

SHRI GANGAJALI EDUCATION SOCIETY & ANR.

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v.

UNION OF INDIA AND ORS.

(Writ Petition (C) No.709 of 2017)

WITH

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(I.A. No. 74584 of 2017)

AUGUST 31, 2017

[DIPAK MISRA, CJI, A. M. KHANWILKAR AND  
DR. D. Y. CHANDRACHUD, JJ.]

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*Education / Educational Institutions – Medical College – Petitioner No.1 applied to respondent No.1 Ministry of Health & Family Welfare, Government of India ("MHFW") for establishment of a new medical college from academic session 2016-17 onwards – That application was forwarded to respondent no.2, Medical Council of India ("MCI") for evaluation, which opined several deficiencies in the proposed college – Based on recommendations made by MCI, the MHFW disapproved the proposal – Thereafter, the Oversight Committee ("OC") constituted by Supreme Court – After considering case of petitioner, order passed by the OC – Pursuant thereto MHFW issued a conditional Letter of permission to the petitioners – Thereafter, a compliance verification inspection conducted by the MCI, which gave negative recommendation to the MHFW – OC conveyed its opinion to the MHFW that inspection conducted by MCI was contrary to the guidelines issued by the OC – MHFW, however, rejected petitioner's application on the basis of the recommendation made by respondent No.2 MCI, while also debarring the petitioners from admitting students for two years i.e 2017-18 and 2018-19 – Aggrieved, Petitioners filed writ petition before High Court, which ordered fresh opportunity of hearing to petitioner – However, MHFW reiterated its earlier decision – On appeal, held: In instant case, the Competent authority of the Government of India has not dealt with the matter as was expected in terms of the direction issued by the Court – No attempt made by the Competent authority to analyse the factors noticed by the OC whilst recommending confirmation of Letter of permission in favour of the petitioner college – From the observations of the OC, it was amply clear that the deficiency noticed by the*

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- A *Assessing Officer was within the permissible limits – Neither the Hearing Committee nor the Competent authority has not made any endeavour to dislodge the observation of OC – The recommendations of OC may not be *stricto sensu* binding on the Competent Authority, but same cannot be completely disregarded –*
- B *Further, the petitioner college undertakes to remove with promptitude any deficiency already noted – Considering the fact that the petitioners college fulfills the infrastructure and academic requirements and has already started the college for academic session 2016-17, in larger public interest, respondent directed to permit the petitioner college to take part in the current year i.e.*
- C *2017-18 counselling process which is still in progress – Constitution of India – Art.142.*

**Allowing the petition and I.A. , the Court**

**HELD:** 1. No attempt was made by the Competent Authority to analyse the factors noticed by the OC whilst recommending confirmation of Letter of Permission in favour of the petitioner college. From the observations of the OC, it was amply clear that the deficiency noticed by the Assessing Officer was within the permissible norms. Moreover, the explanation offered by the petitioner college with regard to each of the deficiencies was acceptable. In the case on hand, neither the Hearing Committee nor the Competent Authority has made any endeavour to dislodge the said observation. It is clear that the recommendation of OC may not be *stricto sensu* binding on the Competent Authority. But at the same time, it cannot be completely disregarded. Also, the Competent Authority is not expected to give elaborate reasons but is certainly bound to advert to the relevant factors noticed by the OC and record its clear finding that it was disagreeing with the same for some tangible reasons discernable from the record before it. It is also possible that the Competent Authority may have additional reasons or advert to some material which has been glossed over by the OC, but then, the decision making process would require the Competent Authority to not only advert to such matter but also record its reasons to come to a different conclusion. In the present case, the Competent Authority has not dealt with the matter as was expected in terms of the direction issued by the Court to

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reconsider the matter after giving opportunity to the petitioners. A  
[Para 12] [477-D-H; 475-A]

