

PONNAIYAH RAMAJAYAM INSTITUTE OF
MEDICAL SCIENCES

v.

UNION OF INDIA AND ANOTHER

(Writ Petition (C) No. 438 of 2017)

SEPTEMBER 22, 2017

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

Indian Medical Council Act, 1956 – s.10A(7) – Permission for establishment of a new medical college – Petitioner sought Letter of Permission (LOP) for establishment of its new medical college for the academic year 2016-17 and also renewal of such LOP for the next academic year 2017-18 – Conditional permission granted by respondent for establishment of the College for academic year 2016-17 – However, eventually in view of lingering deficiencies in its infrastructure and clinical materials, Ministry of Health and Family Welfare by order dtd. 09.06.17 debarred the Petitioner-College from admitting students for next two academic years i.e. 2017-18 and 2018-19 – Medical Council of India was authorised to encash the bank guarantee of Rs. 2 crores submitted by petitioner – Challenged by petitioner – Supreme Court by its order dtd. 01.8.2017 directed Central govt. to take a fresh decision after considering the materials on record and affording an opportunity of hearing to the petitioner – Hearing Committee of Central govt. considered the matter afresh and Central govt. by order dtd. 10.8.2017 reiterated its earlier decision dtd. 9.6.2017 – Propriety of – Held: The findings in the inspections reveal several deficiencies including those in faculty, residents, OPD attendance, bed occupancy etc. – Deficiencies in other areas in the reports, are also not negligible – In the backdrop of such deficiencies recorded in successive inspections, it is not possible to readily discard the eventual findings recorded by Hearing Committee and in the impugned order dated 10.8.2017, as bereft of any reason – Respondents are the best judge to assess the findings in inspection reports on the touchstone of statutory imperatives to ensure the required standard of medical education – Court is ill equipped for want of judicially manageable parameters to substitute the findings

- A *of experts on such issue by its views – Impugned decision not interfered with – Petitioner is not entitled to LOP for the academic year 2017-18 and the application, if submitted by it for the academic year 2017-18 would be treated as one for 2018-19 –Petitioner to keep the bank guarantee deposited with MCI alive, however, MCI would not encash the same – Further, MCI to conduct a fresh*
- B *inspection within a period of three months and afford petitioner an opportunity to remedy the deficiencies, if any – This inspection would be carried out for the purpose of LOP for the academic year 2018-19 – Central Government then to take a final decision in accordance with law – Students admitted on the basis of LOP for the academic*
- C *year 2016-17, allowed to continue their studies in the petitioner-college till the completion of the course.*

Constitution of India – Art.227 – Judicial review – Scope of – Discussed.

Disposing of the petition, the Court

- D **HELD: 1.1** The findings in the inspections conducted by the MCI revealed several deficiencies including those in faculty, residents, OPD attendance, bed occupancy etc. had been detected. Whereas as per the said reports, the deficiency in faculty had fluctuated from 22.72% to 46.15%, in residents, it ranged
- E from 26.09% to 45.65%. The deficiencies in other areas, as finds mention in the reports, are also not negligible. [Para 20] [1114-C-D]

- 1.2** The exercise of power of judicial review and the extent to which it has to be done would vary from case to case and would
- F depend, amongst others on the factual projections. Thus, in exercise of power of judicial review, re-appreciation of the materials on record, as otherwise warranted by an appellate forum is both inexpedient and uncalled for. In the backdrop of the deficiencies recorded in the successive inspections conducted
- G by the MCI as noted by the Hearing Committee as well as the rival assertions *vis-a-vis* the same, it is not possible to readily discard the eventual findings recorded by the Hearing Committee and in the impugned order dated 10.8.2017, as bereft of any reason. This is more so, in the face of the statutory obligation cast on the MCI under the Act and the Regulations framed
- H thereunder to sustain and enhance the excellence in medical

education which eventually would cater to the exigencies of public health. The respondents are the best judge to assess the findings in the inspection reports cumulatively on the touchstone of the statutory imperatives to ensure the required standard of medical education and achieve the paramount and salutary objective of the desired quality of health facilities in the public sector. In a way, a court is ill equipped for want of judicially manageable parameters to substitute the findings of experts on such issue by its views, which otherwise is inexpedient as well. [Paras 23-26] [1115-D-H; 1116-A-D]

Royal Medical Trust (Registered) and Another v. Union of India and Another (2015) 10 SCC 19 – relied on.

