

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

*Pronounced on: September 29, 2015*

+ W.P.(C) 7106/2015 & CM No.13029/2015

MALLA REDDY INSTITUTE OF  
MEDICAL SCIENCES AND ANR

..... Petitioners

Versus

UNION OF INDIA AND ANR

..... Respondents

+ W.P.(C) 8541/2015 & CM No.18391/2015

LORD BUDDHA SIKSHA  
PRATISTHAN AND ANR

..... Petitioners

Versus

UNION OF INDIA AND ANR

..... Respondents

**Present:-** Mr.Nidhesh Gupta, Sr.Adv. with Mr.Amit Kumar,  
Mr.Ramesh Allanki, Mr. Ankit Rajgarhia, Mr.Avijit  
Mani Tripathi, Advs. for the petitioner in W.P.(C)  
No.7106/2015.  
Mr. Ashish Kumar with Mr. Avijit Mani Tripathi, Advs.  
for the petitioner in W.P.(C) No.8541/2015  
Mr.Rakesh Kumar, CGSC for UOI in CWP  
No.7106/2015.  
Mr.Vikas Singh, Sr.Adv. with Mr.T.Singhdev,  
Ms.Biakthansangi, Ms.Puja Sarkar, Advs. for R-2/MCI.

**CORAM:**  
**HON'BLE THE CHIEF JUSTICE**  
**HON'BLE MR. JUSTICE JAYANT NATH**  
**HON'BLE MR. JUSTICE V. KAMESWAR RAO**

**J U D G M E N T**

**MS. G. ROHINI, CHIEF JUSTICE:**

1. Whether an opportunity to rectify the defects/deficiencies specified by the Medical Council of India need be provided to the applicant under Section 10-A(3) and/or 10-A(4) of the Indian Medical Council Act, 1956 (for short 'the Medical Council Act') in cases which fall within the ambit of the provisos (a) to (d) to Regulation 8(3)(1) of the Establishment of Medical College Regulations, 1999 (for short 'the Regulations') is the issue that falls for consideration by us.

**Reference to the Full Bench:**

2. W.P.(C) No.5041/2015 titled *Shree Chhatrapati Shivaji Education Society & Anr. v. Union of India & Anr.* was filed by a Medical College whose request for grant of permission for third renewal for the Academic Year 2015-16 was rejected by the Central Government on the basis of the recommendation of the Medical Council of India by letter dated 11.05.2015 recommending not to renew the permission for the said College. The admitted facts were that the Medical College was inspected on 14<sup>th</sup> and 15<sup>th</sup> November, 2014 and on consideration of the deficiencies noted, MCI having decided to apply the proviso (b) to Regulation 8(3)(1) of the Establishment of the Medical College Regulations recommended to the Central Government by letter dated 22.12.2014 not to renew the permission for the Academic Year 2015-16. The Central Government while communicating the said decision of the MCI to the petitioner Medical College granted an opportunity of hearing in terms of the proviso to Section 10-A of the Medical Council Act. In the hearing, the petitioner reported compliance of

the deficiencies pointed out by MCI and therefore the Central Government by letter dated 17.04.2015 asked the MCI to review the compliance reported by the petitioner College and furnish its recommendation. However, by letter dated 11.05.2015, the MCI reiterated its earlier recommendation not to renew the permission stating that in view of the proviso (b) to Regulation 8(3)(1) of the Regulations, there is no provision to grant any opportunity for rectification of substantial deficiencies found in the earlier inspection. Aggrieved by the same, the Medical College approached this Court by challenging the proviso (b) to Regulation 8(3)(1). The petitioner therein also prayed to set aside the recommendation of MCI dated 11.05.2015. The said writ petition was dismissed by a Division Bench to which one of us (Chief Justice) is a member by order dated 28.05.2015 holding:

“27. The question which arises for consideration is whether the Proviso (b) to Regulation 8(3)(1) providing for no opportunity to rectify the defects/deficiencies mentioned therein to be given is inconsistent with Section 10A(3) providing for the MCI to specify the defects and giving an opportunity to the medical college to rectify the defects. In our opinion, no. The reasons for our opinion are:-

A. Section 10A(3) enables (by use of the word 'may') and does not mandate (by not using the word 'shall') the MCI to, on receipt of scheme, obtain such other particulars as may be considered necessary by it for making its recommendation on the scheme. The Regulations provide for particulars and information required to be furnished in the scheme. If the scheme is not in accordance with the Regulations, there is nothing in Section 10A(3) which mandates the MCI to still make an attempt to enquire whether by seeking further particulars, the scheme can be in accordance with the Regulations. **Discretion has been vested in the MCI to,**

**upon not finding the scheme to be in accordance with the Regulations, make a recommendation for disapproval thereof or to, if so desires or considers, seek further particulars which may bring the scheme in accordance with the Regulations. No right is vested in the applicant to compel the MCI to make efforts to bring the scheme in accordance with the Regulations, in spite of the applicant having failed to do so.**

B. Section 10A(3)(a) also requires the MCI to give only 'reasonable' opportunity to the applicant to make representation and to rectify the defects, again 'if any' specified by the MCI. It is thus not as if the MCI, even if upon finding the scheme to be defective and choosing to give an opportunity to the applicant to rectify the defects, is required to give an 'unlimited' or a 'full' or 'complete' opportunity; even then it is required to give only a 'reasonable' opportunity.

**C. There is no mandate in Section 10A(3)(a) to the MCI to specify the defects in the scheme. Thus it may, on finding defects, not specify the same and straight away proceed to recommend disapproval of the scheme.**

D. Section 10A(3) thus, as distinct from vesting a right in the applicant, vests a discretion in the MCI to, even after finding the scheme forwarded to it by the Central Government to be not in accordance with the Regulations or defective or even after finding the medical college to be deficient, instead of recommending disapproval thereof, give an opportunity to the applicant medical college to give further particulars or to make a representation or to rectify the defects.

E. This becomes further evident from the contrast between the language of Section 10A(3) and (4). Section 10A(4) though in its main part leaves it to the Central Government to, while considering the scheme with recommendation of

MCI, obtain from the applicant such particulars as may be considered necessary, but the first proviso thereto bars the Central Government from disapproving a scheme without giving a reasonable opportunity of hearing to the applicant. **Section 10A(4) thus vests a right of reasonable hearing in the applicant before the scheme submitted by it is disapproved by Central Government. There will be of course an element of discretion in the Central Government as to the extent of such hearing.**

**F. It is this discretion vested by Section 10A(3) and (4) in the MCI and the Central Government which is controlled or sought to be guided by Regulation 8(3)(1) (supra). The main part thereof, in consonance with Section 10A(4) provides that “the Central Government may at any stage convey the deficiencies to the applicant and provide him an opportunity and time to rectify the deficiencies”. However the provisos (a) to (d) thereof limit such opportunity by specifying the deficiencies / defects for rectification whereof no opportunity and time to rectify will be given and existence whereof will lead to “non-consideration of the application for renewal permission” for that year. The provisos (a) to (d) (of which we herein are concerned with proviso (b)) thus instead of taking away any right vested by Section 10A(3) and (4) in the applicant, as contended, limits the discretion vested by Section 10A(3) and (4) in the MCI and Central Government to in spite of finding deficiencies, give opportunity for rectification thereof.**

G. Significantly, the provisos aforesaid are to the part of Regulation 8(3)(1) which, in consonance with Section 10A(4) vests the discretion in Central Government to give opportunity and time to the applicant to rectify the defects conveyed. Thus it is the Central Government which, by the provisos aforesaid is precluded from “considering the applicant medical college for renewal permission” for that

academic year. However, by “precluding consideration even of the application for renewal permission”, MCI also is precluded from giving an opportunity under Section 10A(3).