2. The reconsideration of the matter by the Competent Authority in terms of the order passed by the Court leaves much to be desired. It borders on abdication of statutory duty. Even for academic session 2016-17, the approach of the Competent Authority was questioned by the petitioner college and after pursuing remedies, the petitioner college was eventually granted a Letter of Permission subject to conditions. It is not the finding of the Competent Authority that the conditions so specified have not been fulfilled by the petitioner college. The petitioner college has already started functioning from the academic session 2016-17 and is desirous of getting permission to admit the second batch in the MBBS course for the academic session 2017-18. The petitioner college undertakes to remove with promptitude any deficiency already noted or which becomes known in due course. Considering the fact that the petitioner college fulfills the infrastructure and academic requirements and has already started the college for the academic session 2016-17 by admitting the first batch of students in the MBBS course, in the larger public interest, this writ petition and the application filed by the petitioners are allowed. [Para 14] [475-G-H; 476-A-C] C

3. The impugned decision to the extent that it bars the petitioners to admit upto 150 students in the academic session 2017-18 is quashed and set aside. Instead, the respondents directed to permit the petitioner college to take part in the current year counselling process which is still in progress. The cut-off date for completing the admissions in respect of the petitioner college, however, will stand extended till 5<sup>th</sup> September, 2017. The respondents shall make available students willing to take admission in the petitioner college through central counselling, in order of their merit. This direction is being issued in exercise of plenary powers of this Court under Article 142 of the Constitution of India, in the peculiar facts of the present case to do complete justice and in the larger public interest, so that aspiring students who have not been admitted to the 1<sup>st</sup> year MBBS course for the academic session 2017-18, in order of their merit in NEET examination, will get an opportunity to be admitted D

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A in the petitioner college. At the same time, it is made clear that the MCI or the Competent Authority of the Central Government is free to inspect the petitioner college as and when deemed fit and, if any deficiency is found, after giving opportunity to the petitioner college, it may suitably proceed against the college in accordance with law. [Para 15] [476-D-G]

B *Glocal Medical College and Super Speciality Hospital and Research Centre v. Union of India 2017 (8) SCALE 356; Dr. Jagat Narain Subharti Charitable Trust and Anr. v. Union of India and Ors. 2017 (10) SCALE 308 – referred to.*

C Case Law Reference

2017 (8) SCALE 356	referred to	Para 7
2017 (10) SCALE 308	referred to	Para 14

CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No. 709 of 2017

Under article 32 of the Constitution of India.

With

I. A. No. 74584 of 2017.

Mukul Rohtagi, Sr. Adv., Amalpushp Shrotri, Adv. for the Petitioner.

E Ajit Kumar Sinha, Vikas Singh, Sr. Advs., Shadman Ali, Anmol Chandan, Gaurav Sharma, Amandeep Kaur, Prateek Bhatia, Dhawal Mohan, Advs. for the Respondents.

The Judgment of the Court was delivered by

F **A. M. KHANWILKAR, J.** 1. The petitioners have filed the present writ petition challenging the order of respondent No.1 dated 14<sup>th</sup> August, 2017, whereby respondent No.1, relying upon the recommendations made by respondent No.2, rejected the petitioners' application for establishment of a medical college and debarred the petitioners from admitting students to the said college for two years i.e. 2017-18 and 2018-19 and also directed that the petitioners' bank guarantee of Rs. 2 crore be encashed.

H 2. Petitioner No.1 Shri Gangajali Education Society had made an application to the respondent No.1 Ministry of Health & Family Welfare, Government of India (for short "MHFW") for establishment of a new medical college at Bhilai, Chhattisgarh in the name and style of 'Shri

Shankaracharya Institute of Medical Sciences' from the academic session 2016-17 onwards. That application was forwarded to respondent No.2 Medical Council of India (for short "MCI") for evaluation and making recommendations to the MHFW under Section 10-A of Medical Council Act, 1956 (for short "1956 Act"), which then opined that several deficiencies existed in the proposed college and submitted its negative recommendation to MHFW vide its letter dated 14<sup>th</sup> May, 2016. Based on the recommendations made by MCI, the MHFW disapproved the proposal vide order dated 10<sup>th</sup> June, 2016 but nevertheless, granted liberty to the petitioners to apply for the next academic session.

3. Soon thereafter, the Oversight Committee (for short "OC") constituted by this Court, adopted a resolution to permit all applicant colleges, including the petitioners, to furnish compliance reports in relation to the deficiencies communicated by MCI. MCI would then forward such compliance reports to the MHFW which, in turn, would take a decision on the said reports and forward its decision along with the applications and the reports to the OC. After considering the petitioners' case, the OC passed an order on 11<sup>th</sup> August, 2016.

