IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP NO.13366 OF 2018

Date of Decision : 07.08.2018

N.C.Medical College and Hospital and another

....Petitioner(s)

Versus

The Union of India and others

...Respondent(s)

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. Govind Goel, Advocate and
Mr. Ankit Goel, Advocate for the petitioners
Mr. Arun Gosain, Central Govt. counsel
For respondent no.1
Mr. Gurminder Singh, Sr. Advocate with
Mr. M.S.Longia, Advocate for MCI

MAHESH GROVER, J.

This is a writ petition under Article 226 of the Constitution of India questioning the action of the respondents in declaring the petitioner-College deficient so as to deny them the permission to admit students to the M.B.B.S course for the academic session 2018-19.

We may briefly notice the facts.

The petitioner-College was granted the essentiality certificate in the year 2013 and affiliation with the University was also granted in the very same year. The conditional letter of permission was also released in favour of the petitioner enabling it to admit 150 students for the academic session

2016-17 on the directions of the over-sight committee. Pursuant to the letter of the over-sight committee dated 11.8.2016 the Medical Council of India (hereinafter referred to as the 'MCI') undertook a verification inspection on 7/8-11-2016 and pointed out certain deficiencies with a further recommendations to the Central Government whether the college should be debarred from admitting students for two academic sessions 2017-18 and 2018-19 and also recommended that the Bank guarantee furnished by the petitioner be encashed.

The petitioner sought a personal hearing as is envisaged under Section 10(A)(4) of the Indian Medical Council Act which was granted but the hearing committee accepted the view of the MCI. These views were also accepted by the Govt. of India vide its order dated 10.8.2017. It would be important to set out the deficiencies observed by the MCI in its assessment of the college on inspection carried out on 9/10-12-2015.

I. Deficiency of faculty is 87.7% as detailed in report.

II. Shortage of Residents is 100% as detailed in report.

III. There is no Medical Superintendent in the affiliated hospital.

IV. Office of Medical Superintendent is much smaller than required.

V. OPD: Separate Registration Counters for OPD/IPD are not available.

VI. OPD was non-operational on 1st day of assessment. Only after arrival of assessors, OG & Orthopaedics OPD were operational and a few patients were seated.

VII. Wards: All wards were not functional. Wards are not as per MSR Regulations. Only in 3 wards, Nursing staff was present without any sign of functionality. No

other staff was present. There were no medicines in the wards.

VIII. OPD attendance was 149 on day of assessment. Even this figure, given by institute is inflated. When assessors entered OPD, hardly 10-15 persons were standing in queue for registration. Even at 11:30, only 2-3 persons were there at Registration counter who were looking healthy. In OPD, hardly any patients were seen in waiting areas of OPD or in IPD.

IX. Bed occupancy was Zero % on day of assessment.

X. Casualty attendance was NIL. No records were available of past 24 hours.

XI There were NIL Major & Minor operations on day of assessment.

XII There was NIL Normal Delivery & NIL Caesarean Section on day of assessment.

XIII In Gynaec O.T a list of previous day (i.e 8/12/2015) showing 2 names Veena & Pooja- was provided. These names were found in O.T registers also. However on verification, no such patients were found in wards. Hospital is non-functional since last several months & fake records are being created in registers.

XIV USG workload was NIL. USG machines were covered & sealed by District Competent Authority.

XV. Laboratory investigations workload was NIL

XVI. Casualty: No doctors are posted. Disaster trolley, Crash Cart, Ventilator are not available.

XVII. All ancilliary facilities like Central Clinical laboratories, Casualty, O.T.s, ICUs, Blood Bank, CSSD, Laundry etc. are non-functional since last several months. However, fake records are being generated.

XVIII.There is only 1 mobile X-ray machine against

requirement of 2.

XIX No blood has been issued after 28.9.2015.

XX. No record is available in Pharmacy of drugs issued. Stock Management Software is not working.

XXI Only 10 Nurses are available against requirement of 175. No Nursing staff was available except Nursing Superintendent & 2 Staff Nurses.

XXII Only 12 Paramedical & Non-teaching staff are available against requirement of 100.

The College in turn submitted a compliance report whereafter the MCI on 1.4.2016 carried out a verification assessment which was considered by the Executive Committee in its meeting on 13.5.2016 and noticed the following deficiencies.

i. Deficiency of faculty is 84.61% as detailed in report.

ii. Shortage of residents is 89.13% as detailed in report.

iii. There is no Medical Superintendent in the affiliated hospital.

iv. OPD was non-operational on day of assessment OPD attendance was NIL. When seen by assessors at 10.00 a.m. with no doctors and nursing & other staff. Total OPD attendance was only 54 on day of assessment.

v. Bed occupancy was Zero on day of assessment.

vi. Wards: many wards were non functional. Wards are not as per MSR regulations.

vii. There were Nil Major & minor operations on day of assessment.

viii. There was Nil Normal delivery & Nil caesarean section on day of assessment.

ix. USG workload was Nil on day of assessment.

x. Laboratory investigations workload was Nil on day of assessment.

xi. Ancillary facilities like ICUs, Blood Bank, Laundry are non functional.

xii. There is only I mobile X-RAY machine against requirement of 2. Deficiency remains as it is.

xiii. No blood has been issued since Last several weeks.

xiv. No record of drugs dispensed to patients is available.

xv. Nursing paramedical & other non teaching staff are grossly inadequate.

xvi. Residential Quarters for non teaching staff are of dormitory type with 4 persons in a room which cannot be construed as quarters.

xvii. Anatomy department cadavers are not available. Catalogues of histology slides are not available.

The Government of India accepted the recommendations of MCI and accorded dis-approval to the college for the academic session 2016-17. When the matter was taken to the over-sight committee it directed the Ministry to have a fresh compliance from the college which was submitted on 22.6.2016. This was forwarded to the MCI which submitted its

response which in turn was submitted to the over-sight committee. The over-sight committee vide its letter dated 11.8.2016 approved the scheme of establishment of new Medical College i.e the petitioner college at Ishrana with an annual intake of 150 students for the academic session 2016-17 on certain conditions and the Central Government in line with the approval of the over-sight committee issued necessary letter of permission on 20.8.2016 for establishment of a new Medical College with all the conditions imposed by the over-sight committee. The petitioner submitted its compliances and the Executive Committee of the MCI in its meeting on 22.12.2016 again noticed deficiencies which are extracted herebelow:-

i. Deficiency of faculty is 27.69% as detailed in the report.

ii. Administrative experience of dean/ Principal Dr. Mukesh Yadav is less than the required 10 years as per TEQ regulations.

iii. Seven faculty are not considered as they are found to be full time practitioners which is not permissible.

iv. Names of only 8 faculties are displayed on the website of the institute.

v. Shortage of residents is 36.95% as detailed in the report.

vi. A few senior residents are not staying in the campus.

vii. Bed occupancy is 46% (i.e. 138 out

of 300) on day of assessment at 10 a.m.

viii. There was NIL Patient in Tb & Chest OPD at time of assessment. No faculty in Tb & Chest was available till 11 a.m.

ix. There was Nil normal delivery & nil caesarean section on day of assessment.

x. Workload of USG was NIL on day of assessment. Only I USG machine is available against requirement of 2 & even that was sealed on day of assessment due to PNDT issues.

xi. Data of Laboratory & Radiological investigations provided by the institute are exaggerated.

xii. There is no ICCU.

xiii. OPD: Dressing rooms for males/ females are not available. Plaster cutting room is not available in orthopedics OPD.

