

A KANACHUR ISLAMIC EDUCATION TRUST (R)

v.

UNION OF INDIA AND ANOTHER

(Writ Petition (C) No. 468 of 2017)

B AUGUST 30, 2017

[DIPAK MISRA, CJI, AMITAVA ROY AND
A.M. KHANWILKAR, JJ.]

Education/Educational Institutions – Admission in MBBS course – Respondent No.1 had allowed petitioner's college admission for the year 2016-2017 and had mentioned in the Letter of Permission (LOP) that next batch of students for the academic year 2017-18 would be admitted in college only after obtaining permission of respondent no.1 – Subsequent thereto, the MCI caused inspection of the petitioner's college in two successive sessions –

D MCI recorded deficiencies and gave negative recommendation for a period of two academic years i.e. 2017-2018 and 2018-2019 – However, Oversight Committee recommended confirmation of the conditional LOP granted to the petitioner's college – Respondent No.1 concurred with the recommendations of the MCI and debarred the petitioner's college from making admission for the academic year 2017-18 and 2018-19 – Writ Petition – Respondent No.1 directed to consider materials on record afresh – However, Respondent No.1 reiterated its decision to debar the petitioner's college – On appeal, held: The first inspection by MCI of petitioner's college did not divulge any substantial deficiency justifying

F disapproval of the LOP to it – The reason for second surprise inspection within three weeks of the first exercise and that too in absence of any noticeable substantial deficiency, was convincingly not forthcoming – Further, Oversight Committee too observed that the petitioner's college was assessed twice in quick succession for the same purpose and not authorized by it in its guidelines – The Hearing Committee/Central Government did not undertake a dispassionate, objective, cautious and rational analysis of the materials on record and returned wholly casual findings against the petitioner's college – The respondents failed to persuasively establish the deficiencies – In view of the persistent defaults and

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*shortcomings in the decision making process of the respondents, A
the petitioner's college not to be penalized – The conditional LOP
granted to the petitioner's college for the academic year 2016-17
confirmed – Further, petitioner college also entitled to LOP for the
academic year 2017-2018 – Therefore, the date of counselling for
the admissions to the course involved for the academic year 2017-
18 qua petitioner's college extended – Medical Council Act, 1956
– Establishment of Medical College Regulations, 1999 – regn.
8(3)(1)(d).*

*Maxim – Audi Alteram partem – Ingredients of – Right to fair
hearing – Held: Reasonable opportunity of hearing which is
synonymous to 'fair hearing', it is no longer res integra is an important
ingredient of audi alteram partem rule and embraces almost every
facet of fair procedure – The rule of 'fair hearing' requires that the
affected party should be given an opportunity to meet the case
against him effectively and right to fair hearing takes within its
fold a just decision supplemented by reason and rationale – In
instant case, the approach of respondents is markedly incompatible
with the essence and import of the proviso to s.10A(4) mandating
against disapproval by the Central Government of any scheme for
establishment of a college except after giving the person or the
college concerned a reasonable opportunity of being heard –
Medical Council Act, 1956 – s.10A(4).* E

Allowing the writ petition, the Court

HELD: 1. No endeavour has been made by the respondents and that too in the face of an unequivocal direction by this Court, to fairly and consummately examine the materials on record in details before recording a final decision on the issue of confirmation or otherwise of the LOP granted to the petitioner's college/institution. As the impugned order would reveal, it is apparent that for all practical purposes, the Hearing Committee/ Central Government did not undertake a dispassionate, objective, cautious and rational analysis of the materials on record and returned wholly casual findings against the petitioner's college/ institution. This order thus has to be held, not to be in accord with the spirit and purport of the order passed by this Court. Suffice it to state, the order does not inspire the confidence of

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A this Court to be sustained in the attendant facts and circumstances. [Paras 18, 20] [1058-F-G; 1059-D-E]

2. In the predominant factual setting, the approach of the respondents is markedly incompatible with the essence and import of the proviso to Section 10A(4) mandating against

B disapproval by the Central Government of any scheme for establishment of a college except after giving the person or the college concerned a reasonable opportunity of being heard. Reasonable opportunity of hearing which is synonymous to 'fair hearing', it is no longer *res integra* is an important ingredient of

C *audi alteram partem rule* and embraces almost every facet of fair procedure. The rule of 'fair hearing' requires that the affected party should be given an opportunity to meet the case against him effectively and the right to fair hearing takes within its fold a just decision supplemented by reasons and rationale. Reasonable opportunity of hearing or right to 'fair hearing' casts a steadfast

