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

Date of Decision: 18.04.2018

+ **W.P.(C) 2252/2018**

**CHETTINAD HOSPITAL AND RESEARCH
INSTITUTE**

..... Petitioner

Through Mr.Arun Bhardwaj, Sr. Adv. with
Mr.J.S. Bhasin, Adv. & Mr.Nishant
Shokeen, Adv.

versus

UNION OF INDIA & ANR

..... Respondents

Through Ms.Maninder Acharya, ASG with
Ms.Monika Arora, CGSC, Mr.Kushal
Kumar, Adv., Mr.Harshul Choudhary,
Adv., Mr.Sahil Sood, Adv. &
Mr.Viplav Acharya, Adv. for R-
1/UOI.
Mr.Vikas Singh, Sr. Adv. with
Mr.T.Singhdev, Adv., Mr.Tarun
Verma, Adv., Ms.Biakthan Singh
Das, Adv. & Ms.Puja Sarkar, Adv. for
R-2/MCI.

**CORAM:
HON'BLE MS. JUSTICE REKHA PALLI**

REKHA PALLI, J (ORAL)

1. Vide the present petition, the Petitioner/Institute has inter alia impugned the decision dated 06.02.2018 taken by the Executive Committee of the Respondent No. 2/Medical Council of India (hereinafter referred to as "MCI"), recommending disapproval of the Petitioner's application/scheme

for increase in the number of MBBS seats from 150 to 250 seats, for the academic year 2018-19. The Petitioner also prays for a direction to the Respondent No. 2 to accept the Petitioner's application/scheme for increase in the number of MBBS seats, in consonance with the directions issued by the Respondent No. 1/Union of India vide its order dated 31.01.2018, and to carry out all the necessary consequential steps, including inspection of the Petitioner. The Petitioner further prays for a direction to the Respondent No. 2 to issue a letter of permission to the Petitioner, after giving it an adequate opportunity to comply with the deficiencies, if any, found upon inspection.

2. The case set up by the Petitioner is that it is a medical college established in 2006 and it became a constituent college of Chettinad Academy of Research and Education (deemed to be a University under Section 3 of the University Grants Commission Act, 1956) in 2008. The Petitioner claims that it is situated in an area of 33.45 acres at Kelambakkam, District Kanchipuram, Tamil Nadu and caters to the medical needs of the surrounding villages, both in diagnostics and preventive and curative services. Pursuant to a notification dated 11.12.2013 issued by the Respondent No. 1 under Section 11(2) of the Indian Medical Council Act, 1956 (hereinafter referred to as the "Act"), the Petitioner was granted permission to run a MBBS course with an annual intake of 150 students. With the passage of time, the college and hospital run by the Petitioner gained popularity and, with the increase in facilities, the Petitioner wanted to increase its intake in the MBBS course from 150 to 250 students per year. The Petitioner initially approached the Government of Tamil Nadu, for obtaining the requisite Essentiality Certificate for permitting the aforesaid increase, which was granted to it on 04.07.2016. After receiving the

Essentiality Certificate, the Petitioner was also issued a consent of affiliation (hereinafter referred to as "COA") from the Chettinad Academy of Research and Education on 05.07.2016, wherein it was stated that the said Academy had, on the basis of the report of the Local Inquiry Committee (hereinafter referred to as "LIC"), in principle agreed to increase the number of seats in the MBBS course from the existing 150 seats to 250 seats, for the academic session 2017-18. The COA dated 05.07.2016 (hereinafter referred to as the "First COA") also clearly stated that it would be applicable for five years from the date of its issuance.

3. Armed with the aforesaid Essentiality Certificate and the First COA, the Petitioner submitted an application/scheme dated 27.06.2017 to the Respondent No. 1 along with all the requisite documents, in accordance with Section 10(A) of the Act, for seeking enhancement of the number of MBBS seats from 150 to 250 seats. A perusal of the said scheme dated 27.06.2017 shows that following documents were submitted along with the application:-

- (a) Application Form;
- (b) Time bound programme;
- (c) Demand Draft in favour of The Secretary, MCI for Rs.4,00,000 (Rupees Four Lakhs Only);
- (d) Attested Copy of COA dated 05.07.2016 from the Affiliating University, i.e., Chettinad Academy of Research and Education;
- (e) Attested copy of Bank Authorization Letter;
- (f) Attested copy of Letter of Recognition; and
- (g) Attested copy of Essentiality Certificate issued by the government of Tamil Nadu.