Evidently the MCI took a serious note of this and vide its letter dated 26.12.2016 informed the Govt. of India that the college be debarred from admitting the students for a period of two academic sessions i.e 2017-18 and 2018-19. For the purposes of reference, same is extracted herebelow:-

In view of the above, the college has failed to abide by the undertaking it had given to the central government, that there are no deficiencies as per clause

3.2 (i) of the directions passed by the Supreme Court mandated oversight committee vide communication dated 11.08.2016. The Executive Committee, after due deliberation and discussion, have decided that the college has failed to comply with the stipulation laid down by the oversight committee. Accordingly, the executive committee recommends that as per the directions passed by oversight committee in para 3.2(b) vide communication dated 11.08.2016 the college should be debarred from admitting students in the above course for a period of two academic year i.e. 2017-2018 & 2018-19 as even after giving an undertaking that they have fulfilled the entire infrastructure for establishment of new medical college at Israna, Panipat, Haryana by Shanti Devi Charitable Trust, Pitampura, New Delhi under Pt. B.D. Sharma University of Health Sciences, Rohtak the college was found to be grossly deficient. It has also been decided by the Executive Committee that the Bank Guarantee furnished by the college in pursuance of the directives passed by the oversight committee as well as GOI letter dated 20.08.2016 is liable to be encashed.

The petitioner then pressed for a personal hearing which was granted by the Ministry on 17.1.2017. The hearing committee then submitted its report to the Ministry with the following observations:-

Sr.No.	*Deficiencies reported by MCI*	*Observations of hearing committee*
i	*Deficiency of faculty is 27.69% as detailed in the report.*	*Not satisfactory reply.*
ii.	*Administrative experience of Dean/ Principal Dr. Mukesh Yadav is less than the required 10 years as per TEQ regulations;*	*Agreed on the day of hearing on 17.01.2017 because the reply is not satisfactory.*
iii.	*Seven faculty are not considered as they are found to be full time practitioners which is not permissible.*	*Agreed on the day of hearing on 17.01.2017 because the reply is not satisfactory.*
iv.	*Names of only 8 faculty are displayed on website of the institute.*	*Agreed on the day of hearing on 17.01.2017 because the reply is not satisfactory.*
v.	*Shortage of residents is 36.95% as detailed in the report.*	*Agreed on the day of hearing on 17.01.2017 because the reply is not satisfactory.*
vi.	*A few senior residents are not staying in the campus.*	*Agreed on the day of hearing on 17.01.2017 because the reply is not satisfactory.*
vii.	*Bed Occupancy is 46% (i.e. 138 out of 300) on day of assessment at 10 a.m.*	*Agreed on the day of hearing on 17.01.2017 because the reply is not satisfactory.*
viii.	*There was Nil patient in Tb & Chest OPD at time of assessment. No faculty in Tb & Chest was available till 11 a.m.*	*Agreed on the day of hearing on 17.01.2017 because the reply is not satisfactory.*
ix.	*There was NIL Normal delivery & NIL caesarean section on day of assessment.*	*Agreed on the day of hearing on 17.01.2017 because the reply is*

		not satisfactory.
x.	*Workload of USG was NIL on day of assessment only I USG machine is available against requirement of 2 & even that was sealed on day of assessment due to PNDT issues.*	*Agreed on the day of hearing on 17.01.2017 because the reply is not satisfactory.*
xi.	*Data of laboratory & radiological investigations provided by the institute are exaggerated.*	*Agreed on the day of hearing on 17.01.2017 because the reply is not satisfactory.*
xii.	*There is no ICCU.*	*Agreed on the day of hearing on 17.01.2017 because the reply is not satisfactory.*
xiii.	*OPD. Dressing rooms for males/ females are not available plaster cutting room is not available in orthopedics OPD*	*Agreed on the day of hearing on 17.01.2017 because the reply is not satisfactory.*

This report was then forwarded to the over-sight committee for guidelines which vide its letter dated 14.5.2017 responded as follows:-

i. Faculty: Total requirement of faculty is 65 and once all those who came late are considered valid, the deficiency is 6 i.e. 9.2% if we consider the deficiency of faculty as per the website faculty table accessed today, the deficiency is 3 i.e. 4.6%.

ii. Administrative experience: - This deficiency is not stated by assessors anywhere in the summary or SAF.

iii. Residents: - Total requirement of

residents is 46 and once all those who came late or where staying outside hostel are considered valid, the deficiency is 5 i.e. 10.8%.

iv. SRs: - There is no deficiency of Residents hostel as per SR.

v. Bed Occupancy: - The College has stated that Bed occupancy was more than 78% at the end of the day on 07.11.2016. There is no valid explanation supported with evidences against the said deficiency, neither in SAF nor in their representation. This would appear to be a deficiency.

vi. Delivery: There is no MSR in this regard.

vii. USG Workload: - As per the assessment report, the requirement of USG machine is 2 and were one machine is available that is too sealed. It appears to be a deficiency.

viii. OPD" – there is no MSR in this regard.

ix. Laboratory / Radiological investigations: - This is subjective. NO MSR.

x. ICCU: - As per the SAF, 5 Beds of ICCU are, which is not a deficiency.

As per representation dated 02.05.2017, the college has

stated the 2 USG machines(as per requirement) had been purchased, but were sealed on the day of assessment. However, the case of de-sealing of the machines is sub-judice and they have outsourced USG facility to avoid any hardship to the patients. As regard Bed occupancy, the college has stated that it was practically not feasible to predict bed occupancy of 46% at 10.00 AM without visiting all 300 bedded hospital when the team arrived at 10.00 AM, while the time in the printout of email regarding assessment indicated 10.12 AM. The college has further stated that the bed occupancy was 78.33% on 07.11.2016 and 76% on 08.11.2016,details of which have been signed and stamped/ annexed by the college to their representation. While the statement of the college with regard to Bed occupancy is acceptable, MHFW may examine the status of USG as the matter is understood to be sub judice. An opportunity may be given by MHFW to the college accordingly, before confirmation of LOP.

Ministry may give another opportunity of hearing.

Thereafter another opportunity of hearing was granted to the petitioner on 29.5.2017 and Hearing Committee then reported as follows:

"*Deficiencies existing in Medical College as per hearing on 17.01.2017 were present at the time of inspection and college authorities agreed regarding the same but now they might have rectified but the explanation and documents*

produced in front of committee members were not satisfactory. If required it may be verified."

These recommendations were then accepted by the MCI and vide its letter dated 9.6.2017 the College was debarred from admitting students for two academic sessions 2017-18 and 2018-19 and the bank guarantee of Rs.2 crores was directed to be encashed.

The petitioner then filed proceedings before the Hon'ble Supreme Court W.P (c) 432/2017 and this matter was clubbed with other such similar matters i.e W.P (Civil) 411/2017 **Glocal Medical College and Super Specialty Hospital & Research Centre vs. UOI and others**. Incidentally this judgment stands reported as 2017(15)SCC 690.

On 1.8.2017 the Hon'ble Supreme Court gave the following directions :-

"*In the above persuasive premise, the Central Government is hereby ordered to consider afresh the material on record pertaining to the issue of confirmation or otherwise of the letter of permission granted to the petitioner colleges/ institutions., we make it clear that in undertaking this exercise, the Central Government would re-evaluate the recommendations/ view of the MCI, hearing committee, DGHS and the oversight committee, as available on records. It would also afford and opportunity of hearing to the petitioner college/ institutions to the extent necessary. The process of hearing and final reasoned decision thereon, as ordered, would be complete peremptorily within a period*

of 10 days from today. The parties would unfailingly cooperate in compliance of this direction to meet the time frame fixed."

The petitioner was then granted hearing on 3.8.2017 by the Government of India and the Hearing Committee observed as follows:-

"*The supporting documents for faculty and residents shown by the college were not systematically arranged seemed comprehensive.*

On the issue of full time private practitioners severing as faculty, the college contends that faculty are available 9.00 AM to 4.00 PM in the college. Beyond the college hours it is permissible for them to do private practice. They are available on call for emergency duties. College further informs that six of these seven faculty have been discharged Dr. Satish Chaudhary in Orthopedics department continues and has been declared eligible as Associate Professor by MCI.

