

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on :20.08.2019

Date of decision:05.09.2019

W.P.(C) 6958/2019 & CM.APPL. No.28915/2019

GLOCAL MEDICAL COLLEGE SUPER SPECIALITY HOSPITAL
AND RESEARCH CENTRE Petitioner

Through: Mr.Neeraj Jain & Mr. Anupam
Mishra, Advocates.

versus

UNION OF INDIA & ANR. Respondents

Through: Ms. Suparna Srivastave & Ms.
Nehul Sharma, Advs. for R-1.
Mr. Vikas Singh, Sr.Adv. with
Mr. T. Singhdev, Ms. Puja
Sarkar, Mr. Tarun Verma, Ms.
Michelle, Mr. Abhijit Ms.
Arunima & Ms. Sumangla,
Advocates for MCI.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The petitioner vide the present petition, seeks the setting aside of the impugned order dated 18.05.2019 of the under Secretary to the Government of India Ministry of Health & Family Welfare New Delhi, whereby the petitioner has been *inter alia* directed not to admit students in the MBBS course in the academic year 2019-20 in its college and seeks a mandamus to the respondents to issue the letter of

permission to the petitioner for the year 2019-20 qua the same and further seeks a mandamus to the respondents to display the name of the petitioner college in the list of Medical Colleges entitled for counselling and admission for MBBS course (150 seats) for the academic year 2019-20.

2. The respondent no.1 arrayed on the record is the Union of India through its Secretary, Ministry of Health & Family Welfare and the respondent no.2 arrayed on the record is the Board of Governors in supersession of Medical Council of India.

3. Oral as well as written submissions have been made on behalf of either side.

4. The petitioner submits that it is a minority status charitable Hospital, run by the Abdul Wahid Charitable Trust, situated in the remote, neglected area of District Saharanpur, providing sterling quality of service to the poor villagers of the district nearby, wherein medical services are conspicuously absent. The petitioner also submits that it is spread over an expansive land area, covering about 7 lakh square meter and it has 10 'State of Art' Operation Theatres, fully functional and equipped with most modern machines/ technology, besides other modern equipments that are required to provide quality healthcare to patients as also impart meaningful education to students.

5. The petitioner has submitted that the Letter of Permission for the MBBS Course (150 seats) in Glocal Medical College Super Speciality Hospital and Research Centre, Uttar Pradesh under Glocal University, Saharanpur, UP was granted to it under Section 10A of the Indian Medical Council Act, 1956 in 2016 and that a batch of students

are pursuing their course without any constraint as regards facilities, faculty or any of the requisite equipment(s) and infrastructure within the Campus and that there is no demur from any quarter raised till date of the institution of the petition. The petitioner submits that despite recommendations of the Oversight Committee mandated by the Hon'ble Supreme Court, which were to the effect:-

“3.3 OC noted that 32 Institutions (2 in the Table-1 below and 6 in Table-2 below) have been recommended for approval by the which has been endorsed by MHFW vide their letter dated 05 May 2017. Majority of these 32 institutions have made representation to MHFW as well as OC, against the way inspections have been carried out by MCI, some of which are represented below:-

(i) The behavior and conduct of assessment was more like harassment than assessment.

(ii) Some of the assessments/ inspections have been carried out close to Government holiday/ festival.

(iii) In some cases, the copy of assessment report was denied to the college.

(iv) The guidelines prescribed by OC were not adhered to, especially as it was not approved that the assessors deployed on verification of Conditional Approvals had not conducted more than 3 assessments, each, in one year.

(v) In a majority of cases, the deficiencies pointed out are subjective in nature and are not as per the MSR.

(vi) Again, in a majority of cases, the residents/ faculty who are on sanctioned leave /s or were slightly late for attendance by 11:00 am (very short time given, as short as 15 minutes to half an hour), were not counted for attendance though their presence was not denied. The

residents who had done their night duties were also not counted for attendance.”

the respondent no.2 had failed to adhere to the same and vide order dated 10.08.2017 denied permission to the petitioner.

6. The petitioner submits that it challenged the said order before the Hon'ble Supreme Court vide W.P.(C) No.411/2017 and vide order dated 18.09.2017, the Hon'ble Supreme Court observed that it did not intend to remit the matter to the Hearing Committee as it was not possible on the part of any authority at present to extend the benefit of the Letter of Permission for the academic year 2017-18 but that regard being had to the totality of facts and circumstances, it was directed that the application submitted for the academic year 2017-18 would be treated as the application filed for the academic year 2018-19 and that the bank guarantee that had been submitted by the petitioner institution in pursuance of the conditional order passed by the Oversight Committee while granting renewal of Letter of Permission for the academic year 2016-17, would not be encashed by the Medical Council of India and that the same would be kept alive and that a fresh inspection would be conducted within a span of three months. The Hon'ble Supreme Court also directed vide the said order that the students who had been admitted in pursuance of the letter of permission granted for the year 2016-17 would be permitted to continue their studies.

7. It was also directed vide the said order that the institution or college appearing before the Hearing Committee would carry all the documents it intends to produce to establish its case before the

Hearing Committee and the Hearing Committee would also think of granting an adjournment to enable the institution to produce the documents so that no grievance remains to be agitated in a Court of law in that regard.