4. It is the Petitioner's case that its aforesaid scheme was forwarded by

the Respondent No. 1 to Respondent No. 2 on 14.07.2017, whereafter the Petitioner did not hear anything further from either of the Respondents for the next two months. On 07.09.2017, the Petitioner submitted another COA for the academic session 2018-19, which was essentially in the same terms as the First COA. The COA dated 07.09.2017 (hereinafter referred to as the "Second COA") was sent to Respondent No. 2 directly and was received in the office of Respondent No. 2 on 11.09.2017. Vide letter dated 19.09.2017, the Respondent No. 2 communicated its disapproval of the Petitioner's scheme to Respondent No. 1, on the ground that the First COA submitted by the Petitioner was invalid since it was for the academic year 2017-18 and not for 2018-19. Thereafter, vide letter dated 27.09.2017, the Respondent No. 1 communicated the Respondent No. 2's disapproval to the Petitioner, and the Petitioner was intimated that it should be present for a personal hearing on 06.10.2017.

5. Accordingly, on 06.10.2017, the Respondent No. 1 gave a personal hearing to the Petitioner and, upon considering the matter in its entirety, found both the COAs to be valid. Thereafter, the Respondent No. 1 issued a letter dated 16.10.2017 to the Respondent No. 2, wherein it clearly stated that both the COAs submitted by the Petitioner were valid. In view of its categorical finding, that a valid COA had been submitted by the Petitioner along with its scheme, the Respondent No. 1 referred the matter back to Respondent No. 2 for review, with a specific direction to process the same for assessment.

6. Instead of taking action in accordance with the categorical directions of the Respondent No. 1, the Respondent No. 2, in its Executive Committee meeting held on 22.11.2017, reiterated its earlier decision to return the

Petitioner's scheme on the very same ground that the First COA was invalid. Aggrieved by the Respondent No. 2's conclusion, that the First COA was invalid, the Petitioner approached this Court by way of filing *W.P. (C) No. 328/2018*. Mr. Arun Bhardwaj, Learned Senior Counsel for the Petitioner, draws my attention to the order dated 12.01.2018 passed in *W.P. (C) No. 328/2018*, wherein the Respondent No. 2 had taken a specific stand that its impugned disapproval was merely a recommendation and the final decision on the said recommendation rested with the Respondent No. 1. Upon considering the matter, this Court had granted liberty to the Petitioner to raise its grievances before the Respondent No. 1 by way of a detailed representation, and had further directed Respondent No. 1 to pass a reasoned order on the said representation within a period of ten days.

7. Pursuant to the order dated 12.01.2018 passed by this Court, the Petitioner had submitted a fresh representation to the Respondent No. 1 on 17.01.2018, whereafter the Respondent No. 1 again considered the matter and opined that the First COA submitted by the Petitioner along with its application was valid, since it was applicable for five years from the date of issue. It is interesting to note that the Respondent No. 1 once again categorically directed the Respondent No. 2 to accept the Petitioner's scheme and process the same as per the provisions of the Act and the regulations made thereunder. However, despite the specific directions given by Respondent No. 1, the Respondent No. 2 has yet again in its meeting held on 06.02.2018, reiterated its earlier decision dated 22.11.2017 and recommended disapproval of the Petitioner's scheme, on the same ground that the First COA submitted along with the said scheme invalid. In these circumstances, the present writ petition has been filed on 12.03.2018.

8. When the present writ petition was listed for preliminary hearing, this Court had requested the learned Additional Solicitor General's assistance, in view of the fact that, despite the Respondent No. 1's categorical finding that the Petitioner's scheme was complete and the First COA dated 05.07.2016 was valid, the Respondent No. 2 had chosen to ignore the said findings and defy the specific directions given to it by the Respondent No. 1, to accept the Petitioner's application and to process it as per the provisions of the Act and regulations framed thereunder. Today, Ms. Maninder Acharya, Ld. ASG, has appeared and addressed arguments on behalf of the Respondent No. 1.

9. Having set out the facts leading to the filing of the present petition, I may now deal with the rival contentions of the parties. Mr. Arun Bhardwaj, Ld. Senior Advocate for the Petitioner, submits that the Petitioner's Scheme dated 27.06.2017 has been erroneously rejected by the Respondent No. 2, not only by ignoring the fact that the scheme as submitted was complete in all forms, but also by blatantly refusing to abide by the directions given by Respondent No. 1, which was the final authority to approve the scheme submitted by any person proposing to establish a medical college or by any medical college proposing to introduce a new or higher course of study or increase its admission capacity.