MCI finding is substantiated with copies of letter heads of some of the doctors showing consultation timings from morning till evening at private clinics. The college having discharged 6 of those faculty suggests that they were indeed private practitioners.

The evidence on inpatients is not satisfactory in the absence of MRD records and traceability to the identity of patients. No sample case sheet could be shown to the committee.

In view of the large number of deficiencies. The committee agrees with the decision of the Ministry conveyed by letter dated 09.06.2017 to debar the college for 2 years and also permit MCI to encash bank guarantee".

19. Accepting the recommendations of the hearing committee, the Ministry reiterates its earlier decision dated 09.06.2017 to debar the college from admitting students for a period of two years i.e. 2017 -18 and 2018-19 and also to authorize MCI to encash the bank Guarantee of Rs.2 crores."

In the case of the petitioner on 9.10.2017 the Hon'ble Supreme Court while considering the prayer of the petitioner for permission to admit students for the academic session 2018-19 passed the following order:

"*in respect of the petitioner-institute, inspection may be carried out for the purposes of grant of permission for the academic session 2018-19 as per MCI regulations. The Bank guarantee furnished by the petitioner-institute shall be kept alive."*

The MCI in compliance with the order dated 9.10.2017 extracted above carried out the assessment on 17-11-2017 and 18-11-2017 and the executive committee considered the same on 14.12.2017 to record the following deficiencies:-

1) Deficiency of faculty is 9% as detailed in the report.

2) Shortage of residents is 10.2% as detailed in the

report.

3) CT Scan is not available.

4) Casualty: Separate Casualty for O.G. is not available.

5) ICUs: There was NIL patient in PICU, only 1 patient in ICCU & 2 patients in MICU, SICU, NICU on day of assessment.

6) USG Machines could not be verified as the rooms are sealed by District Administration. Resultantly, there is NIL functional USG available against requirement of 2.

7) Central Research Laboratory: Equipment are inadequate. It is not functional.

8) Lecture Theaters: 2 Lectures theaters are available in the college against 3 required. Contention of the institute to consider 3rd Lecture Theater in the hospital is not valid as 3 Lecture Theaters in the college are required at this phase under the regulations.

9) Central Library: It is partially air –Conditioned. Capacity of staff reading room is 16 against requirement of 30 39 journals are required against requirement of 40.

10) Students Hostels: Visitors room recreations

room are not available.

11) Residents hostel: accommodation is available for 28 residents against 49 required.

12) Nurses' Hostel: Accommodation is available for 13 Nurses against 35 required. It is not furnished.

13) Residential quarters: Quarters for non teaching staff are no available.

14) Pathology department: Cytology & Hematology laboratories are not functional. Space for faculty & non teaching staff is inadequate.

15) Microbiology department parasitology, immunology & virology laboratories are not functional.

16) Community medicine department cold chain equipment are not available specialists visits are not organized. Survey/ MCH/ immunization/FW registers are not available.

17) Common Rooms for boys & girls do not have attached. Toilets.

18) Other deficiencies as pointed out in the assessment report.

In view of above, the Executive Committee of the council decided to recommend to the central

> *government not to renew the permission for admission of 3rd batch of 150 MBBS Students of N.C. Medical College & hospital, Panipat. Haryana under Pt. B.D. Sharma University of health sciences, Rohtak u/s 10A of the IMC Act, 1956 for the academic year 2108-19.*

The Hon'ble Supreme Court vide its order dated 17.1.2018 passed the following order:-

> "In the instant case, this Court has directed the Medical Council of India and other respondents to consider the case for the year 2018-19. The inspection has been made by the Medical Council of India and they have to take a call on the basis of the report as per procedure under the rules. Let the Government of India and Medical Council of India take a decision in the matter by 31st March, 2018 in accordance with law.
>
> In case any of the college is aggrieved by the decision so taken would be at liberty to question it in accordance with the law. Nothing further survives for adjudication in the instant matters. The writ petitions are disposed of in terms of the aforesaid direction."

On 19.1.2018 the petitioner was granted an opportunity of hearing by the hearing committee and in case of the petitioner the committee reported that "*in view of the compliance submitted by the college the matter may be referred to the MCI for review".*

It would be prudent to refer to the deficiencies pointed out by the MCI and the compliance submitted by the college:

Deficiencies pointed out by MCI	*Documents/ information furnished by the institute*
1) Deficiency of faculty is 9% as detailed in the report *2) Shortage of residents is 10.2 % as detailed in the report* *3) CT Scan is not available* *4) Casualty: Separate casualty for O.G. is not available* *5) ICUs: There were NIL patients in PICU, only I patient in ICCU & 2 patients in MICU, SICU, NICU on day of assessment.* *6) USG machines could not be verified as the rooms are sealed by District Administration. Resultantly, there is NIL functional USG available against requirement of 2.* *7) Central Research Laboratory: Equipment are inadequate. It is not functional.* *8) Lecture Theaters: 2 Lecture Theaters are available in the college against 3) required. Contention of the institute to consider 3rd Lecture Theater in the hospital is not valid as*	*1) Contested. College submits that on the day of inspection there was deficiency of only 2 faculty. College submits that 01 faculty member was on leave due to her daughter marriage and another faculty came later for attendance. Proper relieving letter of 02 faculty member was not available on the day of inspection. However, college has submitted proper relieving letter of these faculties along with their submission.* *2) Partially contested. They have admitted for the shortage of 01 resident only.* *3) Agreed. Not rectified yet.* *4) Agreed and rectified. Photographs attached.* *5) Submitted a list of 14 patients in ICUs.* *6) The court vide order dated 21.09.2017 has granted de-sealing order for the USG machines, but the machines*

3 lecture theatre in the college are required at this phase under the Regulations.	*under seal even as on 17.11.2017*
9) Central Library: It is partially air conditioned. Capacity of staff reading room is 16 against requirement of 30.39 journals are required against requirement of 40.	*7) Contested.*
10) Students hostels : Visitors room' recreation room are not available.	*8) The deficiency of .T. still persists since the academic block still has 02 LTs only.*
11) Residents hostels: Accommodation is available for 28 residents against 49 required 12. Nurses Hostel: Accommodation is available for 13 nurses against 35 required. It is not furnished.	*9) Contested fully air conditioned.*
13) Residential quarters: quarters for non teaching staff not available.	*10) 11,12 &13 denied. Verified in earlier inspection photo attached.*
14) Pathology department: Cytology & Hematology laboratories are not functional. Space for faculty & non teaching staff is inadequate.	*14,15 & 16 Partially admitted no conclusive evidence.*
15) Microbiology department: Parasitology, immunology & virology laboratories are not functional.	*17. Agreed.*
16) Community Medicine department: Cold chain equipment are not available. Specialists visits are not organized. Survey/ MCH/ Immunization/FW registers are not	

available. *17) Common rooms for boys & girls do not have attached toilets.*		

The MCI vide its letter dated 9.2.2018 noticed that the compliance submitted by the college was considered by the sub-committee of the Council in its meeting on 6.2.2018 and observed that deficiencies at Sr.no.3, 6, 7, 8, 12 and 14 are not rectified and compliance is not satisfactory. The petitioner was directed to re-submit a detailed point wise satisfactory compliance report within 15 days from the date of dispatch of the letter. The petitioner did so and it would be essential to extract its reply herebelow:-