D and sacrosanct obligation on the adjudicator to ensure fairness in procedure and action, so much so that any remiss or dereliction in connection therewith would be at the pain of invalidation of the decision eventually taken. Every executive authority empowered to take an administrative action having the potential of visiting

E any person with civil consequences must take care to ensure that justice is not only done but also manifestly appears to have been done. [Para 19] [1058-H; 1059-A-D]

3. True it is that the Regulations do provide for certain norms of infrastructure to be complied with by the applicant college/institution for being qualified for LOP depending on the

F stages involved. This, however, does not obviate the inalienable necessity of affording a reasonable opportunity of hearing to the person or the college/institution concerned vis-a-vis the scheme for establishment of a college before disapproving the same. The manner in which the respondents, in the individual facts of the

G instant case, have approached the issue, leads to the inevitable conclusion that the materials on record do not support determinatively the allegation of deficiency, as alleged. The respondents having failed to persuasively establish the said deficiencies, as noted in the impugned order, inspite of opportunities available including the one granted by this Court,

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INDIA AND ANOTHER

such a determination cannot be sustained in the facts and circumstances of the case. In view of the persistent defaults and shortcomings in the decision making process of the respondents, the petitioner's college/institution ought not to be penalised. Consequently, on an overall view of the materials available on record and balancing all relevant aspects, the conditional LOP granted to the petitioner's college/institution for the academic year 2016-17 deserves to be confirmed. Having regard to the progression of events, the assertions made by the petitioner in the representations countering the deficiencies alleged, the observations/views expressed by the Oversight Committee in its communication and the DGHS in the hearing conducted which considerably dilute/negate the findings with regard to the deficiencies as recorded by the assessors of the MCI in the inspections conducted, the petitioner's college/institution, as prayed for, is also entitled to LOP for the academic year 2017-18. However, as the Act and Regulations framed thereunder have been envisioned to attain the highest standards of medical education, it is expedient to permit the Central Government/MCI to cause inspection of the petitioner's college/institution in case of genuine necessity and as warranted in law besides adopting other initiatives, as mandated by the Act and Regulations from time to time. In view of this determination, the date of counselling for the admissions to the course involved for the academic year 2017-18 qua the petitioner's college shall stand extended. [Para 20] [1059-E-H; 1060-A-E]

Modern Dental College and Research Centre and others v. State of Madhya Pradesh and others (2016) 7 SCC 353; Glocal Medical College and Super Specialty Hospital and Research Centre v. Union of India and Another (2018) 1 SCC 188 – referred to.

Case Law Reference

(2016) 7 SCC 353	referred to	Para 1	G
[2018] 1 SCC 188	referred to	Para 2	

CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No. 468 of 2017.

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A Under Article 32 of the Constitution of India.

Maninder Singh, ASG, S.G. Hasnain, Mukul Rohatgi, V. K. Vishwanathan, R. Basant, Mukesh Rohatgi, V. Giri, Kapil Sibal, Dr. Rajeev Dhawan, Raju Ramachandran, C.A. Sundaram, Ajit Kumar Sinha, Vikas Singh, Sr. Advs. Mohd. Zahid Hussain, Kamal Mohan Gupta,

B Amit Kumar, Avijit Mani Tripathi, Atul Kumar, Shaurya Sahay, Ms. Rekha Bakshi, Ms. Vidisha Kumar, Abhishek Vashisht, Ayush Chaurasia, A. Ramesh, Syed Ahmad Naqvi, Ms. Shilpi Gupta, G. Umapathy, Rakesh K. Sharma, A. Leo G. Rozario, Aditya Singh, Gaurav Bhatia, Utkarsh Jaiswal, Abhishek Singh, Ranjan Kumar Pandey, K.P. Gautam, Sandeep Bisht, Anshuman Bhadur, Amitesh Kumar, Shashank Shekhar Singh, Ms. Priti Kumari, Ms. Babita Kushwaha, Mritunjay Kumar Sinha, Amitesh Kumar, Rohit Bhat, V. Shyamohan, Surya Prakash, R.K. Rathore, Vibhu Shanker Mishra, Gurmeet Singh Makker, Gaurav Sharma, Ms. Amandeep Kaur, Prateek Bhatia, Dhawal Mohan, Ms. Deepeika Kalia, Himanshu, Advs for the appearing parties.

