

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on :26.07.2019

Date of decision:29.08.2019

W.P.(C) 7159/2019 & CM APPL. 29827/2019

MULAYAM SINGH YADAV MEDICAL COLLEGE & HOSPITAL
& ANR. Petitioners

Through: Mr. Gaurav Bhatia, Sr. Adv.
with Mr. Utkarsh Jaiswal & Mr.
Himanshu Shekhar Tripathi,
Advocates.

versus

UNION OF INDIA & ORS Respondents

Through: Mr. Jasmeet Singh, CGSC 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 no.1- Institute seeks the quashing of the impugned order dated 18.05.2019 of the respondent no.2 i.e. the Board of Governors in supersession of the Medical Council of India, whereby the request of the petitioner College for grant of first renewal

of permission to admit the second batch of fresh 150 students in the MBBS course for the academic year 2019-20, was disapproved and the petitioner further seeks that the respondents be directed to grant 1st renewal of permission to the petitioner College to admit the second batch of fresh 150 students in the MBBS course for the academic year 2019-20.

2. Vide the impugned order bearing No. MCI-34(41)(R-16)/2019-Med./115172 dated 18.05.2019, it is indicated that with regard to renewal of permission for the MBBS course for the 2nd batch (150 seats) to the Mulayam Singh Yadav Medical College & Hospital at Meerut, U.P. under the Chaudhary Charan Singh University, Meerut u/s 10A of the IMC Act, 1956 for the academic year 2019-20, an assessment was carried out by the Council Assessors on 11th & 12th December, 2018 and the Board of Governors in supersession of the Medical Council of India noted the following deficiencies:-

- “1. No faculty/residents have undergone basic course workshop in Medical Education Technology.*
- 2. No CME conducted.*
- 3. No LT in hospital,*
- 4. UG capacity in hostel 148 as against 180.*
- 5. Bed occupancy - 50.33% on day of assessment*
- 6. No major and minor surgery done on the day of assessment.*
- 7. No delivery on the day of assessment.*
- 8. No CMO available in casualty*
- 9. No static X-ray unit available in casualty.*
- 10. OT shared by ophthalmology- ENT*
-No septic OT
-One defibrillator available for all OTs.
- 11. No patient in clean, septic, eclampsia, labour room.*
- 12. 800/1000 Static X-machine - short.*
- 13. Cell separation facility not available In Blood Bank.*

14. *Research facility not available in Central Research Lab.*
15. *No projection screen in Demo Room of Pathology, Pharmacology, Microbiology, Forensic Medicine and Community Medicine.*
16. *In RHTC, no cold chain equipment available.*
17. *Deficiency of Faculty - 17.02%*
18. *Deficiency of Residents 25.53%.*
19. *Other deficiencies as pointed out in the assessment report"*

and that the MCI vide its letter dated 31.01.2019 sought an explanation/ point-wise compliance, with documentary evidence in support of the claim of rectification of the deficiency noted by the Board of Governors from the college authorities within 30 days, thereupon on receipt of the compliance from the College Authorities, the compliance verification assessment of the petitioner College was carried out by the Council Assessors on 06.04.2019 and the Board of Governors considered the compliance verification report dated 06.04.2019 along with the summary/ observations of the member of the undergraduate expert group appointed by the BOG and noted some deficiencies, which read to the effect:-

- "1. *Faculty deficiency 7.4% (>5%)*
2. *Resident Deficiency 8.5%. (> 5%)*
3. *No major or minor OT procedure on day of assessment, (same as main assessment)*
4. *64 X-rays on day of assessment."*

3. The petitioner's Institute was thus granted a hearing on 07.05.2019 in terms of Section 10A(4) of the IMC Act, 1956 in the Council Office to present its case in view of the said deficiencies and

thereafter, the Hearing Committee, after considering the submissions/compliance furnished by the college observed as under:-

"The Hearing Committee noted that the clinical material was consistently inadequate over the last two assessments. The Hearing Committee also found the explanation offered by the college authorities unsatisfactory.

In view of the deficiencies of Faculty and Residents and in view of inadequate clinical material, the Hearing Committee recommended not to grant renewal of permission for admission of 2nd batch of 150 MBBS seats for the academic year 2019-20 at Mulayam Singh Yadav Medical College & Hospital, Meerut, U.P.",

which recommendation of the Hearing Committee was accepted by the Board of Governors in supersession of the Medical Council of India, which thus decided not to renew the permission for admission of the 2nd batch of the petitioner College for the academic year 2019-20 and the petitioner was thus directed not to admit any students in the MBBS Course for the academic year 2019-20, though the college was held to be free to apply afresh for the next academic year strictly as per the provisions of the IMC Act, 1956 and Regulations framed thereunder.

4. The petitioner submits that the impugned order dated 18.05.2019 of the respondent no.2 is perverse and contrary to the IMC Act, 1956 and is not a reasoned order and is in contravention of the verdict of the Hon'ble Supreme Court in **"Mohinder Singh Gill v. Chief Election Commr."**, (1978) 1 SCC 405, with specific reliance having been placed on observations in paragraph 8 thereof, which read to the effect:-

"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji:

"Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."
....."

5. The petitioner submits that it is a running medical college and is a fully compliant institution and that certain non-existing deficiencies have been artificially generated/created by the assessment team of the respondent Nos. 2 & 3 with an ulterior motive and sole purpose of denying the grant of 1st Renewal of Permission to the petitioner College.

6. Section 10A of the of the Indian Medical Council Act, 1956 adverted to on behalf of the petitioner, reads to the effect:-

"10A. Permission for establishment of new medical college, new course of study. —

(l) 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 post-graduate 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 post-graduate 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 post-graduate 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.

(4) The Central Government may, after considering the scheme and the recommendations of the Council under sub-section (3) and after obtaining, where necessary, such other particulars as may be considered necessary by it from the person or college concerned, and having regard to the factors referred to in sub section (7), either approve (with such conditions, if any, as it may consider necessary) or disapprove the scheme and any such approval shall be a permission under sub-section (1): Provided that no scheme shall be disapproved by the Central Government except after giving the person or college concerned a reasonable opportunity of being heard: Provided further that nothing in this sub-section shall prevent any person or medical college whose scheme has not been approved by the Central Government to submit a fresh scheme and the provisions of this section shall apply to such scheme, as if such scheme has been submitted for the first time under sub-section (2)."