8. The petitioner submits that the Assessors of the respondent no.2 inspected the College on 03.01.2019 when the College was on a 'Winter Vacation' and despite intimation to that effect having been given to the team of Assessors, vide letter dated 03.01.2019 the petitioner had declared a 'Winter Vacation' from 31.12.2018 to 07.01.2019. The petitioner submits that another team of Assessors was appointed to carry out the assessment of the petitioner's institute on 4/5.02.2019 and the assessment report (04/05.02.2019) along with the summary/ observations of the consultant under graduate was considered by the Board of Governors in supersession of the Medical Council of India, which noted the following deficiencies:-

- “1. MCI regional (nodal) centre for training of staff for Medical Education is not mentioned.***
- 2. Orientation and Basic course workshop has not been undergone by MEU faculty.***
- 3. LT in College is under construction.***
- 4. Students reading room in central in central library Inside & outside) less by 175 accommodation and reading staff reading room by 5.***
- 5. Books less by 864, Journal Indian by 3, foreign by 2***
- 6. UG students hostel accommodation by 30 in boys hostel and in girls hostel***
- 7. Resident+ PG hostel accommodation less by 6***
- 8. Residential quarters in teaching staff less by 6 and for non-teaching staff less by 6***
- 9. Blometric devices not installed in college***
- 10. No of normal deliveries & Ceasarian Section - Nil***

- 11. CT Scan done - Nil**
- 12. No. of beds in NICCU/PICU is 1 each, deficient by 4 beds in each.**
- 13. CT spiral Minimum 16 slice, the purchase order has been placed.**
- 14. Central Research Lab - not functional**
- 15. In Anatomy dept. histology lab has seating capacity of 75 as against 90 (15 seats less)**
- 16. Ten short tables less in Dissection Hall**
- 17. In Patho Demo rooms (both) the capacity is less by 40 in each demo room (Required 80, available 40)**
- 18. In microbiology service labs available are 4 against 7(3 deficient)**
- 19. In pharma dept. Experimental Pharma Labs not available and mannequins also not available.**
- 20. In community Medicine, Demo room Capacity, for 70 as against 80**
- 21. No specialist visits in UHTC**
- 22. Deficiency of Faculty - 74.35% (87/117)**
- 23. Deficiency of Residents - 78.78% (52/66)**
- 24. Only 5 pts in male surgical, 2each in female surgical & Paed wards were admitted.**
- 25. No surgery was performed, as per OT register on 19.1.2019. Post OT recovery data register showed last operation was done on 24.1.19."**

9. The petitioner submits that the conduct of the said team was so abominable, reprehensible and insufferable that a written complaint was sent to the Additional Pro-Chancellor of the petitioner College to the respondent no.1 narrating graphic details of the obnoxious demeanour of the inspection committee but no action thereon was taken on behalf of the respondent no.2 and that the petitioner was not supplied with the report/ recommendations of inspection conducted on 04/05.02.2019.

10. The petitioner submits that another team of Assessors reached the petitioner College without furnishing the report of the earlier inspection, in the absence of which the College was completely unaware of the scope of this inspection or as to the deficiencies assessed/ found by the earlier team. The petitioner submits that they thus, denied any further inspection unless the report of the earlier inspection was given to it. The petitioner submits that it received a hearing notice dated 01.05.2019 fixing the date of hearing for 07.05.2019, on which date the petitioner College furnished its explanation qua each and every deficiency pointed out in the hearing notice. *Inter alia* the petitioner submits that the material furnished was of unimpeachable character and that the documents were also annexed by the petitioner in support of its contentions.

11. The petitioner submits that despite the same, the respondent no.2 vide the impugned order dated 18.05.2019 decided not to renew permission for admission of the 4th batch in the MBBS Course for the academic year 2019-20 without scrutinizing or deliberating or appreciating the contents of which was written. The petitioner further submits that the operative part of the impugned order reads to the effect:-

“.....the Institute was granted hearing on 07.05.2019 in the Council Office to present the case of the Institute in view of the above deficiencies and the Hearing Committee, after considering the submissions/ compliance furnished by the college observed as under:

“The Hearing Committee expressed its displeasure to the college authorities for not allowing the MCI

assessors to carry out the assessment on two occasions.

The explanation offered by the college authorities regarding the deficiencies as well as for not allowing the MCI Assessors to carry out the Assessment to the Hearing Committee was found unsatisfactory.

Hence, the Hearing Committee recommended not to grant approval for renewal of permission for admission of 4th batch of 150 MBBS students for the academic year 2019-20 at Glocal Medical College Super Specialty Hospital & Research Center, Saharanpur, Uttar Pradesh, in view of the existing deficiencies of Faculty and Residents, inadequate clinical material and infrastructural deficiencies.”,

and that the same established the pre-determined mindset and non-examination of the material tendered by the petitioner College.