10. Mr. Bhardwaj further submits that not only has the Respondent No. 2 wrongly rejected the Petitioner's application on the basis of an erroneous presumption, that the COA dated 05.07.2016 submitted along with its scheme was invalid, but has also failed to follow the principles of natural justice and has, despite a specific provision in Section 10A(3) of the Act, failed to give any opportunity to the Petitioner to rectify the defect, if any,

found in its scheme. He contends that the callous manner in which the Respondent No. 2 has rejected the Petitioner's scheme, on a hypertechnical ground after more than 2 months of having received the same from the Respondent No. 1 and without giving any opportunity to the Petitioner to explain its position in respect of the First COA, clearly shows that, though the Respondent No. 2 is opposing the petition on the ground that the time schedule prescribed for processing such schemes is sacrosanct and has to be strictly adhered to, it has taken an inordinate amount of time to examine the Petitioner's scheme. He submits that, as per the Act, the only role assigned to the Respondent No. 2/MCI is to carry out a factual verification of the infrastructure available to the college, in order to check whether the concerned college meets the standards prescribed by the MCI, which stage has not arrived since the Respondent No. 2 has defied the repeated directions of the Respondent No. 1/Union of India to process the Petitioner's application on its own merits. He submits that this defiance on part of the Respondent No. 2 is contrary to law, since it is in violation of the Act, as per which it is the Central Government that is the final decision-making authority.

11. Mr. Bhardwaj has relied on the decision of the Hon'ble Supreme Court in the case of ***Royal Medical Trust (Registered) and Anr. v. Union of India and Anr.*** [(2015) 10 SCC 19] in support of his plea that it was incumbent upon the Respondent No. 2 to show due diligence right from the day the scheme was received, and the schedule prescribing timelines for various stages must accommodate every possible eventuality and simultaneously comply with the requirements of natural justice at all levels.

12. Ms. Maninder Acharya, the Ld. ASG appearing for the Respondent

No. 1, while supporting the Petitioner's claim, has defended the orders dated 16.10.2017 and 31.01.2018 passed by Respondent No. 1, whereby after coming to a categorical conclusion that the Petitioner's scheme dated 27.06.2017 was complete in all respects, the Respondent No. 1 had directed the Respondent No. 2 to process the same in accordance with law.

13. Ms. Acharya has taken me through the entire scheme of the Act, especially Section 10A thereof, and submits that, once a scheme/application is received by the Respondent No. 1/Union of India, the same is sent to the Respondent No. 2/MCI for its recommendations. At this stage, the Respondent No. 2 can not only obtain better particulars from the concerned medical college/person, but if any defects are noticed, the Respondent No. 2 is expected to give a reasonable opportunity to the concerned person/medical college to make a written representation and remove the said defects. She, thus, relies on section 10A to contend that, while dealing with an application, the Act envisages that the Respondent No. 2 should follow the principles of natural justice and provide an opportunity to the concerned medical college/person to rectify the defects, if any, and it is only then that a recommendation has to be made by the Respondent No. 2 to the Respondent No. 1 for the latter's further action under Section 10A(4).

14. Ms. Acharya contends that the Act itself makes the Respondent No. 1 the final authority to take a decision on the submitted schemes, the reason for the same being that, even though the Respondent No. 2 is an expert body constituted to prescribe and control the minimum standards of medical education and to regulate their observance, it is for the Respondent No. 1 to ensure that principles of natural justice are followed by the Respondent No. 2 in consonance with the Act and that genuine schemes are not rejected on

hypertechnical grounds. She, thus, submits that, being the final decision-making authority, the Respondent No. 1 was fully justified in directing the Respondent No. 2 to process the Petitioner's scheme in accordance with law. She submits that, while giving such directions, the Respondent No. 1 has not at all interfered with the autonomy given to the Respondent No. 2 to carry out the purpose of the Act, which is to prescribe and control the minimum standards of medical education in India, including providing for courses, period of study, subjects of examination, standards of proficiency, staff, equipment and other similar conditions.

15. Ms. Acharya also submits that none of the decisions relied upon by the Respondent No. 2 in its counter-affidavit are applicable to the present case, since they all deal with the rejection of incomplete schemes at the threshold.

