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

Reserved on: 14.05.2018

Pronounced on: 18.07.2018

+ **LPA 239/2018 & C.M.Nos.16972-16974/2018**

MEDICAL COUNCIL OF INDIA Appellant

Through: Mr.Vikas Singh, Sr. Advocate with
Mr.T.Singhdev, Ms.Puja Sarkar, Mr.Tarun Verma
and Mr.Abhijit Chakravarty, Advocates.

versus

CHETTINAD HOSPITAL & RESEARCH INSTITUTE & ANR

..... Respondents

Through: Mr.Arun Bhardwaj, Sr. Advocate with
Mr.J.S.Bhasin and Mr.Nishant Shokeen,
Advocates for R-1.

Ms.Maninder Acharya, ASG with Ms.Monika
Arora, CGSC, Mr.Kushal Kumar, Mr.Harshul
Chaudhary, Mr.Sahil Sood and Mr.Viplav
Acharya, Advocates for UOI.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A.K. CHAWLA

S. RAVINDRA BHAT, J.

1. The Medical Council of India (the appellant, hereafter called "MCI") is aggrieved by the judgment of a learned Single Judge directing it to treat the Chettinad Hospital & Research Institute/respondent institution's scheme/application dated 27.06.2017 as complete and the first consent of application (hereafter "COA") dated 05.07.2016 submitted along with it as valid. MCI was further directed to process the said institution's scheme/application dated 27.06.2017 in accordance with law by conducting the requisite inspection.

2. The writ petitioner/institute (i.e. the respondent here, referred to in this judgment as “Chettinad”) impugned the decision, dated 06.02.2018 of MCI, recommending disapproval of its scheme for increase in the number of MBBS seats from 150 to 250 seats, for academic year 2018-19. Chettinad sought further direction to MCI for acceptance of its application/scheme for increase in the number of MBBS seats, in accordance with the directions issued by the Central Government (hereafter “the Union”) by its order dated 31.01.2018, and to take consequential steps, including inspection of Chettinad’s college. The latter further sought direction to MCI to issue a letter of permission to it after providing it adequate opportunity to comply with the deficiencies, if any, found upon inspection. Chettinad had established a medical college in 2006; it became a constituent college of Chettinad Academy of Research and Education (a deemed University under the University Grants Commission Act, 1956) in 2008. It is located in an area of 33.45 acres at Kelambakkam, District Kanchipuram, Tamil Nadu; it caters to the medical needs of the surrounding villages for diagnostic, preventive and curative services. Further to MCI’s notification dated 11.12.2013 under Section 11 (2) of the Indian Medical Council Act, 1956 (“the Act” hereafter), Chettinad was granted permission to establish and administer its MBBS course with an annual intake of 150 students. Claiming that over time its college gained popularity, Chettinad wished to increase its intake annually, in the MBBS course from 150 to 250. It applied to the Government of Tamil Nadu, for obtaining the requisite Essentiality Certificate for permitting the increase, which was granted to it on 04.07.2016. It was also issued a COA from the Chettinad Academy of Research and Education on 05.07.2016, which 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 (hereafter "First COA") stated that *it would be applicable for five years from the date of its issuance.*

3. Based on the said Certificate and the First COA, Chettinad applied, by its scheme dated 27.06.2017 to MCI along with all the requisite documents, in accordance with Section 10A of the Act, for enhancement of annual intake in MBBS seats from 150 to 250 seats. The documents furnished with the scheme were (a) Application Form; (b) Time bound program; (c) Demand Draft in favour of MCI for ₹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. It was alleged that MCI sat over the matter and on 07.09.2017, Chettinad submitted another COA for the academic session 2018-19, (in the same terms as the First COA). The COA dated 07.09.2017 ("the second COA") was sent to MCI directly and was received in its office on 11.09.2017. By letter dated 19.09.2017, MCI communicated its disapproval of the scheme to the Union, stating that the First COA submitted by Chettinad was invalid since it was for the academic year 2017-18 and not for 2018-19. Thereafter, by letter dated 27.09.2017, the Union communicated MCI's disapproval to Chettinad, and the latter was intimated that it should be present for a personal hearing on 06.10.2017, which was given by the Union, which considered all materials and found both COAs to

be valid. The Union, therefore issued a letter, dated 16.10.2017 to MCI, stating that both of Chettinad's COAs were valid. In this view, the Union referred the matter back to MCI for review, with a specific direction to process the same for assessment.