4. Pursuant to the OC's aforeslated order, the MHFW issued a conditional Letter of Permission to the petitioners dated 20<sup>th</sup> August, 2016, which was subject to certain criteria being fulfilled, including an inspection by the OC for verification of the compliance report issued by the petitioners.

5. Thereafter, a compliance verification inspection was conducted by the MCI on 16<sup>th</sup>/17<sup>th</sup> December, 2016, and after considering the assessment report of the said inspection, the Executive Committee of the MCI noted several deficiencies in the petitioners' college. The MCI then submitted its negative recommendation to the MHFW vide letter dated 15<sup>th</sup> January, 2017, *inter alia* to revoke the Letter of Permission granted to the petitioners. After receipt of the aforeslated recommendation, the MHFW/Director General of Health Services (for short "DGHS") granted the petitioners an opportunity for personal hearing on 8<sup>th</sup> February, 2017. The Hearing Committee noted as follows:

Srl. No.	Deficiencies reported by MCI	Observations of hearing committee
i.	Deficiency of faculty is 10.60 % as detailed in the report.	No satisfactory justification for deficiencies.

A	ii.	Shortage of Residents is 15.21 % as detailed in the report.	
B	iii.	In General Medicine ward, some patients did not require hospitalization; E.g. Bodyache, Dyspepsia, Giddiness, etc. In General Surgery ward, some patients are such who do not require hospitalization; E.g. Simple wound dressing, etc. One patient who required Dental Intervention was admitted in General Surgery ward.	
C	iv.	OPD attendance was 540 at 2 p.m. on day of assessment against requirement of 600 as per Regulations.	
D	v.	There was NIL Minor Operation on day of assessment	
E	vi.	Radiological investigations workload is grossly inadequate. USG workload was NIL on day of assessment.	
F	vii.	Laboratory investigations workload is inadequate. There was NIL Microbiological & Serological investigations on day of assessment.	
G	viii.	Histopathology & Cytopathology workload was NIL on day of assessment.	
H	ix.	Wards: Space between 2 beds is < 1.5 m. in Orthopaedics ward. Nursing station is unsatisfactory in several wards.	

x.	Casualty: Separate Casualty for O.G. is not available. Casualty attendance & admissions are sub-optimal.	A
xi.	There are only 2 Pre-operative beds.	B
xii.	ICUs: There was NIL patient in SICU & only 1 patient each in NICU/PICU on day of assessment. Out of 2 patients in ICCU, 1 was of Glomerulonephritis & another was of Hemiparesis.	C
xiii.	Labour room: Septic Labour room is located away from Labour room.	D
xiv.	MRD: It is partially computerized.	
xv.	Central Photography Section: Equipment is inadequate. There is no staff.	E
xvi.	Students' Hostels: There is no hostel for medical students as such. Engineering college hostel is used for accommodating medical students by creating partitions.	F
xvii.	Nurses' Hostel: No hostel for Nurses is available as such. They are accommodated on ground floor of Engineering students' hostel.	G
xviii.	Pharmaco Vigilance Committee: No meeting is held.	
xix.	MEU: It is not available.	
xx.	College Council: NIL meeting is held.	H