16. On the other hand, Mr. Vikas Singh, Ld. Senior Advocate for the Respondent No. 2, while vehemently opposing the stand of Respondent No. 1, has prayed for a dismissal of the present petition. Mr. Singh has basically raised two submissions, the first being that the Respondent No. 1 has no authority or jurisdiction to give directions to the Respondent No. 2 to recommend approval/disapproval of a particular scheme, since it is only the Respondent No. 2 which is the expert body especially constituted to control medical education in India. The second submission made by Mr. Singh is that, once the Respondent No. 2 had come to a categorical conclusion that the original COA submitted by the Petitioner along with its scheme was invalid, it was fully justified in rejecting the Petitioner's scheme at the threshold. He contends that the Respondent No. 2's action was in consonance with the decisions of the Supreme Court and, placing reliance

on the decision of the Supreme Court in *Royal (supra)*, he submits that the repeated directions given by Respondent No. 1 to process the Petitioner's scheme were, even otherwise, erroneous and rightly not followed by the Respondent No. 2.

17. Mr. Singh further submits that the admitted facts show that the First COA, which was received after the inquiry by the LIC, was for the academic session 2017-18 and the Petitioner, being well-aware that the said COA was not in conformity with the prescribed requirements, had subsequently submitted a fresh COA dated 07.09.2017. He contends that though the Second COA dated 07.09.2017 was valid, as it related to the academic year in question (i.e., 2018-19), it was rightly ignored by the Respondent No. 2 since it was admittedly submitted much after the cut-off date. He submits that the Petitioner's failure to submit a valid COA along with its scheme could not be condoned, as a valid COA was a sine-qua-non for even examining the Petitioner's scheme. He further submits that the Respondent No. 1 has erroneously held that the first COA was valid.

18. Mr. Singh has also referred to the Establishment of Medical College Regulations, 1999, to contend that the opportunity to remove deficiencies can be given only by the Central Government, and there is no scope for the Respondent No. 2 to give any such opportunity to the concerned person or college while dealing with his/her/its scheme under Section 10A(3) of the Act. He further submits that any such opportunity to cure any defects/deficiencies only comes at the time of inspection.

19. Mr. Singh has also referred to the various decisions relied upon by Respondent No. 2 in its counter-affidavit, and has vehemently contended that, even otherwise, in view of the very little time left to enable the

Respondent No. 2 to carry out the inspections of the Petitioner, it would be inappropriate for this court to grant any relief to the Petitioner at this stage.

20. Having heard the learned counsels for the parties at great length and having considered their rival contentions, I find that following three issues arise in the present case:

I. Is the Respondent No. 2 required to follow the principles of natural justice while examining a scheme submitted under Section 10A of the Act, or can the same be outrightly rejected without giving any opportunity to the medical college/person submitting the scheme to explain its position and rectify the defects, if any, found by the Respondent No. 2?

II. Does the Respondent No. 1 have any jurisdiction to issue any directions to the Respondent No. 2, as long as they do not relate to the standards of medical education?

III. Could the Respondent No. 2 refuse to process the Petitioner's scheme, on the ground that the COA submitted along with it was invalid, when the same had been categorically held as valid by the Respondent No. 1?

21. Before dealing with issues as framed hereinabove, it would be appropriate to refer to Section 10A of the Act, which reads as under:-

“10A. PERMISSION FOR ESTABLISHMENT OF NEW MEDICAL COLLEGE, NEW COURSE OF STUDY ETC.

(1) Notwithstanding anything contained in this Act or any other law for the time being in force:-

(a) no person shall establish a medical college or

(b) no medical college shall:-

(i) open a new or higher course of study or training (including a postgraduate course of study or training) which would enable a student of such course or training to qualify himself for the award of any recognised medical qualification; or

(ii) increase its admission capacity in any course of study or training (including a postgraduate course of study or training), except with the previous permission of the Central Government obtained in accordance with the provisions of this section.

Explanation 1.- For the purposes of this section, "person" includes any University or a trust but does not include the Central Government.

Explanation 2.- For the purposes of this section "admission capacity" in relation to any course of study or training (including postgraduate course of study or training) in a medical college, means the maximum number of students that may be fixed by the Council from time to time for being admitted to such course or training.

(2) (a) Every person or medical college shall, for the purpose of obtaining permission under sub-section (1), submit to the Central Government a scheme in accordance with the provisions of clause (b) and the central Government shall refer the scheme to the Council for its recommendations.