H. In our opinion, where a statute confers a discretion in a statutory body and / or the Government and also empowers such statutory body and / or Government to make Regulations for exercise thereof, a Regulation providing for situations in which discretion will not be exercised, cannot be said to be inconsistent with the statute and bad for this reason. **Thus, the provisos (a) to (d) of Regulation 8(3)(1) laying down the deficiencies on finding which the application for renewal permission shall not be considered i.e. no opportunity to make up the deficiencies will be given, neither by the MCI nor by the Central Government cannot be said to be *ultra vires* Section 10A(3) and (4) which themselves confer absolute discretion as aforesaid on MCI to straightaway recommend disapproval of scheme upon finding it deficient in any manner.**

I. It is not as if the deficiencies mentioned in provisos (a) to (d) supra can be the only deficiencies at the stage of renewal permission with which the said provisos are concerned. A perusal of the “Establishment of Medical College Regulations, 1999” and the “Minimum Standard Requirements for the Medical College for 150 Admissions Annually Regulations, 1999” show a plethora of annual targets to be met at the stages of renewal permission with which provisos (a) to (d) are concerned. The proviso (b) provides for non-consideration of renewal permission only in two situations i.e. when deficiency in teaching faculty and/or residents is more than 20% of the minimum prescribed OR when the bed occupancy is less than 70% of that prescribed. For all other deficiencies, opportunity to rectify can be given.

J. We find the aforesaid to be reasonable. At the time of

seeking renewal permission to admit fourth batch of students, the Medical College is seeking to achieve its full student strength and is thus required to meet all the minimum standards prescribed and for meeting which it has already been given three years time since its establishment. If in the said three years even, it has not been able to not only have the minimum teaching faculty / residents and bed occupancy but the deficiencies are of as much as more than 20% and 70% respectively then, no error is found in the Central Government and the MCI in the Regulations stipulating that such medical college will not be considered for renewal permission in as much as there is only a short time available for consideration of renewal permission and in that short time deficiencies in excess of 20% in teaching faculty and less than 70% bed occupancy, which could not be achieved in previous three years, cannot be made up. Accordingly, it will also fulfil the test of “reasonable opportunity” mentioned in Section 10A(3). Non-giving of opportunity / time to cure defects / deficiencies which are not curable in the time available cannot be said to be deprivation of “reasonable opportunity”.

K. We find a good discussion in this respect in *Aditya Educational Society Vs. UOI* MANU/AP/0003/2014 and in *Muthukumaran Educational Trust Vs. The Secy. to Government* MANU/TN/1346/2014 to which unfortunately neither counsel referred. Of course, the Regulations were not under challenge in these cases.

L. Thus irrespective of the general principle whether a power to regulate discretion vested by statute to give an opportunity to rectify defects/ deficiencies before granting or refusing permission would include power to, in Regulations specify the deficiencies for which no power to rectify will be given, we, in the context of the MCI Act and the Regulations framed thereunder, find that such power is included. We cannot be unmindful of the large number of applications with which Central Government / MCI are flooded annually

and the mammoth work involved in consideration thereof. When the experts in the MCI have assessed that deficiencies in excess of 20% in teaching faculty and of 70% in bed occupancy are such which are incapable of being cured in the short time and have provided so in the Regulations made with the previous sanction of Central Government, it would not be correct for the Courts to say that since opportunity to cure other deficiencies is given, opportunity to cure such deficiencies should also be given.

M. Moreover, the deficiencies in teaching faculty and bed occupancy are fundamental and crucial and cannot be ignored and are such which would certainly affect the quality of education and if in spite thereof permission is granted would result in the college producing half-baked and poor quality doctors.” *(emphasis supplied)*

3. Identical orders of rejection of renewal of permission passed by the Central Government on the basis of the proceedings of MCI reiterating its earlier recommendation for rejection of renewal and declining to undertake compliance verification inspection on application of the provisos to Regulation 8(3)(1) of the Regulations came to be challenged before this Court by several other medical colleges which included W.P.(C)No.6699/2015 titled *Career Institute of Medical Sciences And Hospitals & Anr. Vs. Union of India & Anr.*; W.P.(C) No.7106/2015 titled *Malla Reddy Institute of Medical Sciences & Anr. Vs. Union of India & Anr.* and W.P.(C) No.8541/2015 titled *Lord Buddha Siksha Pratisthan & Anr. Vs. Union of India & Anr.*

4. In *Career Institute of Medical Sciences and Hospitals (supra)*, despite being asked by the Central Government to conduct a fresh inspection for compliance verification, MCI declined to conduct fresh inspection and

reiterated its earlier decision to recommend not to renew the permission for the Academic Year 2015-16 and 2016-17 on application of the proviso (b) to Regulation 8(3)(1). The Central Government by proceedings dated 15.06.2015 accepted the recommendation of the MCI and aggrieved by the same, the college approached this Court. It was contended on behalf of the petitioner therein that since the ratio laid down by the Supreme Court in ***Swamy Devi Dayal Hospital and Dental College Vs. Union of India* (2014) 13 SCC 506** was not considered by the Division Bench while deciding ***Shri Chhatrapati Shivaji Education Society vs. Union of India* (Supra)**, the judgment therein is *per incuriam* and therefore is not binding. It was also contended that in the light of the ratio laid down in ***Swamy Devi Dayal* (supra)**, an opportunity to rectify the deficiency is mandatory at two stages, namely, at the level of MCI after the scheme is submitted to MCI under Section 10-A(2) and again at the level of Central Government at the time when it has to take final decision after the receipt of the recommendation sent by MCI and, therefore, it is not open to MCI to contend that it is not necessary to give an opportunity for rectification of the substantial deficiencies specified by MCI in cases where the provisos to Regulation 8(3)(1) are applied.