D The Judgment of the Court was delivered by

AMITAVA ROY, J. 1. The instant application under Article 32 of the Constitution of India is for laciniating the order dated 31.5.2017 issued by the respondent No. 1— Union of India, thereby debarring the medical college of the petitioner in the name and style of “*Kanachur Institute of Medical Sciences and Research Centre*” (for short, hereinafter to be referred to as “college/institution”) at Deralakatte, Mangalore, Karnataka from making admission in MBBS Course for the academic years 2017-18 and 2018-19 and authorizing as well the Medical Council of India, (for short hereinafter referred to as “MCI”) to encash the bank guarantee of Rs. 2 crores furnished by it. Further, an appropriate writ in the nature of mandamus has also been sought for to direct the respondents to grant renewal of permission for the academic year 2017-18 in terms of the recommendations of the Oversight Committee, constituted by this Court by order dated 2.5.2016, rendered in *Modern Dental College and Research Centre and others vs. State of Madhya Pradesh and others*¹ to oversee the functioning under the Indian Medical Council Act, 1956, (for short, hereafter to be referred to as “The Act”) and also to permit the petitioner’s college/institution to admit students for the said academic year.

¹(2016) 7 SCC 353

2. The facts unfolded hereinafter would attest that in the previous round of contest, the aforementioned order dated 31.5.2017 was annulled by this Court's verdict dated 1.8.2017 delivered in a batch of writ petitions including the one in hand, the lead petition being Writ Petition (C) No. 411 of 2017 (*Glocal Medical College and Super Specialty Hospital and Research Centre vs. Union of India and Another*) and the issue of confirmation or otherwise of the letter of permission (for short "LOP") as involved for the establishment of the above college of the petitioner was referred back to the Central Government for consideration afresh of the materials on record, pertaining thereto and to take a reasoned decision on a re-evaluation of the recommendations/views of the MCI, Hearing Committee, Director General of Health Services (for short, hereafter to be referred to as "DGHS") and the Oversight Committee and also after affording an opportunity of hearing to the petitioner college/institution, to the extent necessary. A time frame was also fixed for that purpose. The Central Government, having reiterated its decision, to debar the petitioner's college/institution from conducting admission in the MBBS for the academic years 2017-18 and 2018-19, as well as to authorise encashment of its bank guarantee by MCI, it has taken up the cudgel against the same in its second outing.

3. We have heard Dr. Rajeev Dhawan, learned senior counsel for the petitioner, Mr. Maninder Singh, learned Additional Solicitor General for the Union of India and Mr. Vikas Singh, learned senior counsel for the Medical Council of India.

4. The prefatory facts need be scripted to comprehend the dissension in essential particulars. The petitioner had submitted an application/scheme for establishment of a new medical college for the academic year 2016-17, as required under the Act and the Establishment of Medical College Regulations, 1999 (abbreviated hereinafter as the "Regulations") framed thereunder before the Government of India, the Ministry of Health, Family Welfare (Department of Health and Family Welfare) Government of India. The same was forwarded to the MCI for evaluation and recommendations as per the Act, whereafter an inspection was made of the college on 7th and 8th January, 2016, in course whereof, certain deficiencies were noticed. The Executive Committee of the MCI eventually recommended to the Central Government not to issue the LOP for the establishment of the college for the academic year 2016-17.

A 5. An opportunity of hearing was afforded to the college by the Hearing Committee of the Central Government whereafter the matter was referred back to the MCI for review. The MCI, however, reiterated its recommendation disapproving the scheme of the petitioner, whereupon the Central Government accepted the same and communicated its decision to the petitioner vide its letter dated 8.6.2016. The Oversight Committee, as above, intervened and after obtaining the compliance affidavit from the petitioner and further scrutiny thereafter, by its communication dated 11.8.2016 approved the scheme for establishment of new medical college of the petitioner with an annual intake of 150 for the academic year 2016-17, subject to certain conditions as mentioned

B therein. Subsequent thereto, the Central Government in deference of such recommendation of the Oversight Committee, by its letter 29.8.2016/ 20.9.2016, issued the LOP for establishment of new college in the name and style of *Kanachur Institute of Medical Sciences* with an annual intake of 150 MBBS seats for the academic year 2016-17 subject to the following conditions:

D (i) An affidavit from the Dean/Principal and Chairman of the Trust/Society/ University/Company etc. concerned, affirming fulfillment of all deficiencies and statements made in the respective compliance report submitted to MHWB by 22 June 2016.

E (ii) A bank guarantee in the amount of Rs. 2 crore in favour of MCI, which will be valid for 1 year or until the first renewal assessment, whichever is later. Such bank guarantee will be in addition to the prescribed fee submitted along with the application.

2. The OC has also stipulated as follows:

F (a) OC may direct inspection to verify the compliance submitted by the college and considered by OC, anytime after 30 September, 2016.