4. The MCI in its Executive Committee meeting dated 22.11.2017, reiterated its earlier decision to return Chettinad's scheme on the same ground that the First COA was invalid. Aggrieved by this conclusion (that the First COA was invalid), Chettinad filed a writ petition, W.P. (C) No. 328/2018 (an earlier petition). In the proceeding, an order, dated 12.01.2018 was made, recording MCI's stand that its impugned disapproval was merely a recommendation and the final decision on the recommendation rested with the Union. Therefore, the court permitted Chettinad to urge its grievances before the Union by way of a detailed representation, and had further directed it to pass a reasoned order on the said representation within a period of ten days. Chettinad accordingly submitted a fresh representation to the Union (on 17.01.2018), after the Union considered the matter and opined that the First COA with its application was valid, as it was applicable for five years from the date of issue. The Union also directed MCI to accept Chettinad's scheme and process it in accordance with provisions of the Act and the regulations made thereunder. MCI, however, yet again in its meeting held on 06.02.2018, reiterated its earlier decision dated 22.11.2017 and recommended disapproval of the Chettinad's scheme, on the same ground that the First COA submitted along with the said scheme invalid. In these circumstances, the Chettinad filed the present second writ petition (WP 2252/2018). At the stage of preliminary hearing, the Additional Solicitor General's assistance was sought in view of the Union's position that

Chettinad's scheme was complete and that its First COA was valid. The Union reiterated its position.

5. The MCI's position before the learned Single Judge, in the writ petition was firstly that the Union had no jurisdiction to direct the MCI to approve/disapprove any particular scheme, as MCI is the only competent statutory expert body especially tasked to regulate medical education in India. It was secondly urged that once MCI concluded that Chettinad's original COA along with its scheme was invalid, it justifiably rejected the scheme at the threshold. MCI relied on the authority of the Supreme Court's judgment in of the Supreme Court in *Royal Medical Trust v Union of India* [(2015) 10 SCC 19] to urge that the Union's repeated directions to process Chettinad's scheme were, erroneous and correctly ignored by it. MCI further argued that the first COA was for academic session 2017-18 and though Chettinad was aware that such COA did not conform with the prescribed requirements, subsequently submitted a fresh COA dated 07.09.2017. It stated that though the second COA (dated 07.09.2017) though valid was rightly ignored by it since it was admittedly submitted much after the cut-off date. Accordingly, Chettinad's failure to submit a valid COA along with its scheme could not be condoned, as a valid COA was a precondition for examining the scheme. MCI referred to and relied on the Establishment of Medical College Regulations, 1999, to say that the opportunity to remove deficiencies could be given only by the Central Government, and there is no scope for MCI to grant any such opportunity to the concerned person or college while dealing with his/her/its scheme under Section 10A (3) of the Act. MCI urged that the opportunity to cure any deficiencies arises only at the time of inspection.

6. In the light of the rival contentions, the learned Single Judge proceeded – by the impugned judgment, to firstly analyze the provisions of Section 10A. According to her, broadly, the scheme of that provision envisioned that as a first step, the Central Government, after receiving an application (like in the present case) for increase in intake in an existing medical college, had to refer it to the MCI. In the second step, MCI had to consider the application and adopt one of the two courses: either accept it, or if it wished to reject it, seek the views of the applicant, by giving proper opportunity. The impugned judgment took note of observations in *Royal Medical College* (supra) to hold that the MCI was obliged to elicit and consider Chettinad's views, after giving it reasonable opportunity and that on this score, it (MCI) had faltered since no such opportunity was ever granted. It was held that -

“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.”

The Single Judge also held that the Union's directions bound MCI:

“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.”

The impugned judgment held that undoubtedly the position in law that prescribed time limits had to be adhered to was undisputed. Nevertheless, having regard to the facts of the case, it was observed and held as follows:

“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.”

The final conclusions and operative directions given in the impugned judgment, are as follows:

“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.”

Contentions of parties

7. Mr. Vikas Singh, learned Senior Counsel for MCI argued that for effectively implementation of Section 10-A, the MCI, with approval of the

Central Government framed under Section norms providing for the detailed procedures to be followed and the criteria to be considered applying for starting new higher courses of study or training or increase of intake capacity in the existing medical college, i.e. "The Opening of a New or Higher Course of Study or Training (including Post-graduate Course of Study or Training) and Increase of Admission Capacity in any Course of Study or Training (including a Postgraduate Course of Study or Training) Regulations, 2000" (hereafter "2000 Regulations"). Reliance is placed on the decision of the Supreme Court in *Ashish Ranjan & Ors. v. Union of India & Ors.* (2016) 11 SCC 225 and *Union of India v. All India Children Care and Educational Development Society-* (2002) 3 SCC 649, wherein it is submitted that the time schedule prescribed under the said Regulations are iron clad and that only such applications which are complete in all respects as per the qualifying criteria prescribed in the statutory regulations, that deserve to be treated as applications under Section 10A.

8. Adverting to the time schedule prescribed in the regulations, it is urged that at the second stage, it is imperative that the complete applications which are received by the Central Government between 15.06.2017 to 07.07.2017 are then required to be forwarded to the MCI positively before the 15.07.2017 in which the fresh applications are submitted to the Central Govt. The Central Govt. is, therefore, obliged to forward the complete applications under Section 10A of the Act to the Council by the 15.07.2017 and not thereafter. The counsel states that on receipt of the application from the Central Govt. on or before the 15.07.2017, MCI has to evaluate those applications/technical scrutiny and conducting inspections for sending recommendation to the Govt. of India, for grant of Letter of Permission

(LOP). This exercise has to be completed by the Council on or before 15.12.2017 and this time stage is also an absolute imperative. Thereafter, two months' time (from the receipt of recommendation from MCI but not beyond 31.01.2018 is provided to the applicant for sending reply/ compliance to the Central Govt., for personal hearing and forwarding of compliance by the Central Govt. to the MCI. The final recommendation for letter of permission has to be made by the MCI by of April 2018.