12. The petitioner submits that the respondent no.2 has repeatedly erroneously stated that the petitioner College did not permit inspection on 03.01.2019 and 05.04.2019. *Inter alia* the petitioner has submitted that the contention raised on behalf of the respondent no.2 to the effect that W.P.(C) 15248/2019 had been filed by disgruntled persons against the petitioner College, in as much as it had been filed by five students who had not even revealed any lacunae in teaching in the college and that one of the complaints were made by an erstwhile teacher, whose services were terminated after enquiry due to his misconduct with a women staffer and that the other complaint received was those of students against whom there were huge fee

arrears. *Inter alia* the petitioner has submitted that the impugned order passed without granting the petitioner an opportunity to be heard was in violation of the order dated 18.09.2017 of the Hon'ble Supreme Court in W.P.(C) 411/2017 and that the impugned order needed to be quashed with the permission being granted for renewal of permission for the MBBS Course for the 4th batch (150 seats) to the petitioner Institute.

13. The respondent no.2 vide its submissions has submitted that vide its communication dated 14.06.2018, it had requested the petitioner medical college to submit the Standard Inspection Form 'A' and Form 'B' along with the Declaration Forms towards the grant of renewal of permission for the admission of 4th batch of 150 MBBS students for the academic session 2019-20 and that the petitioner medical college vide its communication dated 31.07.2018 had submitted the Standard Inspection Form 'A' and Form 'B' along with the Declaration Forms. *Inter alia* the respondent no.2 has submitted that it has received a letter dated 27.06.2018 from the Central Government forwarding therewith a letter dated 06.06.2018 from the Prime Minister's Office enclosing therewith a complaint dated 01.06.2018 from a parent of the MBBS student of the petitioner college and that the MCI i.e. the respondent no.2 had also received another complaint against the petitioner medical college dated 29.08.2018 which was received on 25.09.2018 from the students of the MBBS course of the petitioner medical college. The respondent no.2 has further submitted that these complaints brought forth that the petitioner medical college did not have any faculty and it relied upon

ghost faculty. The respondent no.2 has further submitted that holidays had been suddenly declared by the petitioner college when the MCI Assessors would reach the College as there were no patients available in the hospital and the wards were empty with also no patients available in the OPD/Casualty. *Inter alia* the respondent no.2 has submitted that the petitioner College did not permit inspection by the MCI Assessors.

14. The respondent no.2 is also stated to have received a complaint from the Additional Pro-Chancellor, Glocal University through the Central Government vide letter dated 27.02.2019, wherein various baseless allegations had been raised against the assessment team that had conducted assessment of the petitioner medical college on 4th & 5th February, 2019. The respondent no.2 further submits that the petitioner College did not permit the inspection by the MCI Assessors on 05.04.2019, which fact has been suppressed by the petitioner and that the petitioner vide letter dated 05.04.2019 informed the MCI that it was not ready for an inspection. *Inter alia* the respondent no.2 submits that it gave a hearing on 07.05.2019 and considered the explanation submitted vide letter dated 07.05.2019 and submitted that the petitioner College did not offer any explanation as to why the MCI Assessors were not permitted to inspect the medical college on 03.01.2019 & 05.04.2019 and thus, taking into account the deficiencies and the aspect that the petitioner had not allowed the MCI to carry out the assessment on 03.01.2019 & 05.04.2019, the MCI vide letter dated 18.05.2019 decided not to grant renewal of permission for the admission of 4th batch of 150 MBBS students for

the academic session 2019-20 in view of the complaints that had been received dated 12.02.2019, 18.03.2018 which was received on 27.03.2019, 23.04.2019 which was received on 30.04.2019 & 29.04.2019, 15.05.2019 which was received on 29.05.2019 & 23.05.2019 which was received on 29.05.2019.

15. The respondent no.2 has further submitted that the students of the 2016-17 batch had approached the Hon'ble High Court of Allahabad vide W.P.(C) 15248/2019, seeking transfer to another medical college in the State of UP since there was no infrastructure for their teaching and training in the MBBS course. The respondent no.2 has thus submitted that since the Hon'ble High Court of Allahabad was already seized of the matter pertaining to availability of infrastructure in the medical college, the petition deserved to be rejected on the ground of 'forum non conveniens' as proceeding further with the present writ petition would cause multiplicity of proceedings and may result in conflicting views on the same issue.

16. The respondent no.2 has placed reliance on the verdict of the Hon'ble Supreme Court in ***"Manohar Lal Sharma Vs. MCI" (2013) 10 SCC 60***, with specific reference to the observation in paragraph 26, which reads to the effect:-

"26. We have already dealt with, in extenso, the deficiencies pointed out by the MCI team in its report dated 6-7-2013. In our view, the deficiencies pointed out are fundamental and very crucial, which cannot be ignored in the interest of medical education and in the interest of the student community. MCI and the College authorities have to bear in mind, what is prescribed is the minimum, if MCI dilutes the minimum standards, they will be doing violence to the statutory

requirements. MCI is duty-bound to cancel the request if fundamental and minimum requirements are not satisfied or else the College will be producing half-baked and poor quality doctors and they would do more harm to the society than service. In our view, the infirmities pointed out by the inspection team are serious deficiencies and the Board of Governors of MCI rightly not granted approval for renewal of permission for the third batch of 150 MBBS students for the academic year 2013-2014.