- A This report was forwarded to the OC for guidance vide letter dated 5<sup>th</sup> May, 2017. In response to this letter, the OC conveyed its opinion to the MHFW vide its letter dated 14<sup>th</sup> May, 2017, *inter alia* recording that the inspection conducted by MCI was contrary to the guidelines issued by the OC. The OC recommended confirmation of the grant of the Letter of Permission dated 20<sup>th</sup> August, 2016 to the petitioners, as set out hereunder:
  - (i) *Faculty:- As per EMCR 1999, the requirement of faculty is acceptable with deficiency upto 20%. However College has explained the grounds on which the assessors had not accepted the 7 faculty members. The explanation is acceptable.*
  - (ii) *Residents:- College has explained the grounds on which the assessors had not accepted 4 Residents. The explanation is acceptable. Deficiency of 3 Residents i.e. 6.52% is within norms.*
  - (iii) *General Medicine ward:- This deficiency is subjective. No MSR.*
  - (iv) *OPD attendance:- During the last assessment the College had mentioned that the OPD attendance by 4 pm was 620, while assessors had mentioned 340 at 12 noon. This attendance was 540 upto 2 pm. The assessors have not shown this as deficiency in their summary and OPD attendance is 540 in SAF. The rest of the remark is subjective.*
  - (v) *Operations:- This deficiency is subjective. No MSR.*
  - (vi) *Radiological investigations workload:- All equipments were available and functional as per SAF. No further remarks of the assessor. The deficiency pointed out is subjective. No MSR.*
  - (vii) *Laboratory investigations workload:- This deficiency is subjective. No MSR.*
  - (viii) *Histopathology and Cytopathology workload:- This deficiency is subjective. No MSR.*
  - (ix) *Wards:- It is not specified by how much is the distance less than 1.5m. This deficiency is subjective. No MSR.*
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(x) *Casualty*:- This deficiency is subjective. No MSR. A

(xi) *ICUs*:- This deficiency is subjective. No MSR.

(xii) *Labour room*:- This deficiency is subjective. No MSR.

(xiii) *MRD*:- This deficiency is subjective. No MSR.

(xiv) *Central Photography Section*:- The deficiency pointed out is subjective. No MSR. B

(xv) *Student's hostels*:- Explanation of College is acceptable.

(xvi) *Nurses Hostel*:- Hostel is within the campus with adequate capacity.

(xvii) *Pharmaco Vigilance Committee*:- This deficiency is subjective. No MSR. C

(xviii) *College Council*:- This deficiency is subjective. No MSR.

(xix) *There are only 2 Pre-operative beds*:- This deficiency is subjective. No MSR. D

*LoP confirmed."*

(emphasis supplied)

6. However, on 31<sup>st</sup> May, 2017, the MHFW rejected the petitioners' application on the basis of the recommendation made by respondent No.2 MCI, while also debarring the petitioners from admitting students for two years i.e. 2017-18 and 2018-19 and further, authorising respondent No.2 MCI to encash the petitioners' bank guarantee. E

7. Aggrieved, the petitioners challenged the above order of the MHFW by filing a writ petition before the High Court of Chhattisgarh. The High Court proceeded to dispose of the same in light of the decision of this Court in *Glocal Medical College and Super Speciality Hospital and Research Centre v Union of India*<sup>1</sup> [Writ Petition (Civil) No. 411 of 2017] in which this Court had directed the Central Government to reevaluate the recommendations made by the MCI and the OC with respect to the applicant college therein as also to grant the applicant college therein a fresh opportunity of hearing. G

8. Accordingly, the petitioners were granted fresh hearing on 8<sup>th</sup> August, 2017 to present their case but ultimately, the MHFW reiterated its earlier decision and rejected the petitioners' application vide order

<sup>1</sup> 2017 (8) SCALE 356

A dated 14<sup>th</sup> August, 2017 while also debarring the petitioners from admitting students for two years i.e. 2017-18 and 2018-19 and authorising respondent No.2 MCI to encash the petitioners' bank guarantee. The relevant extract of the impugned decision reads thus:

*"17. Now, in compliance with the above direction of Hon'ble High Court dated 03.08.2017, the Ministry granted hearing to the college on 08.08.2017. The Hearing Committee after considering the record and oral & written submission of the college submitted its report to the Ministry. The findings of Hearing Committee are as under:*

C *The Committee note that deficiency of 7 faculty and 7 residents have been pointed out in the MCI assessment. The SAF form mentions 8 faculty and 5 residents who were not accepted, 11 for coming late and 2 in the absence of Form-16. The Form 16 and salary details for some faculty were randomly perused. The college did not submit Form-16 for residents since they are very mobile and do not stay for long periods.*

E *The submission of the college that patients go for laboratory investigations after clinical rounds is not acceptable. The college had no explanation for how a renal and a neurology patient could be admitted in Intensive Cardiac Care Unit.*

F *The Committee also notes the finding of the assessors that nursing hostel is not available and they are accommodated in the Engineering hostel run by the same management. The college denied and was asked to submit some proof of the availability of hostels. They could not provide a convincing evidence.*