5. Taking note of the fact that the decision of the Supreme Court in ***Swamy Devi Dayal* (supra)** was not cited before the Division Bench while deciding ***Chhatrapati Shivaji* (supra)**, the Division Bench (Comprising Chief Justice and Jayant Nath, J.) passed an interim order dated 05.08.2015, observing as under:

“20. Admittedly, the decision of the Supreme Court in *Swamy Devi Dayal Hospital and Dental College (supra)* was not cited before the Division Bench and the above conclusion in *Chhatrapati Shivaji (supra)* was arrived at without taking note of the ratio laid down therein with regard to the adherence to the principles of natural justice under Section 10A(4) of the Act in the event the Central Government proposes to disapprove the scheme. Though there was no reference to a provision similar to Regulation 8(3)(1) of the Regulations, having regard to the settled legal position that statutory Regulations cannot be in conflict with the provisions of the parent Act, it appears to us that the ratio laid down in *Swamy Devi Dayal Hospital and Dental College (Supra)* applies to all cases of rejection including rejection on application of proviso (a) to (d) of Regulation 8(3)(1).

21. Therefore, it appears to us that the matter requires reconsideration in the light of the ratio laid down in *Swamy Devi Dayal Hospital and Dental College (Supra)*.”

6. Subsequently, when W.P.(C) No.7106/2015 titled Malla Reddy Institute of Medical Sciences & Anr. Vs. Union of India & Anr. and W.P.(C) No.8541/2015 titled Lord Buddha Siksha Pratisthan & Anr. Vs. Union of India & Anr. came up for consideration, Shri Nidhesh Gupta, the learned Senior Counsel appearing for the petitioners relied upon the judgment dated 20.08.2015 of a three-Judge Bench of the Supreme Court in *Royal Medical Trust (Regd.) and Another. vs. Union of India and Another* (Writ Petition (C) No. 705/2014) wherein while reiterating the ratio laid down in *Swamy Devi Dayal Hospital (supra)* it was held:

“23. While considering the Scheme under Section 10A

of the Act, the MCI and the Central Government are required to have due regard to the factors referred to in sub-section (7) thereof. If the initial Scheme itself is found to be defective or is to be disapproved, sub-section (3)(a) and proviso to sub-section (4) of Section 10A oblige the MCI and the Central Government respectively to grant to the applicant reasonable opportunity to rectify the defects and of being heard. The Statue thus recognizes that before any adverse decision is taken as regards the Scheme, the applicant must be afforded reasonable opportunity. This facet has been considered by this Court while dealing with issues under Section 10A of the Dentists Act in *Swamy Devi Dayal*. It was laid down that the requirement of following the principles of natural justice is available at two stages, first where the Dental Council of India finds deficiencies during its inspection and secondly at the level of the Central Government before it passes any adverse orders after receipt of the recommendations by the Dental Council of India. The observations in *Swamy Devi Dayal* while considering provisions of Section 10A of the Dentists Act which are *pari materia* with Section 10A of the Act, must apply with equal force in relation to cases under the Act..... ”

7. In the light of the law laid down in *Swamy Devi Dayal (supra)* and *Royal Medical Trust (supra)*, the Division Bench having opined that the decision in *Shree Chhatrapati Shivaji (supra)* requires reconsideration, by order dated 11.09.2015 referred the matter to a Larger Bench.

8. As mentioned above, the core issue that falls for consideration by the Full Bench is as to whether in cases where the provisos (a) to (d) to Regulation 8(3)(1) are invoked, no opportunity of personal hearing and/or opportunity to rectify the deficiencies need be provided to the applicant

under Section 10-A(3) and/or Section 10-A(4) of the Medical Council Act.

9. Before proceeding further, it is necessary to notice the legal position relating to grant of permission for establishment/renewal of Medical Colleges.

**Indian Medical Council Act, 1956 and the Regulations made thereunder:**

10. The Medical Council Act was enacted to provide for the reconstitution of the Medical Council of India and maintenance of a Medical Register for India and the matters connected therewith. Section 3 of the Medical Council Act provides that the Central Government shall constitute a Council consisting of the members specified therein and as per Section 6, the Council so constituted shall be a body corporate by the name of the Medical Council of India (MCI). It is not in dispute that MCI is an expert body constituted under the Medical Council Act to prescribe and to control the minimum standards of medical education and to regulate their observance. Section 33 of the Medical Council Act empowers MCI to make regulations, with the previous sanction of the Central Government, to carry out the purpose of the Act and also to provide *inter alia* for the courses and period of study and of practical training to be undertaken, the subjects of examination and standards of proficiency therein to be obtained in Universities or medical institutions for grant of recognized medical qualifications; the standards of staff, equipment, accommodation, training and other facilities for medical education and the conduct of professional examinations, qualifications of examiners and the conditions of admission to such examinations.

11. The major amendments made to the Medical Council Act included the amendment by Act 31 of 1993 w.e.f. 27.08.1992 by incorporating Sections 10-A to 10-C specifically providing for prior permission of the Central Government for establishing any new Medical College and for starting any new or higher courses of study or increasing admission capacity in any course of study or training including post-graduate course of study in any existing Medical College.

12. Section 10-A with which we are concerned in the present case reads as under:

**“10A. PERMISSION FOR ESTABLISHMENT OF NEW MEDICAL COLLEGE, NEW COURSE OF STUDY ETC.** (1) Notwithstanding anything contained in this Act or any other law for the time being in force,-

(a) no person shall establish a medical college; or

(b) no medical college shall:-

(i) open a new or higher course of study or training (including a 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.

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

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

**(b) consider the scheme, having regard to the factors referred to in sub-section (7), and submit the scheme together with its recommendations thereon to the Central Government.**

**(4) The Central 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).

(5) Where, within a period of one year from the date of submission of the scheme to the Central Government under sub-section (2), no order passed by the Central Government has been communicated to the person or college submitting the scheme, such scheme shall be deemed to have been approved by the Central Government in the form in which it had been submitted, and, accordingly, the permission of the Central Government required under sub-section (1) shall also be deemed to have been granted.

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

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

**(a) whether the proposed medical college or the existing medical college seeking to open a new or higher course of study or training, would be in a position to offer the minimum standards of medical education as prescribed**

by the Council under section 19A or, as the case may be, under section 20 in the case of postgraduate medical education;

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

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

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

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

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

(g) any other factors as may be prescribed.