7. The petitioner also places reliance on the provisions of the Indian Medical Council (Amendment) Ordinance 2018, which read to the effect:-

*"2. In section 3A of the **Indian Medical Council Act, 1956** (102 a 1956),-*

(a) in sub-section (1), for the words, brackets and figures "Indian Medical Council (Amendment) Act, 2010", the words, brackets and figures "Indian Medical Council (Amendment) Ordinance, 2018" shall be substituted;

(b) in sub-section (2), for the words "three years", the words "one year" shall be substituted;

(c) in sub-section (4), for the words "and medical education", the words "and medical education or proven administrative capacity and experience" shall be substituted;

(d) after sub-section (7), the following sub-section shall be inserted, name

"(7A) The Board of Governors shall be assisted by a Secretary General who shall be appointed by the Central Government on deputation or contract basis and he shall be the head of the secretariat in the Council."

8. The petitioner also relied upon the Gazette Notification dated 26.09.2018 passed by the respondent no.1, which reads to the effect:-

"S.O. 4986(E).—Whereas the President promulgated the Indian Medical Council (Amendment) Ordinance, 2018 (Ordinance 8 of 2018) on 26th September, 2018, which came into force on the said date;

And whereas, on and from the date of commencement of Indian Medical Council (Amendment) Ordinance, 2018 (Ordinance 8 of 2018), the Medical Council of India shall stand superseded and the President, Vice President and other Members of the Council shall vacate their offices and shall have no claim for any compensation, whatsoever;

And whereas upon the supersession of the Council and until a new Council is reconstituted, a Board of Governors is required to be constituted by the Central Government to exercise the powers and perform the functions of the Council under the said Act; Now, therefore, in exercise of the powers conferred by sub-section (4) of section 3A of the Indian Medical Council (Amendment) Ordinance, 2018, the Central Government hereby constitutes the Board of Governors consisting of the following persons as its Chairperson and Members..."

9. The petitioner submits that the K.S.D Charitable Trust at Meerut, Uttar Pradesh was registered under the Indian Trust Act, 1882 in the year 1882 and that the petitioner Trust is a reputed charitable

trust, running various educational institutions for philanthropic purposes and it has established the Petitioner No. 1 i.e. a medical college by the name of Mulayam Singh Yadav Medical College and Hospital and that on 31.05.2018, the respondent no.1 on being satisfied with the inspection report of the petitioner College conducted by the respondent No. 3, and finding the petitioner eligible in terms of the Indian Medical Council Act, 1956, had granted the Letter of Permission to the petitioner No. 1, to establish a new Medical College in the name and style of "Mulayam Singh Yadav Medical College & Hospital" with an annual intake of 150 fresh students in the MBBS Course for the academic year 2018-19 under Section 10A of the IMC Act, 1956.

10. The petitioner submits that on 12.07.2018, on receipt of communication vide an email dated 14.06.2018 from the respondent no.3 i.e. the MCI, that the petitioner College must submit the standard inspection forms A & B along with other documents in the prescribed format to the respondent No. 3 on or before 15.07.2018 for grant of the 1st Renewal of Permission for admitting the second batch of 150 students in MBBS course for the academic year 2019-20 at the petitioner College, the petitioner on 12.07.2018 applied to the respondent no.3 for the grant of such 1st renewal along with the Standard Inspection Form A & B and other required documents to the respondent no.3 and on 13.07.2018, the Chaudhary Charan Singh University, Meerut on being satisfied with the local enquiry issued the Consent of Affiliation to the petitioner Medical College from the academic session 2019-20. The petitioner further submits that in view

of the promulgation of the Indian Medical Council (Amendment) Ordinance, 2018 on 26.09.2018, the Board of Governors constituted by the Respondent No. 1, in exercise of powers conferred by Section 3A (4) of the Indian Medical Council Act, 1956, started functioning in place of the Medical Council of India i.e. the respondent no.3 which had been superceded by the Board of Governors i.e. the respondent no.2.

11. The respondent no.2 is thus, stated to have conducted the assessment of the petitioner College on 11.12.2018 & 12.12.2018 for the grant of 1st Renewal of Permission for admitting the second batch of 150 students in the MBBS course for the academic year 2019-20 and that the assessment team pointed out some deficiencies, which read to the effect:-

- ***"Deficiency of Teaching Faculty: 17.02% (16 out of 94)" and***
- ***"Deficiency of Resident Doctor: 25.53% (12 out of 47)".***

which the petitioner submits, were non-existent with it having been submitted by the petitioner that these deficiencies were found by the respondent no.2 because it did not take into account 6 Junior Residents/ Senior Residents, who were present in the Petitioner College on the day of assessment i.e. on 11.12.2018 & 12.12.2018, the term of one year of the Board of Governors was increased to three years vide the Indian Medical Council (Amendment) Ordinance, 2019 promulgated on 12.01.2019 and on 31.01.2019, the respondent no.2 informed the petitioner College of the deficiencies pointed out by the assessment team of the respondent no.2 which had conducted the inspection of the petitioner College on 11.12.2018 & 12.12.2018,

which deficiencies have already been adverted to elsewhere hereinabove.

12. The petitioner submits that it replied to all the deficiencies pointed out by the assessment team of the respondent no.2 in the report dated 11.12.2018 & 12.12.2018 and submitted a demand draft of Rs.3,54,000/- in favour of the Secretary, Medical Council of India. The petitioner submits that on 16.04.2019 i.e. a Saturday, the assessment team of the respondent no.2 conducted a compliance verification of the petitioner College during Navratri Pooja, which is widely celebrated in the northern part of the country and that this inspection was so done during the Navratri Pooja days with an ulterior motive of disapproving the grant of letter of permission/ renewal of permission to the petitioner College. The petitioner submits that the minimum deficiency, which was found in the petitioner College at the time of the compliance inspection was solely because of the reason that the compliance inspection of the petitioner College was conducted by the assessment team of the respondent no.2 on the first day of Navratri Festival during the Navratri Pooja, which is widely celebrated in the Northern part of the country and that it fell on a Saturday.

13. The petitioner has submitted that on the first day of the Navratri festival large number of people observe fasting and that the petitioner College showed all compliances to the satisfaction of the assessment team of the respondent no.2. The petitioner submits that the entire exercise of the assessment team has been videographed by the petitioner and can be produced. The petitioner submits that vide letter

dated 01.05.2019 on the basis of the assessment report dated 11.12.2018 & 12.12.2018 and the compliance assessment report dated 06.04.2019, the respondent No. 2 recommended disapproval of the application of the Petitioner College for grant of 1st Renewal of Permission for admitting the second batch of 150 students in MBBS course for the academic year 2019-20.