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 6-7-2013. 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. Consequently, Writ Petition (C) No. 590 of 2013 is allowed and IA No. 2 of 2013, filed in SLP (C) No. 28480 of 2012, is disposed of, as above.”,

and on the verdict of the Hon’ble Supreme Court in “***MCI Vs. Kalinga Institute of Medical Sciences***” (2016) 11 SCC 530, with specific reference to the observations in paragraphs 21, 22 & 24, which read to the effect:-

“21. A perusal of the decision of the High Court clearly indicates that it considered the latest report of the Inspection Team as if it was hearing an appeal against the report. In doing so, the High Court went into great details on issues relating to the number of teaching beds in the hospital, the limitations in the OPD Department, the number of units available in the subjects of General Medicine, Pediatrics, etc., bed occupancy, number of

caesarean sections, discrepancy in data of major and minor operations, computerisation in the institution, number of patients in the ICU, number of static x-ray machines, deficiency of examination halls, lecture theatres, library, students hostel, interns hostel, playground, etc. etc. Surely, this was not within the domain of the High Court in exercise of its jurisdiction under Article 226 of the Constitution.

22. The High Court did not appreciate that the inspection was carried out by eminent Professors from reputed medical institutions who were experts in the field and the best persons to give an unbiased report on the facilities in KIMS. The High Court under Article 226 of the Constitution was certainly not tasked to minutely examine the contents of the inspection report and weigh them against the objections of KIMS in respect of each of its 18 items. In our opinion, the High Court plainly exceeded its jurisdiction in this regard in venturing into seriously disputed factual issues.

24. Medical education must be taken very seriously and when an expert body certifies that the facilities in a medical college are inadequate, the courts are not equipped to take a different view in the matter except for very cogent jurisdictional reasons such as mala fides of the Inspection Team, ex facie perversity in the inspection report, jurisdictional error on the part of MCI, etc. Under no circumstance should the High Court examine the report as an appellate body — this is simply not the function of the High Court. In the present case there was no ground made out at law for setting aside the report of the Inspection Team.”

(emphasis supplied),

to contend that the report of the Assessors of the MCI cannot be doubted as they are experts in the field of medicine with unquestionable integrity/ reputation.

17. The respondent no.2 has further submitted that all inspections were conducted by it in terms of the directions as specified by the Hon'ble Supreme Court in ***“Royal Medical Trust (Regd.) & Anr. Vs. UOI & Anr.” (2015) 10 SCC 19*** and placed reliance on the observations in paragraph 31 thereof, which reads to the effect:-

“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.”

18. *Inter alia* the respondent no.2 has submitted that the Hon'ble Supreme Court has upheld the disapproval of applications by the respondent no.2 even when the deficiencies have been marginal and has thus placed reliance on the observations of the Hon'ble Supreme Court in ***"MCI Vs. N.C. Medical College" (2018) SCC Online SC 1468*** and also placed reliance on the observations of the Hon'ble Supreme Court in relation to the same aspect upholding the disapproval of applications even when the deficiencies have been marginal in ***"Maheshwara Medical College & Hospital & Anr. Vs. UOI & Ors."*** in W.P.(C) 694/2018 vide orders dated 09.07.2018 & 08.08.2018.

19. The respondent no.2 has further submitted that the petitioner College could not in any manner constrict and prohibit the assessors from carrying out an assessment when the expert Statutory Authority in as much as the Expert Statutory Authority had legitimate reasons for seeking verification. The respondent no.2 has further submitted that the assessment of conditions prevailing in a medical college is central to the role to be discharged by the MCI and it would thus be contrary to public interest to restrict the MCI from carrying out assessments when in its wisdom it considers the assessment essential to be carried out.

20. The respondent no.2 has also placed reliance on the verdicts of the Hon'ble Supreme Court in ***"Sri Venkateshwara University & Anr. Vs. Union of India & Anr."*** 2017 SCC Online SC 1034, with specific reference to observations in paragraph 16 thereof, which reads to the effect:-

“16. Having said that, we shall proceed to analyze what the clause precisely conveys. On a careful reading of the same, it is quite clear and unambiguous that the obligation of the MCI is to ensure that inspections are not to be carried out at least 2 days before and 2 days after an important religious and festival holidays declared by the Central/State Government. In the clause, the words which gain significance are “important religious and festival holidays”. On 12th December, 2016, it was Milad-un-Nabi and it is the day of festival. The inspection was done on 9th December, 2016, which was a Friday. The amended clause of the notification state only covers 2 days before the festival declared as a holiday by the Central/State Government and 2 days thereafter. In the case at hand, the inspection team had gone for inspection on 9th December, 2016, and they were deprived to carry out the inspection. It was not covered by the concept of two days of moratorium. In such a situation when the Institution does not allow the team of the MCI or the assessors of the MCI, it will be adding premium to deviancy. Conferment of this kind of privilege is absolutely unwarranted. Therefore, the directions sought for grant of renewal of Letter of Permission for the academic session 2017-2018 is not acceptable.”,

in **“Madha Medical College & Research Institute Vs. Union of India & Anr.” 2017 SCC Online SC 1078**, with specific reliance to observations in paragraph 20 thereof, which reads to the effect:-