Modern Dental College and Research Centre and others v. State of Madhya Pradesh and others (2016) 7 SCC 353 ; *Royal Medical Trust and Another v. Union of India and Another* 2017(11) SCALE 307 – referred to.

Case Law Reference

(2016) 7 SCC 353	referred to	Para 8
2017 (11) SCALE 307	referred to	Para 19
(2015) 10 SCC 19	relied on	Para 19

CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil)
No.438 of 2017.

Under Article 32 of the Constitution of India.

S.G. Hasnain, Mukul Rohatgi, V.K. Vishwanathan, R. Basant, Mukesh Rohatgi, V. Giri, Kapil Sibal, Dr. Rajeev Dhawan, Raju Ramachandran, C.A. Sundaram, Sr. Advs., Mohd. Zahid Hussain, Kamal Mohan Gupta, Amit Kumar, Avijit Mani Tripathi, Atul Kumar, Shaurya Sahay, Ms. Rekha Bakshi, Ms. Vidisha Kumar, Abhishek Vashisht, Ayush Chaurasia, A. Ramesh, Syed Ahmad Naqvi, Shilpi Gupta, G. Umamathy, Rakesh K. Sharma, A. Leo G. Razario, 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, Rohit Bhat, V. Shyamohan, Surya Prakash, Advs for the Appellant.

- A Maninder Singh, ASG, Ajit Kumar Sinha, Vikas Singh, Sr. Advs, R.K. Rathore, Vibhu Shanker Mishra, Gurmeet Singh Makker, Gaurav Sharma, Ms. Amandeep Kaur, Prateek Bhatia, Dhawal Mohan, Deepeika Kalia, Himanshu, Advs for the Respondents.

The Judgment of the Court was delivered by

- B **AMITAVA ROY, J.** 1. The instant adjudication witnesses a relentless pursuit of the petitioner to secure the letter of permission (for short, hereafter referred to as “LOP”) for the establishment of its new medical college in the name & style of “*Ponnaiyah Ramajayam Institute of Medical Sciences and Technology*” at Manamai-Nallur, Tamil Nadu with an annual intake of 150 MBBS students for the academic year 2016-17 and further renewal of such LOP for the next academic year 2017-18.

2. As the facts would unfold hereinafter, conditional permission was granted for such establishment for the academic year 2016-17, but eventually on the detection of lingering deficiencies in its infrastructure and clinical materials, it was, by order dated 9.6.2017 of the Government of India, Ministry of Health and Family Welfare, debarred from admitting students for the next two academic years 2017-18 and 2018-19 and the Medical Council of India, (for short hereinafter referred to as “MCI”) was authorised to encash the bank guarantee of Rs. 2 crores submitted by it in terms of the stipulations, subject to which such conditional permission had been granted. This order was successfully challenged by the petitioner in the instant writ petition, whereupon by this Court’s verdict dated 1.8.2017 rendered 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*), this order of debarment and encashment of bank guarantee was interfered with and the issue of confirmation or otherwise of the LOP was remanded to the Central Government for fresh consideration of the materials on record and a decision thereon after affording an opportunity of hearing to the petitioner/college to the extent necessary. In undertaking this exercise, the Central Government was, amongst others directed to re-evaluate 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, as available on records.

3. Thereafter, the Hearing Committee of the Central Government considered the matter afresh and after the appraisal of the oral and written submissions of the petitioner/college, submitted its report, whereupon the Central Government by order dated 10.8.2017 has reiterated its earlier decision dated 9.6.2017 to debar the petitioner/college from admitting students in next two academic years i.e. 2017-18 and 2018-19 and also to authorise the MCI to encash the bank guarantee of Rs. 2 crores. Noticeably, after setting at naught the earlier order dated 9.6.2017 of the Central Government, the writ petition was kept pending before this Court. The petitioner has thus returned with the impeachment of the order dated 10.8.2017.

4. We have heard Mr. Mukul Rohatgi, 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.

5. The foundational facts in bare essentials present the backdrop. As required under Section 10A of the Indian Medical Council Act, 1956 (for short, hereinafter to be referred to as "the Act") and the Establishment of Medical College Regulations, 1999 (abbreviated hereinafter as the "Regulations") framed thereunder, the petitioner had submitted its scheme for grant of LOP to establish its new medical college with the annual intake of 150 MBBS seats for the academic year 2016-17 as referred to hereinabove. The MCI conducted assessment of the college on 29/30.12.2015 and on a consideration of the assessment report, its Executive Committee, in its meeting held on 30.1.2016 noticed the following deficiencies/short-comings in its infrastructure and clinical facilities:

"I. Deficiency of faculty is 46.15% as detailed in the report.