14. The respondent no.2 i.e. the Board of Governors in supersession of the Medical Council of India is indicated to have further informed the petitioner on the basis of the compliance report of the deficiencies as detailed hereinbelow:-

- “1. Faculty Deficiency 7.4% (>5%)***
- 2. Resident Deficiency 8.5% (>5%)***
- 3. No major or minor OT procedure on day of assessment (same as main assessment)***
- 4. 64 X-rays on day of assessment.”***

15. The said letter indicated that a hearing opportunity was granted to the petitioner on 07.05.2019 at 9.30 AM, wherein the petitioner was called upon to furnish an explanation in regard to the deficiencies observed by the assessment team of the respondent No. 2 in the compliance assessment report dated 06.04.2019 and as mentioned in the letter dated 01.05.2019 are non-existent in nature and had been purposely pointed out by the respondent no.2 to disapprove the application of the petitioner for grant of the 1st Renewal of Permission for admitting the second batch of 150 students in the MBBS course for the academic year 2019-20.

16. The petitioner has submitted a point wise clarification in relation to each deficiency existent in the petitioner college on 01.05.2019, to the effect :-

S. No.	Deficiency pointed out by the Respondent No. 2 in the letter Dated 01.05.2019	Submission by the Petitioner College								
1.	Faculty Deficiency 7.4% (>5%)	●The Petitioner College has submitted documentary evidence including declaration form, Form 16, Salary Statement with bank statements and University Letter for UG Teacher approval to the Respondent No. 2 in regard to 4 faculty members which were not counted by the assessment team of the Respondent No. 2. If the aforesaid 4 faculty members are taken into consideration by the Respondent No. 2 than the deficiency in regard to the faculty comes down to 3.4%. ● This year the Respondent No. 2 has granted Renewal of Permission to N.C. Medical College & Hospital, Panipat, for the academic year 2019-20, where deficiency in regard to faculty was observed at 5.1%, which is similar to the Petitioner. ●The compliance assessment of the Petitioner College was done 06.04.2019, during Navratri Holidays. ●Hon'ble Supreme Court has granted Renewal of Permission to other Colleges for the academic year 2017-18, which had much higher deficiency in Faculty than the Petitioner College which is reproduced in a tabular chart below: -<table><tr><th>Name of College</th><th>Deficiency in faculty</th></tr><tr><td>Apollo Institute of Medical Sciences & research</td><td>12.03%</td></tr><tr><td>Shridev Suman Subharti Medical College, Dehradun</td><td>20%</td></tr><tr><td>Shankracharya Institute of Medical College, Bhillai.</td><td>10.6%</td></tr></table> ● As per the erstwhile Oversight Committee which was mandated by Hon'ble Supreme Court, deficiency of 20% in faculty is permissible and worthy to be ignored.	Name of College	Deficiency in faculty	Apollo Institute of Medical Sciences & research	12.03%	Shridev Suman Subharti Medical College, Dehradun	20%	Shankracharya Institute of Medical College, Bhillai.	10.6%
Name of College	Deficiency in faculty									
Apollo Institute of Medical Sciences & research	12.03%									
Shridev Suman Subharti Medical College, Dehradun	20%									
Shankracharya Institute of Medical College, Bhillai.	10.6%									
2.	Resident Deficiency 8.5% (>5%)	● The Petitioner College has submitted documentary evidence including declaration form. Form 16, Salary Statement with bank statements and University Letter for UG Teacher approval to the Respondent No. 2 in								

		regard to 3 Residents which were not counted by the assessment team of the Respondent No. 2. If the aforesaid 3 Residents are taken into consideration by the Respondent No. 2 than the deficiency in regard to the faculty comes down to 2.5% ● This year the Respondent No. 2 has granted Renewal of Permission to N.C. Medical College & Hospital, Panipat, for the academic year 2019-20, where deficiency in regard to resident was observed at 7.58%, which is similar to the Petitioner. ● The compliance assessment of the Petitioner College was done 06.04.2019, during Navratri Holidays. ● Hon'ble Supreme Court has granted Renewal of Permission to other Colleges for the academic year 2017-18, which had much higher deficiency in Resident than the Petitioner College which is reproduced in a tabular chart below: - <table><tr><th>Name of College</th><th>Deficiency in faculty</th></tr><tr><td>Apollo Institute of Medical Sciences & research</td><td>8.69%</td></tr><tr><td>Shridev Suman Subharti Medical College, Dehradun</td><td>21.70%</td></tr></table> ● As per the erstwhile Oversight Committee which was mandated by Hon'ble Supreme Court, deficiency of 20% in Residents is permissible and worthy to be ignored.	Name of College	Deficiency in faculty	Apollo Institute of Medical Sciences & research	8.69%	Shridev Suman Subharti Medical College, Dehradun	21.70%
Name of College	Deficiency in faculty							
Apollo Institute of Medical Sciences & research	8.69%							
Shridev Suman Subharti Medical College, Dehradun	21.70%							
3.	No major or minor OT procedure on day of assessment (same as main assessment)	● 4 major OT and 19 minor OT were done in the petitioner college on the day of assessment as per the OT Register and patients file. ● There is severe contradiction between the compliance assessment report dated 06.04.2019 of the Petitioner College and the letter dated 01.05.2019, as at Page 3 of the compliance assessment report the assessment team of the Respondent No. 2 has observed that "Hysterectomy- 1 major surgery done on the day of assessment on 06.04.2019", at Page 6 of the compliance assessment report the assessment team of the Respondent No. 2 has observed that 1 major surgery has been done on the day of assessment. But in the letter dated 01.05.2019 of the Respondent No. 2 where the compliance assessment report of the Petitioner College has been concluded, observation has been made that "No major or minor OT procedure on day of assessment"						

		At Page 6 of the compliance assessment report of the Petitioner College, the assessment team of the Respondent No. 2 has observed that No. of admissions in the Petitioner College on the day of assessment is 49 and the No. of discharges in the petitioner college on the day of assessment is 25. It is submitted that dressing forms part of minor operations and it is not tenable that none of the 25 discharged patient received dressing before being charged from the Petitioner College.
4.	64 X-rays on day of assessment."	- The deficiency in regard to "X-rays on the day of assessment" is not part of the MSR (Minimum Standard Regulations). - During the day of compliance assessment i.e. on 06.04.2019, total 69 X-rays were done on the day of assessment as per the X-ray register of the Petitioner College. 5 X-rays were taken into consideration by the assessment team of the Respondent No. 2 in the compliance assessment report dated 06.04.2019, to the reasons best known to the Respondent No. 2. - As per page 14 of the assessment report dated 11.12.2018 & 12.12.2018 of the Petitioner College, 60 X-rays were done in the Petitioner College on the day of assessment. The Respondent No. 2 did not considered 60 X-rays in the assessment report dated 11.12.2018 & 12.12.2018 as a deficiency, but consider 64 X-rays in the compliance assessment report dated 06.04.2019 as a deficiency, to the reasons best known to the Respondent No. 2.

