with such conditions, if any, as it may consider necessary) or disapprove the scheme and any such approval shall be a permission under sub-section (1);

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

Provided further that nothing in this sub-section shall prevent any person or medical college whose scheme has not been approved by the Central Government to submit a fresh scheme and the provisions of this section shall apply to such scheme, as if such scheme has been submitted for the first time under sub-section (2).

27. From a reading of the first proviso to Section 10-A (4) of the Act, it is clear that before disapproving the scheme, the person or the college shall be given reasonable opportunity of being heard. But impugned orders do not disclose that the petitioners were given opportunity of hearing before rejecting their claim. Not providing opportunity of hearing; amounts to violation of principles of natural justice.

28. Learned Assistant Solicitor General submits that initially when the MCI recommended for rejection of renewal to the colleges, petitioners were provided with opportunity of hearing and after considering compliance reports, the present impugned orders have been passed. Therefore, question of again providing opportunity of hearing, does not arise, as the above provision does not contemplate multiple hearings. This contention cannot be accepted for the reason that the above provision makes it mandatory of giving opportunity before rejecting the claim for renewal. Admittedly, before passing the impugned order, opportunity of hearing was not given to the petitioners. It is to be further seen that after remanding the matter back for reconsideration by MCI, the Executive Committee of the Council, pointed out new deficiencies, and petitioners submitted their explanations, thus there arose new cause of action.

Therefore, before rejection, principles of natural justice require issuance of notice.

29. The Apex court in Kanachur Islamic Education Trust case (1 supra), considering the proviso under Section 10-A(4) of the Act, held as under:

“23. As a reasonable opportunity of hearing contained in the proviso to Section 10-A(4) is an indispensable precondition for disapproval by the Central Government any scheme for establishment of a medical college, we are of the convinced opinion that having regard to the progression of events and the divergent / irreconcilable views/recommendations of MCI, the Hearing Committee, the DGHS and the Oversight Committee, the impugned order, if sustained in the singular facts and circumstances, would be in disaccord with the letter and spirit of the prescription of reasonable opportunity of hearing to the petitioner Institutions / Colleges, as enjoined under Section 10-A(4) of the Act. This is more so in the face of the detrimental consequences with which they would be visited. It cannot be gainsaid that the reasonable opportunity of hearing, as obligated by Section 10-A(4) inheres fairness in action to meet the legislative edict. With the existing arrangement in place, MCI, the Central Government and for that matter, the Hearing Committee, DGHS, as in the present case, the Oversight Committee and the colleges/institutions concerned are integral constituents of the hearing mechanism so much so that severance of any one or more of these, by any measure, would render the process undertaken to be mutilative of the letter and spirit of the mandate of Section 10-A(4).”

30. In view of above facts and circumstances and in the light of law laid down in the above judgment of the Apex Court, as the petitioners were not provided with the opportunity of hearing as envisaged under section 10-A(4) of the Act; for not considering the detailed representations submitted by petitioners; for not recording any cogent reasons for rejecting the claim of the petitioners and; for non-application of mind to the material available on record, the impugned orders are liable to be set aside and accordingly set aside.

31. The cut-off date for grant of permission as per the schedule under the Regulations, is 31st of May of the present academic year. The chronology of events, noted above, discloses that the Medical Council of India made recommendations for rejection of renewal for the academic year on 20.04.2018 and thereafter, petitioners made representations,

raising objections to the assessment of compliance verification reports by MCI and the petitioners in W.P.No.19926 of 2018, had to move the High Court of Delhi for a direction to consider their representations. These circumstances, suggest that the petitioners acted with all promptitude, in ventilating their grievance. But the 1st respondent dodged the issue and eventually, passed the impugned orders, as already noted above, without recording any reasons and in violation of proviso to Section 10-A(4) of the Act; only on the cut-off date prescribed under the schedule on 31.05.2018. The submission of the learned Assistant Solicitor General, is that as there are number of colleges, the 1st respondent could pass the orders only on 31.05.2018. When the rights of the petitioners are being affected, respondents cannot take the said plea and again say cut-off date is over. Therefore, this explanation cannot be accepted, having regard to the above facts and circumstances.

32. The next issue, in the light of setting aside of the impugned orders, is whether this court under Article 226 of the Constitution of India, can direct the 1st respondent to reconsider the claim of the petitioners for the according permission for admission of students in MBBS course for the academic year 2018-19, after the cut-off date fixed under the Regulations.

33. A Division Bench of this court in similar facts and circumstances in W.P.No.405 of 2016 and batch dated 13.07.2016, considering various judgments of the Apex Court, including the judgments relied on by the learned Senior counsel for the petitioners, passed the following order:

“Today, we are confronted with a situation where about 86 seats in Government medical colleges have gone waste in the State of Andhra Pradesh and 32 seats have gone waste in the State of Telangana. All these seats are for post-graduate degrees or diplomas both on clinical and non-clinical sides. The last date on which the 5th counseling was held, was 30.05.2016. As per the

Government orders, the private colleges were entitled to convert their merit quota seats into management quota seats. This could have happened only after 30.05.2016. Today, we are on 13.07.2016. Therefore, the breaking of the deadline, just for the purpose of ensuring that the vacant seats are filled up, will be in larger public interest. We make it clear that we are not merely taking note of the plight of the writ petitioners, but the very plight of the Government Institutions, where the investment in the form of resources cannot be utilized to the full potential, if some of the seats go waste in post-graduate courses.

Though the learned counsel for the Medical Council of India submitted that any violation of the deadline, has always been taken adverse notice of by the Supreme Court, the Courts have not so far been confronted with a situation of this nature where so many seats go waste not due to the fault committed by any one of the stakeholders. Therefore, the peculiar circumstances of the case warrant us to issue interim directions not necessarily in the interest of some individuals but also in the larger public interest and the interest of the Universities and the educational institutions themselves.

In view of the above, an interim direction is issued to the respondents to open up one last counseling to be conducted on 23.07.2016 for filling up of seats that are remaining vacant, either due to non-allotment or due to allotment not being taken by the allotted candidate or due to the allotted candidate taking the seat and not reporting or due to the allotted candidate joining and leaving by this time for better prospects or better course. There shall be one counseling conducted by Dr. NTR University of Health Sciences for filling up these seats. An advertisement, in this regard, shall be published in the same manner as they have done in the past in Newspapers and also in the web sites of the Universities."

From the above directions it is clear that after the cut-off date, the Division Bench of this court, considering the facts and circumstances that seats are going waste for that academic year, directed the respondents to conduct counseling to fill those seats. On appeal, the Apex Court in *MEDICAL COUNCIL OF INDIA vs. DR. MADEM APOORVA* (Special Leave to Appeal (C) No.19633/2016), held as follows:

"It is submitted by Mr. Gaurav Sharma that the High Court should not have passed the aforesaid order. It needs to be stated that this court has determined a schedule after hearing learned counsel for the Union of India and the Medical Council of India. Therefore, the High Court should not have issued the above directions. We are sure, in future, the same shall not be done."

34. Though the impugned orders are set aside, in view of the above observations of the Apex Court, this court is not inclined to give direction to the 1st respondent to reconsider the claim of the petitioner for the present academic year.

35. The writ petitions are accordingly allowed to the extent indicated above.

36. Miscellaneous petitions pending, if any, shall stand closed. No costs.

A.RAJASHEKER REDDY,J

DATE:20—06—2018
AVS