II Shortage of Residents is 45.65% on day of assessment.

III. OPD attendance is 467 on day of assessment against 600 required.

IV. Bed occupancy was 30% on day of assessment.

V Space between 2 beds is < 1.5m in some wards.

VI There was NIL Major operation on day of assessment.

VII. There was NIL Normal Delivery & Nil Caesarean Section on day of assessment.

A VIII. Histopathology workload is shown as 92 which is not feasible as NIL Major operation was performed on day of assessment.

IX Data of patients in ICCU & ICUs on day of assessment are not provided.

B X. Blood Bank license is not available.

XI. Students' Hostels: Study room is not air-conditioned.

XII. Anatomy department: NIL cadavers are available."

6. Based on the above findings, the MCI by its letter dated 31.1.2016 recommended to the Central Government not to issue LOP to the petitioner/college, as prayed for, whereafter the Central Government afforded the petitioner/college an opportunity of hearing under Section 10A(4) of the Act. Subsequent thereto, a compliance verification assessment was carried out by the MCI on 10.3.2016 and the resultant report along with the earlier report were analysed by its Executive Committee, which again noted the following deficiencies in its meeting held on 13.5.2016.

"I. Deficiency of faculty is 38.46% as detailed in the report.

II Shortage of Residents is 26.09%, as detailed in the report.

E III OPD attendance on day of assessment is 371 against requirement of 600.

IV. Bed occupancy on day of assessment is 12.66%.

V There was NIL major operation on day of assessment.

F VI. There was NIL Normal Delivery & Nil Caesarean Section on day of assessment.

VII. Histopathology & Cytopathology workload on day of assessment is only 1 each which is grossly inadequate.

G VIII. There was NIL patient in ICCU & all ICUs on day of assessment.

IX. Blood Bank license is not available.

X. Casualty attendance was only 08 on day of assessment.

XI. Radiological investigation workload is inadequate."

H

7. As a consequence, the MCI by its letter dated 14.5.2016, recommended its disapproval of the scheme submitted by the petitioner under Section 10A for the academic year 2016-17, which was accepted by the Central Government. A

8. Meanwhile, this Court by its decision on 2.5.2016, rendered in *Modern Dental College and Research Centre and others vs. State of Madhya Pradesh and others*¹ had constituted the Oversight Committee, authorising it amongst others to oversee all statutory functions under the Act and also leaving it at liberty to issue appropriate remedial directions. The Oversight Committee intervened, whereupon the Central Government obtained compliance input dated 20.6.2017 from the petitioner/college afresh and forwarded it to the MCI. Eventually, the Oversight Committee by its letter dated 11.8.2016 approved the scheme of establishment of the new college of the petitioner with the annual intake of 150 students in MBBS course for the academic year 2016-17, subject to the conditions, as enumerated in its letter. As a consequence, the Central Government on 20.8.2016 granted the LOP to the petitioner for establishment of its new medical college as above for the academic year 2016-17 with an annual intake of 150 MBBS seats for the academic year 2016-17 subject to the following two conditions: B C D

“(i) An affidavit from the Dean/Principal and Chairman of the Trust/Society/University/Company etc. concerned, affirming fulfilment of all deficiencies and statements made in the respective compliance report submitted to MHFW 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.” F

It was, amongst others made clear by the said letter that the Oversight Committee could direct inspection to verify the compliance submitted by the petitioner/college any time after 30.9.2016 and that in default of the aforementioned conditions and if the compliances were found to be incomplete in the inspection to be so conducted, the college would be debarred from making fresh intake of students for two years commencing 2017-18. It was mentioned as well that the next batch of students in MBBS course for the academic year 2017-18 would be G

- A admitted in the college only after obtaining the permission of the Central Government and fulfilling the conditions.

9. Thereafter, the petitioner/college, as required, submitted the affidavit of compliance affirming that it had rectified all the deficiencies pointed out in the inspections earlier conducted and also furnished the bank guarantee.