17. The petitioner submits that it also submitted a point wise detailed clarification and reply on all the deficiencies pointed out by the assessment team of the Respondent No. 2 in the assessment report dated 11.12.2018 & 12.12.2018 and compliance assessment report dated 06.04.2019 to the respondent No. 2 vide letter dated 06.05.2019. The petitioner further submits that the respondent no.2 has arbitrarily and mechanically rejected the application of the petitioner for the 1st Renewal of admitting the second batch of 150 students in the MBBS Course for the academic session 2019-20 and upheld the rejection of

the petitioner's Institute vide order dated 18.05.2019 issued by the respondent no.2.

18. The petitioner submits that it wrote two separate letters dated 24.05.2019 to the Secretary General of the Respondent No. 3, whereby the petitioner informed the Secretary General of the respondent No. 3 that the compliance inspection of the petitioner College was conducted on 06.04.2019 i.e. on the first day of the Navratri Pooja Festival, due to which 4-5 faculty/residents were late in reporting to the Petitioner College on 06.04.2019, whose presence was not counted by the assessment team of the respondent No. 2. The petitioners submit that vide letter dated 24.05.2019, the petitioner College also informed the Secretary General of the respondent No. 3 that it is a fully compliant institution with all the required faculty/residents and infrastructure in terms of the MSR (Minimum Standard Regulations) prescribed by the respondent Nos. 2 & 3, and requested the Secretary General of the respondent No. 3 to conduct the second compliance inspection of the Petitioner College to ensure that all the deficiencies which were found by the assessment team of the Respondent No. 2 in the compliance assessment report dated 06.04.2019 had already been rectified by the Petitioner College.

19. *Inter alia* the petitioners submit that the respondent no.2 has granted Letter of Permission/Renewal of Permission for the academic year 2019-20 to other colleges where similar deficiencies as the petitioner college were found in the assessment and compliance assessment report e.g. N.C. Medical College & Hospital, Panipat, in which there were deficiencies similar to the petitioner college that had

been found i.e. 5.1% deficiency in faculty and 7.58% deficiency in resident. The petitioner submits that whilst not admitting the existence of deficiencies as pointed out by the assessment team of the respondent no.2 in the Compliance Assessment Report dated 06.04.2019, even if those medical colleges having deficiencies similar to the petitioner college had been granted renewal of permission by the respondent no.2, the Court may grant renewal of permission to the petitioner college where the deficiencies are miniscule. The petitioner has placed reliance on the verdict of this Court in ***Saraswati Education Charitable Trust Vs. Union of India*** in WP (C) 6842/2018, a judgment dated 29.08.2018 to contend that there had been no application of mind by the respondent no.2 and that there was a non-consideration of the relevant material by the respondent which was available on the record.

20. The petitioner has placed reliance on the verdict of the Hon'ble Supreme Court in ***Saraswati Education Charitable Trust Vs. Union of India (2017) 16 SCC 637*** whereby the Hon'ble Supreme Court granted renewal of permission to a similarly situated medical college and held to the effect:-

“16. We have no hesitation in taking the view that the Hearing Committee as well as the Central Government have failed to consider all the relevant aspects of the matter and the conclusion reached by the said authorities is, on the face of it, without application of mind, if not perverse.”

21. The petitioner submits that the petitioner college fulfils all the eligibility and qualifying criteria prescribed under the Establishment

of Medical College Regulations, 1999 and Indian Medical Act, 1956 and that the deficiencies pointed out by the respondent no.2 in its letter dated 01.05.2019 pertaining to number of X-rays was not a part of the MSR prescribed under the Indian Medical Council Act, 1956. The petitioner has further submitted that the respondent no.2 had disapproved the application of the petitioner for grant of 1st renewal of permission on the basis of illegal compliance assessment dated 06.04.2019, which was done on the first day of the Navratri Pooja festival, which is widely celebrated in the northern part of the country and that too being a Saturday.

22. The petitioner has placed reliance on the verdict of the Hon'ble Supreme Court in ***Jagat Narain Subharti Charitable Trust v. Union of India, (2017) 16 SCC 666*** to contend that deficiency in regard to the faculty and residents cannot be held against the college if the assessment or compliance assessment of the college was done close to festive vacation. Para 12 of the said judgment was relied upon on behalf of the petitioner, which reads to the effect:-

“12.....Notably, in Para 17 of the impugned communication, the competent authority of the Central Government has recorded the observation of the Hearing Committee that inspection carried out on 26-10-2016/27-10-2016 was just prior to Diwali and was bound to reflect on the attendance of the faculty, residents and OPD as well as bed occupancy. The competent authority has stopped at that It has not rejected the said explanation as incorrect or bogus. On the other hand, the impression gathered from the contents of Para 17 of the impugned communication is that the Hearing Committee as well as the competent authority of the Central Government has not

*rejected the explanation offered by the petitioners' College. If that is so, **deficiency in respect of faculty, residents, OPD and bed occupancy cannot be held against the petitioners** more so when the OC, on the basis of the same material, had opined that the deficiency regarding faculty at the relevant time was only 6.15%, which was within the norms. Even the deficiency of residents was answered in favour of the petitioners by observing that there was no deficiency."*

23. Reliance was placed on behalf of the petitioner on the verdict of the Hon'ble Supreme Court in ***Shri Gangajali Education Society Vs. Union of India (2017) 16 SCC 656*** with specific reference to observations in para 13, which reads to the effect:-

"13. Be that as it may, reverting to the factors which have been highlighted in the impugned decision, particularly in Para 17 which is the edifice of the impugned order, the first is about the deficiency of seven faculty and seven residents pointed out by MCL. With reference to the said deficiency, OC has noted that the deficiency up to 20% is permissible. The competent authority has not chosen to dislodge that observation of OC. Further, OC has noticed that the explanation offered by the petitioner College with regard to deficiency of 7 faculty and 7 residents was acceptable and plausible. However, the competent authority has not analysed the said explanation in the impugned decision or recorded a clear finding that it was disagreeing with the view of OC in that behalf for reasons which can be perceived as tangible and just. The competent authority has then adverted to another facet of the deficiency concerning Form 16 and salary details, but has not chosen to advert to the explanation given by the petitioner College in that behalf which had found favour with the OC."

24. *Inter alia* the petitioner has submitted that in terms of Section 10A (7) of the Indian Medical Council Act, 1956 whilst passing an order under section 10A (4) of the Act, the respondent no.2, Board of Governors in supersession of the MCI is under a statutory obligation of Section 10A (7) of the IMC Act, 1956 to give reasons for passing orders under Section 10A(4) of the IMC Act, 1956. The petitioner submits that it had complied with all the statutory requirements and was entitled for grant of renewal of permission for admitting the second batch of 150 students in the MBBS course for the academic year 2019-20 and that the actions of the respondent no.2 are arbitrary and violative of the fundamental rights of the petitioners guaranteed under Articles 14, 19(1)(g) and 21 of the Constitution of India.