(b) The Scheme referred to in clause (a) shall be in such form and contain such particulars and be preferred in such manner and be accompanied with such fee as may be prescribed.

(3) On receipt of a scheme by the Council under sub-section (2) the Council may obtain such other particulars as may be considered necessary by it from the person or the medical college concerned, and thereafter, it may -

(a) if the scheme is defective and does not contain any necessary particulars, give a reasonable opportunity to the person or college concerned for making a written representation and it shall be open to such person or medical college to rectify the defects, if any, specified by the Council.

(b) consider the scheme, having regard to the factors referred to in sub-

section (7) and submit the scheme together with its recommendations thereon to the Central Government.

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

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

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 subsection (1).

(5) Where, within a period of one year from the date of submission of the scheme to the Central Government under sub-section (1), no order passed by the Central Government has been communicated to the person or college submitting the scheme, such scheme shall be deemed to have been approved by the Central Government in the form in which it had been submitted, and accordingly, the permission of the Central Government required under sub-section (1) shall also be deemed to have been granted.

(6) In computing the time-limit specified in sub-section (5), the time taken by the person or college concerned submitting the scheme, in furnishing any particulars called for by the Council, or by the Central Government, shall be excluded.

(7) The Council, while making its recommendations under clause (b) of sub-section (3) and the Central Government, while passing an order, either approving or disapproving the scheme under sub-section (4), shall have due regard to the following factors, namely:-

(a) whether the proposed medical college or the existing medical college seeking to open a new or higher course of study or training, would be in a position to offer the minimum standards of medical education as prescribed by the Council under section 19A or, as the case may be under section 20 in the case of postgraduate medical education.

(b) whether the person seeking to establish a medical college or the existing medical college seeking to open a new or higher course of study or training or to increase its admission capacity has adequate financial resources;

(c) whether necessary facilities in respect of staff, equipment, accommodation, training and other facilities to ensure proper functioning of the medical college or conducting the new course or study or training or accommodating the increased admission capacity, have been provided or would be provided within the time-limit specified in the scheme.

(d) whether adequate hospital facilities, having regard to the number of students likely to attend such medical college or course of study or training or as a result of the increased admission capacity, have been provided or would be provided within the time-limit specified in the scheme;

(e) whether any arrangement has been made or programme drawn to impart proper training to students likely to attend such medical college or course of study or training by persons having the recognised medical qualifications;

(f) the requirement of manpower in the field of practice of medicine; and

(g) any other factors as may be prescribed.

(8) Where the Central Government passes an order either approving or disapproving a scheme under this section, a copy of the order shall be communicated to the person or college concerned."

22. What emerges from a bare perusal of Section 10A is that, the first step envisaged under the Act to obtain permission under sub-section (1), is the submission of an application/scheme by the concerned person/college to the

Central Government. As per section 10A(2)(b), the aforementioned scheme is to be submitted in the prescribed form and has to contain such particulars and documents as are prescribed.

As per section 10A(2)(a), after receiving an application under Section 10A(1), the Central Government has to refer the same to the MCI for its *recommendations*. Thereafter, as per Section 10A(3), the MCI may request the concerned college/person for any other particulars it considers necessary, and then adopt one of two courses. Firstly, if the scheme submitted is already complete in all respects, then the MCI must consider the same and then pass an order either approving or disapproving the said scheme. However, if the MCI finds that the scheme in question suffers from any deficiency/defect in terms of particulars, it must first give the concerned college/person a reasonable opportunity to make a written representation and cure the defects/deficiencies found, and only then can it pass an order recommending approval/disapproval of the said scheme.

23. In view of the aforementioned provisions, I may now analyse whether the Respondent No. 2 was legally obligated to provide an opportunity to the Petitioner to cure the defects, if any, found in its scheme. In my considered opinion, the provisions of the Act are unambiguous and specifically incorporate the principles of natural justice in Section 10A(3), the requirements of which are binding on the Respondent No. 2. I find that even if the First COA was found to be invalid, it was incumbent upon the Respondent No. 2 to comply with the requirements of Sections 10A(3)(a) and give the Petitioner a reasonable opportunity to make written submissions and cure the defects found in its scheme. The Respondent No. 2 could not have bypassed the binding provisions of the Act and made any

recommendation without following the procedure stipulated in Section 10A(3) of the Act. In view of my aforesaid conclusion, I find that Mr. Singh's contention, that there is no obligation on the Respondent No. 2 to afford an opportunity to the Petitioner to rectify the defects/deficiencies in its application/scheme, is wholly misconceived and cannot be sustained.