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

13. Section 33 of the Medical Council Act has also been amended by Act 31 of 1993 w.e.f. 27.08.1992 thereby inserting Clauses (fa) to (fc) and thus,

empowering MCI to make Regulations providing for the form of the scheme under Section 10-A(2), the particulars to be given in such scheme and etc. In exercise of the power so conferred under Section 33 and Section 10-A of the Medical Council Act, MCI made Regulations called the Establishment of Medical College Regulations, 1999. Regulation 3 gives details of the scheme for obtaining permission of the Central Government to establish a medical college and provides that all applications under the scheme shall be made in Form-I prescribed therein which under Part II requires to furnish details of the medical college including “Manpower Programme”, i.e. requirements of teaching staff, technical staff, administrative staff, salary structure and etc. Similarly, Part III requires to furnish details of existing hospitals including bed strength, bed distribution, built-up area, clinical and para-clinical disciplines and etc. Regulation 7 stipulates that after examining the application and after conducting necessary physical inspection, the MCI should send a factual report to the Central Government and that its recommendation shall be in Form-IV. Regulation 8 which relates to grant of permission provides *inter alia* that the permission granted under Section 10-A(4) may include a time bound programme for the establishment of a medical college and expansion of the hospital facilities. Regulation 8(3) further makes it clear that the permission to establish a medical college and admit students would be granted initially for a period of one year and it would be renewed on early basis 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 and that the application for renewal has to be made by the institution six months

prior to the expiry of the initial permission. It is also provided that the Central Government may, at any stage, convey the deficiencies to the applicant and provide him an opportunity and time to rectify the deficiencies.

14. The said Regulations were amended by the Establishment of Medical College Regulations (Amendment), 2010 (Part-II) which came into force w.e.f. 16.04.2010. By virtue of the said Amendment, Regulation 8(3) was amended by insertion of provisos (a) to (d) to Regulation 8(3)(1). Regulation 8 as amended by the Amendment dated 16.04.2010 reads as under:

**“8. GRANT OF PERMISSION:**

(1) The Central Government on the recommendation of the Council may issue a Letter of Intent to set up a new medical college with such conditions or modifications in the original proposal as may be considered necessary. This letter of Intent will also include a clear cut statement of preliminary requirements to be met in respect of buildings, infrastructural facilities, medical and allied equipments, faculty and staff before admitting the first batch of students. The formal permission may be granted after the above conditions and modifications are accepted and the performance bank guarantees for the required sums are furnished by the person and after consulting the Medical Council of India.

(2) The formal permission may include a time bound programme for the establishment of the medical college and expansion of the hospital facilities. The permission may also define annual targets as may be fixed by the Council to be achieved by the person to commensurate with the intake of students during the following years.

(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.

**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.**

**(b) Colleges in the stage from III renewal (i.e. Admission of fourth batch) till recognition of the institute for award of M.B.B.S. degree:**

**If it is observed during any regular inspection of the institute that the deficiency of teaching faculty and/or Residents is more than 20% and/or bed occupancy is <70%, such an institute will not be considered for renewal of permission in that Academic Year.**

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

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

**(d) Colleges which are found to have employed teachers with faked / forged documents:**

**If it is observed that any institute is found to have employed a teacher with faked / forged documents and have submitted the Declaration Form of such a teacher, such an institute will not be considered for renewal of permission / recognition for award of M.B.B.S. degree / processing the applications for postgraduate courses for two Academic Years – i.e. that Academic Year and the next Academic Year also.**

However, the office of the Council shall ensure that such inspections are not carried out at least 3 days before upto 3 days after important religious and festival holidays declared by the Central/State Govt.

(2) The recognition so granted to an Undergraduate Course for award of MBBS degree shall be for a maximum period of 5 years, upon which it shall have to be renewed.

(3) The procedure for “Renewal” of recognition shall be same as applicable for the award of recognition.

(4) Failure to seek timely renewal of recognition as required in sub-clause (a) supra shall invariably result in stoppage of admissions to the concerned Undergraduate Course of MBBS at the said institute.”

(4) The council may obtain any other information from the proposed medical college as it deems fit and necessary.”

*(emphasis supplied)*

15. In terms of the provisos (a) to (d) to Regulation 8(3)(1) inserted by Amendment dated 16.04.2010, if the medical college is found to have the deficiencies specified in the said provisos, it will not be considered for renewal of permission for that academic year or two academic years. As per proviso (a) to Regulation 8(3)(1), if a medical college, during any regular inspection, is found to have deficiency of teaching faculty and/or Residents, being more than 30% and/or the bed occupancy is found to be less than 60%, such an institute will not be considered for renewal of permission for that Academic Year. Similarly, by virtue of proviso (b) to Regulation 8(3)(1) which is applicable to any institution which is at the stage of third renewal of permission, if a medical college is found to have deficiency of teaching faculty and/or Residents being more than 20% and/or the bed occupancy is found to be less than 70% such an institute will not be considered for renewal of permission for that academic year. Coming to the proviso (c) to Regulation 8(3)(1), the same is applicable to medical colleges which are already recognized for award of MBBS degree and/or is running post-graduate courses. As per the said proviso during any regular inspection, if such a medical college is found to have deficiency of teaching faculty and/or Residents being more than 10% and/or the deficiency of bed

occupancy is found to be less than 80%, such an institute will not be considered for processing its application for starting post-graduate courses for that academic year and will be issued a show cause notice as to why the action specified therein shall not be taken. So far as proviso (d) to Regulation 8(3)(1) is concerned, the same deals with a situation where a medical college, during an inspection, is found to have employed teaching faculty with fake/forged documents and in such an event, the college will not be considered for permission for the next two academic sessions.

**Contentions:**

16.1 It is submitted by Shri Nidhesh Gupta, the learned Senior Counsel appearing for the petitioners that the judgment of the Division Bench of this Court in *Shree Chhatrapati Shivaji (supra)* in holding that Section 10-A(3) of the Medical Council Act vests a discretion in the MCI to give an opportunity to the applicant to give further particulars or to make a representation or to rectify the defects is contrary to the ratio laid down by the Supreme Court in *Swamy Devi Dayal (supra)*.

16.2 In support of the said submission, the learned senior counsel has also placed reliance upon the recent decision in *Royal Medical Trust (supra)* rendered by a three-Judge Bench of the Supreme Court reiterating the ratio laid down in *Swamy Devi Dayal (supra)*.

16.3 Placing much reliance on the said two decisions, it is contended by the learned Senior Counsel that providing an opportunity to rectify the deficiencies specified by MCI is mandatory both under sub-section (3) and sub-section (4) of Section 10-A of the Medical Council Act.

16.4 It is further contended that the provisos (a) to (d) to Regulation 8(3)(1) travel beyond the scheme of Section 10-A of the Medical Council Act inasmuch as the said provisos vested the power with the MCI to conclude that the concerned institute will not be considered for renewal for that Academic Year or for two academic years. The learned Senior Counsel contends that the provisos (a) to (d) thus virtually interdicted the exercise of power by the Central Government under Section 10-A(1) read with Section 10-A(4) to grant permission for establishment/renewal of medical colleges.

16.5 The learned Senior Counsel would also contend that the opportunity provided under Section 10-A(3) and (4) of the Medical Council Act to rectify the deficiencies cannot be taken away by the provisos to Regulation 8(3)(1) since the law is well-settled that statutory Regulations cannot be in conflict with the provisions of the parent Act.

16.6 It is also pointed out by the learned Senior Counsel that the second limb of Regulation 7 which expressly provides for 'Reconsideration' obligates MCI to conduct an inspection for compliance verification if so directed by the Central Government.