25. The respondent no.2, the Board of Governors in supersession of the MCI vide its reply affidavit dated 20.07.2019 has submitted that at the threshold itself, it is clear that the petitioner medical college had failed to fulfil the minimum infrastructure, teaching faculty, resident, clinical material and other physical facilities. The respondent no.2 has submitted that the deficiencies pointed out in the inspection reports dated 11/12.12.2018 and 06.04.2019 were so grave in nature that the same could not be brushed aside in the larger public interest and also in the interest of resident community and students community and that the respondent could not be compelled for the grant of renewal of permission for admission of the second batch of 150 MBBS students for the academic year 2019-20. The respondent no.2 thus submits that the requisite requirements of Section 3B(b)(ii) r/w Section 3B(b)(iii) of the IMC Act, 1956 had rightly been complied with by it by grant of

hearing on 07.05.2019 and that the petitioner medical college had submitted the response dated 06.05.2019, which was duly considered by the Hearing Committee constituted by the respondent no.2 whilst granting the hearing on 07.05.2019 but that the Hearing Committee had thereafter concluded that the explanation offered by the petitioner medical college regarding shortage of faculty, residents & clinical material were not satisfactory and that the clinical material was inadequate and thus it had recommended not to grant renewal of permission for the admission of the second batch of 150 MBBS students for the academic year 2019-20.

26. The respondent no.2 has submitted that the inspection report dated 11/12.12.2018 revealed that there were gross deficiencies of infrastructure, teaching faculty, residents clinical material and other physical facilities in the petitioner medical college and that both the inspections dated 11/12.12.2018 and 06.04.2019 had been carried out by independent assessors who were Professors in Govt. Medical Colleges and from outside the State in which the petitioner medical college is situated. The respondent no.2 further submits that the inspection of the petitioner medical college had taken place in the presence of its management including the Dean/Principal who had counter signed on each page of the inspection reports dated 11/12.12.2018 and 06.04.2019 and thus, all the deficiencies of minimum infrastructure, teaching faculty, residents, bed occupancy, clinical material and other physical facilities pointed out by the MCI Assessors during their inspections as recorded in the inspection reports dated 11/12.12.2018 and 06.04.2019 had been duly accepted by the

petitioner medical college and thus, the deficiencies pointed out including that of infrastructure, faculty/residents, clinical material, bed occupancy and other physical facilities, cannot be disputed by the petitioner medical college at this stage.

27. The respondent no.2 further submits that the deficiencies of minimum infrastructure, teaching faculty, residents, bed occupancy and other physical facilities as pointed out in the inspection reports dated 11th & 12th December, 2018 and 06.04.2019 were gross in nature which also had been duly admitted by the petitioner medical college and the same cannot be rectified or removed within a short span of one or two months. The respondent no.2 further submits that the petitioner medical college was obliged to be ready with the complete infrastructure, teaching faculty, residents, clinical material and other physical facilities in their medical college at the time of submitting their Standard Assessment Form and Declaration Forms for the grant of letter of permission for the academic year 2019-20 and that the above facts clearly establish that the petitioner medical college was not ready for the grant of renewal of permission for admitting 2nd batch of 150 MBBS students for the academic year 2019-20.

28. The respondent no.2 has submitted that the petitioner medical college even after being afforded numerous opportunities to rectify the deficiencies, the same have been continuously persisting and the petitioner had failed to rectify the deficiencies pertaining to infrastructure, clinical material, teaching faculty, residents, bed occupancy and other physical facilities. The respondent no.2 further submits that in terms of the verdict of the Hon'ble Supreme Court in

Ashish Ranjan & Ors. Vs. Union of India & Ors. (2016) 11 SCC 225, the last date i.e. 31.05.2019 for issuing grant of letter of permission by the Medical Council of India for the academic year 2019-20 has already passed by and that it is impermissible for the respondent no.2 to consider the case of the petitioner medical college for the academic year of 2019-20 and that the respondent no.2 can neither now reconsider nor carry out any fresh inspection of the petitioner medical college and the petition ought to be rejected. The respondent no.2 has submitted that in terms of the verdict of the Hon'ble Supreme Court in ***Ashish Ranjan (supra)*** a period of 3 to 4 months has been provided to the answering respondent to conduct initial as well as the compliance assessments so as to maintain the surprise element to assess whether the medical colleges have requisite infrastructure, teaching faculty, residents, clinical material and other physical facilities available and have not been borrowed or put in place temporarily as held by the Hon'ble Supreme Court in ***Royal Medical Trust Vs. UOI & Anr. (2015) 10 SCC 19***.

29. The respondent no.2 has submitted that the Hon'ble Supreme Court in its various pronouncements has upheld the strict adherence of the time schedule for processing the application, grant of permission and for admissions and has held that any defaulting party will be proceeded under the Contempt of Courts Act, 1971. The respondent no.2 has submitted that it is constituted under the provisions of the Indian Medical Council Act, 1956 and has been given the responsibility of discharging the duty of maintenance of the highest standards of medical education throughout the country and reliance

was placed on behalf of the respondent no.2 on the verdict of the Hon'ble Supreme Court in "***State of Kerala Vs. T.P. Roshna***" (1979) **SCC 580** wherein it was observed to the effect:-

".....The Indian Medical Council Act, 1956 has constituted the Medical Council of India as an expert body to control the minimum standards of medical education and to regulate their observance. Obviously, this high-powered Council has power to prescribe the minimum standards of medical education. It has implicit power to supervise the qualifications or eligibility standards for admission into medical institutions. Thus, there is an overall invigilation by the Medical Council to prevent sub-standard entrance qualifications for medical courses "

30. The respondent no.2 has also placed reliance on the observations of the Hon'ble Supreme Court in "***MCI Vs. State of Karnataka***" (1998) **6 SCC 131**, wherein it was observed to the effect:

"A medical student requires grueling study and that can be done only if proper facilities are available in a medical college and the hospital attached to it has to be well equipped and the teaching faculty and doctors have to be competent enough that when a medical student comes out, he is perfect, in the science of treatment of human beings and is not found wanting in any way. The country does not want half-baked medical professionals coming out of medical colleges when they did not have full facilities of teaching and were not exposed to the patients and their ailments during the course of their study "