Point-wise reply of deficiencies pointed out by the MCI letter dated: 06.01.2018				
Sr. no.	*Deficiencies pointed out by MCI*	*Compliance rectification of deficiencies*	*Annexure NO.*	*Remarks*
3.	*CT scan is not available.*	*We have already applied to District Appropriate Authority (DAA), Panipat, Haryana for permission and registration of CT Scan under PNDT Act.* *Purchase of CT Scan is only possible after permission of DAA which is still awaited.* *We also filed appeal before the state appropriate authority (SAA), PNDT Act and final hearing was held on 20.02.2018 and next date which was fixed for 23.02.2018 at 2.30 pm in the office of DGHS have been postponed email information for the same attached as*	*Annexure NO.3a, 3b*	

		documentary evidence. *We are hopeful of getting permission very soon.* *Application for the same along with relevant document is attached for your kind perusal.* *We are assuring of adding of CT Scan facility as and when we will have permission from the competent authority under PNDT Act.*		
6	*USG machines could not be verified as the rooms are sealed by District Administration. Resultantly, there is NIL Functional USG available against requirement of 2.*	*Case is sub-judice / pending before the competent court. Next date of hearing 26.02.2018.* *Final charge sheet/ police investigation report has been submitted and pending in the court at Panipat, Haryana (Annexure attached.) in the meantime civil judge (Junior Division) , Panipat, dated 21.09.2017, No. 2677, Title State Vs. Dr. Manjari & others , issued order for de- sealing of USG machines. Order mention. "The District appropriate authority is directed to de-seal the ultra sound machine bearing make and model no. Acuson X300, Model No. X-300 PE ISG Machine of N.C. Medical College, Israna, Panipat, within 15 days from the date of this order and the possession of the same be handing over to the applicant on superdari ……. Annexure Attached.* *Patient care is taken care by MoU with PANACIA, USG Diagnostic Centre.* *Previous order of ministry of health and family welfare,*	*Annexure No.6a, 6b,6c, 6d,6e, 6f,6g*	

		Government of India , NO.U.12012/686/2015- ME-1 (3063589) dated 10.08.2017, has already accepted our arguments,, with supporting documents and considered this deficiency as rectified satisfactorily. (Please see para 14 & para 18, page 6& 7). *USG PNDT monthly report for the month of November, 2017, December, 2017 and January 2018 attached as documentary evidence of functionality and patient care. ”*		
7	*Central Research Laboratory : Equipment are inadequate. It is not functional*	*Subjective observations of the MCI Assessors. There is no MSR of MCI regarding list of equipments and minimum number of project/ research work to be called it as functional N.C. Medical college is in infancy stage and more research work will be done with the passage of time. List of completed research projects and new ongoing research projects to been completed is attached for your kind perusal.* *List of equipments to be shared with central research laboratory by various departments is attached.* *List of publication by faculty is also attached as evidence of research work carried on.* *Clarification in this regard was sought from MCI by email dated 23.01.2018, reminder dated 16.02.2018 , but till date no information / reply received.*	*Annexure No. 7a, 7b, 7c, 7d, 7e*	
8	*Lecture Theaters: 2 Lecture theaters are*	*Rectified* *We are having five (5) lecture theaters (LTs) (3 in academic*	*Annexure 8, 8a, 8b*	

	available in the college against 3 required. Contention of the institute to consider 3rd lecture theater in the hospital is not valid as 3 lecture theaters in the college are required at this phase under the regulations.	*block and 2 in hospital block.* *One more lecture theater (LT-3) capacity 180, gallery type has been constructed / created in academic block, ground floor and forensic medicine laboratory has been shifted to New Para clinical block.* *Photograph and architect plan attached as evidence.*		
12	*Nurses' hostel: accommodation is available for 13 nurses against 35 required. It is not furnished.*	*Rectified* *Previous MCI inspection report dated 7th & 8th Nov 2016, at page 9 confirmed availability of adequate numbers, only repair work was in process during MCI inspection.* *However, renovation of new building work has been finished and accommodations allotted to nursing staff which is adequately furnished.* *Photographs and floor plan with allotted rooms attached as evidence.*	*Annexure No.12:* *12a, 12b & 12c*	
14	*Pathology department:* *Cytology & Haematolgy laboratories are not functional.*	*Rectified* *Subjective Observations of MCI Assessors, documents attached for kind perusal* *Adequate space was available in the department of pathology.*	*Annexure No.14a,* *14b, 14c,* *14d, 14e,*	

	Space for faculty & non teaching staff is inadequate.	*However, new building para clinical block renovated where we have shifted department of pathology and additional space for all para clinical departments have been made available for future expansion also.* *In addition to space in department of pathology we also have additional space for faculty in the blood bank and central hospital laboratory which is under the control and supervision of Department of Pathology clinical material data of MRD/ Department of pathology investigations of previous months attached as evidence of functional status.* *Photographs and architect plan attached as evidence*	*Page no. 13, 14 of MSR 1999 for 150 students.*	

This was then duly considered once again by the sub-committee of the MCI in its meeting on 5.3.2018 and it observed that deficiencies at sr.no.3, 6 and 7 are not rectified. It is essential to mention here that the committee evidently accepted explanation qua the other deficiencies and limited the deficiencies to the one noticed at sr.no.3, 6 and 7 and even at the cost of repetition, we deem it appropriate to notice those deficiencies point wise:-

Sr. no.	*Deficiencies pointed out by MCI*	*Compliance rectification of deficiencies*
3.	*CT scan is not available.*	*We have already applied to District Appropriate Authority (DAA), Panipat, Haryana for permission and registration of CT Scan under PNDT Act.* *Purchase of CT Scan is only possible after permission of DAA which is still awaited.*

		We also filed appeal before the state appropriate authority (SAA), PNDT Act and final hearing was held on 20.02.2018 and next date which was fixed for 23.02.2018 at 2.30 pm in the office of DGHS have been postponed email information for the same attached as documentary evidence. *We are hopeful of getting permission very soon.* *Application for the same along with relevant document is attached for your kind perusal.* *We are assuring of adding of CT Scan facility as and when we will have permission from the competent authority under PNDT Act.*
6	*USG machines could not be verified as the rooms are sealed by District Administration. Resultantly, there is NIL Functional USG available against requirement of 2.*	*Case is sub-judice / pending before the competent court. Next date of hearing 26.02.2018.* *Final charge sheet/ police investigation report has been submitted and pending in the court at Panipat, Haryana (Annexure attached.) in the meantime civil judge (Junior Division) , Panipat, dated 21.09.2017, No. 2677, Title State Vs. Dr. Manjari & others , issued order for de- sealing of USG machines. Order mention. "The District appropriate authority is directed to de-seal the ultra sound machine bearing make and model no. Acuson X300, Model No. X-300 PE ISG Machine of N.C. Medical College, Israna, Panipat, within 15 days from the date of this order and the possession of the same be handing over to the applicant on superdari …… Annexure Attached.* *Patient care is taken care by MoU with PANACIA, USG Diagnostic Centre.* *Previous order of ministry of health and family welfare, Government of India , NO.U.12012/686/2015- ME-1 (3063589) dated 10.08.2017, has already accepted our arguments,, with supporting documents and considered this deficiency as rectified satisfactorily. (Please see para 14 & para 18, page 6& 7).* *USG PNDT monthly report for the month of November, 2017, December, 2017 and January 2018 attached as documentary evidence of functionality and patient care. "*
7	*Central*	*Subjective observations of the MCI Assessors. There*

	Research Laboratory: Equipment are inadequate. It is not functional	*is no MSR of MCI regarding list of equipments and minimum number of project/ research work to be called it as functional N.C. Medical college is in infancy stage and more research work will be done with the passage of time. List of completed research projects and new ongoing research projects to been completed is attached for your kind perusal.* *List of equipments to be shared with central research laboratory by various departments is attached.* *List of publication by faculty is also attached as evidence of research work carried on.* *Clarification in this regard was sought from MCI by email dated 23.01.2018, reminder dated 16.02.2018 , but till date no information / reply received.*