(b) In default of the conditions (i) and (ii) in para 1 above and if the compliance are found incomplete in the inspection to be conducted after 30 September, 2016, such college will be debarred from fresh intake of students for 2 years commencing 2017-18."

G 6. This letter further mentioned that the permission was being accorded initially for a period of one year and would be renewed on yearly basis subject to the verification of the achievement of the annual

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targets as indicated in the scheme and revalidaiton of the performance bank guarantee and that such process of renewal of permission would continue till such time, the establishment of medical college and expansion of hospital facilities were completed and a formal recognition of the medical college was granted. It was mentioned as well that the next batch of students in MBBS course for the academic year 2017-18 would be admitted in the college only after obtaining permission of the Central Government and fulfilling of the conditions, enumerated hereinabove. The petitioner's college/institution thereafter admitted students to the above course for the academic year 2016-17 and presently they are continuing their studies.

7. According to the petitioner, in compliance of the conditions enumerated in the letter dated 20.8.2016/20.9.2016, it did submit the affidavit of the authority concerned affirming the fulfillment of all deficiencies and statements made in the compliance report before the Central Government and furnished as well, the bank guarantee.

8. Subsequent thereto, the MCI caused inspection of the petitioner's college/institution to be made in two successive sessions, the first during 17-18.11.2016 and second during 9-10.12.2016.

9. The petitioner promptly thereafter submitted a representation on 15.12.2016 inter alia questioning the permissibility and bona fide of the second inspection on 9-10.12.2016 firstly, being in violation of clause 8(3)(1)(d) of the Regulations, as amended on 18.3.2016 prohibiting such inspections at least two days before and two days after important religious festivals/holidays declared by the Central/State Governments and secondly, as the findings in the previous inspection conducted on 17-18.11.2016 testified that the petitioner's college/institution was largely compliant with the various norms and standards of physical infrastructure, teaching faculty and clinical materials, the second inspection was even otherwise unmerited having been undertaken within three weeks of the previous exercise was highlighted. It was pleaded as well that the petitioner's college being a recognized minority educational institution, the inspection on 9-10.12.2016, just one working day before the festival of Milad-un-Nabi notified on 12.12.2016, 11.12.2016 being a Sunday, was clearly impermissible in law and displayed bias and a predetermined mind. According to the petitioner, the inspection team of the MCI adamantly refused to acknowledge the physical infrastructure, teaching faculty and the clinical materials in place in course of the inspection held

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- A on 9-10.12.2016 and submitted its report contrary to the facts. The petitioner also submitted a detailed representation on 16.1.2017 before the Central Government furnishing the facts and figures controverting the findings of deficiencies recorded by the MCI with supporting documents.
- B 10. The Executive Committee of the MCI, on a consideration of the assessment reports, based on the two inspections, recorded the deficiencies noticed and recommended to the Central Government that the petitioner's college/institution be debarred from admitting students in the MBBS course for a period of two academic years i.e. 2017-18 and 2018-19, as even after giving an undertaking that they had furnished the entire infrastructure for the establishment of new medical college, it was found to be grossly deficient. The Central Government thereafter granted hearing to the petitioner's college/institution on 17.1.2017 through a Hearing Committee in which the DGHS participated as well. The proceedings of the said hearing were next forwarded to the Central
- C Government and eventually to the Oversight Committee along with other relevant records. As noted in the order 1.8.2017, passed by this Court, while dealing with the challenge to the order dated 31.5.2017, it was, amongst others minuted that the proceedings of the hearing on 17.1.2017, as forwarded to the Oversight Committee was not in full, inasmuch as the observations of the DGHS against the deficiencies reported by the MCI were not included therein. Be that as it may, the Oversight Committee by its letter dated 1.4.5.2017 dealt with the deficiencies highlighted by the MCI and on the basis of the assessment made by it, recommended confirmation of the conditional LOP granted to the petitioner's college. As the Central Government, the above
- F notwithstanding, by its order dated 31.5.2017 concurred with the recommendations of the MCI and directed debarment of the petitioner's college/institution from admitting students in the above course for the two academic years 2017-18 and 2018-19 and also authorized the MCI to encash the bank guarantee, the same was assailed before this Court in this writ petition and to reiterate, was interfered with by this Court's order dated 1.8.2017 with a direction to the Central Government to re-examine the materials on record on merits and enter a reasoned decision.
- H 11. The overwhelming premise in which the above direction was issued can be culled out from the following excerpts of the aforementioned order dated 01.08.2017.