31. The respondent no.2 further submits that by virtue of provisions of Section 33 of the IMC Act, the MCI has been empowered with the prior approval of the Central Government to frame regulations for laying down minimum standards of infrastructure, teaching and other

requirements for conduct of medicine courses. *Inter alia* the respondent no.2 has submitted that the regulations of the MCI are binding and mandatory and that all State enactments, rules and regulations framed by universities etc. in relation to the conduct of medicine courses to the extent they are inconsistent with the Act and the regulations made thereunder by the MCI are repugnant to Article 254 of the Constitution of India inasmuch as the Act is relatable to Entry 66 List 1 Schedule VII of the Constitution of India. The respondent no.2 further relied on the observations made by the Hon'ble Supreme Court in ***MCI Vs. State of Karnataka (Supra)*** to the effect:-

“.....27..... It is the Medical Council which is primarily responsible for fixing standards of medical education and overseeing that these standards are maintained. It is the Medical Council which is the principal body to lay down conditions for recognition of medical colleges which would include the fixing of intake for admission to a medical college. We have already seen in the beginning of this judgment various provisions of the Medical Council Act. It is, therefore, the Medical Council which in effect grants recognition and also withdraws the same. Regulations under Section 33 of the Medical Council Act, which were made in 1977, prescribe the accommodation in the college and its associated teaching hospitals and teaching and technical staff and equipment in various departments in the college and in the hospitals. These regulations are in considerable detail.....

28Standards have been laid by the Medical Council, an expert body, for the purpose of imparting proper medical education and for maintaining uniform standards of medical education throughout the country. Seats in medical colleges cannot be increased

indiscriminately without regard to proper infrastructure as per the regulations the Medical Council.

29. A medical student requires gruelling study and that can be done only if proper facilities are available in a medical college and the hospital attached to it has to be well equipped and the teaching faculty and doctors have to be competent enough that when a medical student comes out, he is perfect in the science of treatment of human beings and is not found wanting in any way. The country does not want half-baked medical professionals coming out of medical colleges when they did not have full facilities of teaching and were not exposed to the patients and their ailments during the course of their study.After the insertion of Sections 10-A, 10-B and 10-C in the Medical Council Act, the Medical Council has framed regulations with the previous approval of the Central Government which were published in the Gazette of India dated 29-9-1993 (though the notification is dated 20-9-1993).....

30..... Nivedita Jain case does not say that all the regulations framed by the Medical Council with the previous approval of the Central Government are directory or mere recommendatory. It is not that only future admissions will have to be regulated on the basis of the capacity fixed or determined by the Medical Council. The plea of the State Government that power to regulate admission to medical colleges is the prerogative of the State has to be rejected.....”

32. The respondent no.2 has further placed reliance on the verdict of the Hon'ble Supreme Court in ***Dr. Preeti Srivastava Vs. State of M.P. (1999) 7 SCC 120***, with specific reference to observations in para 57, which read to the effect:-

“57..... In the case of Medical Council of India v. State of Karnataka a Bench of three Judges of this Court has distinguished the observations made in Nivedita Jain. It

has also disagreed with Ajay Kumar Singh v. State of Bihar and has come to the conclusion that the Medical Council regulations have a statutory force and are mandatory. The Court was concerned with admissions to the MBBS course and the regulations framed by the Indian Medical Council relating to admission to the MBBS course. The Court took note of the observations in State of Kerala v. T.P. Roshana (SCC at p.580) to the effect that under the Indian Medical Council Act, 1956, the Medical Council of India has been set up as an expert body to control the minimum standards of medical education and to regulate their observance. It has implicit power to supervise the qualifications or eligibility standards for admission into medical institutions. There is, under the Act an overall vigilance by the Medical Council to prevent sub-standard entrance qualifications for medical courses. These observations would apply equally to postgraduate medical courses. We are in respectful agreement with this reasoning.....”

33. The respondent no.2 also adverted to the verdicts of the Hon’ble Supreme Court in:-

“(i) Dr. Narayan Sharma & Anr. Vs. Dr. Pankaj Lehar & Ors.- (2000) 1 SCC 44.

(ii) State of Punjab Vs. Deyanand Medical College- (2001) 8 SCC 664.

(iii) State of MP & Ors Vs. Gopal D. Tirthani & Ors- (2003) 7 SCC 83

(vi) Harish Verma & Ors Vs. Ajay Srivastava & Anr.- (2003) 8 SCC 69”

to reiterate that the regulations of the respondent no.2 have a binding and mandatory character.

34. The respondent no.2 has further submitted that the teaching faculty in the medical colleges have to be full time in the employment of the college and no part time or honorary teachers are acceptable and are not counted towards the teaching faculty of the medical college, in terms of the MCI's Regulations. The respondent no.2 has further submitted that the intake in the medicine course is dependent directly upon the physical facilities available, particularly in respect of the teaching faculty, clinical material and other infrastructural facilities available in the department, besides the existence of these facilities in commensurate with the annual intake capacity of the medical college for MBBS course. The respondent no.2 has further submitted that in terms of the scheme of the Act and the regulations made thereunder, each medical college when it makes an application u/s 10A for permission for establishment of the medical college is required to specify the proposed annual intake in the said course and that thereafter, an inspection by the inspection team of MCI is caused to verify the infrastructural, teaching faculty, clinical material and other physical facilities available at the college concerned for imparting the relevant MBBS course. The respondent no.2 submits that based on the infrastructural, teaching faculty and other physical facilities available at the college inspection report, the MCI makes the recommendation to the Central Govt. qua the grant of requisite

permission to make admission with an annual intake in the said course.

35. The respondent no.2 submits that when the 1st batch of the MBBS course appears in its final year university examination, another inspection for recognition of MBBS course is caused by the MCI and based on the facilities available for imparting the course MCI recommends recognition of the MBBS degree of the students of the affiliating University with respect to the students of the medical college. The respondent no.2 submits further that in case the medical college fails to fulfill the desired infrastructure, teaching faculty and other physical facilities in their medical college the MCI is constrained to forward negative recommendation to the Central Government for the disapproval of the scheme. The respondent no.2 has submitted that it is bound by the time schedule forming part of statutory regulations which it uniformly applies to all applicants and that the respondent no.2 cannot pick and choose in accepting the application after the date fixed in the Regulations, to which, strict adherence is necessary. The respondent no.2 whilst placing reliance on the verdict of the Hon'ble Supreme Court in *Mridul Dhar vs. UOI & Ors. (2005) 2 SCC 65*, contends that the strict adherence to each of the stages of the time schedule is an absolute imperative.

