



*appellant college for academic session 2017-18 as having being made for academic session 2018-19 – For that purpose, MCI directed to conduct inspection of the appellant college and inform the appellant about the deficiencies – Appellant college to report its compliance and communicate the removal of deficiencies to MCI; whereafter it will be open to the MCI to undertake verification of the compliance and then prepare its report to be submitted to the Central Government – Thereafter, Respondent to take appropriate decision in accordance with law.*

**Disposing of the appeal, the Court**

**HELD: 1.1** The fact that the Competent Authority of the Central Government has confirmed the renewal of permission in favour of the appellant for academic session 2016-17, it would not follow that the appellant college is entitled to grant of recognition/approval under Section 11(2) of the Act from the academic session 2017-18 as a matter of course, without removing the deficiencies pointed out in the latest assessment report. [Para 16] [1094-D-E]

**1.2** There is nothing to indicate in the communication sent by the MCI or, for that matter, the impugned decision of the Competent Authority of the Central Government dated 31<sup>st</sup> May, 2017, that any plausible explanation was offered by the appellant college in regard to the stated deficiencies. Even the order dated 31<sup>st</sup> August, 2017, does not indicate as to whether any explanation was offered by the appellant college during the hearing for reconsideration by the Central Government. Notably, a member of the OC constituted by this Court was present during the hearing. [Para 16] [1095-A-B]

**2.1** The appellant would then contend that it was not permissible for the MCI to carry out successive inspections. Reliance has been placed on the dictum of this Court in *Kanachur Islamic Education Trust Vs. Union of India and Anr.* decided on 30<sup>th</sup> August, 2017. For, in the aforementioned case, this Court found that it was unambiguously clear that the inspection of the concerned college was already conducted on 17<sup>th</sup>/18<sup>th</sup> November, 2016 and it did not divulge any substantial deficiency so as to justify disapproval. Further, no reason was assigned for the

A surprise inspection carried out on 9<sup>th</sup>/10<sup>th</sup> December, 2016, in a short span of less than one month. In that backdrop the Court held that the justification for such surprise inspection was not explained by the MCI. In the subsequent decision in the case of *Royal Medical Trust & Anr. Vs. Union of India & Anr.* the decision in *Kanachur Islamic Education Trust (supra)* has been explained and the argument under consideration has been rejected. Be that as it may, in the present case, it is not a case of successive surprise inspections. For, the inspection conducted on 17<sup>th</sup> February, 2017 was followed by compliance verification assessment on 15<sup>th</sup>/16<sup>th</sup> March, 2017 for considering the proposal for confirmation of renewal of LOP for the academic session 2016-17; and the inspection carried out on 10<sup>th</sup> April, 2017 was for considering the proposal regarding recognition/approval for the college from academic session 2017-18. [Para 18] [1095-F-H; 1096-A-C]

3. Considering the above, it is not possible to doubt the decision of the Ministry dated 31<sup>st</sup> May, 2017, as confirmed on 31<sup>st</sup> August, 2017 after re-consideration. [Para 19] [1096-D]

4. The proposal for grant of recognition/approval submitted by the appellant college for the academic session 2017-18 be treated as having been made for the academic session 2018-19 and be processed by the respondents accordingly, in accordance with law. For that purpose, the MCI is directed to conduct inspection of the appellant college within two months and inform the appellant about the deficiencies, if any, with the option to remove the same within the time limit specified in that regard. The appellant college shall then report its compliance and communicate the removal of deficiencies to MCI, whereafter it will be open to the MCI to undertake verification of the compliance and then prepare its report to be submitted to the Central Government. The Central Government shall take appropriate decision, as may be advised, in accordance with law. [Para 22] [1097-H; 1098-A-C]

*Kanachur Islamic Education Trust v. Union of India and Anr.* (2017) 10 SCALE 321 ; *Royal Medical Trust & Anr. v. Union of India & Anr.* (2017) 11 SCALE 307 – referred to.

Case Law Reference

A

2017 (10) SCALE 321 referred to Para 18

2017 (11) SCALE 307 referred to Para 18

CIVIL APPELLATE JURISDICTION : Civil Appeal No.12845  
of 2017. B

From the impugned final Judgment and Order dated 19.07.2017  
of the High Court of Judicature at Madras in Writ Petition (Civil)  
No.18334 of 2017.

C

Mukul Rohatgi, Sr. Adv, Amit Kumar, Avijit Mani Tripathi, Shaurya  
Sahay, Kumar Abhishek, Advs for the Appellant.

Maninder Singh, ASG, Ajit Kumar Sinha, Vikas Singh, Sr. Advs,  
Ms.Kiran Bhardwaj, Mukesh Kumar Maroria, Gaurav Sharma, Dhawal  
Mohan, Prateek Bhatia, Ms. Amandeep Kaur, Advs for the Respondents. D

The Judgment of the Court was delivered by

**A.M. KHANWILKAR, J.** 1. Leave granted.

E

2. This appeal emanates from the judgment and order dated 19<sup>th</sup>  
July, 2017 passed by the High Court of Madras in Writ Petition No.18334  
of 2017. The said writ petition has been filed by the appellant for quashing  
of the order dated 31<sup>st</sup> May, 2017, passed by the Under Secretary to the  
Government of India, Ministry of Health and Family Welfare (Department  
of Health and Family Welfare) debarring the appellant college from  
admitting students against 150 seats in MBBS course for the academic  
session 2017-18. The said order was passed by the Competent Authority  
of the Central Government on the proposal for confirmation of conditional  
Letter of Permission (for short "LOP") granted in favour of the appellant  
college for the 5<sup>th</sup> batch of 150 seats in MBBS course for the academic  
session 2016-17 and to grant recognition/approval to the appellant college  
under Section 11(2) of the Indian Medical Council Act, 1956 (for short  
"the Act"). The communication dated 31<sup>st</sup> May, 2017, informing about  
the decision of the Competent Authority of the Central Government,  
which has been challenged before the High Court, reads thus:

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"ANNEXURE-P/10

No.U.12012/127/2016-ME.I[F.TS.3084749]

Government of India

Ministry of Health and Family Welfare

(Department of Health & Family Welfare)

B

Nirman Bhawn, New Delhi

Dated the 31<sup>st</sup> May, 2017

To

The Principal/Dean,

C

Karpagam Faculty of Medical Sciences & Research

Pollachi Main Road, L & T By Pass Road junction

Eachanari Post, Eachnari,

Coimbatore, Tamil Nadu-641021.