The petitioner vide its letter dated 15.3.2018 reported compliance which we notice as below:-

Sr. no.	*Deficiencies pointed out by MCI*	*Compliance rectification of deficiencies*
3.	*CT scan is not available.*	*We have already applied to District Appropriate Authority (DAA), Panipat, Haryana for permission and registration of CT Scan under PNDT Act.* *Today on the 15th March 2018 we have got the permission from District Appropriate authority (DAA) to purchase the CT Scan machine vide their letter no.PNDT./Panipat/ 2018/44 dated 15.03.2018.* *Accordingly we have made a purchase order of 16 slice CT Scan machine to M/s Edge medical solutions Pvt. Ltd. house no.104, Mangolpur Kalan, New Delhi – 110085, India vide our purchase order NO.NCMH/ PO/ 2018./020 dated 15.03.2018 and a advance payment of Rs.6,50,000/- against the quotation has been made vide RTGS (UTR NO. ORBCH18073071719 dated 14.03.2018) and have also received the confirmation of our order.* *Order of the same along with relevant document is attached for your kind perusal.*

		In radiology department the space is ready for the installation of CT scan machine photos enclosed *For the time being till our own CT Scan is installed we already have MoU with PANACIA for the indoor and outdoor patients vide MoU dated 11th Dec 2017.*
6	*USG machines could not be verified as the rooms are sealed by District Administration. Resultantly, there is NIL Functional USG available against requirement of 2.*	*As per the order no. CRM-M 10899-2018 of Hon'ble Punjab and Haryana High Court has given the decision to stay the order of revisional court, Panipat upholding the orders of the trial court, Panipat.* *We hope as per the order the Ultra Sound Machine shall be de-sealed by the authorities within a week's time.* *Meanwhile patient diagnostic care is taken care by MoU with PANACIA USG Diagnostic Centre at a walking distance from the hospital. (Copy attached.)* *USG PNDT Monthly report for the month of November, 2017, December, 2017 and January 2018, February 2018 attached as documentary evidence of functionality and patient care*
7	*Central Research Laboratory: Equipment are inadequate. It is not functional*	*Rectified* *These were subjective observations of the MCI Assessors as there is no minimum standard regulations (MSR) of MCI Regarding list of equipments and minimum number of project work to be called as functional central research lab.* *List of equipments available and shared with various departments:* *· List of equipments to be shared with central research laboratory by various departments is attached.* *List of research work:* *· List of publication by faculty is also attached as evidence of research work carried on.* *· List of few more research papers of our*

		faculty recently published in indexed journals has been attached. *Clarification regarding MSR related to CRL.* · *Clarification in this regard was sought from MCI by email dated 23.01.2018, reminder dated 16.02.2018, but till date no information / reply received.* · *Request for the same ref no. NCMCH/ Principal / March -2018/019, dated 09.03.2018, submitted to the secretary, supreme Court mandated oversight committee for consideration of our request and clarity on the issue of MSR related to central research lab., reply still awaited.* *It is pertinent to note that N.C. Medical college is in infancy stage and more research work will be done with the passage of time.* *In view of above peculiar circumstances, it is humbly requested to consider this deficiency as complied and oblige us in large public interest.*

The petitioner then unsuccessfully made an application in the petition bearing no. W.P.(Civil) no.432 of 2017 which already stood disposed of before the Hon'ble Supreme Court. The Hon'ble Supreme Court granted the petitioner liberty to question the order or action in appropriate proceedings.

The MCI subsequent thereto vide its communication dated 4.5.2018 while considering the plea of the petitioner for renewal of admission for the session 2018-19 recorded numerous deficiencies and declined permission to the petitioner. Following are the deficiencies recorded by the MCI in its report of 4.5.2018 which was also approved by the Oversight committee.

1. Deficiency of faculty is 9% as detailed in the report.

2. Shortage of Residents is 28.57% as detailed in the report.

3. On random verification, 14 Residents were found to be not staying in the Residents' hostel.

4. Engineering college girls _ Kajal Sharma, Anju, Sapexh & Pallavi – are staying in room nos. 303, 310 & 316 allotted to junior Residents.

5. IN SR hostel, Room # 315 was allotted to Annu Khatri, SR, O.G; however on verification it was found that wife of Dr. Abu Siddiq, Asst. Prof. of Pharmacology was staying.

6. List of faculty & Residents joined or promoted after last assessment was not produced.

7. OPD data as given by the Institute are inflated when correlated with investigations being carried out.

8. Bed Occupancy at 10 a.m on day of assessment as 50%.

9. Patients: 32 patients were not considered in departments of Surgery, Medicine, Psychiatry, TBCD, Orthopedics, General Medicine:

* Patient Balkishna admitted in female medical ward with complaints of muscle pain, Rash (there was no rash).

* Mrs. Dhanpati IP no. 70318262 admitted in female ward for Cataract operation, with controlled diabetes.

* Pt. Shantidevi IP no. 50418176 admitted for controlled Diabetes and no complaints.

* Patient Renu IP no. 120418621 admitted with diagnosis of Obesity.

* Patient Aminaben IP no. 120418162 without any symptoms with diagnosis of Anemia.

* In Psychiatry Department patient Deepak IP no. 030418314 was admitted from 3rd April with complaints of Anxiety.

* Patient IP no.03041840 was admitted for mild depression.

* Another patient was admitted for alcohol withdrawal tremors.

* In female psychiatry ward patient Santro was admitted with mild depression.

* In TB Chest ward Pt. Sube Singh was having only mild weakness and burning sensations on tongue.

* Patient Savitri Devi was admitted for COPD but no symptoms were seen.

* In Surgery ward patient Parveen IP no. 120418317 was admitted with complaints of Mild.

* Patient Aminaben was kept after laparoscopic Cholecystectomy done on 4th April having no symptoms.

* Pt. Santosh was indoor for Excision Biopsy for Breast lump for dressing only.

* Patient Mrs. Suman No.10041833 admitted with Diagnosis of Ureteric stone but USG was normal.

* Pt. Sunita No.03041837 was operated for laparoscopic Cholecystectomy on 4th April and kept without any symptoms.

* Patient Seema IP no. 2803182 ureteric stone removal kept for 4 days without any symptoms.

* Pt. Angrejo 260318432 was kept after laparoscopic Cholecystectomy done on 4th April without any symptoms.

* Patient Saroj IP no. 24031878 was kept after ureteric stone removal for 8 days without any symptoms.

* Patient Azar admitted in male surgical ward complained of burning all over the body and no surgical complaints.

* Patient Tejbir Singh operated for Inguinal hernia kept since 3rd April without any complaints.

* Patient Ramesh IP 10041828 admitted with very small umbilical hernia, which patient did not complain of.

* Pt. Paleram 1304187 admitted with very small umbilical hernia, which the patient did not complain of.

* Another patient Paleram had incision and draingage of small abcess.

* Patient Mr.Nanu admitted with diagnosis of BPH had no USG done although he was admitted on 7th April.

* In Orthopedics patient Ritesh was admitted with small hand injury.

* Patient Kidara 0204183 was admitted since 2nd April with diagnosis of Cervical Spondylosis, on asking the patient complaint of knee pain.

* Patient Sunil admitted without any Diagnostic X Ray

* Total 32 such patients were not counted.

* Hence 32 patients were deducted out of 182 admitted patients. So bed occupancy is calculated at 150 patients.

10. There were only 6 Major & 4 Minor Operations on day of assessment.

11. There was NIL Normal Delivery on day of assessment.

12. CT Scan is not available.

13. In many wards, Demonstration rooms are non-functional & not furnished.

14. Other deficiencies as pointed out in the assessment report.

In view of 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 150 M.B.B.S students at N.C Medical College & Hospital, Panipat, Haryana under Pt. B.D.Sharma Unviersity of Health Sciences, Rohtak u/s 10A of the IMC Act, 1956 for the academic year 2018-2019."