“21. A bare perusal of the letter dated 31.05.2017 would A
demonstrate in clear terms that the same is de hors any reason in
support thereof. It mentions only about the grant of conditional
permission on the basis of the approval of the Oversight Committee,
and an opportunity of hearing vis-à-vis the recommendations of
the MCI in its letter dated 15.01.2017 highlighting the deficiencies
detected in course of the inspection undertaken on 21st and 22nd
December, 2016, but is conspicuously silent with regard to the
outcome of the proceedings of the Hearing Committee, the
recommendations recorded therein both of the Committee and
the DGHS and more importantly those of the Oversight Committee
conveyed by its communication dated 14.05.2017, all earlier in
point of time to the decision taken. This assumes importance in
view of the unequivocal mandate contained in the proviso to Section
10A(4) of the Act, dealing with the issue, amongst others of
establishment of a medical college. The relevant excerpt of sub-
section 4 of Section 10A of the Act for ready reference is set out
hereinbelow:

“(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.”

22. Though as the records testify, a hearing was provided to the petitioner colleges/institutions through the Hearing Committee constituted by the DGHS (as mentioned in the proceedings dated 23.3.2017) qua the recommendations of the MCI contained in its letter dated 15.01.2017, as noted hereinabove, the proceedings of the Hearing Committee do reflect varying views of the Hearing Committee and the DGHS, the latter recommending various aspects bearing on deficiency to be laid before the OC for an

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A appropriate decision. The Central Government did forward, albeit a pruned version of the proceedings of the Hearing Committee to the Oversight Committee after a time lag of almost six weeks. The reason therefor is however not forthcoming. The Oversight Committee, to reiterate, though on a consideration of all the relevant facts as well as the views of the MCI and the proceedings of the Hearing Committee as laid before it, did cast aside the deficiencies minuted by the MCI and recommended confirmation of the letters of permission of the petitioner colleges/institutions, the impugned decision has been taken by the Central Government which on the face of it does not contain any reference whatsoever of all these developments.

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23. As a reasonable opportunity of hearing contained in the proviso to Section 10A(4) is an indispensable pre-condition for disapproval by the Central Government of any scheme for establishment of a medical college, we are of the convinced opinion that having regard to the progression of events and the divergent/irreconcilable views recommendations of the MCI, the Hearing Committee, the DGHS and the Oversight Committee, the impugned order, if sustained in the singular facts and circumstances, would be in dis-accord with the letter and spirit of the prescription of reasonable opportunity of hearing to the petitioner institutions/colleges, as enjoined under Section 10A(4) of the Act. This is more so in the face of the detrimental consequences with which they would be visited. It cannot be gainsaid that the reasonable opportunity of hearing, as obligated by Section 10A(4) inheres fairness in action to meet the legislative edict. With the existing arrangement in place, the MCI, the Central Government and for that matter, the Hearing Committee, DGHS, as in the present case, the Oversight Committee and the concerned colleges/institutions are integral constituents of the hearing mechanism so much so that severance of any one or more of these, by any measure, would render the process undertaken to be mutilative of the letter and spirit of the mandate of Section 10A(4).

24. Having regard to the fact that the Oversight Committee has been constituted by this Court and is also empowered to oversee all statutory functions under the Act, and further all policy decisions of the MCI would require its approval, its recommendations, to

state the least, on the issue of establishment of a medical college, A as in this case, can by no means be disregarded or left out of consideration. Noticeably, this Court did also empower the Oversight Committee to issue appropriate remedial directions. In our view, in the overall perspective, the materials on record bearing on the claim of the petitioner institutions/colleges for confirmation of the conditional letters of permission granted to them require a fresh consideration to obviate the possibility of any injustice in the process. B

25. In the above persuasive premise, the Central Government is hereby ordered to consider afresh the materials on record pertaining to the issue of confirmation or otherwise of the letter of permission granted to the petitioner colleges/institutions. We make it clear that in undertaking this exercise, the Central Government would re-evaluate the recommendations/views of the MCI, Hearing Committee, DGHS and the Oversight Committee, as available on records. It would also afford an opportunity of hearing to the petitioner colleges/institutions to the extent necessary. The process of hearing and final reasoned decision thereon, as ordered, would be completed peremptorily within a period of 10 days from today. The parties would unfailingly co-operate in compliance of this direction to meet the time frame fixed." C D

12. The Central Government by its order dated 10.8.2017 in purported compliance of this Court's direction contained in the order dated 1.8.2017 has reiterated its decision to debar the petitioner's college/institution from admitting students in the MBBS course for the academic years 2017-18 and 2018-19 and to authorize the MCI to encash the bank guarantee of Rs. 2 crores. E F