9. It is submitted that the statutory time schedule permits the Central Govt. to issue of Letter of Permission to a medical college for Establishment of new medical college or for renewal of permission or increase of intake capacity on or before 31.05.2018. Mr.Singh submitted that under MCIs regulations, an applicant, seeking increased intake in the undergraduate (MBBS) course has to necessarily fulfill all statutory preconditions together with the need of submitting all requisite documents including the Essentiality Certificate and the Consent of Affiliation, as provided for in the qualifying criteria of Statutory Regulations of MCI- the 2000 Regulations, to be eligible to apply under Section 10A of the Act. Any application under Section 10A which does not fulfill the statutory preconditions of the qualifying criteria in terms of the requisite documents cannot be said to be an application under Section 10A, deserving rejection at the initial stage by the Government of India itself. It is submitted that under the statutory regulations of the MCI an incomplete application is not fit for registration under section 10A of the Act. Reliance is placed on the decision of the Supreme Court in *Dental Council of India v. S.R.M. Institute of Science and Technology* (2004) 9 SCC 676, *K.S. Bhoir v. State of Maharashtra* (2001) 10 SCC 264; *Govt. of A.P. v. Medwin Educational Society* (2004) 1 SCC 86.

10. MCI argued that Chettinad's application dated 27.06.2017 had not submitted a copy of the Consent of Affiliation valid for academic year 2018-19 thus the said application was incomplete in reference to the 2000 Regulations and was therefore rejected. Highlighting the importance of adherence to time limits counsel explains that grant of permissions/annual renewals in such cases where colleges can fulfil the minimum infrastructural, teaching and other facilities – found to be so at the early inspection itself and the recommendation are sent by the Council to the Govt. of India - it is apparent that the process of consideration of the recommendation of the MCI and the grant of permission/renewal by the Govt. of India would not be required to wait till the last date of 30th April for the MCI and 31st of May prescribed for this purpose for the Central Govt. to do so. This can also take place earlier, i.e., much prior to the last date. It is further submitted that as per the statutory time schedule with regard to the processing of such applications under Section 10A, every complete application, fulfilling all the conditions of the statutory qualifying criteria including all documents, requires a period of full one year for conducting the necessary process and for grant of permission under Section 10A of where after the applicant becomes entitled to make admissions in the course. In other words, for the admissions in the academic year 2018-19, every college/applicant was to submit a complete application by 07.07.2017. The learned senior counsel highlighted that the Supreme Court's rulings have underlined the importance of adhering to the prescribed time lines, for permission to commence new courses or increase intake in existing courses/colleges and relied on *Medical Council of India v. Manas Ranjan Behera* (2010) 1 SCC 173 and *Priya Gupta v. State of Chhattisgarh* (2012) 7 SCC 433. The

decision in *Royal Medial Trust* (supra) relied on by the single judge too was relied on.

11. MCI submits that after the COA was issued on 05.07.2016, Chettinad, in this case, applied for permission on 06.07.2016; the application was forwarded to MCI by the Central Government on 14.07.2016 after which, in the presence of the management and its representatives, MCI's team inspected the college. MCI states that the inspection revealed that in almost all departments, there was a staff inadequacy; on an average it was 16.08% as detailed in the report. Shortage of residents was 32.28% and bed occupancy was 32.34% on day of assessment; details of available Paramedical & Non-teaching staff were not provided; hospital lecture theatre was under construction and no resident's quarters were available for non-teaching staff. Besides, other deficiencies were pointed out in the assessment report. As these deficiencies were fundamental in nature and impinged on public interest, the MCI's Executive Committee Regulation 8(3)(1)(c) of the Establishment of Medical College Regulation, 1999 which provides that if the deficiencies of teaching faculty and/or residents is more than 10% - (in the present case 16.08%) or if the bed occupancy is found to be less than 70% - (in the present case 32.34%); in that case no opportunity of rectification of the deficiencies shall be provided to the medical college and also the medical college will not be considered for processing applications for postgraduate courses in that academic year and will be issued show cause notice as to why the recommendation for withdrawal of recognition of the courses run by the medical college should not be made for undergraduate and postgraduate courses which are recognized under Section 11(2) of the Act. It was therefore decided by the Council not to consider

Chettinad for processing application for postgraduate courses for the academic year 2017-18 and to issue a show cause notice as to why the recommendation for withdrawal of recognition of the courses run by it should not be made for undergraduate and postgraduate courses recognized under Section 11(2). This decision was communicated by MCI to the Central Government by its letter, dated 13.01.2017. MCI also submits that as the Central Government had set up a committee to grant hearing to the concerned individual colleges, under Section 10A (4) that committee granted hearing to Chettinad on 02.02.2017. The Central Government in its letter of 08.02.2017 – it is urged- wrongly required MCI to reconsider the issue; by its meeting of the Executive Committee, the MCI reconsidered the issue and reiterated its decision not to approve the request for increased intake, on 28.03.2017. This was sent to the Central Government by letter dated 20.04.2017.