G *In view of the above the Committee concludes that the deficiency of clinical material and infrastructure seems more pronounced than the deficiency of faculty and residents. The college is at LoP stage and the facilities have to be satisfactorily verified.*

H *The Committee agrees with the decision of the Ministry vide letter dated 31.05.2017 to debar the college for two years and also permit MCI to encash bank guarantee.*

*18. Accepting the recommendations of Hearing Committee, the Ministry reiterates its earlier decision dated 31.05.2017 to debar the college from admitting students for a period of 2 years i.e., 2017-18 & 2018-19 and also to authorize MCI to encash Bank Guarantee of Rs.2 Crores.”*

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(emphasis supplied) B

9. The petitioners then filed the present writ petition before this Court, seeking issuance of a writ of certiorari to set aside the aforesaid order of the MHFW dated 14<sup>th</sup> August, 2017 as also to confirm the Letter of Permission granted to the petitioners for admission of students (150 seats) to the MBBS course. The petitioners also filed an Interlocutory Application along with the main writ petition, being I.A. No.74584 of 2017, praying for stay of the MHFW’s order of 14<sup>th</sup> August, 2017 and to direct the respondent No.3 State to include the petitioner No.2 college for counselling and allot students for the MBBS course for the academic year 2017-18. This application was taken up for hearing along with the main writ petition.

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10. The principal grievance of the petitioners is that the Competent Authority of the Government of India has once again passed a casual and mechanical order, mainly being influenced by the recommendation of the MCI. It has failed to advert to the opinion recorded by the OC in its letter dated 14.05.2017, which expressly held that the deficiencies noticed by the Assessing Officer were acceptable and within the norms specified therefor. No effort has been made by the Competent Authority to indicate any tangible reason for not accepting the stated opinion of the OC. Significantly, the deficiencies adverted to by the Competent Authority relate to technical matters and rejected the explanation offered by the college on the basis of conjectures. On the other hand, the OC was fully convinced that the petitioner college fulfilled the requisite requirements regarding infrastructure and academic matters. No finding has been recorded by the Competent Authority that the deficiency of faculty of 10.60 % and residents of 6.52 % was exceeding the prescribed norms in that regard. Further, the Competent Authority has not considered or analysed the explanation offered by the petitioner college with regard to the deficiencies highlighted in the impugned decision but has jumped to the conclusion that the said explanation was not acceptable. Moreover, the conclusion reached by the Competent Authority, that there was deficiency of clinical material and infrastructure, was manifestly wrong.

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- A and is belied by the opinion of the OC, but no effort has been made by the Competent Authority to point out the specific information and material facts as to why it took a view contrary to the one taken by the OC. In substance, the argument is that the conclusion reached by the Competent Authority suffers from the vice of non-application of mind and non-consideration of relevant materials and record which were pressed into service by the petitioners even during the recent hearing.

- 11. The respondents, on the other hand, have supported the conclusion reached by the Competent Authority and would contend that the same is just and proper. According to the respondents, MCI in its recommendation, has adverted to the deficiency not only regarding faculty and residents but also clinical material which, according to it, was more pronounced. The respondents contend that this writ petition is devoid of merits and deserves to be dismissed.

- 12. Having considered the rival submissions, we are of the considered opinion that the Competent Authority has once again passed an order which is cryptic, if not perverse. No attempt has been made by the Competent Authority to analyse the factors noticed by the OC in its letter dated 14.05.2017 whilst recommending confirmation of Letter of Permission in favour of the petitioner college. From the observations of the OC, it was amply clear that the deficiency noticed by the Assessing Officer was within the permissible norms. Moreover, the explanation offered by the petitioner college with regard to each of the deficiencies was acceptable. In the case on hand, neither the Hearing Committee nor the Competent Authority has made any endeavour to dislodge the said observation. We are conscious of the fact that the recommendation of OC may not be *stricto sensu* binding on the Competent Authority.
- F But at the same time, it cannot be completely disregarded. We are also conscious of the fact that the Competent Authority is not expected to give elaborate reasons but is certainly bound to advert to the relevant factors noticed by the OC and record its clear finding that it was disagreeing with the same for some tangible reasons discernable from the record before it. It is also possible that the Competent Authority may have additional reasons or advert to some material which has been glossed over by the OC, but then, the decision making process would require the Competent Authority to not only advert to such matter but also record its reasons to come to a different conclusion. In the present case, the Competent Authority has not dealt with the matter as was expected in

terms of the direction issued by the Court to reconsider the matter after giving opportunity to the petitioners. A