13. The petitioner seeks to impeach this order in the interim application under consideration. For ready reference, the observations of the Hearing Committee of the Central Government, based on which the decision presently impugned has been taken, are extracted hereinbelow: G

"The college submitted that MCI conducted compliance verification on 17-18 November, 2016 where the deficiency of faculty was pointed out as nil and residents as 2% only. However, without assigning any reason, MCI visited the college again on H

A 9-10 December, 2016 to re-inspect. Still, the college complied and MCI conducted another inspection. This time the deficiency of faculty and residents was 12.31% and 32.61% respectively. The college further alleged that not only did the MCI conducted 2nd surprise inspection in quick succession, but the 2nd inspection was just 3 days before Eid which is a major festival, the institution being a minority institution. It may be noted that 11.12.2016 was Sunday. Eid fell on 12.12.2016. The college was inspected on 09-10 December, 2016. The college requested that the inspection report of November should be considered.

B The Committee has noted the submissions made by the college. The college has not explained the deficiency of faculty. The ground of leave on account of NEET (PG) exam could be accepted in case of few residents and not for all 10 as submitted by the college. NEET (PG) exam was held online over a period of one week in early December but a candidate is required to appear in only one session.

C The college has tried to dismiss many observations made by the assessors as non-specific and vague and has chosen not to respond. However, in case of 3 particular cases cited by the assessors at Sr. NO. 11(a) to (c) also the college has not responded. The college also did not respond to the charge of 3 residents signing in the register in advance.

D The Committee on random perusal of OPD data furnished by the college at p/277 & p/282 observed that at least 5 instances of multiple entries of same patient in the same department apparently to inflate the OPD figures. There could be more of such instances. The compliance submitted by the college thus does not seem to be reliable. Further, the college is evasive on many observations made by assessors which they ought to have responded. Such observations cannot be dismissed by labeling them as subjective. The assessors are clinical experts and would be expected to note down a comment after their satisfaction.

E It is a fact that the November inspection report of MCI does not convey any substantial deficiency warranting disapproval. But in the opinion of the Committee, MCI was not precluded from conducting inspection subject to sufficient reason and justification.

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The Committee is of the view that notwithstanding the November assessment report, the college has failed to answer the objections raised in subsequent inspection. The compliance as noted above is not reliable. The Committee agrees with the decision of the Ministry conveyed by letter dated 31.5.2017 to debar the college for two years and also permit MCI to encash bank guarantee.” A

14. As would be evident from the quoted text, the following are the salient features gleanable from the observations of the Hearing Committee:

a) The inspection conducted on 17-18.11.2016 reveal that the deficiencies of the faculty was nil and of residents was 2% only and that it did not convey any substantial deficiency warranting disapproval. C

b) In the next inspection undertaken on 9-10.12.2016, the deficiency of faculty and residents was respectively 12.31% and 32.61%. D

c) The college has not explained the deficiency of faculty.

d) Though the absence of faculty on the ground of leave due to NEET (P.G.) examination could be accepted in case of few residents, but not for all. This is more so as the NEET (P.G.) examination was held online over a period of one week in early December and a candidate was required to appear in only one session. E

e) The college has tried to dismiss many observations, made by the assessors as non-specific and vague but has chosen not to respond.

f) In three cases, in particular, as noticed in clause (xii)(a) to (c) (wrongly noted as serial no. 11(a) to (c), vis-a-vis patients, Ms. Laxmamma, Ms. Sahfeena and Ms. Mamatha in the inspection report, the petitioner's college has not responded.

g) The petitioner's college has also not responded to the charge of three residents signing in register in advance.

h) On a perusal of the OPD data, furnished by the petitioner's college, at least five instances of multiple entries of the same patient in the same department were detected to inflate the OPD figures and that there could be more of such instances.

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- A i) The compliance submitted by the petitioner's college thus does not seem to be reliable.
- j) The reply of the petitioner's college had been evasive on many observations made by the assessors, who are clinical experts.
- B k) MCI was not precluded from conducting successive inspections subject to sufficient reasons and justifications.
- l) The petitioner's college has failed to respond to the objections raised in the subsequent inspection.