12. It is next argued that Chettinad's compliance verification report/ assessment dated 25.04.2017 was considered by MCI's committee on 28.04.2017. This report indicated that faculty deficiency was to an extent of 27.09%; Residents' shortage, to an extent of 62.10%; bed occupancy on the date of assessment was 42.06% and there were only five major surgeries or operations. Besides most patients did not require hospitalization and were healthy; they had no papers and were generally fit to walk and move about. There were no residential quarters for non teaching staff. In view of these, the MCI had no option but to apply Regulation 8(3)(1)(c) of the 1999 Regulations and the show cause notice proceedings; this was followed up with a show cause notice on 30-04-2017. This decision was accepted and conveyed to Chettinad, through letter dated 31.05.2017 by the Central

Government. Chettinad represented and replied to the show cause notice which led to a fresh compliance verification report (dated 31.07.2017 and 01.08.2017). Again, there were significant deficiencies, in the form of bed deficiency to the extent of 73.47%; shortcomings in lack of diagnosis etc in the case sheet were noticed; in the TB and chest ward both male and female wards were lacking in oxygen facilities. Most paediatric ward patients seemed healthy. These deficiencies too, in MCI's opinion were fundamental and the Executive Committee of the MCI therefore decided to apply Regulation 8 (3) of the 1999 regulations vis-à-vis show cause notice for deficiencies, which was communicated to Chettinad on 31.10.2017.

13. MCI urged that in this case the learned Single Judge overlooked that Chettinad had submitted its incomplete application for increased intake from 150 to 250 for academic year 2018-19 on 27.06.2016, which was forwarded to MCI on 14.07.2017 by the Central government. Since the application did not comply with the Regulations of 2000 for academic year 2018-19, MCI was within its rights to refuse it. The MCI relies on several judgements, including *Royal Medical Trust*; and other cases. Counsel argued that the single judge erroneously concluded that since Chettinad was issued a show cause notice on 19.04.2018 recommending withdrawal of recognition due fundamental deficiencies found during the assessment of 02.04.2018, regarding the continuation of recognition of its course for 150 seats, that was not an issue germane to the present matter. It is stressed that Chettinad sought increased intake capacity. In this regard, it is also a threshold requirement prescribed by the regulations that only such medical colleges be liable to apply for increasing intake whose undergraduate, i.e. MBBS qualification continues to be recognised for the initial intake

capacity. Senior counsel states that the single judge was at fault in holding that there was delay in processing the application by Chettinad, on account of red tapism on its part. The last date for scrutiny of the application was 15.12.2017. The residency in the first instance, had returned the application thinking of September 2017.

14. Counsel submitted that the impugned judgement has long-term implications, in as much as it directs MCI to ignore prescribed timelines in respect to receipt and in processing of applications. Emphasising that these timelines are necessary in public interest, the learned counsel firstly, submitted that they have been reiterated in several decisions of the Supreme Court as of essence and secondly that these timelines clarify the MCI's scope and duty for inspection. In any given year, several hundred applications are received for setting up of new colleges of increasing intake in various undergraduate and postgraduate courses. These necessarily entail detailed scrutiny, not only of applications, but its processing through several stages such as verification and inspection. The non compliance of those timelines can be at any stage, which results in rejection of those applications. That is essential and necessary in the larger public interest, not only for ensuring adherence to minimum standards of medical education, but for ensuring that those professionally qualified in accordance with the standards in fact, graduate from recognised institutions and serve the public as trusted doctors.

15. Senior Counsel for Chettinad, Mr. Arun Bhardwaj, contended that pursuant to this court's initial order, the Central Government issued an order on 18.01.2018 which reads as follows:

"...3. Considering the representation/documents furnished by the Institute in the light of the direction of the Hon'ble High Court, the Ministry is of the opinion that the Consent of Affiliation dated 05.07.2016 submitted by the Institute along with the application for Increase of intake capacity in MBBS course from 150 to 250 seats for the academic session 2018-19 is a valid COA since it is applicable for five years from the date of issue. The Ministry therefore directs MCI to accept the application of the Institute and process it as per the provisions of the 1956 and Regulations made thereunder..."

16. Learned counsel argued that the above order is binding on the MCI and that its decision in its impugned order dated 06.02.2018 is also in violation of the judgment in *Royal Medical Trust*. It is submitted that the decisions cited by MCI are irrelevant, because the facts in those cases were different. Counsel also argued that the reasoned order of the Central Government examined all aspects highlighted (by the MCI of 16.10.2017, which rejected Chettinad's request). Consequently, the Central Government's view and directions prevailed and could not have been disregarded.

17. Mr. Bhardwaj urged that Chettinad's scheme dated 27.06.2017 was erroneously rejected by MCI not only by ignoring that it was complete in all forms, but also by patently refusing to abide by the directions of the Central Government, 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.