36. Reliance was placed on behalf of the respondent no.2 on the Medical Council of India Establishment of Medical College Regulations, 1999 with specific reliance on Regulation 8(3)(1) thereof, which reads to the effect:-

“(3)(1). The permission to establish a medical college and admit students may be granted initially for a period of one year and may be renewed on yearly basis subject to verification of the achievements of annual targets. It shall be the responsibility of the person to apply to the Medical Council of India for purpose of renewal six months prior to the expiry of the initial permission. This process of renewal of permission will continue till such time the establishment of the medical college and expansion of the hospital facilities are completed and a formal recognition of the medical college is granted. Further admissions shall not be made at any stage unless the requirements of the Council are fulfilled. The Central Government may at any stage convey the deficiencies to the applicant and provide him an opportunity and time to rectify the deficiencies.

Note: In above clause, “six months” shall be substituted by “as per latest time schedule”

PROVIDED that in respect of

(a) Colleges in the stage upto II renewal (i.e. Admission of third batch):

If it is observed during any regular inspection of the institute that the deficiency of teaching faculty and/or Residents is more than 30% and/or bed occupancy is < 60 %, such an institute will not be considered for renewal of permission in that Academic Year.”

37. Reliance was placed on behalf of the respondent no.2 on the verdict of the Hon'ble Supreme Court in ***Manohar Lal Sharma vs. Medical Council of India (2013) 10 SCC 60*** wherein it has been held vide para 27 of the said verdict, to the effect:-

"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...."

38. Reliance was placed on behalf of the respondent no.2 on the observations of the Hon'ble Supreme Court in ***MCI vs. Kalinga Institute of Medical Sciences (2016) 11 SCC 530*** with specific reference on observations, which read to the effect:-

"6. Our attention was also drawn to the decision of this Court in Manohar Lai Sharma v. Medical Council of India wherein it was held that since the inspection is taken by "doctors of unquestionable integrity and reputation, who are experts in the field, there is no reason to discard the report of such an inspection." In the present appeal, there is no allegation made by KIMS of any mala fides of the Inspection Team or any perversity in the inspection report and hence there is no question of challenging the conclusions of a neutral, randomly selected Inspection Team in its assessment....."

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, computerization 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.....”

39. *Inter alia* the respondent no.2 has contended that the scope of judicial review is extremely limited in matters relating to decisions taken by expert bodies in academic matters and that the Hon’ble Supreme Court has in a catena of verdicts laid down that strict

adherence to the prescribed time schedule, process of selection to be based on rules of merit by the respondent no.2 is essential and that the Hon'ble Supreme Court has requested all High Courts to ensure strict adherence to the prescribed time schedule, with the process of selection to be based on rules of merit.

40. *Inter alia* the respondent no.2 has submitted that the administration report of the MCI Assessor dated 11/12.12.2018 was considered by the respondent no.2 along with observations of the Consultant (Undergraduate) which had brought forth the deficiencies therein, already adverted to elsewhere hereinabove, which the respondent no.2 submits are fundamental in nature and cannot be brushed aside and pursuant to the show cause notice issued thereupon to the petitioner college, a compliance report dated 28.02.2019 was sent by the petitioner. Thereafter, the compliance verification assessment of the infrastructure, teaching faculty, residents, clinical material and other physical facilities conducted on 06.04.2019 which brought forth the faculty deficiency of 7.4%, which is more than 5% and resident deficiency of 8.5%, which is more than 5%, no major or minor OT procedure on day of assessment and 64 X-rays on day of assessment, which deficiencies, it has been reiterated on behalf of the respondent no.2 are fundamental in nature and cannot be brushed aside. The respondent no.2 has submitted that though the deficiency of no major or minor OT procedure on day of assessment was apparently an inadvertent error in as much as one operation had taken place, the Hearing Committee constituted by the respondent no.2 during the hearing on 07.05.2019 had correctly taken into account the

discrepancy and deficiencies brought forth through the report dated 11/12.12.2018 as well as on 06.04.2019 and had made its recommendations on the basis of the deficiency of the faculty, residents and inadequate clinical material. The respondent no.2 has further submitted that the Hearing Committee of the respondent no.2 on 07.05.2019 vide its minutes dated 07.05.2019 had observed to the effect:-

“ HEARING COMMITTEE MINUTES DATED 07.05.2019

<i>S. NO</i>	<i>State</i>	<i>Name of the college</i>	<i>Type of assessment</i>	<i>Seats</i>	<i>Type</i>	<i>Deficiencies of the college pointed out by the MCI</i>	<i>Submissions made by the College authorities</i>	<i>Decision of the Hearing Committee</i>
17	Uttar Pradesh	Mulayam Singh Yadav Medical College & Hospital, Meerut, U.P.	2 nd	150	Pvt.	Compliance Verification Assessment dated 6 th April, 2019. 1.Faculty deficiency of 7.4% (>5%) 2.Resident Deficiency 8.5% (>5%) 3.No major or minor	The college authorities submitted a representation explaining the inadequate clinical material and the Faculty and Residents deficiencies	The Hearing Committee noted that the clinical material was consistently inadequate over the last two assessments. The Hearing Committee also found the explanation offered by the college authorities unsatisfactory. In view of the deficiencies of Faculty and Residents and in view of inadequate

						<i>OT proced ure on day of assess ment (same as main assess ment) 4.64 X- rays on day of assess ment.</i>		<i>clinical material the Hearing Committee recommended not to grant renewal of permission for admission of 2nd batch of 150 MBBS seats for the academic year 2019-20 at Mulayam Singh Yadav Medical College & Hospital, Meerut, UP.</i>
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and that the clinical material was consistently inadequate over the **last two assessments** and thus the Hearing Committee found the explanation offered by the college authority unsatisfactory and as a consequence thereof, the respondent no.2 had accepted the recommendations of the Hearing Committee and decided not to grant permission for admission of the 2nd batch of the petitioner institute for the academic year 2019-20 though the petitioner could apply afresh for the next academic session with strict adherence to the provisions of the IMC Act and regulations framed thereunder.

41. The respondent no.2 further submits that the Hon'ble Supreme Court has upheld the disapproval of applications even when the deficiencies have been marginal in MCI Vs. NC Medical College (2018) SCC Online SC 1468 wherein the deficiency of faculty 9% & residents 10.2%, and that thus, the contention of the petitioner that the deficiencies of the petitioner College were minimal and thus, the

approval be granted for the intake of 150 students for the academic year 2019-20, cannot be accepted.

42. It has further been submitted on behalf of the respondent no.2 that the contention of the petitioner that on 06.04.2019 i.e. the first day of Navratri Puja, the faculty as well as residents were not available on the day of inspection, cannot be accepted, in as much as the same would render the entire purpose of inspecting a medical college in respect of its claims of possessing adequate infrastructure, faculty, residents, clinical material as well as other physical facilities as otiose and that if the representations/compliances were to be accepted, then there would be no need of any physical verification since such details of infrastructure, faculty, residents, clinical material as well as other physical facilities were already submitted by the medical colleges prior to the inspections.