15. Dr Dhawan, learned senior counsel for the petitioner has insistently urged that in the face of the findings in the inspection conducted on 17-18.11.2016, which did not divulge any deficiency in the infrastructure as a whole, the second inspection on 9-10.12.2016 was wholly uncalled for and lacks bona fide. Further, the petitioner's college being a minority institution, such inspection was also in violation of the amended Regulation 8(3)(1)(d) of the Regulations, as amended, the festival being on 12.12.2016 and 11.12.2016 being a Sunday. The learned senior counsel referred, amongst others to the representations submitted by the petitioner controverting the findings of deficiencies allegedly noticed by the inspection team as well as the observations, in particular of the Oversight Committee recorded in communication 14.5.2017 and also of DGHS in course of hearing on 17.1.2017 to repudiate the conclusions of the Committee that it had failed to respond or explain such deficiencies. Dr. Dhawan also invited our attention to the explanation furnished by the petitioner for the absence of the residents who were on leave for NEET (PG) examination during that period and pleaded that the observation to this effect by the Hearing Committee was against the weight of the records and was thus wholly inferential. The learned senior counsel also referred to the statement of the Professor and Head of Department of Surgery recorded on 13.12.2016 detailing the treatment administered to the three patients named in the clause xii (a) to (c) (mentioned as serial number 11 (a) to (c) in the order dated 10.8.2017) to negate the observation of the Hearing Committee that the petitioner's college/institution had not responded thereto. Dr. Dhawan was critical as well of the conclusion of the Hearing Committee that there could be more instances of multiple entries in the OPD figures as wholly unfounded and hypothetical.

16. Per contra, learned senior counsel for the respondents have urged that the inspection report having amply demonstrated lingering

deficiencies in the infrastructure and facilities of the petitioner's college/institution in contravention of the enjoinder of the Regulations to that effect, the impugned decision is unassailable, more particularly in view of the persistent failure of the petitioner to make up such deficiencies inspite of its undertakings and the affidavit of compliance as per the conditions, subject to which it had been granted the conditional LOP. While contending that in the facts of the case, the second inspection on 9-10.12.2016 was both permissible and merited in the attendant facts and circumstances and further was not in violation of the amended clause 8(3)(1)(d) of the Regulations, it was asserted that the petitioner's college/institution having failed to rectify the deficiencies detected or to furnish any convincing explanation therefor, they are not entitled to any relief in the face of otherwise binding statutory ordainments. A B C

17. In the above eventful backdrop, we have cautiously considered the rival assertions, which assuredly would have to be evaluated on the measure of the operative directions contained in the order dated 1.8.2017, whereby the issue involved was referred to the Central Government for an appropriate reasoned decision on a reevaluation of the recommendations/views of the MCI, Hearing Committee, DGHS and Oversight Committee and after affording an opportunity of hearing to the petitioner's college/institution to the extent necessary. That against the inspections conducted by the MCI, the petitioner's college/institution had submitted representations on 15.12.2016 and 16.1.2017 before the Central Government is a matter of record. That the report qua the inspection conducted on 17-18.11.2016 did not disclose any substantial deficiency warranting disapproval as observed by the Hearing Committee is also not in dispute. It is unambiguously clear that the inspection of the petitioner's college undertaken on 17-18.11.2016 did not divulge any substantial deficiency justifying disapproval of the LOP to it. The reason for the surprise inspection on 9-10.12.2016, i.e. within three weeks of the first exercise and that too in absence of any noticeable substantial deficiency, is convincingly not forthcoming. The fact that the petitioner's college/institution is a minority institution and that a major festival for the said community was scheduled on 12.12.2016 and that the day previous thereto i.e. 11.12.2016 was a Sunday, are facts which may not be wholly irrelevant. The observation of the Hearing Committee that petitioner's college/institution has not explained the deficiency of faculty is belied by its representations and also the observations amongst others of the Oversight Committee. The conclusion that a few residents might have D E F G H

- A been on leave on account of NEET (PG) examination but not all, also seems to be inferential in the face of exhaustive explanation provided by the petitioner's college/institution. In this context, the observation of the Oversight Committee in its communication dated 14.5.2017 that eight colleges including the petitioner's college/institution had been assessed twice in quick succession for the same purpose though not authorized by it in its guidelines, deserves attention. The Hearing Committee seems to have ignored the explanation provided by the Professor and Head of Department of Surgery, explaining the treatment given to the three patients named in clause xii (a) to (c) of the Inspection Report in concluding that, the petitioner's college/institution had not responded thereto. Its deduction
- B that there might have been more instances of multiple entries in the OPD patient statistics based on five such instances is also visibly presumptive. The striking feature of the observations of the Hearing Committee, on the basis of which the impugned decision has been rendered, is the patent omission on its part to consider the relevant materials on record, as mandated by this Court by its order dated
- C 1.8.2017. The findings of the Hearing Committee, in our comprehension, thus stands vitiated by the non-consideration of the representations/ explanations of the petitioner's college/institution, the documents supporting the same, the recommendations/views of the MCI, the observation of the earlier Hearing Committee, DGHS and Oversight
- D Committee, as available on records. The Central Government as well readily concurred with the observations of the Hearing Committee in passing the impugned order, which per se, in our estimate, is unsustainable in the singular facts and circumstances of the case