24. I am fortified in my aforesaid conclusion by the decision of the Hon'ble Supreme Court in the case of Royal (supra), the relevant portion of which reads as under:-

*“31. MCI and the Central Government have been vested with monitoring powers under Section 10-A 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. 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 fulfil these requirements, the application on the face of it, would be incomplete and be rejected. Those who fulfil the basic requirements would be considered at the next stage.

(B) Inspection should then be conducted by the Inspectors of 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, 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, 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 MCI and the Central Government. In cases where actual physical verification is required, 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."

25. At this stage, it is also relevant to note the Respondent No. 2's conduct in considering and processing the Petitioner's scheme for increase in the number of seats for the MBBS Course. In view of my aforesaid conclusion, that the principles of natural justice are inherent in the provisions of Section 10A of the Act, I find that the Respondent No. 2 has grossly violated the same by not only depriving the Petitioner of a reasonable opportunity of being heard, but by also taking an inordinate amount of time to communicate its disapproval of the Petitioner's scheme. The callous manner in which the Respondent No. 2 has processed the Petitioner's application is

an instance of the kind of red-tapism that has been condemned by the Hon'ble Supreme Court on many an occasion. This Court appreciates the assistance given by the Ld. ASG and the fair stand taken by her in emphasizing and condemning the Respondent No. 2's red-tapism.

26. I may now consider Mr. Singh's contention that the Respondent No. 1 has no authority to issue any directions to the Respondent No. 2, to consider and process an application/scheme submitted under the Act, which the Respondent No. 2 has already disapproved. Section 10A(4) stipulates that, after the MCI makes its recommendations, the scheme in question has to be referred back to the Central Government, whereafter the Central Government is statutorily obligated to either approve or disapprove the scheme in question. The proviso to Section 10A(4) clearly stipulates that the Central Government cannot disapprove any scheme without giving the concerned person/medical college a reasonable opportunity of being heard. Therefore, on a bare perusal of the provision, it is apparent that the principles of natural justice are also inherent in Section 10A(4) of the Act, and are statutorily binding on the Central Government. More importantly, however, the approval granted by the Central Government under this provision is specifically termed as “permission”. In comparison to the word “approval”, which in the context of the Act connotes non-binding recommendations, the word “permission” seems to suggest the leave of an authority to do a certain thing. Viewed at from this angle, the word “permission” occurring in Section 10A(4) lends itself to the conclusion that, while the MCI’s approval/disapproval is integral to the passing of a decision under Section 10A, they are merely recommendations for the Central Government to consider before passing its final decision under Section

10A(4) of the Act. Therefore, I find that Central Government is the final decision-making authority under the Act, and it has jurisdiction to issue binding directions to the Respondent No. 2.

27. In this regard, it is also imperative to note the Respondent No. 2's stand before this Court in *W.P. (C) No. 328/2018* as also in the present writ petition. In *W.P. (C) No. 328/2018*, the Respondent No. 2 had taken the categorical stand that the final decision with respect to any scheme submitted under the Act rested with the Respondent No. 1, and that the Respondent No. 2's approval/disapproval was merely a recommendation. The relevant paragraph of the order dated 12.01.2018 in *W.P. (C) No. 328/2018* reads as under:

"Learned counsel appearing for respondent no.2/MCI who appears on advance notice submits that the impugned order is only a recommendation made by respondent no.2 and the final decision is yet to be taken on the said recommendation by the respondent no.1. He submits that the present petition is therefore pre-mature as a final decision is yet to be taken by respondent no.1/Union of India."

In the present writ petition, even though the Respondent No. 2 has maintained that it is only a recommending authority, it contends that the Respondent No. 1 has no authority to direct it to recommend approval/disapproval of a certain scheme.