The above decision of the Executive Committee has been approved by the Oversight Committee on 4.5.2018."

It is at this stage that the petitioner approached this Court by filing the present writ petition.

We have heard learned counsel for the parties.

The only question that has engaged us is as to whether the action of the MCI is arbitrary and whether the Hearing Committee or the Oversight Committee applied themselves to the reports of the MCI and the concerns of the writ petitioner while accepting the inspection reports of the MCI.

We may at the outset observe that the very nomenclature; very composition of the committees that go by the name of "Hearing Committee" and "Oversight Committee" would suggest a role to act like a sieve while considering the inspection report of the MCI in co-relation with the response of the affected institution and discard, frivolous objections and retain the ones with significance.

It is absolutely imperative for them to examine minutely whether the concerns flagged by the MCI are sufficient to deprive the institution of its right to carry on with the task of medical education. If they merely accept what is submitted by the MCI without examining the material and the representation of the institution then it invites upon itself a charge of non-application of mind that paves the way for an arbitrary decision.

If we see the entire record i.e objections raised by the MCI and the response of the Hearing Committee, it does not weed out the objections that may be irrelevant or frivolous but merely goes on to accept what the

MCI recommends.

This to our minds cannot be the purpose of the Hearing Committee or the Oversight Committee which in essence needs to apply its mind independent of the inspection report of the MCI.

Learned counsel for the petitioners has referred to the power of judicial review by the Courts to examine such actions by the executive or any regulatory authority.

We may observe that not for a minute do we have any doubts about our power to examine the issues raised before us. The only impediment that confronts us is that while exercising our power of judicial review we are confronted with an inherent constraint offered by the controversy where a professional body i.e MCI tasked with the job of ensuring high standards in medical education and observant of certain deficiencies which when offered to us for their relevance naturally puts Courts at a disadvantage; as they are not adequately equipped to understand the significance of atleast a few aspects.

We can very well understand some of the concerns which would be inherent to an institute for its proper functionality but certain issues that we notice in the report of the MCI resulting in negation of the petitioners' claim, do not really sound inherent or significant enough to thwart the functioning of an institute altogether.

We have also noticed that barely few weeks ago the MCI had through its communication and after considering the response of the petitioner-institute responded to say that all other deficiencies stood rectified except the ones that they had indicated at sr. no. 3, 6 and 7. There seems to

be no consistency in the findings recorded by the MCI in its multiple reports. For example on 14.5.2017 the MCI recorded that total requirement of faculty is 65 and once of those who came late are considered valid deficiency is 6 i.e 9.2% if we consider the deficiency of faculty as per the website faculty table accessed today deficiency is 3 i.e 4.6%.

In so far as residents are concerned it noticed that the total requirement of residents is 46 and once all those who came late or staying outside hostel are considered valid, the deficiency is 5 i.e 10.8%. It goes on to notice that there is no deficiency of residents' hostel. But in its last report on 4.5.2018 the deficiency of faculty is 9% shortage of residents is 28.57%. 14 residents were found to be not staying in residents' hostel.

Be that as it may, there is no mention in the report whether the strength of the faculty, residents, senior residents, other staff were checked from the records, particularly, when the petitioners assert that the entire staff has bio-metric record duly supported by other materials such as the proof of their pay etc. With equal vehemence it has been argued before us that the residents, senior residents at the time of inspection were not expected to be in the hostels when they were performing their duties in the hospital. This assumes significance because MCI insists on surprise inspection and it would thus be imperative for them to observe in detail from the record to infer about the existing strength of the staff faculty and the residents. It cannot simply rely on a presence or an absence from a hostel room to conclude the shortage of the staff. This to our minds would not withstand the scrutiny on any rationale. The petitioner in turn has submitted compliances to the earlier deficiencies which were pointed out by none other but the MCI itself in its report dated 9.2.2018, 23.2.2018 and after going

through the same it was accepted by the MCI vide its report dated 5.3.2018 that deficiencies at sr. no. 3, 6 and 7 were still not rectified. We thus deem it appropriate to extract these three deficiencies:-

Sr. no.	*Deficiencies pointed out by MCI*	*Compliance rectification of deficiencies*
3.	*CT scan is not available.*	*We have already applied to District Appropriate Authority (DAA), Panipat, Haryana for permission and registration of CT Scan under PNDT Act.* *Purchase of CT Scan is only possible after permission of DAA which is still awaited.* *We also filed appeal before the state appropriate authority (SAA), PNDT Act and final hearing was held on 20.02.2018 and next date which was fixed for 23.02.2018 at 2.30 pm in the office of DGHS have been postponed email information for the same attached as documentary evidence.* *We are hopeful of getting permission very soon.* *Application for the same along with relevant document is attached for your kind perusal.* *We are assuring of adding of CT Scan facility as and when we will have permission from the competent authority under PNDT Act.*
6	*USG machines could not be verified as the rooms are sealed by District Administration. Resultantly, there is NIL Functional USG available against requirement of 2.*	*Case is sub-judice / pending before the competent court. Next date of hearing 26.02.2018.* *Final charge sheet/ police investigation report has been submitted and pending in the court at Panipat, Haryana (Annexure attached.) in the meantime civil judge (Junior Division) , Panipat, dated 21.09.2017, No. 2677, Title State Vs. Dr. Manjari & others , issued order for de-sealing of USG machines. Order mention. "The District appropriate authority is directed to de-seal the ultra sound machine bearing make and model no. Acuson X300, Model No. X-300 PE ISG Machine of N.C. Medical College, Israna, Panipat, within 15 days from the date of this order and the possession of the same be*

		handing over to the applicant on superdari …… …… Annexure Attached. *Patient care is taken care by MoU with PANACIA, USG Diagnostic Centre.* *Previous order of ministry of health and family welfare, Government of India , NO.U.12012/686/2015- ME-1 (3063589) dated 10.08.2017, has already accepted our arguments,, with supporting documents and considered this deficiency as rectified satisfactorily. (Please see para 14 & para 18, page 6& 7).* *USG PNDT monthly report for the month of November, 2017, December, 2017 and January 2018 attached as documentary evidence of functionality and patient care. ”*
7	*Central Research Laboratory: Equipment are inadequate. It is not functional*	*Subjective observations of the MCI Assessors. There is no MSR of MCI regarding list of equipments and minimum number of project/ research work to be called it as functional N.C. Medical college is in infancy stage and more research work will be done with the passage of time. List of completed research projects and new ongoing research projects to been completed is attached for your kind perusal.* *List of equipments to be shared with central research laboratory by various departments is attached.* *List of publication by faculty is also attached as evidence of research work carried on.* *Clarification in this regard was sought from MCI by email dated 23.01.2018, reminder dated 16.02.2018 , but till date no information / reply received.*

The petitioners in turn had submitted that even these deficiencies stood rectified and offered sufficient explanation but what intrigues us is that barely few weeks thereafter in May, 2018, the deficiencies jump up multi-fold. We are unable to accept atleast some of the

objections that now find mention, regarding the deficiencies in OPD or bed occupancy which in any case would be fluid at any given time of the year. That apart we notice that the petitioner submitted its compliance report regarding three limited deficiencies that remained, they were not even noticed by the MCI or the Hearing Committee or the Government. The petitioner had clearly submitted in its representation 15.3.2018 that as far as C.T scan is concerned they had applied to District Appropriate Authority Panipat for permission and for registration of the CT scan machine under PNDT Act and they had received a permission for purchase of C.T scan machine and in fact they had made a purchase order of 16 slice CT scan machine. They had also given the details of the payment and order placed for it.