18. The Counsel highlighted that the MCI's rejection of Chettinad's application was not only an erroneous interpretation, that the COA dated

05.07.2016 submitted along with its scheme was invalid, but it was in violation of principles of natural justice and had, despite Section 10A (3) the Act, failed to grant it opportunity to rectify the defect, if any, found in its scheme. He contended that the manner in which MCI's rejected the Petitioner's scheme, on a hyper technical ground after two months of having received it from the Central Government and without giving any opportunity to Chettinad to explain its position in respect of the First COA, clearly showed that, though MCI objected on the ground that the time schedule prescribed for processing such schemes is sacrosanct (and has to be strictly adhered to), it took an inordinate amount of time to examine the scheme. He submits that, under the Act, the only role assigned to MCI is to carry out a factual verification of the infrastructure available to the college, to check whether the concerned college meets the standards prescribed, which stage has not arrived since it (MCI) defied the repeated directions of Union of India to process the application on its own merits. It was argued that this defiance by MCI is contrary to law, since it is in violation of the Act, in terms of which the Central Government is the final decision-making authority. Counsel stated that *Royal Medical Trust* is an authority for the proposition that MCI is under a duty to act diligently from the day a scheme is received by it and that it has to comply with natural justice at all levels.

19. Ms.Maninder Acharya, learned Additional Solicitor General, appeared for the Union of India and stated that the Hearing Committee constituted in the Ministry under Section 10A(4) of IMC Act, 1956 gave an opportunity of personal hearing to Chettinad's representatives on 06.10.2017. The representatives submitted that the COA dated 09.07.2016 is valid for five years. However, in view of the revised format for CoA

prescribed MCI, a new consent valid for 2018-19 was issued on 07.09.2017 a copy of which was submitted to MCI. The college further contended the CoA format was revised for PG course. The hearing committee found the submissions of the college acceptable and was of the view that the application may be processed for assessment. The Committee further recommended that Chettinad's scheme may be referred back to MCI for review. By letter dated 16.10.2017 the Central Government sent the recommendations of the hearing committee to MCI for reviewing Chettinad's scheme. MCI, by its letter dated 15.12.2017 informed the Central Government that its Executive Committee at its meeting held on 22.11.2017 considered its letter dated 16.10.2017 alongwith Chettinad's institute letter dated 03.10.2017 and observed that the CoA in the prescribed format was submitted to the Central Government only on 11.09.2017 which was past the last date of application 07.07.2017. The Executive Committee of the Council reiterated its earlier decision to return Chettinad's application for increase of seats in MBBS intake from 150 to 250 at its petitioner institute for the year 2018-19. It was also informed that the decision of the Executive Committee was approved by the Oversight Committee on 14.12.2017. Aggrieved by this decision, Chettinad approached this court, which on 12.01.2018 directed that its representation should be considered expeditiously by the Central Government, which did so and told the MCI by letter dated 31.01. 2018 that the CoA dated 05.07.2016 was valid and could be considered for processing.

20. It was argued that the single judge's decision cannot be faulted because once the Central Government felt that the CoA was valid, the MCI could not override that decision, given that such a decision was final and

binding. Besides, the CoA of 05.07.2016 was expressly valid for five years; therefore, the insistence by MCI for a fresh CoA for each academic year was inconsistent with the requirements of the Regulations and the Act. In these circumstances, it was submitted by the ASG that this court should not disturb the findings and directions of the Single Judge.

Analysis and Conclusions

21. Section 10A which is relevant for the purposes of this appeal, reads as follows:

"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 subsection (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 of 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. The relevant provisions of the 2000 Regulations read as follows:

"3.2 That the Essentiality Certificate in the prescribed format regarding no objection of the State Government / Union Territory administration for opening of New or Higher Course of Study or Training (Including Post Graduate Course of Study or Training) and Increase of Admission Capacity in any Course of Study or Training (Including a Post Graduate Course of Study or Training) in the medical college/institution and availability of the adequate clinical material as per the Council Regulations have been obtained by the applicant from the concerned State Government/Union Territory administration, as the case may be.

3.3 That Consent of Affiliation in the prescribed format with respect to opening of New or Higher Course of Study or Training (Including Post Graduate Course of Study or Training) and Increase of Admission Capacity in any Course of Study or Training (Including a Post Graduate Course of Study or Training) has been obtained by the Medical College/institution from the University to which it is affiliated."