28. Having carefully considered the provisions of Section 10A(3) and (4) of the Act, and in light of the Respondent No. 2's unequivocal stand before this Court, I find that the Central Government, being the final decision-making authority, has the authority to issue directions to the Respondent No. 2 to process a particular scheme. In my considered opinion, the Respondent No. 2 is bound by these directions of the Respondent No. 1, and any

defiance thereof on part of the Respondent No. 2 is contrary to law, especially the provisions of the Act. In view of this conclusion, I find that the Respondent No. 1's finding, that the First COA submitted by the Petitioner was valid, is binding on the Respondent No. 2. Therefore, the Respondent No. 2 has no authority to disobey the Respondent No. 1's directions and refuse to process the Petitioner's scheme, on the ground that the First COA submitted along with it was invalid, when the same had been categorically held as valid by the Respondent No. 1. I am of the opinion that, in refusing to process the Petitioner's scheme, the Respondent No. 2 has not only gone far beyond the scope of its recommendatory functions, but has essentially usurped the Respondent No. 1's authority to make the final decision with regard to a scheme under Section 10A(4) of the Act.

29. At this stage, I find it appropriate to deal with the decisions relied upon by Mr. Singh, in support of his contention that the Respondent No. 2 was justified in outrightly rejecting the Petitioner's scheme, since it had found the First COA submitted along with the same to be invalid. In my considered opinion, none but one of the said decisions apply to the facts of the present case, since all of them deal with situations wherein an incomplete scheme was submitted by the concerned person/medical college. None of those cases deal with a situation where the Respondent No. 1, which is the final decision-making authority as per Section 10A of the Act, had specifically found that the scheme in question was complete and did not suffer from any defects/deficiencies. In fact, in my view, the decision of the Hon'ble Supreme Court in *Royal (supra)*, which has been relied upon by Mr. Singh, does not support the case of the Respondent No. 2 but that of the Petitioner. As noted above, the Hon'ble Supreme Court's decision in *Royal*

(*supra*) emphasizes the need to follow the principles of natural justice at every stage, when any scheme/application is being considered or processed by the MCI and the Central Government. However, since Mr. Singh has heavily relied upon the said decisions, I deem it appropriate to deal with each of them as follows.

30. In ***Medical Council of India v. V.N. Public Health & Educational Trust & Ors.*** [(2016) 11 SCC 216], while allowing the appeal of the MCI, the Supreme Court observed that the scheme for grant of approval was filed with a *conditional*, and therefore, *defective* Essentiality Certificate. Therefore, the Court upheld the MCI's and Central Government's rejection of the scheme in question. The Supreme Court also set aside the High Court's order directing a fresh assessment of the concerned college's scheme, since the time stipulated for the same had elapsed. Similarly, in ***Dental Council of India v. SRM Institute of Science and Technology*** [(2004) 9 SCC 676], while dealing with a situation wherein the concerned college did not submit the requisite Essentiality Certificate with its scheme, the Supreme Court held that an incomplete application cannot be processed either by the Central Government or the Dental Council. Likewise, in ***MCI v. Amma Chandravati Education and Charitable Trust & Ors.*** [LPA No. 224/2015], the Essentiality Certificate issued by the State Government and the COA issued by the university were not filed alongwith the concerned college's scheme.

31. In ***Padmashree Dr. D.Y. Patil Medical College v. MCI & Anr.*** [(2015) 10 SCC 51], the scheme submitted by the concerned college for increase in the number of seats for the MBBS Course was deficient, since the Essentiality Certificate was not filed along with the Scheme

within the time stipulated for the same. In that case, the Supreme Court upheld the High Court's order setting aside the Ld. Single Judge's order condoning the concerned college's delay. In *Medical Council of India v. Akash Education & Development Trust & Ors.* [(2015) 10 SCC 78], the Supreme Court set aside the High Court's order directing a fresh inspection of the concerned college's inspection, on the ground that direction was ordered at a belated stage after the time for the same had elapsed. Similarly, in *Mridul Dhar & Anr. v. Union of India & Ors.* [(2005) 2 SCC 65], the Supreme Court dealt with the cardinal importance of adhering to the time schedule for granting admissions to students in the MBBS/BDS Courses.

32. With regard to Mr. Singh's reliance on the decisions of the Supreme Court in *Public Health & Educational Trust (supra)*, *Dental Council of India (supra)*, *Amma Chandravati (supra)*, *Padmashree (supra)*, *Akash Education* and *Mridul Dhar (supra)*, I find that there can be no doubt about the well-settled legal position, that the prescribed time schedule has to be strictly adhered to and that any incomplete scheme has to be rejected at the threshold. However, in the facts of the present case, the Respondent No. 1 has come to a categorical conclusion that the Petitioner's scheme was complete in all respects and the First COA submitted along with the said scheme was valid. Therefore, none of the aforesaid decisions apply to the facts of the present case. In my considered opinion, the only ground taken by the Respondent No. 2 in recommending disapproval of the Petitioner's scheme was that it was incomplete, since the First COA submitted along with the same was invalid. However, in view of the Respondent No. 1's categorical finding that the Petitioner's scheme was complete and the First COA submitted along with the same was valid, the Respondent No. 2's

disapproval of the Petitioner's scheme on this ground was completely wrong and cannot be sustained.