18. As the impugned order dated 10.08.2017 would reveal, it is apparent that for all practical purposes, the Hearing Committee/Central Government did not undertake a dispassionate, objective, cautious and rational analysis of the materials on record and in our view, returned wholly casual findings against the petitioner's college/institution. This order thus has to be held, not to be in accord with the spirit and purport of the order dated 01.08.2017 passed by this Court. Suffice it to state, the order does not inspire the confidence of this Court to be sustained in the attendant facts and circumstances.

19. In the predominant factual setting, noted hereinabove, the approach of the respondents is markedly incompatible with the essence and import of the proviso to Section 10A(4) mandating against disapproval

by the Central Government of any scheme for establishment of a college except after giving the person or the college concerned a reasonable opportunity of being heard. Reasonable opportunity of hearing which is synonymous to 'fair hearing', it is not longer *res integra* is an important ingredient of *audi alteram partem rule* and embraces almost every facet of fair procedure. The rule of 'fair hearing' requires that the affected party should be given an opportunity to meet the case against him effectively and the right to fair hearing takes within its fold a just decision supplemented by reasons and rationale. Reasonable opportunity of hearing or right to 'fair hearing' casts a steadfast and sacrosanct obligation on the adjudicator to ensure fairness in procedure and action, so much so that any remiss or dereliction in connection therewith would be at the pain of invalidation of the decision eventually taken. Every executive authority empowered to take an administrative action having the potential of visiting any person with civil consequences must take care to ensure that justice is not only done but also manifestly appears to have been done.

20. No endeavour whatsoever, in our comprehension, has been made by the respondents and that too in the face of an unequivocal direction by this Court, to fairly and consummately examine the materials on record in details before recording a final decision on the issue of confirmation or otherwise of the LOP granted to the petitioner's college/institution as on 12.09.2016. True it is that the Regulations do provide for certain norms of infrastructure to be complied with by the applicant college/institution for being qualified for LOP depending on the stages involved. This however does not obviate the inalienable necessity of affording a reasonable opportunity of hearing to the person or the college/institution concerned vis-a-vis the scheme for establishment of a college before disapproving the same. The manner in which the respondents, in the individual facts of the instant case, have approached the issue, leads to the inevitable conclusion that the materials on record do not support determinatively the allegation of deficiency, as alleged. The respondents having failed to persuasively establish the said deficiencies, as noted in the impugned order dated 10.08.2017, inspite of opportunities available including the one granted by this Court, such a determination cannot be sustained in the facts and circumstances of the case. We are of the considered opinion that in view of the persistent defaults and shortcomings in the decision making process of the respondents, the petitioner's college/

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- A institution ought not to be penalised. Consequently, on an overall view of the materials available on record and balancing all relevant aspects, we are of the considered opinion that the conditional LOP granted to the petitioner's college/institution on 12.09.2016 for the academic year 2016-17 deserves to be confirmed. Having regard to the progression of events,
- B the assertions made by the petitioner in the representations countering the deficiencies alleged, the observations/views expressed by the Oversight Committee in its communication dated 14.05.2017 and the DGHS in the hearing held on 17.01.2017, which considerably dilute/negate the findings with regard to the deficiencies as recorded by the assessors of the MCI in the inspections conducted, we hold that the
- C petitioner's college/institution, as prayed for, is also entitled to LOP for the academic year 2017-18. We order accordingly. However, as the Act and Regulations framed thereunder have been envisioned to attain the highest standards of medical education, we consider it expedient to permit the Central Government/MCI to cause inspection of the petitioner's college/institution in case of genuine necessity and as warranted in law besides adopting other initiatives, as mandated by the Act and Regulations from time to time. In view of this determination, the date of counselling for the admissions to the course involved for the academic year 2017-18 qua the petitioner's college shall stand extended till 05.09.2017. The impugned order dated 10.08.2017 is thus set aside. The writ petition
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- E is allowed. We make it clear that the decision rendered and the directions issued are in the singular facts and circumstances of the case. I.A. No. 73463 of 2017 also stands disposed of.

Ankit Gyan

Pettition allowed.