23. The initial application for increased intake was made on 06.07.2016; it was accompanied by a CoA dated 05.07.2016. That CoA stated that it was valid for five years; it also stated that the consent was for Academic year 2017-18. The application was processed, after the Central Government forwarded it to MCI (on 14.07.2017). According to MCI, several crucial deficiencies were noticed, which resulted in the rejection of the application for increased intake. MCI's decision was communicated to the Central Government by letter dated 13.01.2017. The Central Government had set up a committee to grant hearing to the concerned individual colleges, under Section 10A (4) that committee granted hearing to Chettinad on 02.02.2017. The Central Government in its letter of 08.02.2017 MCI (argues, wrongly) required it to reconsider the issue; by meeting of its Executive Committee, MCI reconsidered the issue and reiterated its decision not to approve the request for increased intake, on 28.03.2017. This was sent to the Central Government by letter dated 20.04.2017. The record also shows that MCI had decided to invoke Regulation 8(3) (1) (c) of the Establishment of Medical College Regulations, 1999 which reads as follows:

“(c) Colleges which are already recognized for award of M.B.B.S. degree and/or running Postgraduate Courses:

If it is observed during any regular inspection of the institute that the deficiency of teaching faculty and/or Residents is more than 10% and/or bed occupancy is < 80 %, such an institute will not be considered for processing applications for postgraduate courses in that Academic Year and will be issued show cause notices as to why the recommendation for withdrawal of recognition of the courses run by that institute should not be made for Undergraduate and Postgraduate courses which are recognized u/s 11(2) of the IMC Act, 1956

along with direction of stoppage of admissions in permitted Postgraduate courses.”

24. MCI's Executive Committee decided to invoke Regulation 8 (3) on 28.03.2017. This decision sent to the Central Government by letter dated 20.04.2017. A fresh representation, by Chettinad, was received; this led to a fresh consideration; MCI again was unsatisfied with verification compliance and said so in its decision dated 30.04.2017. This decision was conveyed to Chettinad, through letter dated 31.05.2017 by the Central Government. Chettinad represented and replied to the show cause notice which led to a fresh compliance verification report (dated 31.07.2017 and 01.08.2017). Again, there were significant deficiencies, which, in MCI's opinion were fundamental and the Executive Committee of the MCI therefore decided to apply Regulation 8 (3) of the 1999 regulations vis-à-vis show cause notice for deficiencies, which was communicated to Chettinad on 31.10.2017.

25. As far as Chettinad's application for academic year 2018-19 is concerned the CoA by the Chettinad Academy of Research & Education (a deemed university) issued a CoA dated 07.09.2017; the same date, Chettinad applied for increased intake. MCI rejected this – perhaps mechanically, stating that the CoA was for another year (whereas it was for the year 2018-19). The committee constituted by the Central Government, therefore, after the hearing recommended (by its minutes of meeting dated 16.10.2017) consideration of the request (for increased intake) on the ground that a *revised CoA* had been issued.

26. The Minutes of the Executive Committee meeting (of the MCI) held on 22.11.2017 read as follows:

“Increase in MBBS seats from 150 to 250 at Chettinad Hospital

& Research Institute. Kanchipuram u/s 10A of the IMC Act, 1956.

Read: the matter with regard to increase in MBBS seats from 150 to 250 Chettinad Hospital & Research Institute Kanchipuram u/s 10A of the IMC Act, 1956

The Executive Committee of the Council, perused the letter from Central Government, Ministry of Health and F/W dated 16/10/2017 along with letter from institute dated 03/10/2017 and observed as under:

(1) Consent of Affiliation in the prescribed format is submitted to the Central Govt. only on 11/09/2017 which is well past the last date of application i.e. 07/07/2017. Thus admittedly it was not available and attached with the application.

The Committee further noted the following relevant portion of the Hon'ble Supreme Court judgment dated 20/08/2015 in W.P.(C) No. 705/2015-Royal Medical Trust (Regd.) and Another Vs. Union of India and Anr.; –

(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 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."

It is apparent from the aforesaid decision and the regulations that the application at the first instance is required to be complete and incomplete applications are liable to be rejected. Thereafter, there has to be an inspection and other stages of decision-making process."

In view of the above, the Executive Committee of the Council reiterated its earlier decision to return the application for increase in MBBS seats from 150 to 250 at Chettinad Hospital & Research Institute, Kanchipuram for the academic year 2018-2019 recommending disapproval of the scheme to the Central Govt. as there is no provision u/s 10A of the Indian Medical Council Act, 1956 or the Regulations framed therein to keep the application pending in the Council office for the next academic-year."

27. Three basic reasons inform the impugned judgment: first, that Chettinad had the CoA for five years and consequently MCI's rejection of it was a "hypertechnicality". The second is that MCI's inaction resulted in delay in consideration of Chettinad's case for increase in intake of its MBBS

course. The third and perhaps most important reason is that the Central Government *overrode* MCI's decision, which meant that the former was bound to fall in and grant the approval for increased intake.

28. As far as the first reason is concerned, the factual narrative would reveal that the sequence and pattern of events is such that the scheme originally was not rejected only because the CoA was not in order; there were other grounds as well. Chettinad's constant refrain, in respect of the CoA having been issued for five years, in the opinion of the court, is not persuasive. The scheme of the 2000 Regulations suggest that upon rejection in respect of a particular academic year, another application for a later academic year can be made. The logic of this is sound; like the CoA, the state government too has to issue an Essentiality Certificate. Similarly, each valid application results in an obligation to verify it and process it in accordance with regulations and more importantly inspect the college. In this case, therefore, Chettinad's argument that MCI's insistence on a new CoA for the year 2018-19 was a hypertechnicality, therefore, cannot be accepted. As a matter of fact the fresh application for academic year 2018-19 was *accompanied by a CoA dated 07.09.2017*.