“20. While considering the above submissions, we must make it clear at the outset that we are not impressed with the argument that MCI is prohibited from conducting a second or subsequent inspection. The purpose of inspection by an expert team of assessors is to verify whether a medical college has the requisite infrastructure and facilities including faculty, residents as well as clinical and non-clinical material. The basic purpose of inspection is to verify whether the college possesses the wherewithal

and resources to provide quality legal education consistent with the statutory regulations which hold the field. The powers of MCI cannot be constricted by prohibiting it from carrying out another inspection, even it were to come close on the heels of an earlier inspection. As an expert statutory body, MCI may have legitimate reasons for seeking a reverification of the observations contained in a prior inspection. There may be reasons to doubt the genuineness of the picture which has been made out by the college during the course of an inspection. MCI may have prima facie reasons, to believe that the actual possession of resources and infrastructure is at variance with what was portrayed before its team of assessors. MCI has been conferred with statutory powers to protect the cause of medical education. MCI is a custodian of public interest and acts in trust for the welfare of society. Access to medical care requires the presence of qualified health professionals. Verification of the conditions which prevail in medical colleges is central to the role discharged by MCI. Hence, it would be manifestly contrary to public interest to restrict the powers of MCI to carry out a fresh inspection even though in its considered decision, such an inspection is necessary. This court cannot sit in judgment over the wisdom of an expert body and we find no basis to hold in law that there is a prohibition in carrying out a fresh inspection. In the absence of a statutory interdict, the court will not read such a restriction into the powers of MCI. In these circumstances, we find no merit in the submission.”,

and to similar effect the respondent no.2 has placed reliance on the following verdicts:-

- (i) ***Dr. Jagat Narain Subharti Charitable Trust & Anr. Vs. Union of India & Anr.*** in W.P. (C) No. 5006/2018, a verdict dated 28.05.2018;

(ii) ***Dr. Jagat Narain Subharti Charitable Trust & Anr. Vs. Union of India & Anr.*** in LPA No.340/2018, a verdict dated 19.07.2018;

(iii) ***Dr. Jagat Narain Subharti Charitable Trust & Anr. Vs. Union of India & Anr.*** in SLP(C) No.22414/2018, a verdict dated 12.10.2018.

21. The respondent no.2 has further submitted that in as much as the Disciplinary Authority i.e. the Board of Governors had agreed with the findings of the Hearing Committee/ Assessors, it was not necessary for it to give any further reasons for accepting the observations made by the Hearing Committee whilst declining the permission sought by the petitioner.

22. A further submission made on behalf of the respondent no.2 is to the effect that the petitioner College was well aware of the guidelines as approved by the Hon'ble Supreme Court in "***Ashish Ranjan and others vs. Union of India and Others***" (2016) 11 SCC 225 vide order dated 18.01.2016 whereby a notification was issued by the MCI with the prior approval of the Central Government under Section 33 of the Indian Medical Council Act, 1956 pertaining to the time schedule including the time schedule for receipt of applications qua increase of admission capacity in MBBS Course/ renewal of permission for increase of seats and processing of the applications by the Central Government and the Medical Council of India from the academic year 2017-18 onwards and that the petitioner was well aware of the dates and was thus obliged to be ready with the minimum infrastructure, teaching faculty, residents, clinical material and other

physical facilities when they submitted standard assessment forms along with declaration form of the faculty.

23. The respondent no.2 has further submitted that the petitioner College was inspected on 03.01.2019, on which date there was no important or religious festival as declared by either the Central Government or the State Government and that the contention of the petitioner that there were winter vacations from 31.12.2018 to 07.01.2019 was misconceived since, on account of the same, the patients admitted in the various Wards, ICUs, Labour Rooms, admitted for various minor/ major operations could not have been simply discharged and sent back home irrespective of their medical condition and ailment and thus, it was submitted on behalf of the respondent no.2 that it was erroneous on the part of the petitioner medical college to contend that there were winter vacations from 31.12.2018 till 07.01.2019 and thus the faculty members and residents who worked as doctors in the attached hospital could be permitted to either neglect the patients admitted in the hospital or report late to the medical college in as much as the winter vacation was for the students and not for faculty/ residents who worked as doctors in the attached hospital and that patients admitted in the hospital attached to the petitioner medical college cannot be discharged on account of any holiday or winter vacations whatsoever.

24. *Inter alia* the respondent no.2 has placed reliance on the deliberations of the Executive Committee of the MCI in its meeting held on 21.08.2014, wherein the report prepared by the Sub-Committee dated 17.04.2014 in respect of the acceptable leaves during

the assessment of the medical colleges had been approved vide item no.24 which specifies to the effect:-

“24. Regarding specifying the type of acceptable leave during inspection of medical colleges.

Read: the matter with, regard to regarding specifying the type of acceptable leave during inspection of medical colleges.

The Executive Committee of the Council considered the report of the Sub-Committee dt. 17.04.2014 as constituted by the Executive Committee at its meeting held on 14th March, 2014 and decided to accept the report with the following amendments:-

(1) The faculty who is on leave due to following reasons would be accepted:

(a) For attending International/National conferences organized by the respective International / National Associations or Societies;

(b) For attending any work assigned by Medical Council of India, either at headquarters or for assessment of a medical college;

(c) For conducting examination of the concerned subject in a medical college in a Central / State University;

(d) For attending Courts.

Provided that appropriate documents certifying the same which are countersigned by the dean are furnished.