43. It has also been submitted on behalf of the respondent no.2 that the faculty and residents were to be considered as available on the date of inspection at 11.00 AM on the first day of assessment & Senior Residents/ Junior Residents on night duty in the hospital were considered upto 12 noon as per the Assessors Guide. *Inter alia* the respondent no.2 has submitted that there is no requirement of a minimum number of major or minor operations as prescribed under the Minimum Standards Requirement for the Medical College for 150 Admission Annually Regulations, 1999 whereby the minimum infrastructure, faculty, residents, clinical material as well as other physical facilities have to be maintained by the medical colleges for grant of renewal to admit fresh batches of MBBS students and that

under the phase wise requirement of infrastructure, faculty, residents, clinical material as well as other physical facilities to be fulfilled by medical colleges under the Minimum Standards Requirement for the Medical College for 150 Admission Annually Regulations, 1999 wherein it has been prescribed that a medical college at the stage of admitting the 2nd batch of MBBS students must possess 4 major operation theatres and 2 minor operation theatres and that thus, when a medical college is mandated to possess 4+2 operation theatres, it was only logical that the same number of operations must be conducted on any given day as having vacant operation theatres would not provide adequate clinical material for the training of MBBS students.

44. As regards the contention raised on behalf of the petitioner that there is no minimum number of X-Rays as prescribed under the Minimum Standards Requirement for the Medical College for 150 Admission Annually Regulations, 1999 and that under the phase wise requirement of infrastructure, faculty, residents, clinical material as well as other physical facilities to be fulfilled by medical colleges under the Minimum Standards Requirement for the Medical College for 150 Admission Annually Regulations, 1999 wherein, it has been prescribed that a medical college at the stage of admitting 2nd batch of MBBS students must possess X-Ray Machines of the following discretion:-

“300mA-1, 600mA-1, 60mA-1 & 100mA-1”,

and that thus, when a medical college was mandated to possess 4 X-Ray Machines of the aforesaid discretion, which were available in the

Out Patient Department as well as the In Patient Department, then 43+21=64 X-Rays were clearly inadequate which also showed that there was less footfall of patients which would not provide adequate clinical material for the training of MBBS students.

45. As regards the contention raised on behalf of the petitioner placing reliance on the notification published on 27.06.2019 issued by the MCI bearing no. MCI-34(41)/2019- Med./126165, whereby in Clause 8, under the heading of “Grant of Permission”, sub- Clause 5 has been added into the Establishment of Medical College Regulations (Amendment), 2019, which notification relates to the aspect of reduced permission being granted for establishment of a new medical college or renewal of permission of an existing medical college to the lower prescribed intake capacity in the event of the applicant College falling short of the requirement prescribed in the Minimum Standard Requirement Regulations for the intake capacity for which the medical college had applied, it has been submitted on behalf of the respondent no.2 that the same can relate only and applies only from the academic session 2020-21 onwards and cannot be retrospectively applicable, as there is nothing in the notification to so indicate and even otherwise, the last date for grant of permission as per the judgment of the Hon’ble Apex Court in “*Ashish Ranjan*” (supra) being 31.05.2019, the petitioner cannot avail of any benefit of the said notification published on 27.06.2019 for the academic year 2019-20.

46. On a consideration of the rival submissions that have been made on behalf of either side, it is apparent that the deficiencies that have been pointed out in the petitioner college of faculty deficiency of

7.4%, which is more than 5% and residents deficiency of 8.5% which is more than 5% and 64 X-rays on the day of assessment, the Hearing Committee minutes dated 07.05.2019 adverted to hereinabove having observed that the clinical material was consistently inadequate **for the last two assessments**, taking the same into account and the verdict of the Hon'ble Supreme Court in relation to the maintainability of standards of medical education, it is apparent that the deficiencies as pointed out by the minutes dated 07.05.2019 of the Hearing Committee have been taken into account by the respondent no.2 and that the order of the respondent no.2 dated 18.05.2019 not granting the permission to the petitioner college for an intake of 150 MBBS students i.e. the second batch for the academic year 2019-20 cannot be faulted with.

47. As regards the reliance placed on behalf of the petitioner on the communication dated 21.06.2019 bearing No.U-12012/350/2019-ME.I [FTS.8013875] of the Government of India in relation to increase of MBBS seats under the EWS quota for the academic year 2019-20 under which the petitioner no.1 *inter alia* seeks that the counselling may be permitted for the EWS quota for the academic year 2019-20, it is essential to observe as held vide judgment dated 29.07.2019 of this Court in W.P.(C) No.6827/2019 titled as “***L.N. Medical College & Research Centre and Anr. Vs. Union of India, Ministry of Health And Family Welfare & Ors.***” & W.P.(C) No.6828/2019 titled as “***Chirayu Medical College & Hospital & Ors. Vs. Union of India, Ministry of Health And Family Welfare & Ors.***”, for the academic year 2019-20, the filling up of the MBBS

seats under the EWS quota for the year 2019-20 as notified by the respondent no.1 relates only to the colleges which are being run by Government controlled societies, municipal bodies, public private partnership and under self financing mode as communicated vide a communication dated 25.06.2019 bearing No. MCI-34(41)(EWS)/2019-Med./126285, in terms of the Office Memorandum dated 28.06.2019 bearing F.No.12-3/2019-UI issued by the Government of India, which reads to the effect:-

***“F.No. 12-3/2019-UI
Government of India
Ministry of Human Resources Development
Department of Higher Education***

Dated the 28th June, 2019

OFFICE MEMORANDUM

Subject:- Reservation in admissions in higher courses in Unaided Private Educational Institutions for Economical Weaker Section (EWS)- regarding.

The undersigned is directed to refer to OM No F.No.C.18018/05/2019- MEP dated 25th June, 2019 of M/o Health & Family Welfare (MH&FA) and to say that at present there is no reservation specified by this Ministry in Unaided Private Education Institutions.”

48. In view of the observations hereinabove qua the deficiencies pointed out by the minutes dated 07.05.2019 of the Hearing Committee taken into account by the respondent no.2, with it having been held hereinabove that thus, the non-grant of permission to the petitioner College for the intake of 150 students i.e. the 2nd Batch for

the academic year 2019-20 by the respondent no.2, cannot be faulted with, the other contentions that are raised on behalf of either side, do not require consideration presently.

49. In the circumstances, the petition and the accompanying application are dismissed.

ANU MALHOTRA, J

AUGUST 29th, 2019/NC/vm