17.1 Per contra, it is contended by Shri Vikas Singh, the learned Senior Counsel appearing for the MCI that the opportunity provided under sub-section (3) of Section 10-A to the applicant/institution to rectify the defects, if any, specified by the MCI relates to rectification of paper-deficiencies found during the scrutiny of the scheme submitted. In other words, the opportunity contemplated therein is prior to the physical inspection only.

17.2 It is further contended that the opportunity provided under sub-section

(4) of Section 10-A is only an opportunity of hearing by the Central Government and that the same does not include an opportunity to the applicant/institution to rectify the deficiencies found by the MCI during the inspection.

17.3 It is sought to be explained by the learned Senior Counsel that the opportunity to rectify deficiencies provided under Regulation 8(3)(1), as a part of hearing process by the Central Government, which was initially unrestricted has been rightly limited by virtue of the amendment to the Regulations dated 16.04.2010 to ensure that the institutions throughout the year provide complete infrastructure, teaching faculty, residents, clinical materials and other physical facilities in the medical colleges so as to provide the best of teaching and training to the students.

17.4 The said amendment brought out to the Regulations with the previous sanction of the Central Government as provided under Section 33 of the Medical Council Act cannot be held to have curtailed the powers conferred on the Central Government under the parent Act in any manner whatsoever.

17.5 The conclusion of the Division Bench in *Shree Chhatrapati Shivaji (Supra)* that the provisos to Regulation 8(3)(1) had merely limited the discretion vested with the Central Government to grant an opportunity of hearing and time to rectify deficiencies but in no way excluded the said right is in accordance with the settled principles of law and warrants no reconsideration.

17.6 While submitting that the provisions of sub-section (4) of Section 10-A of the Medical Council Act does not provide for giving an opportunity

to rectify the deficiencies specified by MCI but the same has been provided only under the Regulations, it is contended by the learned Senior Counsel that the power so conferred on the Central Government under Regulation 8(3)(1) has been restricted by way of the provisos (a) to (d) and the same cannot be held to be illegal since the law is well settled that where a statute confers a discretion in a statutory body or the Central Government, it also empowers them to limit such discretion.

17.7 The judgment of *Swamy Devi Dayal (supra)* has no bearing on the interpretation of Regulation 8(3)(1) as amended on 16.04.2010, since in the said case the Supreme Court was dealing with the provisions of the Dentist's Act, 1948 under which no Regulations are made relatable to the Establishment of Medical Colleges Regulations, 1999.

17.8 Similarly, in *Royal Medical Trust (supra)* also, the Supreme Court was not dealing with a case wherein the provisos to Regulation 8(3)(1) of the Regulations had been invoked. All the cases which were considered in the said decision were the cases where MCI did not conduct inspections for compliance verification *de hors* the provisos to Regulation 8(3)(1) on account of time constraints for that academic year.

17.9 Thus, the learned Senior Counsel seeks to distinguish both *Swamy Devi Dayal (supra)* and *Royal Medical Trust (supra)*.

18. Rebutting the contentions of MCI, it is submitted by the learned Senior counsel appearing for the petitioners that the opportunity provided under Section 10-A(3) as interpreted by the Supreme Court in *Royal Medical Trust (supra)* is not limited to an opportunity to rectify the paper

deficiencies found in the scheme but it includes an opportunity to rectify the deficiencies even after physical inspection. To substantiate the said submission, the learned Senior Counsel while drawing the attention of this Court to sub-section (7) of Section 10-A which provides for the factors that are required to be taken into consideration by MCI while making its recommendations under sub-section (3) of Section 10-A, contended that several factors specified therein cannot be made out in the absence of physical inspection. The learned Senior Counsel has also relied upon Form-IV prescribed under the Regulations in which the MCI has to submit its recommendations after physical inspection.

**Consideration:**

19. The principal ground upon which the vires of the proviso (b) to Regulation 8(3)(1) was impugned in *Shree Chhatrapati Shivaji (supra)* was that the said provision is in contravention of the scheme of Section 10-A of the Medical Council Act inasmuch as it prohibits consideration of the application for renewal upon finding the deficiencies specified in the proviso without giving an opportunity to the applicant in terms of Section 10-A.

20. In view of the expression “may” employed in Section 10-A(3) and for other reasons assigned therein, the Division Bench opined that the opportunity provided under sub-section (3) of Section 10-A, i.e. at the stage of consideration of the scheme by MCI, is only discretionary and there is no mandate that the MCI shall specify the defects in the scheme and give an opportunity to rectify the same. So far as the consideration by the Central

Government under sub-section (4) of Section 10-A is concerned, i.e. on receipt of the recommendations of MCI, the Division Bench though held that Section 10-A(4) vests a right of reasonable hearing in the applicant before the scheme is disapproved, opined that there is an element of discretion in the Central Government as to the extent of such hearing.

21. Having proceeded on the said premise, the Division Bench held that the provisos (a) to (d) of Regulation 8(3)(1), instead of taking away any right vested by Section 10-A(3) and (4) in the applicant, limit the discretion vested in the MCI and Central Government to give an opportunity for rectification of the deficiencies. It was thus concluded that the provisos (a) to (d) to Regulation 8(3)(1) laying down the deficiencies for rectification of which no opportunity need be given either by the MCI or by the Central Government cannot be held to be ultra vires Section 10-A(3) and (4).

22. The above-said conclusions of the Division Bench in *Shree Chhatrapati Shivaji (supra)*, according to the petitioners, are not in conformity with the law laid down by the Supreme Court in *Swamy Devi Dayal (supra)* and *Royal Medical Trust (supra)*. It is pointed out by the learned Senior Counsel appearing for the petitioners that the decision in *Swamy Devi Dayal (supra)* wherein it was held that grant of opportunity of being heard is mandatory at the stage of consideration by MCI under sub-section (3) of Section 10-A and again at the stage of consideration by the Central Government under sub-section (4) of Section 10-A, was not brought to the notice of the Division Bench in *Shree Chhatrapati Shivaji (supra)*, thus resulting in a decision contrary to the law laid down by the Supreme Court.

23. The decision in *Swamy Devi Dayal (supra)* is sought to be distinguished by the learned Senior Counsel appearing for the MCI on two grounds, namely, (i) that the Supreme Court in *Swamy Devi Dayal (supra)* was dealing with the provisions of a different enactment, i.e. Dentists Act, 1948; and (ii) that neither the provisions of Regulation 8(3)(1) of Establishment of Medical College Regulations, 1999 nor any other provision relatable to the said Regulations were the subject matter of the issue under consideration in *Swamy Devi Dayal (supra)*.

24. On merits, it is contended that neither sub-section (3) nor sub-section (4) of Section 10-A of the Medical Council Act provides for an opportunity to the applicant to rectify the deficiencies specified by MCI on physical inspection and, therefore, the contention of the petitioners that denial of an opportunity to rectify the deficiencies on application of provisos (a) to (d) to Regulation 8(3)(1) is contrary to the scheme of Section 10-A of the Act, is misconceived and untenable.