Similarly, qua objection no.6 regarding USG machine, it was stated by the petitioner that the issue was under litigation where a machine has been sealed and the Trial Court ordering in their favour with the revisional Court upsetting the same but the order being stayed in Crl.Misc.No.M-10899 of 2018 by the High Court in terms of the order they would accept the machine to be desealed. Qua objection no.7 they had reported complete rectification. we would for the purposes of forming a comprehensive narrative deem it appropriate to extract the explanation given by the petitioner

Sr. no.	*Deficiencies pointed out by MCI*	*Compliance rectification of deficiencies*
3.	*CT scan is not*	*We have already applied to District*

	available.	*Appropriate Authority (DAA), Panipat, Haryana for permission and registration of CT Scan under PNDT Act.* *Today on the 15th March 2018 we have got the permission from District Appropriate authority (DAA) to purchase the CT Scan machine vide their letter no.PNDT./Panipat/ 2018/44 dated 15.03.2018.* *Accordingly we have made a purchase order of 16 slice CT Scan machine to M/s Edge medical solutions Pvt. Ltd. house no.104, Mangolpur Kalan, New Delhi – 110085, India vide our purchase order NO.NCMH/ PO/ 2018./020 dated 15.03.2018 and a advance payment of Rs.6,50,000/- against the quotation has been made vide RTGS (UTR NO. ORBCH18073071719 dated 14.03.2018) and have also received the confirmation of our order.* *Order of the same along with relevant document is attached for your kind perusal.* *In radiology department the space is ready for the installation of CT scan machine photos enclosed* *For the time being till our own CT Scan is installed we already have MoU with PANACIA for the indoor and outdoor patients vide MoU dated 11th Dec 2017.*
6	*USG machines could not be verified as the rooms are sealed by District Administration. Resultantly, there is NIL Functional USG available against requirement of 2.*	*As per the order no. CRM-M 10899-2018 of Hon'ble Punjab and Haryana High Court has given the decision to stay the order of revisional court, Panipat upholding the orders of the trial court, Panipat.* *We hope as per the order the Ultra Sound Machine shall be de-sealed by the authorities within a week's time.* *Meanwhile patient diagnostic care is taken care by MoU with the PANACIA USG Diagnostic Centre at a walking distance from the hospital. (Copy attached.)* *USG PNDT Monthly report for the month of*

		November, 2017, December, 2017 and January 2018, February 2018 attached as documentary evidence of functionality and patient care
7	*Central Research Laboratory: Equipment are inadequate. It is not functional*	*Rectified* *These were subjective observations of the MCI Assessors as there is no minimum standard regulations (MSR) of MCI Regarding list of equipments and minimum number of project work to be called as functional central research lab.* *List of equipments available and shared with various departments:* *· List of equipments to be shared with central research laboratory by various departments is attached.* *List of research work:* *· List of publication by faculty is also attached as evidence of research work carried on.* *· List of few more research papers of our faculty recently published in indexed journals has been attached.* *Clarification regarding MSR related to CRL.* *· Clarification in this regard was sought from MCI by email dated 23.01.2018, reminder dated 16.02.2018, but till date no information / reply received.* *· Request for the same ref no. NCMCH/Principal / March -2018 /019, dated 09.03.2018, submitted to the secretary, supreme Court mandated oversight committee for consideration of our request and clarity on the issue of MSR related to central research lab., reply still awaited.* *It is pertinent to note that N.C. Medical*

		college is in infancy stage and more research work will be done with the passage of time. *In view of above peculiar circumstances, it is humbly requested to consider this deficiency as complied and oblige us in large public interest.*

None of these find any detailed mention in the report of the MCI which betrays, to our mind an arbitrariness. In similar circumstances the Hon'ble Supreme Court in **Dr.Jagat Narain Subharti Charitable Trust vs. UOI** reported as (2017) 16 SCC 666 observed as follows:-

> "4. Thereafter, an assessment with regard to verification of compliance submitted by the college was conducted by the MCI on 26-10-2016/27-10-2016 and after considering the report, the Executive Committee of MCI, in its meeting held on 13.01.2017, noted certain deficiencies. MCI, vide letter dated 15.01.2017, submitted its recommendation to the Central Government to revoke the letter of permission. After receipt of the said recommendation, personal hearing was given to the college on 17.01.2017, by Director General of Health Services (for short "DGHS"). The Hearing Committee noted as follows:

<table>
<tr><td>Sr. No.</td><td colspan="4">Deficiencies reported by MCI</td><td>Observations of hearing committee</td></tr>
<tr><td>i.</td><td colspan="4">Deficiency of faculty is 20.00% as detailed in the report.</td><td rowspan="6">No satisfactory justification for Deficiencies</td></tr>
<tr><td>ii.</td><td colspan="4">Shortage of Residents is 21.70% as detailed in the deficiencies report</td></tr>
<tr><td>iii.</td><td colspan="4">OPD attendance is 535 on day of assessment against requirement of 600 as per Regulations.</td></tr>
<tr><td rowspan="14">iv.</td><td colspan="4">Bed Occupancy is 31.33% at 10 a.m. on the day of assessment as under</td></tr>
<tr><td>Sr.no</td><td>Department</td><td>Beds</td><td></td></tr>
<tr><td></td><td></td><td>Available</td><td>Occupied</td></tr>
<tr><td>1.</td><td>General Medicine</td><td>72</td><td>30</td></tr>
<tr><td>2.</td><td>Paediatrics</td><td>24</td><td>05</td></tr>
<tr><td>3.</td><td>Tb and Chest</td><td>08</td><td>00</td></tr>
<tr><td>4.</td><td>Psychiatry</td><td>08</td><td>00</td></tr>
<tr><td>5.</td><td>Skin and VD</td><td>08</td><td>00</td></tr>
<tr><td>6.</td><td>General Surgery</td><td>90</td><td>18</td></tr>
<tr><td>7.</td><td>Orthopaedics</td><td>30</td><td>08</td></tr>
<tr><td>8.</td><td>Ophthalmology</td><td>10</td><td>11</td></tr>
<tr><td>9.</td><td>ENT</td><td>10</td><td>04</td></tr>
<tr><td>10.</td><td>O.G.</td><td>40</td><td>18</td></tr>
<tr><td></td><td>Total</td><td>300</td><td>94</td></tr>
<tr><td>v.</td><td colspan="3">There was NIL Normal Delivery & 1 Caesarean</td></tr>
</table>

	Section on day of assessment.	
vi.	ICUs: There was Nil patient in ICCU & only 1 patient each in MICU; SICU and NICU/PICU on day of assessment. "	

This report was forwarded to OC for guidance, in response to which the OC vide letter dated 14.05.2017 conveyed its opinion to the Ministry as follows:

"i). Faculty:- Once the faculty on leave are considered, the deficiency comes to 6.15% which is within norms.

ii). Residents:- Once the residents on leave are considered, there is no deficiency.

iii) OPD attendance:- Explanation of College is valid.

iv) Bed Occupancy:- Explanation of College is valid.

v) Deliveries:- This deficiency is subjective. No MSR.

vi) ICUs:- This deficiency is subjective. No MSR. LoP confirmation is subject to the status required to be ascertained by MHFW with reference to OC letter No.OC/Sridev Suman Subharti/2017/189 dated 18-4-2017 addressed to MHFW."