10. The MCI conducted an inspection for assessment and the verification of compliance submitted by the petitioner/college on 28/29.12.2016. The assessment report, which was considered by the Executive Committee of the MCI in its meeting dated 13.1.2017, discussed the following deficiencies:

- I. Deficiency of faculty is 22.72% as detailed in the report.
 II. Shortage of Residents is 28.26% as detailed in the report.
 III. Bed Occupancy is 42.33% at 10 a.m. on day of assessment as under:

D

#	Department	Beds	
		Available	Occupied
1	General Medicine	72	26
2	Paediatrics	24	06
3	Tb & Chest	08	04
4	Psychiatry	08	00
5	Skin & VD	08	07
6	General Surgery	90	45
7	Orthopedics	30	15
8	Ophthalmology	10	02
9	ENT	10	06
10	O.G.	40	16
	TOTAL	300	127

E

F

- IV. Most of admitted patients did not merit to be admitted. In General Medicine ward, some patients were admitted for complaints of fever, headache, etc.

G

- V. There was NIL Normal Delivery & NIL Caesarean Section on day of assessment.

- VI. Cytopathology workload is NIL. Histopathology workload is only 01.

H

- VII. ICUs: There was NIL patient in NICU/PICU, only 1 patient

each in ICCU; SICU and only 2 patients in MICU on day of assessment. Both patients in MICU were of Hypertension not meriting admission in MICU. A

VIII. There were only 03 Major & 03 Minor Operations on day of assessment.

IX. Radiological workload as observed by assessor is inadequate. B

X. OPD attendance of 649 as claimed by the Institute and number of Laboratory investigations appear to be inflated data."

11. Noting the above, the MCI vide its letter 15.1.2017 recommended to the Central Government that in view of the failure of the petitioner/college to abide by the undertaking given by it vis-a-vis the deficiencies earlier noted, it ought to be debarred from admitting students in the MBBS course for the two academic years i.e. 2017-18 and 2018-19 and that the bank guarantee submitted by it, be allowed to be encashed. C

12. The Central Government, through its Hearing Committee offered personal hearing to the petitioner/college on 8.2.2017 and in its report, the Hearing Committee recorded as hereunder: D

Srl. No .	Deficiencies reported by MCI	Observations of Hearing Committee																																
i.	Deficiency of faculty is 22.72% as detailed in the report.	No satisfactory justification																																
ii.	Shortage of Residents is 28.26% as detailed in the report.																																	
iii.	Bed Occupancy is 42.33% at 10 a.m. on day of assessment as under:																																	
	<table><tr><th>#</th><th>Department</th><th colspan="2">Beds</th></tr><tr><td></td><td></td><th>Available</th><th>occupied</th></tr><tr><td>1</td><td>General Medicine</td><td>72</td><td>26</td></tr><tr><td>2</td><td>Paediatrics</td><td>24</td><td>06</td></tr><tr><td>3</td><td>Tb & Chest</td><td>08</td><td>04</td></tr><tr><td>4</td><td>Psychiatry</td><td>08</td><td>00</td></tr><tr><td>5</td><td>Skin & VD</td><td>08</td><td>07</td></tr><tr><td>6</td><td>General Surgery</td><td>90</td><td>45</td></tr></table>	#	Department	Beds				Available	occupied	1	General Medicine	72	26	2	Paediatrics	24	06	3	Tb & Chest	08	04	4	Psychiatry	08	00	5	Skin & VD	08	07	6	General Surgery	90	45	
#	Department	Beds																																
		Available	occupied																															
1	General Medicine	72	26																															
2	Paediatrics	24	06																															
3	Tb & Chest	08	04																															
4	Psychiatry	08	00																															
5	Skin & VD	08	07																															
6	General Surgery	90	45																															

E

F

G

H

A

B

C

D

E

F

	7	Orthopaedics	30	15
	8	Ophthalmology	10	02
	9	ENT	10	06
	10	O.G.	40	16
		TOTAL	300	127
iv.	Most of admitted patients did not merit to be admitted. In General Medicine ward, some patients were admitted for complaints of fever, headache, etc.			
v.	There was NIL Normal Delivery & NIL Caesarean Section on day of assessment.			
vi.	Cytopathology workload is NIL. Histopathology workload is only 01.			
vii.	ICUs: There was NIL patient in NICU/PICU, only 1 patient each in ICCU; SICU and only 2 patients in MICU on day of assessment. Both patients in MICU were of Hypertension not meriting admission in MICU.			
viii.	There were only 03 Major & 03 Minor Operations on day of assessment.			
ix.	Radiological workload as observed by assessor is inadequate.			
x.	OPD attendance of 649 as claimed by the Institute and number of Laboratory investigations appear to be inflated data.			