25. Elaborating the said contention, Shri Vikas Singh, the learned senior counsel appearing for MCI submitted that the opportunity provided under Section 10-A(3) is only with reference to the defects found during the scrutiny of the scheme submitted and, therefore, the question of providing an opportunity to rectify the deficiencies specified after physical inspection does not arise at that stage. According to him, no such opportunity to rectify the deficiencies need be provided even under Section 10-A(4) since the proviso to Section 10-A(4) contemplates only a “reasonable opportunity of being heard” but not an opportunity to rectify the defects.

26. We may at the outset mention that though the Supreme Court in ***Swamy Devi Dayal (supra)*** was dealing with the permission for starting a Post-Graduation course in a Dental College and thus was considering the provisions of Dentist's Act, 1948, the provisions of the said Act are *pari materia* to the provisions of the Medical Council Act, particularly, Section 10-A providing for permission for establishment of new College, new course of study, etc. Therefore, the law laid down therein is equally applicable to the interpretation of Section 10-A of the Medical Council Act. Considering the very same issue in ***Royal Medical Trust (supra)***, it was made clear by the Supreme Court that the observations in ***Swamy Devi Dayal (supra)*** while considering provisions of Section 10-A of the Dentist's Act which are *pari materia* with Section 10-A of the Medical Council Act must apply with equal force in relation to cases under the Medical Council Act.

27. It is no doubt true that in ***Swamy Devi Dayal (supra)*** and ***Royal Medical Trust (supra)***, the Supreme Court was not concerned with any provision relatable to Regulation 8(3)(1) of the Regulations. However, the law is well settled that the Rules or Regulations made on matters permitted by the statute cannot override either the provisions of the statute or the object and scheme of the same. Therefore, the requirement of adherence to the principles of natural justice under Section 10-A(3) and 10-A(4) of the Medical Council Act cannot be limited or excluded on any ground whatsoever and no exception can be carved out even with regard to the institutions in respect of which the provisos (a) to (d) of Regulation 8(3)(1) are invoked. Hence, the distinction sought to be drawn by Sh. Vikas Singh on the ground that in ***Swamy Devi Dayal (supra)***, the Supreme Court was not concerned

with Regulation 8(3)(1) cannot be accepted.

28. We also do not find any substance in the contention advanced by Sh.Vikas Singh, the learned Senior Counsel appearing for MCI that the opportunity provided under Section 10-A(3) of the Medical Council Act does not include rectification of deficiencies specified by MCI after physical inspection.

29. Consideration of scheme by MCI under Section 10-A(3) of the Medical Council Act as well as consideration of the scheme and the recommendations of the MCI by the Central Government under sub-Section (4) of Section 10-A for Medical Council Act, shall be having regard to the factors referred to in sub-Section (7) of Section 10-A. The factors enumerated in sub-Section (7) of Section 10-A, apart from adequate financial resources and capacity to offer minimum standards of medical education, included the following:

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

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

30. That apart, Regulation 1 of the Establishment of Medical College Regulations, 1999 provides that the scheme for permission under Section 10-A of the Act shall be submitted in Form-I annexed to the Regulations. A perusal of Form-I shows that it is in 3 parts and Part-3 thereof specifically provides for furnishing the details of upgradation and expansion programme of the hospital including the details of the additional land for expansion of the existing hospital, year-wise details of the additional clinical and para-clinical disciplines, year-wise additional built-up area to be provided for hospital, staff housing, staff and students hostels and other ancillary buildings, upgraded manpower programme and phasing and scheduling of the expansion of scheme. It is also relevant to note that Regulation 6 specifically provides that MCI while evaluating the application/scheme shall carry out physical inspection to verify information supplied by the applicant. Regulation 7 which deals with report of MCI further provides that MCI shall send a factual report to the Central Government after examining the application and after conducting necessary physical inspections. As per Clause (8) of Regulation 7(a), it is also necessary for MCI to point out in its factual report the deficiencies, if any in the infrastructure or faculty and indicate whether the same are remediable or not. Regulation 7(d) provides that the recommendation of MCI shall be in Form-IV annexed to the Regulations and the contents of Form-IV reflect that the recommendation of MCI has to be made only after physical inspections. It is also relevant to note that under Regulation 8(1) to 8(3) the formal permission for establishment of a new medical college may be granted initially for a period of 1 year and the same may be renewed on yearly basis subject to

verification of the achievements of annual targets fixed by MCI to be achieved during the following years.

31. On a combined reading of the above noticed provisions of the Medical Council Act and the Regulations, the only conclusion that can be arrived at is that the opportunity provided under Section 10-A(3)(a) to rectify the defects specified by the MCI relates to the defects that are pointed out by MCI after physical inspection but not mere paper-deficiencies found in the scheme. This view of ours is fortified by the following observations made by the Supreme Court in *Royal Medical Trust (supra)*.

“24. The Scheme under Section 10A, with due regard to the factors referred to in sub-section (7), may contemplate putting in place necessary facilities at a later point of time. Paragraphs 7(b) and 8(3) of the Regulations also speak of defining and achieving annual targets respectively. Naturally, it needs to be assessed and verified whether such annual targets are achieved or not. The timely assessment is integral to the Scheme itself and the MCI and the Central Government are therefore obliged and required to conduct renewal inspections every year so as to ensure that the establishment of the Medical College and expansion of hospital facilities are completed in time and in accordance with the Scheme.....”

32. Therefore, we are unable to agree with the contention that MCI is not obligated before making its recommendation under Section 10-A(3) to give an opportunity to the applicant to rectify the defects that are pointed out in the physical inspection.

33. The further contention that the reasonable opportunity of being heard

provided under Section 10-A(4) of the Medical Council Act is limited only to personal hearing and does not include the opportunity to rectify the deficiencies specified by MCI, is equally untenable.

34. The proviso to sub-Section (4) of Section 10-A of the Medical Council Act expressly provides for giving a reasonable opportunity of being heard to the applicant in the event of disapproval of scheme by the Central Government. The said opportunity has been held to be mandatory in *Swamy Devi Dayal (supra)* as well as *Royal Medical Trust (supra)*. What is ‘reasonable opportunity of being heard’ has been explained in *Swamy Devi Dayal (supra)* as under:-

“22.3. The expression “opportunity of being heard” occurring in this proviso would mean that the material that goes against the applicant and is to be taken into consideration, is to be supplied to the applicant within an opportunity to make representation. For this purpose either the report of DCI itself can be supplied or at least the deficiencies pointed out in the report have to be communicated by the Central Government to the applicant with an opportunity to furnish its comments thereupon. At that stage while giving its reply, if the applicant claims personal hearing, such a personal hearing should also be accorded.”

35. According to the learned Senior Counsel for MCI, none of the provisions of the Medical Council Act provides for giving an opportunity to rectify the deficiencies much less inspection by MCI for compliance verification.