(2) The faculty who is on sanctioned Maternity leave would be accepted provided the appropriate leave sanction order issued by the sanctioning authority and

countersigned by the dean is furnished with all necessary certificates.”

and thus, the respondent no.2 has submitted that the petitioner College has clearly admitted/ conceded to the fact that it was not ready for being inspected towards the grant of renewal of permission for the admission of 4th batch of 150 MBBS students for the academic year 2019-20 since the petitioner College had tried to explain the same by stating that there were winter vacations from 31.12.2018 to 07.01.2019 and that the petitioner College had failed to prove any concrete reasoning and justifying the denial of assessment on 03.01.2019 and 05.04.2019.

25. *Inter alia* the respondent no.2 has submitted to the effect there was a deficiency of faculty at 74.35% and the deficiency of residents at 78.78%, apart from various other serious/ gross deficiencies of infrastructure or physical facilities. The respondent no.2 has further submitted that the Assessor's Guide provides that the attendance for faculty/ residents should be checked before 11.00 AM on the 1st day of the assessment and only such faculty/ residents who have signed the attendance sheet before 11.00 AM would be verified and that if the residents were on night duty they could be called at 12:00 noon since residents are supposed to be on 24x7 duty and are also mandated to reside within the hospital premises and that the bed occupancy is to be verified at 10:00 AM on the 1st day of the assessment. It has thus been submitted on behalf of the respondent no.2 that in as much as the MCI assessors who inspected the petitioner medical college on 03.01.2019 & 05.04.2019 had found a deficiency of faculty at 74.35% and

deficiency of residents at 78.78%, apart from other gross deficiencies as laid down by the Hon'ble Supreme Court in ***“Manohar Lal Sharma Vs. MCI” (2013) 10 SCC 60***, with specific reference to the observation in paragraph 26 and in ***“MCI Vs. Kalinga Institute of Medical Sciences” (2016) 11 SCC 530***, with specific reference to the observations in paragraphs 21, 22 & 24 as already adverted to elsewhere hereinabove.

26. The petitioner is indicated to have submitted its response to communication dated 01.05.2019 received from the respondent no.2 and had sought to explain that there were no deficiencies whatsoever in its institute by submitting its point wise clarifications/ justification, which read to the effect:-

“

	Point raised by Assessor	Reply and clarification	Annexure No.
1.	MCI Regional Center for training of staff for medical education is not mentioned	No regional center is allotted by MCI. It is assured that once the center is allotted, faculty will be sent immediately for training.	
2.	Orientation and basic course workshop has course workshop has not been undergone by MEU faculty	Principal, who is chairperson of MEU also, is well trained and also adjunct also, is well trained and also adjunct faculty of MCI Nodal Center, CMC Ludhiana. (Annexures in support attached) As no regional center has been allotted by MCI so other MEU faculty are not trained.	1
3.	3 rd LT is under construction	3 rd LT is under construction and will be completed by July-Aug2019. It is submitted that at present only one batch is taking classes and we have two well equipped lecture theatres in college	
4.	Students reading room in central in central library	It is submitted that student reading rooms, Inner and outer, both have required	2

	(inside & outside) less by 175 accommodation and reading staff reading room by 5.	accommodation (150) in each. Reading staff room is also spacious with accommodation of 30 faculty. Photographs are attached as annexures	
5.	Books less by 864, Journal Indian by 3, foreign by 2	There is no deficiency of books and journal in library. It is submitted that 5158 books are present in library (Also mentioned in Form A). Journals Indian and foreign are 28 & 12 respectively which are as per MCI requirement. List of books & journals and Photographs are attached as annexures.	3
6.	UG students hostel accommodation less by 30 in boys hostel and in girls hostel.	As per MCI requirement accommodation of 360 students (60% of total students) required in boys and girls hostel for permission for 4 th batch. It is submitted that UG hostel has accommodation for 394 students in boys and girls hostel. Hence no deficiency photographs are attached as annexure	4
7.	Residents + PG hostel accommodation less by 6	As per MCI requirement accommodation of 66 residents is required for permission for 4 th batch. PG hostel is not required at present. It is submitted that college has accommodation for 71 residents. Hence no deficiency Photographs are attached as annexure	5
8.	Residential quarters in teaching staff less by 6 and for non- teaching staff less by 6.	As per MCI requirement 36 residences required for non teaching and 24 required for teaching staff. It is submitted that for nonteaching staff 48 residences and for teaching staff 32 residences are present. Hence no deficiency. Photographs are attached as annexure	
9.	Biometric devices not installed in college	No competent person from MCI came for the installation of device. We will get it done as soon as competent person comes.	