G

13. The Oversight Committee on receipt of the report of the Hearing Committee, conveyed its views thereon by its letter dated 14.5.2017 as hereunder:

“(i) Faculty:- The College has explained the grounds which is acceptable.

Accepting these 11 faculty, the deficiency is 9.09%.

(ii) Residents:- Once 3 residents are accepted, the deficiency is 21.74% which exceeds the norms.

H

(iii) Bed Occupancy:- The College has explained the grounds of deficiency and explanation is acceptable. A

(iv) Most of admitted patients did not merit to be admitted:- This deficiency is subjective. No MSR.

(v) Deliveries:- This deficiency is subjective. No MSR.

(vi) ICUs:- This deficiency is subjective. No MSR. B

(vii) Operations:- This deficiency is subjective. No MSR.

(viii) Radiological workload:- This deficiency is subjective. No MSR.

(ix) OPD:- This observation of inflated data is subjective as the assessors have no reasons to say so. C

The College has explained the grounds otherwise.

The College has not submitted any clarification on deficiencies pointed out by EC to OC. D

MHFW may give another opportunity of Hearing."

14. In deference to the views expressed by the Oversight Committee, the Central Government through its Hearing Committee offered another opportunity of hearing to the petitioner/college on 29.5.2017 whereupon it communicated its decision to debar the petitioner/college from admitting students for two academic years i.e. 2017-18 and 2018-19 and to authorise the MCI to encash the bank guarantee, by its letter dated 9.6.2017, which, as aforementioned was interfered with by this Court by order dated 1.8.2017 with the following operative directions: E

"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, F

H

- A 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.”

B 15. The order dated 10.8.2017 of the Central Government, presently impugned, is the yield of a fresh round of hearing offered to the petitioner/college on 4.8.2017 in compliance of the order of this Court. As the order dated 10.8.2017 would reveal, the Hearing Committee, on a consideration of the materials on record after hearing the petitioner/college, recorded its findings as hereunder:

C “11 faculty/residents were physically present but not considered due to being late. The college accepted that seven faculty and 11 residents were deficient on the day of inspection. The present deficiency of faculty and residents is claimed by the college at 5% and 2% respectively. The college also furnished bank statement of salary payment for 106 faculty/residents. The college informed that bio metric instruments have arrived but not installed.

D Apparently there is some shortfall of clinical material but the college seems to be making earnest efforts to increase patient load. The contention of college that delivery patients are hard to get in private hospitals in the State of Tamil Nadu due to attractive maternity welfare scheme is acceptable to the Committee. The college also informed that the normal functioning of hospital was disrupted in the aftermath of Cyclone ‘Vardah’. However, it is noted that the cyclone came on 12.12.2016 whereas the MCI assessment took place on 28.12.2016. The disruption factor would also get offset to some extent by the increase in number of patients due to various disease factors post cyclone.

F Still in view of the deficiencies raised by MCI and part acceptance by the college, the Committee agrees with the decision of the Ministry conveyed by letter dated 09.06.2017 to debar the college for 2 years and also permit MCI to encash bank guarantee.”

G The instant challenge is directed against this order.

16. It has been assiduously urged by Mr. Rohtagi, learned senior counsel for the petitioner/college that the purported deficiencies recorded by the Hearing Committee, are infact non est and that the petitioner/college has been illegally and unfairly debarred from admitting students

H

for the next two academic years, as mentioned therein, while permitting the MCI to encash its bank guarantee. According to the learned senior counsel, a plain perusal of the inspection reports and the observations in particular of the Oversight Committee would bely the imputation that the petitioner/college suffers from any deficiency for disqualifying it from securing confirmation of its LOP for the academic year 2016-17 and from admitting students for the academic year 2017-18. Without prejudice to these, Mr. Rohtagi has urged that even if the deficiencies, as noticed by the Hearing Committee, are accepted on their face value, the same do not merit in law the debarment of the petitioner/college from making admission of students for the two academic years 2017-18 and 2018-19 and encashment of its bank guarantee by the MCI.

17. As against this, Mr. Maninder Singh, learned Additional Solicitor General for the Union of India and Mr. Vikas Singh, learned senior counsel for the MCI have asserted with reference to the pleadings on record and the other materials available, that not only the petitioner/college has failed to abide by its undertaking to remedy its deficiencies in infrastructure and clinical materials, as submitted in terms of the stipulations, subject to which it had been granted conditional LOP for the academic year 2016-17, the inspections for verification of compliance have revealed persistent shortcomings in major areas of infrastructure and clinical facilities and thus the impugned decision cannot be faulted with in any manner.