36. Clause (a) of Sub-Section (3) of Section 10-A expressly provides for

giving a reasonable opportunity to the person or college concerned for making a written representation and it shall be open to such person or medical college to rectify the defects, if any specified by MCI. We have already held that the opportunity to rectify the defects provided therein is not confined to rectification of paper-deficiencies found in the scheme submitted under Section 10-A(2) but it also includes the deficiencies that are pointed out by MCI after physical inspection.

37. So far as Section 10-A(4) is concerned, it is true that the proviso merely provides for ‘a reasonable opportunity of being heard’. However, Regulation 8(3)(1) of the Regulations made by MCI in exercise of the power conferred under Section 33 read with Section 10-A of the Medical Council Act expressly provides for giving an opportunity and time to the applicant to rectify the deficiencies. This itself makes clear the legislative intent to provide opportunity and time to the applicant to rectify the deficiencies at the stage of consideration of scheme by the Central Government under Section 10-A(4). It is not in dispute that the said Regulations made by MCI with the previous sanction of the Central Government have statutory force and are equally applicable to the scheme contemplated under the Medical Council Act. Therefore, we are of the view that giving an opportunity to rectify the deficiencies is an integral part of the opportunity of being heard provided under sub-Section (4) of Section 10-A of the Medical Council Act. In fact, it is a part of hearing process provided under Section 10-A(4).

38. Coming to the question whether an opportunity to rectify the defects/deficiencies specified by MCI need be provided to the applicant in cases which fall within the ambit of the provisos (a) to (d) to Regulation

8(3)(1), the contention of MCI is that provisos (a) to (d), which create an absolute bar on renewal of permission, carve out an exception to the requirement of opportunity provided under Section 10-A(3) & (4) and therefore in cases where the provisos (a) to (d) are invoked, MCI is not obliged to undertake a compliance verification inspection.

39. Under the scheme of Section 10-A of the Medical Council Act, the Central Government is the authority which is vested with the power to grant permission for establishment of new medical college as well as grant of renewal whereas MCI works as a recommendatory body and plays an important role in deciding whether sanction as required under Section 10-A(1) be granted.

40. There can be no dispute with regard to the authority of MCI to take various measures to ensure maintenance of proper standards in medical institutions. While referring to the power conferred on MCI under Section 33 of the Medical Council Act to make regulations to carry out the purposes of the Act, particularly, to make Regulations providing for clauses (j) to (n) of Section 33, the Supreme Court in *State of M.P. vs. Nivedita Jain* (1981) 4 SCC 296 observed:

“18. An analysis of the various sections of the Act indicate that the main purpose of the Act is to establish Medical Council of India, to provide for its constitution, composition and its functions; and the main function of the Council is to maintain the medical register of India and to maintain a proper standard of medical education and medical ethics and professional conduct for medical practitioners. The scheme of the Act appears to be that the Medical Council of India is to be set up in

the manner provided in the Act and the Medical Council will maintain a proper medical register, will prescribe minimum standards of medical education required for granting recognised medical qualifications, will also prescribe standards of postgraduate medical education and will further regulate the standards of professional conduct and etiquette and code of ethics for medical practitioners. The Act further envisages that if it appears to the Council that the courses of study and examination to be undergone in, or the proficiency required from candidates at any examination held by any university or medical institution do not conform to the standard prescribed by the Council or that the staff, equipment, accommodation, training and other facilities for instructions and training provided in such university or medical institution or in any college or other institution affiliated to that university do not conform to the standards prescribed by the Council, the Council will make a representation to that effect to the Central Government and on consideration of the representation made by the Council, the Central Government may take action in terms of the provisions contained in Section 19 of the Act. The Act also empowers the Council to take various measures to enable the Council to judge whether proper medical standard is being maintained in any particular institution or not.”

41. The same has been reiterated in *Medical Council of India v. State of Karnataka*, (1998) 6 SCC 131 and *Manohar Lal Sharma v. Medical Council of India*, (2013) 10 SCC 60.

42. Being an expert body to control the minimum standards of medical education and to regulate their observance, MCI is well within the power conferred under Section 33 of the Medical Council Act in inserting the provisos (a) to (d) to Regulation 8(3)(1) to the effect that the institutes which are found to have the deficiencies specified therein will not be considered for renewal of permission for that academic year/two academic years.

However, the question is whether the decision to invoke the provisos (a) to (d) can be taken without giving an opportunity of being heard to the institute concerned.

43. As held in *Swamy Devi Dayal (supra)*, non-renewal of permission to an institution involves civil consequences of grave nature barring the applicant to enrol fresh students in that academic year. Therefore, before imposing such a bar, the principles of natural justice require providing a reasonable opportunity of being heard to the institute concerned against the proposed action. This is also essential to check arbitrary exercise of power by MCI. The law is well settled that unless a statutory provision either specifically or by necessary implication excludes the application of principles of natural justice, it is essential to give a reasonable opportunity of being heard to the party affected when the order has adverse civil consequences. Since the principles of natural justice have been expressly included in the provisions of Section 10-A as well as Regulation 8(3)(1), such an opportunity cannot be taken away by way of subordinate legislation. The power to make subordinate legislation is derived from the enabling Act and it is fundamental principle of law which is self-evident that the delegate on whom such power is conferred has to act within the limitations of the authority conferred by the Act. It is equally well settled that rules made on matters permitted by the Act in order to supplement the Act and not to supplant the Act, cannot be held to be in violation of the Act. A delegate cannot override the Act either by exceeding the authority or by making provisions inconsistent with the Act. (Vide: *J.K.Industries Ltd. v. Union of India* (2007) 13 SCC 673). It is also explained in *St. John's Teachers*

***Training Institute v. Regional Direction, NCTE (2003) 3 SCC 321:-***

“10. A regulation is a rule or order prescribed by a superior for the management of some business and implies a rule for general course of action. Rules and regulations are all comprised in delegated legislations. The power to make subordinate legislation is derived from the enabling Act and it is fundamental that the delegate on whom such a power is conferred has to act within the limits of authority conferred by the Act. Rules cannot be made to supplant the provisions of the enabling Act but to supplement it.....”

44. As already mentioned above, in *Swamy Devi Dayal (Supra)* while analysing the purport of Section 10-A of the Dentist’s Act, the Supreme Court highlighted the need for adherence to the principles of natural justice included therein as under:-

“12. .... We are, therefore, of the opinion that the cases of renewal cannot be excluded from the provisions of Section 10-A of the Act. It was not disputed before us that when the petitioner College applied for renewal of the permission, the application was processed in accordance with the procedure laid down in Section 10-A. As per this procedure, when a request is received in the form of a requisite scheme, as required in sub-section (2) of Section 10-A of the Act, the same is to be processed in the manner provided under sub-section (3) thereof. Once it is found by DCI that all the parameters for granting permission are met, it recommends the grant of approval of the scheme to the Central Government. In case a scheme is found to be deficient, sub-section (3)(a) of Section 10-A of the Act casts an obligation on the part of DCI to give a reasonable opportunity for making a written representation and also to rectify the deficiencies, any, specified by DCI. After the recommendation is sent by DCI to the Central Government, Central Government is required to process the same in

accordance with the procedure contained in sub-section (4) of Section 10-A. It can either approve or disapprove the scheme. However, in case the Central Government is proposing to disapprove the scheme, a final decision in this behalf can be taken only after giving the person, authority or institution concerned, a reasonable opportunity of being heard. This is the mandate of the proviso to Section 10-A(4) of the Act.