10.	No of normal deliveries & Caesarian Section - Nil	One normal delivery and one Caesarian Section was performed on each day of inspection as per MRD data given. Annexure attached.	6
11.	CT Scan done nil	CT machine is not installed. Purchase order has been placed. Annexure attached.	7
12.	No of beds in NICCU/PICU is 1 each, deficient by 4 beds in each.	As per MCI requirement, 5 beds are required in NICCU/PICU It is submitted that 5 beds are present in NICU/PICU. Hence no deficiency. Photographs attached.	8
13.	CT spiral Minimum 16 slice, the purchase order has been placed.	Purchase order has been placed. Annexure attached	7
14.	Central Research Lab - not functional	It is submitted that central research lab is functional. Photograph attached	9
15.	In Anatomy dept. histology lab has seating capacity of 75 as against 90 (15 seats less)	It is submitted that histology lab has seating capacity of 90 which is as per MCI requirement. Photographs attached	10
16.	Ten short tables less in Dissection Hall.	MCI requirement for short table in DH is 5. It is submitted that Five tables are present in Dissection Hall. Hence no deficiency. Photograph attached	11
17.	In Patho Demo rooms (both) the capacity is less by 40 in each demo room (Required 80, available 40)	It is submitted that Patho Demo room has capacity of 80 students. Photograph attached	12
18.	In microbiology service labs available are 4 against 7 (3 deficient)	It is submitted that in Microbiology, all seven service labs are functional. Photograph attached	13
19.	In pharma dept, Experimental Pharma Labs not available and mannequins also not	It is submitted that in Pharmacology department, fully equipped experimental lab is there along with 15 computers installed	14

	available.	with animal simulation experiments. Photograph attached.	
20.	In community Medicine, Demo room Capacity, for 70 as against 80	It is submitted that community Medicine Demo room has capacity of 80 students. Photograph attached	15
21.	No specialist visits in UHTC	It is submitted that one Gynaecologist visits to UHTC on 9 th of every month.	
22.	Deficiency of Faculty 74.35% (87/117)	Glocal Medical college is situated in remote place so many faculty used to go out of the campus on Saturday and come back on Monday morning. It is submitted that it was Monday on 4 th Feb 2019 so many faculty were out and due to dense fog with poor visibility on that day, most of the faculty could not reach to college in stipulated time. Hence they were not counted by assessors. List of faculty and photographs of faculty which were not considered but waiting outside the council room attached	16
23.	Deficiency of Residents 78.78% (52/66)	Glocal Medical college is situated in remote place so many residents used to go out of the campus on Saturday and come back on Monday morning. It is submitted that it was Monday on 4 th Feb 2019 so many faculty were out and due to dense fog with poor visibility on that day, most of the residents could not reach to college in stipulated time. Hence they were not counted by assessors.	16
24.	Only 5 pts in male surgical, 2 each in female surgical & Paed wards were admitted.	It is submitted that as per MRD data signed by Medical Superintendent: On 4 th feb 2019 till 2pm OPD attendance was 990 & IPD was 340 On 5 th Feb 2019 till 12 noon OPD attendance 815 & IPD was 339 Annexure attached	17
25.	No surgery was performed, as per OT register on 19.1.2019. Post OT recovery data	In hospital, all seven operation theatres are functional and surgeries are being performed by faculty regularly. Information from OT register and post OT	18

	register showed last operation was done on 24.1.19."	recovery register is attached as annexure	
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and further submitted its clarification to the effect:-

"1. College and hospital is in rural area with very poor road connectivity.

Majority of Population of this area belong to low socioeconomic strata.

2. Since institution is charitable trust so provide health care to needy and poor people at very affordable rates without any profit.

3. There is no other higher health service provider in the area and in the periphery of 30-40km of the institution available.

4. Currently only one batch (2016) batch of MBBS course is studying here."

27. The respondent no.2 vide its impugned order is indicated to have considered the said response as well and had observed to the effect:-

"The Hearing Committee expressed its displeasure to the college authorities for not allowing the MCI assessors to carry out the assessment on two occasions.

The explanation offered by the college authorities regarding the deficiencies as well as for not allowing the MCI Assessors to carry out the Assessment to the Hearing Committee was found unsatisfactory.

Hence, the Hearing Committee recommended not to grant approval for renewal of permission for admission of 4th batch of 150 MBBS students for the academic year 2019-20 at Glocal

Medical College Super Specialty Hospital & Research Center, Saharanpur, Uttar Pradesh, in view of the existing deficiencies of Faculty and Residents, inadequate clinical material and infrastructural deficiencies.",

and thus accepted the recommendation of the Hearing Committee not to renew the permission for the admission of the 4th batch of 150 seats of the petitioner College under Section 10A of the IMC Act, 1956 for the academic session 2019-20 and the petitioner College was also directed not to admit any student in the MBBS Course for the academic session 2019-20, though, it was observed that the petitioner College was free to apply afresh for the next academic year strictly as per the provisions of Indian Medical Council Act, 1956 and Regulations framed thereunder.

28. At the outset, it is essential to observe that the last date of admission in terms of the verdict of the Hon'ble Supreme Court in ***"Ashish Ranjan and others vs. Union of India and Others"* (2016) 11 SCC 225** being 31.08.2019 has already lapsed in terms of the schedule approved therein as incorporated in the Regulations on Graduate Medical Education, 1997 Appendix-E, which schedule reads to the effect:-

Sl. Nos.	Schedule for admissions	Seats to be filled up by the Central Government through the All-India Entrance Examination	Seats to be filled up by the State Government Institution
1.	Conduct of entrance examination.	Between 1 st to 7 th May	Between 10 th to 17 th May
2.	Declaration of the result of the qualifying exam/entrance exam.	By 1 st June	By 1 st June