18. The rival pleadings and contentions have been duly evaluated. Section 10A of the Act deals with the permission for establishment of a new medical college, new course of study etc.. Sub-section (7) thereof reads as under:

“(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.

- A (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;
- B (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 or study or training or accommodating the increased admission capacity, have been provided or would be provided within the time-limit specified in the scheme;
- C (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;
- D (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;
- E (f) the requirement of manpower in the field of practice of medicine; and
- (g) any other factors as may be prescribed.”

19. This Court in Writ Petition (C) No. 747 of 2017, titled as *Royal Medical Trust and Another vs. Union of India and Another*, decided on September 12, 2017, while dwelling upon the purport and purpose of Section 10A of the Act and the Regulations framed thereunder, referred to its following observations in *Royal Medical Trust (Registered) and Another vs. Union of India and Another*² in the following terms:

- G “MCI and the Central Government have been vested with monitoring powers under Section 10A and the Regulations. It is expected of these authorities to discharge their functions well within the statutory confines as well as in conformity with the Schedule to the Regulations. If there is inaction on their part or non-observance of the time schedule, it is bound to have adverse effect on all concerned. The affidavit filed on behalf of the Union of

India shows that though the number of seats had risen, obviously because of permissions granted for establishment of new colleges, because of disapproval of renewal cases the resultant effect was net loss in terms of number of seats available for the academic year. It thus not only caused loss of opportunity to the students community but at the same time caused loss to the society in terms of less number of doctors being available. MCI and the Central Government must therefore show due diligence right from the day when the applications are received. The Schedule giving various stages and time-limits must accommodate every possible eventuality and at the same time must comply with the requirements of observance of natural justice at various levels. In our view the Schedule must ideally take care of:

(A) Initial assessment of the application at the first level should comprise of checking necessary requirements such as essentiality certificate, consent for affiliation and physical features like land and hospital requirement. If an applicant fails to fulfill these requirements, the application on the face of it, would be incomplete and be rejected. Those who fulfill the basic requirements would be considered at the next stage.

(B) Inspection should then be conducted by the Inspectors of MCI. By very nature such inspection must have an element of surprise. Therefore sufficient time of about three to four months ought to be given to MCI to cause inspection at any time and such inspection should normally be undertaken latest by January. Surprise inspection would ensure that the required facilities and infrastructure are always in place and not borrowed or put in temporarily.

(C) Intimation of the result or outcome of the inspection would then be communicated. If the infrastructure and facilities are in order, the medical college concerned should be given requisite permission/renewal. However, if there are any deficiencies or shortcomings, MCI must, after pointing out the deficiencies, grant to the college concerned sufficient time to report compliance.

(D) If compliance is reported and the applicant states that the deficiencies stand removed, MCI must cause compliance verification. It is possible that such compliance could be accepted

A even without actual physical verification but that assessment be left entirely to the discretion of MCI and the Central Government. In cases where actual physical verification is required, MCI and the Central Government must cause such verification before the deadline.

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

C 20. As the findings in the inspections conducted by the MCI on 29/30.12.2015, 10.3.2016 and 28/29.12.2016 would reveal several deficiencies including those in faculty, residents, OPD attendance, bed occupancy etc. had been detected. Whereas as per the said reports, the deficiency in faculty had fluctuated from 22.72% to 46.15%, in residents, it ranged from 26.09% to 45.65%. The deficiencies in other areas, as finds mention in the reports, are also not negligible. Even the Oversight Committee in its letter dated 14.5.2017 has recorded deficiency in faculty to the tune of 9.09% and in residents at 21.74%, which exceeds the norms.

E 21. As alluded hereinabove and as recommended by the Central Government, a fresh hearing was afforded to the petitioner/college. An analysis of the findings of the Hearing Committee, on the basis of which the impugned order dated 10.8.2017 has been issued, reveals the following features:

F a) The college had accepted that seven faculty and eleven residents were deficient on the date of inspection, which however, it claimed was 5% and 2% respectively.

G b) The college had furnished bank statement of salary payment of 106 faculty/residents.

c) The college had informed that bio metric instruments had arrived but not installed.