33. In *Educare Charitable Trust v. Union of India & Anr.* [(2013) 16 SCC 474], the concerned dental college did not meet the qualifying criteria for an increase in its admission capacity, since its existing admission capacity was not recognized under the relevant regulations. However, in the present case, the Petitioner's existing capacity has not only been permitted by the Respondent No. 1, but the stage for determining whether the Petitioner meets the criteria for increasing its capacity has not arrived, since the Respondent No. 2 has refused to process its complete application and conduct the requisite inspection. Therefore, the aforesaid decision is also inapplicable to the determination of the present petition.

34. In *Poonaiyah Ramajayam Institute of Science And Technology Trust v. MCI* [(2015) 10 SCC 83], the Essentiality Certificate and COA were not submitted along with the scheme and were only submitted 10 days after the cut-off date. The Supreme Court directed the MCI to conduct the inspection under the Act, whereafter several deficiencies were reported by the MCI. The MCI then decided to invoke clause 8(3)(1)(d) of the Establishment of Medical College Regulations (Amendment), 2000 and return the concerned college's application recommending disapproval. In the facts of the case, the Supreme Court refrained from issuing any directions to the MCI. As noted above, in the present case, the stage for inspection has not arrived due to the Respondent No. 2's repeated defiance of the Respondent No. 1's directions. Therefore, this case also does not apply to the facts of the present case.

35. In *Priya Gupta v. State of Chhattisgarh* [(2012) 7 SCC 433], Priya

Gupta had appeared in the pre-medical test conducted by the State of Chhattisgarh for the year 2006 and had secured a General Rank of 1614. A three member enquiry committee was constituted to find out as to whether the admissions of Priya Gupta and another were valid or not. This was not a case pertaining to the submission of a scheme under Section 10A of the Act, for the enhancement of seats in a medical course offered by the concerned college. Therefore, this case is evidently inapplicable to the present petition.

36. During the final hearing of the present petition, Mr. Singh had contended that even the initial permission granted to the Petitioner to start an MBBS Course with an intake of 150 students, had been discovered to be flawed during the course of the present petition. However, in my considered opinion, the deficiencies/defects in such initial permission are not germane to the present proceedings. Secondly, they were urged before this Court for the first time only during the final hearing of the matter. Therefore, I have neither ventured to discuss these contentions at length nor rendered my considered opinion on the same. Needless to say, the Respondents are free to take action in respect of the deficiencies/defects in this initial permission, if permitted under law.

37. It has been contended that, in view of the paucity of time to process the Petitioner's scheme according to the provisions of the Act, it would be inappropriate to allow the writ petition at this stage. However, in my considered opinion, this delay has occurred only on account of the Respondent No. 2's red-tapism, as has been contended by the learned ASG, and the consequences of the same cannot be allowed to fall on the Petitioner. I find merit in Mr. Bhardwaj's submission that it was incumbent upon the Respondent No. 2 to show due diligence right from the day the Petitioner's

scheme was received, especially in light of the settled legal position that the time lines prescribed for the various stages of processing the applications under Section 10A have to be strictly adhered to. Therefore, in my considered opinion, the paucity of time in this case does not create an embargo on granting the reliefs prayed for in the present petition.

38. In view of my aforementioned conclusions, the Respondent No. 2 is directed to treat the Petitioner's scheme/application dated 27.06.2017 as complete and the First COA dated 05.07.2016 submitted along with it as valid. The Respondent No. 2 is further directed to process the Petitioner's scheme/application dated 27.06.2017 as per law by conducting the requisite inspection. Needless to say, if the Petitioner, during inspection, is found to not meet the requisite standards and criteria stipulated under the Act or is discovered to be deficient in some respect, the Respondent No. 2 will be free to recommend disapproval of the Petitioner's scheme., whereafter the Respondent No. 1 would be entitled to take an appropriate decision in accordance with law.

39. The writ petition is allowed in the aforementioned terms with no orders as to costs.

(REKHA PALLI)
JUDGE

APRIL 18, 2018/aa.ff