3.	1 st round of counselling/ admission	To be over by 25 th June	Between 6 th July to 15 th July
4.	Last date for joining the allotted college and the course.	By 5 th July	By 22 nd July
5.	2 nd round of counselling/ admission for vacancies.	Between 23 rd July to 30 th July	Between 10 th to 22 nd August.
6.	Last date of joining for the 2 nd round of counselling/ admission.	By 9 th August	By 28 th August
7.	Commencement of academic session/ term.	1 st of August	1 st of August
8.	Last date up to which students can be admitted/ joined against vacancies arising due to any reason.		By 31st August

and the time schedule for receipt of applications for establishment of New Medical Colleges/ Renewal of Permission and processing of the applications by the permission and processing of the applications by the Central Government and the Medical Council of India reads to the effect:-

TIME SCHEDULE FOR RECEIPT OF APPLICATIONS FOR ESTABLISHMENT OF NEW MEDICAL COLLEGES/ RENEWAL OF PERMISSION AND PROCESSING OF THE APPLICATIONS BY THE CENTRAL GOVERNMENT AND THE MEDICAL COUNCIL OF INDIA

Sl. Nos.	Stage of processing	Last date
1.	Receipt of applications by the Central Government.	Between 15 th June to 7 th July (both days inclusive) of any year.
2.	Forwarding application by the Central Government to the Medical Council of India.	By 15 th July.

3.	Technical scrutiny assessment and recommendations for letter of permission by the Medical Council of India.	By 15 th December
4.	Receipt of reply/compliance from the applicant by the Central Government and for personal hearing thereto, if any, and forwarding of compliance by the Central Government to the Medical Council of India.	Two months from receipt of recommendation from MCI but not beyond 31 st January.
5.	Final recommendations for the letter of permission by the Medical Council of India.	By 30 th April.
6.	Issue of letter of permission by the Central Government.	By 31 st May.

has also lapsed.

29. On a consideration of the submissions that have been made on behalf of either side, taking into account the factum that the petitioner College did not allow the assessors of the respondent no.2 to conduct the assessment on the date 5th and 6th April 2019 and also did not allow the MCI assessors to carry out the assessment on 03.01.2019 & 04.01.2019 submitting to the effect that it was the winter vacations from 31.12.2018 to 07.01.2019, in relation to this aspect it is essential to observe as laid down by the Hon'ble Supreme Court in ***“Shri Venkateshwara University through its Registrar and Another Vs. Union of India and Another”*** in W.P.(C) 445/2017 a verdict dated 01.09.2017, in such a situation where the Institution does not allow the team of the MCI or the assessors of the MCI to conduct an inspection, it will be adding premium to deviancy and conferment of this kind of a privilege is absolutely unwarranted and in these circumstances, the directions sought for grant of renewal of Letter of Permission in that

case for the academic session 2017-18 was held to be unacceptable. The facts and circumstances of the instant case in relation to the aspect that the petitioner herein did not permit the assessors of the respondent no.2 to conduct the inspection on 03.01.2019 & 05.04.2019, are in *pari materia* with the facts and circumstances of the case in ***Shri Venkateshwara University through its Registrar and Another*** (supra) as relied upon on behalf of the respondent no.2.

30. *Inter alia* the respondent no.2 has submitted that vide complaints dated 15.05.2019 received on 29.05.2019 and 23.05.2019 received on 29.05.2019 there were complaints standing in relation to the forged records including surgeries, IPDs, OPDs, attendance records being uploaded on the MCI web site with patients being admitted at the time of inspection and faculties being invited according to inspection demands.

31. On behalf of the petitioner, it has been reiterated that the complaints that have been made to the respondent no.2 have been made by the disgruntled faculty members and students who had not paid the fees of the petitioner institute and the petitioner has submitted that there are no deficiencies at all.

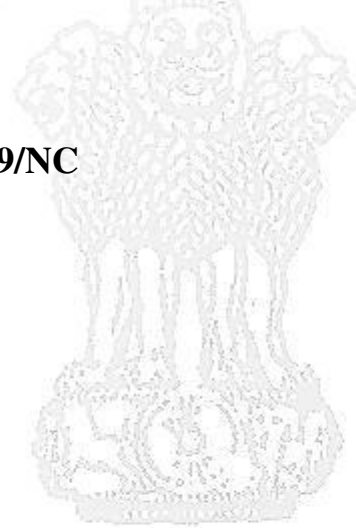
32. On a consideration of the submissions that have been made on behalf of either side, it is essential to observe that the factum that the petitioner institute did not permit the respondents to conduct the inspections twice as observed vide the impugned order dated 18.05.2019, it is apparent that the petitioner has not been able to explain the deficiency of faculty of 74.35% and residents of 78.78% in its Institute, which deficiencies are wholly gross and which cannot be

overlooked by this Court, and thus, in as much as the respondent no.2 is bound to maintain and regulate the standards of excellence in Medical Education, the impugned order of the respondent no.2 dated 18.05.2019 declining the prayer made by the petitioner for permission of induction of 4th batch of 150 students in the MBBS Course for the academic session 2019-20, cannot be held to be unjust or inappropriate and cannot be faulted with.

33. In the circumstances, the petition and the accompanying application CM.APPL. No.28915/2019 are declined.

SEPTEMBER 5th, 2019/NC

ANU MALHOTRA, J



सत्यमेव जयते