H d) There was some shortfall of clinical material, but the college seemed to be making earnest efforts to increase patient load.

e) The contention of the college that delivery patients were hard to get in private hospitals due to attractive maternity welfare scheme was acceptable. A

f) The college had informed that normal functioning of the hospital was disrupted in the aftermath of cyclone 'Vardah', though it was on 12.12.2016 and the inspection was done on 28.12.2016. B

g) The disruption factor would also get offset to some extent by the increase in number of patients due to various disease factors, post cyclone.

22. In the face of the deficiencies pointed out by the MCI and the part acceptance thereof by the petitioner/college, the decision to debar it from admitting students in the MBBS course for the next two academic years 2017-18 and 2018-19 and to permit encashment of bank guarantee by the MCI was endorsed. C

23. True it is that as explicated on umpteen occasions and very recently in *Royal Medical Trust* (supra) the exercise of power of judicial review and the extent to which it has to be done would vary from case to case and would depend, amongst others on the factual projections. The following observations to this effect in the above decision succinctly adumbrates this postulation: D

50. Thus analysed, it is evincible that the exercise of power of judicial review and the extent to which it has to be done will vary from case to case. It is necessary to state with emphasis that it has its own complexity and would depend upon the factual projection. The broad principles have been laid down in *Tata Cellular* (supra) and other decisions make it absolutely clear that judicial review, by no stretch of imagination, can be equated with the power of appeal, for while exercising the power under Article 226 or 32 of the Constitution, the constitutional courts do not exercise such power. The process of adjudication on merit by re-appreciation of the materials brought on record which is the duty of the appellate court is not permissible. E F G

24. Thus, in exercise of power of judicial review, re-appreciation of the materials on record, as otherwise warranted by an appellate forum is both inexpedient and uncalled for. In the backdrop of the deficiencies recorded in the successive inspections conducted by the MCI as noted by the Hearing Committee as well as the rival assertions H

- A vis-a-vis the same, it is not possible to readily discard the eventual findings recorded by the Hearing Committee and in the impugned order dated 10.8.2017, as bereft of any reason. This is more so, in the face of the statutory obligation cast on the MCI under the Act and the Regulations framed thereunder to sustain and enhance the excellence in medical education which eventually would cater to the exigencies of public health.

- B
C 25. In *Royal Medical Trust* (supra) again, this Court while responding to the assailment of the order impugned therein to be bereft of reasons, enunciated that the order passed has to be appreciated in its entirety and neither the Central Government nor the Hearing Committee is expected to pass a judgment as a Judge is expected to do. It was observed that the order must reflect application of mind and should indicate reasons. The plea based on want of reasons was negated.

- D 26. In any view of the matter, the respondents are the best judge to assess the findings in the inspection reports cumulatively on the touchstone of the statutory imperatives to ensure the required standard of medical education and achieve the paramount and salutary objective of the desired quality of health facilities in the public sector. In a way, a court is ill equipped for want of judicially manageable parameters to substitute the findings of experts on such issue by its views, which otherwise is inexpedient as well.

- E 27. In the overall factual setting and on a consideration of the materials on record in entirety, we do not feel persuaded in the facts and circumstances of the case to interfere with the impugned decision for want of reasons.

- F 28. In the face of the above determination, we thus hold that the petitioner/college is not entitled to LOP for the academic year 2017-18 and the application/scheme, if submitted by it for the academic year 2017-18 would be treated as one for 2018-19. The petitioner/college however, would keep the bank guarantee deposited with the MCI alive and the MCI would not encash the same. Further the MCI would make a fresh inspection as per the Act/Regulations within a period of three months and apprise the petitioner/college with regard to the result thereof and if there are deficiencies, afford it an opportunity to remedy the same and thereafter proceed, as required under the Act and the Regulations. This inspection, we clarify, would be carried out for the purpose of LOP for the academic year 2018-19. Needless to say, after
H the MCI sends its recommendations to the Central Government, the

latter would take a final decision in accordance with law, after affording
an opportunity of hearing to the petitioner/college with the assistance of A
the Hearing Committee, as constituted. As the students admitted on the
basis of LOP for the academic year 2016-17 are continuing with the
studies in the petitioner/college, they would be, in the attendant facts and
circumstances, allowed to continue their studies in the petitioner/college B
and would be permitted to continue till completion of the course.

29. The Writ Petition and I.A. No. 74486 of 2017 are disposed of.

Divya Pandey

Petition disposed of.