29. As regards the second and third ground (since both are connected and interrelated), this court notices that the first application (dated 06.07.2016, forwarded by the Central Government to the MCI on 14.07.2016) resulted in processing of the request; an inspection was carried out on 19/20.10.2016 which led the MCI committee to conclude that various deficiencies were noticed. The MCI felt that these deficiencies were far too serious and invoked Regulation 8(3) (1) (c) of the 1999 Regulations asking Chettinad to show cause why its existing affiliation ought not to be cancelled. The

Central Government however, felt that the rejection communicated by MCI should be set aside, despite the fact that MCI had heard Chettinad and recommended rejection. Accordingly, yet another inspection took place and MCI's committee decided to reject the request for increased intake. A compliance verification was conducted and assessed by a report dated 25.04.2017 that showed that the deficiencies which emerged at the stage of verification of the college (*in the context of its request for increased intake*) had continued. As a result of the consideration of this report, on 28.04.2017, a show cause notice was issued to the college under the 1999 Regulations again. The MCI's recommendations to do so, with regard to deficiencies and omissions in the institutions *were accepted by the Central Government on 31.05.2017*. Yet another compliance verification dated 31.07.2017/01.08.2017 was undertaken by MCI to evaluate Chettinad's institution and staff adequacies, etc. This report too did not give a "go bye" or clearance. MCI's meeting of 30.08.2017 outlined the various inadequacies and deficiencies. It is in this background that the application for increased intake was made, enclosing a fresh CoA dated 07.09.2017 *in respect of Academic year 2018-19 for the first time*. Although the first rejection by MCI appears to be mechanical, because the committee which heard Chettinad noted that the fresh CoA was for 2018-19 and could not be *per se* rejected, its stand that the application – freshly submitted in September 2017 deserved to be rejected at the threshold as not conforming to the time schedule, needs deeper scrutiny.

30. The entire burden of song by Chettinad appears to be that since the CoA was the main stumbling block, or obstacle, MCI's decision to reject its application for 2018-19 on the basis of its submission beyond the time is

untenable. The learned Single Judge too appears to have accepted this line of argument. With respect, this court is unable to concur with this reasoning. In the debate regarding the validity of CoA and adherence to timelines, what appears to have been lost sight of is that verification of particulars of the college was conducted or evaluation, by MCI *no less than on three different occasions*. The college was issued show cause notice on each occasion. The deficiencies such as faculty strength inadequacy (three times) insufficient bed capacity utilization, improper documentation of inpatients, the relative good health of admitted patients, etc. point to serious flaws. The MCI is correct in contending that in the circumstances, it could not have been directed to accord permission to increase intake.

31. After *Royal Medical Trust* the Supreme Court has ruled on the importance of MCI's role in considering regulatory standards for starting courses or increasing existing intake) courses: in *IQ Foundation v Union of India* 2018 (2) SCC 593 it was observed as follows:

“This Court, referring to the decisions in Manohar Lal Sharma v. Medical Council of India and others, Medical Council of India v Kalinga Institute of medical Sciences (KIMS) and others² and Royal Medical Trust (Regd) and another v Union of India and another³ and thereafter referring to Section 10A of the Act and the Regulations, opined thus:-

“29. On a reading of Section 10-A of the Act, Rules and the Regulations, as has been referred to in Manohar Lal Sharma (supra), and the view expressed in Royal Medical Trust (supra), it would be inapposite to restrict the power of the 1 (2013) 10 SCC 60 2 (2016) 11 SCC 530 3 (2015) 10 SCC 19 MCI by laying down as an absolute principle that once the Central Government sends back the matter to MCI for compliance verification and the Assessors visit the College they shall only

verify the mentioned items and turn a Nelson's eye even if they perceive certain other deficiencies. It would be playing possum. The direction of the Central Government for compliance verification report should not be construed as a limited remand as is understood within the framework of Code of Civil Procedure or any other law. The distinction between the principles of open remand and limited remand, we are disposed to think, is not attracted. Be it clearly stated, the said principle also does not flow from the authority in Royal Medical Trust (supra). In this context, the objectivity of the Hearing Committee and the role of the Central Government assume great significance. The real compliant institutions should not always be kept under the sword of Damocles. Stability can be brought by affirmative role played by the Central Government. And the stability and objectivity would be perceptible if reasons are ascribed while expressing a view and absence of reasons makes the decision sensitively susceptible."