13. Be that as it may, reverting to the factors which have been highlighted in the impugned decision, particularly in paragraph 17 which is the edifice of the impugned order, the first is about the deficiency of seven faculty and seven residents pointed out by the MCI. With reference to the said deficiency, the OC has noted that the deficiency up to 20% is permissible. The Competent Authority has not chosen to dislodge that observation of the OC. Further, the OC has noticed that the explanation offered by the petitioner college with regard to deficiency of 7 faculty and 7 residents was acceptable and plausible. However, the Competent Authority has not analysed the said explanation in the impugned decision or recorded a clear finding that it was disagreeing with the view of OC in that behalf for reasons which can be perceived as tangible and just. The Competent Authority has then adverted to another facet of the deficiency concerning Form 16 and salary details, but has not chosen to advert to the explanation given by the petitioner college in that behalf which had found favour with the OC. Another reason which has weighed with the Competent Authority is that the explanation of the college that patients go for laboratory investigations after clinical rounds is not acceptable and that no explanation was forthcoming from the petitioner college as to how a renal and neurology patient could be admitted in Intensive Cardiac Care Unit. Assuming that the observation is correct, the issue of granting permission cannot be answered on the basis of one stray incident. No finding has been recorded by the Competent Authority that a pattern of such practice is being followed by the college and it has been so noticed from the record and further, that such lapse is opposed to defined medical protocols entailing in revocation of permission accorded to a medical college. B C D E F G H

14. An objective assessment would be one which is based on the information gathered from the entire record pertaining to the relevant period and not just one stray lapse or mistake. Suffice it to observe that the reconsideration of the matter by the Competent Authority in terms of the order passed by the Court leaves much to be desired. It borders on abdication of statutory duty. It is unnecessary to underscore that even for academic session 2016-17, the approach of the Competent Authority was questioned by the petitioner college and after pursuing remedies, the petitioner college was eventually granted a Letter of

- A Permission subject to conditions. It is not the finding of the Competent Authority that the conditions so specified have not been fulfilled by the petitioner college. The petitioner college has already started functioning from the academic session 2016-17 and is desirous of getting permission to admit the second batch in the MBBS course for the academic session 2017-18. The petitioner college undertakes to remove with promptitude any deficiency already noted or which becomes known in due course. Considering the fact that the petitioner college fulfills the infrastructure and academic requirements and has already started the college for the academic session 2016-17 by admitting the first batch of students in the MBBS course, in the larger public interest, we allow this writ petition
- B and the application filed by the petitioners. We are also inclined to issue further directions to the respondents as have been issued in the judgment of *Dr. Jagat Narain Subharti Charitable Trust and Ann. vs. Union of India and Ors.*, delivered on 30<sup>th</sup> August, 2017.

- 15. We, accordingly, quash and set aside the impugned decision
- D to the extent that it bars the petitioners to admit upto 150 students in the academic session 2017-18. Instead, we direct the respondents to permit the petitioner college to take part in the current year counselling process which is still in progress. The cut-off date for completing the admissions in respect of the petitioner college, however, will stand extended till 5<sup>th</sup> September, 2017. The respondents shall make available students willing to take admission in the petitioner college through central counselling, in order of their merit. This direction is being issued in exercise of plenary powers of this Court under Article 142 of the Constitution of India, in the peculiar facts of the present case to do complete justice and in the larger public interest, so that aspiring students who have not been admitted to
- E the 1<sup>st</sup> year MBBS course for the academic session 2017-18, in order of their merit in NEET examination, will get an opportunity to be admitted in the petitioner college. At the same time, we make it clear that the MCI or the Competent Authority of the Central Government is free to inspect the petitioner college as and when deemed fit and, if any deficiency is found, after giving opportunity to the petitioner college, it may suitably proceed against the college in accordance with law. This arrangement will subserve the ends of justice.

- 16. No order as to costs.