Thus, the procedure prescribed in Section 10-A contains the requirement of following this principle of natural justice at two stages. In the first place, by DCI when it finds deficiencies while examining the school in the second stage at the level of the Central Government before it passes away adverse orders, as it is the final administrative authority vested with powers to pass such an order. The law, thus specifically requires that at the stage of a decision by the Central Government, again an opportunity of being heard is to be provided. This proviso, thus, acknowledges the need of and confers a very valuable right in favour of the petitioner.”

45. In para-22.2, the legal position has again been summed up as under:-

“22.2. It contemplates grant of opportunity of being heard at two stages. First stage would be at the level of DCI after the scheme is submitted to DCI under sub-section (2) of Section 10-A of the Act. Once it is found by DCI that all the parameters for granting permission are met, it recommends the grant of approval of the scheme to the Central Government. In case a Scheme is found to be deficient, sub-section (3)(a) of Section 10-A of the Act casts an obligation on the part of DCI to give a reasonable opportunity for making a written representation and also to rectify the deficiencies, if any, specified by DCI. Second stage of adherence to the principles of natural justice is provided at the level of Central Government at the time when it has to take final decision, after the receipt of the recommendation sent by DCI. This requirement of hearing is stipulated in proviso

to sub-section (4) of Section 10-A, in the event the Central Government is proposing to disapprove the scheme.”

46. Admittedly, this legal position was not brought to the notice of the Division Bench in *Shree Chhatrapati Shivaji (supra)*. The Division Bench therefore proceeded on the premise that the opportunity provided under Section 10-A(3) & (4) is discretionary.

47. We have already held that the opportunity provided under sub-Sections (3) & (4) of Section 10-A of the Medical Council Act includes an opportunity to rectify the deficiencies specified by MCI after physical inspection. Consequently, undertaking an inspection for compliance verification forms part of the scheme under Section 10-A and MCI is required to undertake such an inspection within the statutory time schedule. While explaining the need for discharging the functions well within the statutory confines as well as in conformity with the Schedule to the Regulations, the three judge Bench of the Supreme Court in *Royal Medical Trust (Supra)* enumerated the aspects that are required to be taken care of in the Schedule as under:-

“27. .... The MCI and the Central Government must therefore show due diligence right from the day when the applications are received. The Schedule giving various stages and time limits must accommodate every possible eventuality and at the same time must comply with the requirements of observance of natural justice at various levels. In our view the Schedule must ideally take care of:

(A) Initial assessment of the application at the first level should comprise of checking necessary requirements such as

essentiality certificate, consent for affiliation and physical features like land and hospital requirement. If an applicant fails to fulfill these requirements, the application on the face of it, would be incomplete and be rejected. Those who fulfill the basic requirements would be considered at the next stage.

(B) Inspection should then be conducted by the Inspectors of the MCI. By very nature such inspection must have an element of surprise. Therefore sufficient time of about three to four months ought to be given to the 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 concerned Medical College should be given requisite permission/renewal. However if there are any deficiencies or shortcomings, the MCI must, after pointing out the deficiencies, grant to the college concerned sufficient time to report compliance.

(D) If compliance is reported and the applicant states that the deficiencies stand removed, the MCI must cause compliance verification. It is possible that such compliance could be accepted even without actual physical verification but that assessment be left entirely to the discretion of the MCI and the Central Government. In cases where actual physical verification is required, the MCI and the Central Government must cause such verification before the deadline.

(E) The result of such verification if positive in favour of the Medical College concerned, the applicant ought to be given requisite permission/renewal. But if the deficiencies still persist or had not been removed, the applicant will stand disentitled so far as the academic year is concerned.”

48. In the light of the above discussion, we are of the view that it is

mandatory to provide to the applicant/institute concerned an opportunity to rectify the defects/deficiencies specified by MCI even in cases which fall within the ambit of the provisos (a) to (d) to Regulations 8(3)(1) of the Regulations.

49. It may be added that in fact, the contention of the MCI that the provisos (a) to (d) carves out an exception to the power of the Central Government to provide an opportunity and time to the applicant to rectify the deficiencies and thus in cases where the said provisos are invoked, no opportunity need be given to the applicant is based on an erroneous interpretation of Regulation 8(3)(1) of the Regulations.

50. On a careful reading of Regulation 8(3)(1), it appears to us that what is provided thereunder is grant of permission to establish a medical college initially for a period of one year and the renewal of the same on yearly basis subject to verification of the achievements of annual targets prescribed by MCI under Regulation 8(2). It is no doubt true that Regulation 8(3)(1) also states that “the Central Government may at any stage convey the deficiencies to the applicant and provide him an opportunity and time to rectify the deficiencies”. However, the contention of MCI that by virtue of the provisos (a) to (d), an exception has been carved out to the power conferred on the Central Government to provide an opportunity and time to the applicant to rectify the deficiencies, is fallacious. We are afraid that this is not the import of Regulation 8(3)(1). According to us, the provisos (a) to (d) which imposed a bar on grant of renewal in the circumstances specified therein would only work as an exception to the main part of Regulation 8(3)(1) specifying the process of renewal of permission on yearly basis but

not to the requirement of providing opportunity to rectify the deficiencies.

51. Therefore, we are of the view that it is not open to MCI and/or Central Government to deny an opportunity to the applicant/institute concerned to rectify the deficiencies specified by MCI even in cases which fall within the ambit of the provisos (a) to (d) of Regulation 8(3)(1) of the Regulations. However, it is essential for both MCI and Central Government to observe the time schedule as held in *Royal Medical Trust (supra)*.

52. For the aforesaid reasons, we hold that the provisos (a) to (d) to Regulation 8(3)(1) of the Regulations shall not in any way circumvent the opportunity of being heard/opportunity to rectify the deficiencies provided under sub-Sections (3) and (4) of Section 10-A of the Medical Council Act. However, the same shall be in strict adherence to the time Schedule fixed in the Regulations and in conformity with the Schedule as laid down in *Royal Medical Trust (supra)*.

53. The reference is answered accordingly.

**CHIEF JUSTICE**

**JAYANT NATH, J**

**V. KAMESWAR RAO, J**

**SEPTEMBER 29, 2015**

*kks/anb/pmc*