32. In *Manohar Lal Sharma v. Medical Council of India* 2013 (10) SCC 60, the Supreme Court emphasized the role of MCI, to form opinion, on the basis of regular reports regarding the capacity of a college to provide necessary facilities in respect of staff, equipments, accommodation, training and other facilities to ensure proper functioning of the medical college or for increase of admission capacity. It was held that:

"24. Surprise inspection, in this case, was conducted to ascertain whether compliance report could be accepted and to ascertain whether the deficiencies pointed out in the regular inspection were rectified or not. By pointing out the deficiencies, MCI is giving an opportunity to the College to rectify the deficiencies, if any noticed by the inspection team. It is the duty of the College to submit the compliance report, after rectifying the deficiencies. MCI can conduct a surprise inspection to ascertain whether the deficiencies had been rectified and the compliance report be accepted or not."

27. We are also of the view that such an order is not vitiated by violation of principles of natural justice, especially, when no allegation of bias or mala fide has been attributed against the two doctors who constituted the inspection team, which conducted the surprise inspection on 67 2013. When the inspection team consists of two doctors of unquestionable integrity and reputation, who are experts in the field, there is no reason to discard the report of such inspection. In such circumstances, we are of the view that MCI has rightly passed the order rejecting the approval for renewal of permission for the third batch of 150 MBBS students granted for the academic year 2013-2014.”

33. Yet another decision, *Indian Council for Advancement of Research Haldia v Union of India* 2017 (16) SCC 1 reiterated *IQ Foundation* and emphasized the need to comply substantively with academic and infrastructural standards, in the following terms:

“31. The aforesaid Regulations, as we perceive, deal with the compliance verification. In the instant case, after the College submitted that it had complied with deficiencies pointed out by the team of assessors, the MCI thought it necessary to have an inspection. It is not in dispute that the said inspection was a surprise inspection and further it was, as the MCI perceived, required to be done to verify whether the institution was really compliant or not. In the verification report dated 24.04.2017, as the assessors have pointed out, there are number of deficiencies.

32. The stand of the petitioners is that such verification is impermissible and grossly mala fide. In IQ City Foundation (supra), the three-Judge Bench, after referring to the authority in Royal Medical Trust (supra) has held that the emphasis on the compliant institutions that can really educate doctors by imparting quality education so that they will have inherent as well as the cultivated attributes of excellence. There

can be no scintilla of doubt that an institution that imparts medical education has to remain ever compliant.”

34. Besides *Royal Medical Trust* other decisions, such as *D.Y. Patil Medical College v. Medical Council of India and Anr* 2015 (10) SCC 51; *Educare Charitable Trust v. Union of India and Anr* (2013) 16 SCC 474 and *Medical Council of India vs. V.N. Public Health and Educational Trust and Ors* 2016 (11) SCC 216 have emphasized and repeatedly underlined the inviolability of the time schedule prescribed for receipt, forwarding, processing of applications, inspection and final approval or rejection. Given this undoubted position in law, it is difficult to accept the Single Judge’s logic that the MCI was at fault in insisting upon a hyper-technicality (with respect to CoA) and that its procedures were mired in red tape. This logic and approach is superficial, with respect. The record shows that physical inspection of the college was carried out and MCI’s committee gave opportunities to Chettinad; repeated compliance verifications were conducted not once but three times. Yet, the college was not given a clean chit. In these circumstances, the MCI’s position that the application (of September 2017) having been preferred beyond the prescribed limit (for receiving it, by the MCI from the Central Government, i.e. 15.07.2017) is neither unreasonable nor hyper-technical. This court finds that in each of the Central Government’s decisions, differing with MCI, the important issues concerning compliance verification and deficiencies *were not addressed or adverted to*. In view of these shortcomings, it is held that the Central Government’s decision could not be held to be conclusive.

35. The Central Government produced the official file, during the hearing. It discloses that considerable *inter se* correspondence between it and the MCI, whereby the latter was told that a defective CoA or Essentiality Certificate cannot be rejected and that in principle, such cases should not be considered as defective or incomplete, having regard to the decision in *Royal Medical Trust*. This court is of opinion that the circumstances of this case, such logic cannot be accepted. The application for the earlier year (2017-18) was not accepted *as there were deficiencies noticed during the inspection, consequent to the application for increase of intake*. The subsequent reviews (compliance verifications) did not relieve Chettinad from the defects noticed. In these circumstances, MCI was justified in saying that the application made on 11.09.2017 was considerably delayed and therefore had to be rejected. The facts of this case, in the opinion of this court, closely correspond to the judgment in *Poonaiyah Ramajayam Institute of Science And Technology Trust v. Medical Council of India* [(2015) 10 SCC 83] where the Essentiality Certificate and COA were not submitted along with the scheme and were furnished 10 days after the cut-off date. The court had directed the MCI to conduct the inspection under the Act. 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. The Supreme Court did not grant the relief claimed. The learned Single Judge, in this court's opinion erred in holding that "*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.” Likewise, the decision in *Priya Gupta v State of Chattisgarh* (2012) 7 SCC 433 was again wrongly distinguished.

36. In view of the above discussion, it is held that the findings and impugned judgment of the learned Single Judge cannot be sustained; it is set aside. The respondent’s writ petition is, consequently dismissed. The appeal is allowed in these terms without order on costs.

S. RAVINDRA BHAT
(JUDGE)

A.K. CHAWLA
(JUDGE)

JULY 18, 2018