"12.Having considered the rival submissions and after perusing the records, we are more than convinced that the impugned communication dated 14.08.2017 cannot stand the test of judicial scrutiny. As can be discerned from paragraph 17, essentially, three factors have weighed with the Hearing Committee and the competent authority of the Central Government while debarring the petitioner college for two academic sessions. The first is about the deficiencies of faculty, residents, OPD and bed occupancy. The petitioners had offered explanation in relation to each of these deficiencies. The OC, after considering the explanation, had opined that the petitioners had shown sufficient cause and that the deficiencies, if any, were within the permissible norms.This is evident from the communication of the OC dated 14.05.2017. Neither the

Hearing Committee nor the competent authority of the Central Government has dwelt upon the stated explanation given by the petitioners and which had found favour with the OC, as noted in its communication dated 14.05.2017. No finding has been recorded by the Hearing Committee or the competent authority of the Central Government that the said view expressed by the OC is inappropriate or incorrect. Notably, in Para 17 of the impugned communication, the competent authority of the Central Government has recorded the observation of the Hearing Committee that inspection carried out on 26.10.2016/27.10.2016 was just prior to Diwali and was bound to reflect on the attendance of the faculty, residents and OPD as well as bed occupancy.The competent authority has stopped at that. It has not rejected the said explanation as incorrect or bogus. On the other hand, the impression gathered from the contents of Para 17 of the impugned communication is that the Hearing Committee as well as the competent authority of the Central Government has not rejected the explanation offered by the petitioners' college. If that is so, deficiency in respect of faculty, residents, OPD and bed occupancy cannot be held against the petitioners moreso when the OC, on the basis of the same material, had opined that the deficiency regarding faculty at the relevant time was only 6.15%, which was within the norms.Even the deficiency of residents was answered in favour of the petitioners by observing that there was no deficiency. The explanation of the college with regard to OPD attendance and

bed occupancy was found to be reasonable, sufficient and valid by the OC. Accordingly, the first aspect highlighted in Para 17 in relation to the deficiency of faculty, residents, OPD and bed occupancy, cannot be held against the petitioners."

Similarly, in case titled as **World College of Medical Sciences & Research and Hospital vs. UOI (2017) 15 SCC 746** observed as below:-

"11. Having considered the rival submissions, we are in agreement with the petitioners that the competent authority has once again failed to consider the relevant matters in the spirit of the direction given by this Court on 1.8.2017 [Glocal Medical College and Super Speciality Hospital & Research Centre vs. Union of India, (2017) 15 SCC 690]. It has mechanically adverted to the recommendation of the Hearing Committee, which, in turn, has reproduced the factual position narrated in the assessment report in respect of the inspection conducted on 26-10-2016/27-10-2016. The competent authority has not examined the matter with respect to the specific plea taken by the petitioners which had found favour with the OC. OC in its recommendation dated 14.5.2017 had noted that the faculty deficiency was only 06.18% which was within the acceptable norms. OC had noted that the assessing team completely glossed over the fact that some staff was on leave due to the ensuing Diwali festival and that 4 staff

members had come late after the scheduled time. The explanation offered by the petitioners in that behalf found favour with the OC. However, neither the Hearing Committee nor the competent authority has dealt with the factual matrix and in particular, the explanation offered by the petitioners, including the fresh representation."

Similar was the view in various other judgments such as **Chiarman Al Azhar Medical College and Super Speciality Hospital vs. Union of India** decided on 22.9.2017, **Apollo Institute of Medical Sciences & Research vs. Union of India (2017) 16 SCC 649** and **Kanachur Islamic Education Trust v. Union of India** (2017) 15 SCC 702.

In case titled as **Royal Medical Trust vs. Union of India (2015) 10 SCC 19**, the Hon'ble Supreme Court has observed about the MCI as below:-

"31. The MCI and the Central Government have been vested with monitoring powers under Section 10A and the Regulations. It is expected of these authorities to discharge their functions well within the statutory confines as well as in conformity with the Schedule to the Regulations. If there is inaction on their part or non-observance of the time Schedule, it is bound to have adverse effect on all concerned. The affidavit filed on behalf of the Union of India shows that though the number of seats had risen, obviously because of permissions granted for establishment of new colleges, because of disapproval of renewal cases the resultant effect was net loss in

terms of number of seats available for the academic year. It thus not only caused loss of opportunity to the students community but at the same time caused loss to the society in terms of less number of doctors being available. The MCI and the Central Government must therefore show due diligence right from the day when the applications are received. The Schedule giving various stages and time limits must accommodate every possible eventuality and at the same time must comply with the requirements of observance of natural justice at various levels. In our view the Schedule must ideally take care of :

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

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

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

We had observed in foregoing paragraphs that the very nomenclature of the Hearing Committee and the Oversight Committee pre-supposes an element of adherence to the rule of audi alterem partem. It becomes essential and the provisions of Section 10(A)(4) of Indian Medical Council Act also dictate likewise and if the objections raised by the person affected adversely are not dealt with and supported with reasons then the very spirit of the statute and the principles of natural justice are rendered illusory. In case titled as **Krishna Mohan Medical College and Hospital vs. Union of India** reported as (2017) 15 SCC 719 it has been observed as follows:-

"20. In the predominant factual setting, noted hereinabove, the approach of the respondents is markedly incompatible with the

essence and import of the proviso to Section 10A(4) mandating against disapproval by the Central Government of any scheme for establishment of a college except after giving the person or the college concerned a reasonable opportunity of being heard. Reasonable opportunity of hearing which is synonymous to 'fair hearing', it is not longer res integra, is an important ingredient of audi alteram partem rule and embraces almost every facet of fair procedure. The rule of 'fair hearing' requires that the affected party should be given an opportunity to meet the case against him effectively and the right to fair hearing takes within its fold a just decision supplemented by reasons and rationale. Reasonable opportunity of hearing or right to 'fair hearing' casts a steadfast and sacrosanct obligation on the adjudicator to ensure fairness in procedure and action, so much so that any remiss or dereliction in connection therewith would be at the pain of invalidation of the decision eventually taken. Every executive authority empowered to take an administrative action having the potential of visiting any person with civil consequences must take care to ensure that justice is not only done but also manifestly appears to have been done."

Taking all the facts in totality, we are of the opinion that the petitioner has been denied an objective assessment not only by the MCI but also by the Hearing Committee and the Oversight Committee and we are at pains to observe that despite observations of the Hon'ble Supreme Court in numerous judgments, some of which we have noticed above, the MCI continues to falter in its duty provided by the statute that can raise concern about its own credibility as an institution. We need not say any further since we conclude that the MCI as also other bodies such as the Hearing Committee and the Oversight Committee have completely abdicated their duty in passing a balanced, reasoned order where their own reasons to overrule the explanation offered by the petitioner is manifestly absent. During the course of hearing the Government granted its approval to the College but observed it is conditional, without specifying any of them. For the purpose of reference, the relevant portion of the communication dated 31.5.2018 is extracted herebelow:-

> "i. This permission is valid for one year and for admitting only one batch of 150 MBBS seats during the academic year 2018-19. Admission in next batch of students for the year 2019-20 will be made only after renewal permission of the Central Govt.
>
> ii. Admissions made in violation of the above conditions will be treated as irregular and shall be liable for action under IMC Act 1956 & Regulations made thereunder.
>
> iii. The aforesaid permission shall be

subject to further orders to be passed by Hon'ble High Court of Punjab & Haryana in this Writ Petition.

4. The permission is further subject to the conditions stipulated by the Hon'ble High Court in the interim order dated 29.5.2018."

This exposes them equally to a charge of arbitrariness and also betrays that the left hand knows not what the right is doing. We are thus of the opinion that the impugned orders debarring the college for making admission for two academic sessions and encashment of Bank guarantee suffer from the vice of arbitrariness and deserve to be set aside.

In view of the fact that the Government has granted an approval to the College for the academic session 2018-19 which was, however, made subject to the orders passed by this Court, we are of the opinion that in view of the candid acceptance of the claim of the petitioner by the Government, instant petition deserves to be disposed of.

Ordered accordingly.

(Mahesh Grover)
Judge

07 .08.2018 **(Mahabir Singh Sindhu)**
rekha **Judge**

Whether speaking/reasoned Yes/No
Whether reportable Yes/No