D

*Subject: Confirmation of conditional permission granted in 2016-17 and disapproval of renewal permission for 2017-18 Karpagam Faculty of Medical Sciences & Research, Coimbatore.*

*Sir/Madam,*

E

*In continuation to this Ministry's letter dated 20.08.2016 granting conditional renewal permission for admission of 5<sup>th</sup> Batch of (150 seats) in MBBS course at Karpagam Faculty of Medical Sciences & Research, Coimbatore for the academic year 2016-17 on the basis of approval communicated by Supreme Court Mandated Oversight Committee on MCI (OC) and after granting an opportunity of hearing to the college with reference to recommendation of MCI dated 24.03.2017 and considering the contents of MCI letter No. MCI-34(41) (RG-17)/2017-Med./107428 dated 29.04.2017. I am directed to confirm the renewal of permission granted vide this Ministry's letter dated 20.08.2016 for 2016-17 and remove the conditions imposed there on. MCI is also being requested to return the Bank Guarantee of Rs.2 Cr. submitted by the College in the Ministry as per the conditions laid down by the OC which is now in possession of MCI.*

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**2. Further, I am directed to convey the decision of the Central Government not to permit admission of students in MBBS Course (150 seats) for the academic year 2017-18 at Karpagam Faculty of Medical Sciences & Research, Coimbatore.**

*3. Admission made against the decision of the Central Government will be treated as irregular and action will be initiated under IMC Act & Regulation made thereunder.*

*Yours faithfully,*

*Sd/-*

*(D V K Rao)*

*Under Secretary to the Govt. of India*

*Telefax: 011-23061120"*

*(emphasis supplied)*

3. As the said decision refers to the recommendation made by the Medical Council of India (for short "MCI") vide letters dated 24<sup>th</sup> March, 2017 and 29<sup>th</sup> April, 2017, it may be apposite to reproduce the same for discerning the real issue that arises for our consideration. The communication dated 24<sup>th</sup> March, 2017, sent by the Joint Secretary of the MCI to the Secretary to the Government of India, Ministry of Health & Family Welfare, reads thus:

**"ANNEXURE-P/5**

**MEDICAL COUNCIL OF INDIA**

*No. MCI-34(41)(RG-17)/2016-Med./*

*Date: 24/03/2017*

*ITEM NO. 35*

*The Secretary,  
Govt. of India,  
Ministry of Health & Family Welfare,  
Nirman Bhawan,  
New Delhi - 110011*

*Sub: Recognition/Approval of Karpagam Faculty of Medical Sciences & Research, Coimbatore, Tamilnadu for the award of MBBS degree (150 seats) granted by The Tamilnadu Dr. M.G.R. Medical University, Chennai w/s 11(2) of the IMC Act,*

A        *1956 and Compliance Verification Assessment for renewal of permission for admission of 5<sup>th</sup> batch (150 MBBS seats) u/s 10(A) of the IMC Act., 1956 for the Academic Year 2016-17.*

Sir,

B        *I am directed to inform you that an assessment to assess the standard of examination held by the Tamilnadu Dr. MGR Medical University, Chennai and to assess the physical and the other teaching facilities available for Recognition/Approval of Karpagam Faculty of Medical Science & Research, Coimbatore, Tamilnadu for the award of MBBS degree (150 seats) granted by the Tamilnadu Dr. MGR Medical University, Chennai u/s 11(2) of the IMC Act, 1956 as well as Compliance Verification Assessment for renewal of permission for admission of 5<sup>th</sup> batch (150 MBBS seats) u/s 10(A) of the IMC Act, 1956 for the Academic year 2016-17 with reference to the conditional approval accorded by Oversight Committee were carried out by the Council assessors on 17<sup>th</sup> February, 2017 and 15<sup>th</sup> & 16<sup>th</sup> March, 2017. The assessment reports (17<sup>th</sup> February, 2017 & 15<sup>th</sup> & 16<sup>th</sup> March, 2017) and a letter dated 15/03/2017 from the Assessors regarding complaint dated 03.01.2017 of the students of Karpagam Faculty of Medical Sciences & Research, Coimbatore, Tamilnadu were considered by the Executive Committee of the council at its meeting held on 21/03/2017 and it was decided as under:-*

E        *“The Executive Committee of the Council noted that the compliance verification assessment report (19<sup>th</sup> February 2016) along with previous assessment report (2<sup>nd</sup> & 3<sup>rd</sup> November, 2015) with regard to renewal of permission for MBBS course for 5<sup>th</sup> batch (150 seats) of Karpagam Faculty of Medical Sciences & Research, Coimbatore, Tamil Nadu under The Tamilnadu Dr. M.G.R. Medical University, Chennai u/s 10A of the IMC Act, 1956 for the academic year 2016-2017 was considered by the Executive Committee of the Council at its meeting held on 13.05.2016 and it was decided as under:-*

F        *“The Executive Committee of the Council considered the compliance verification assessment report (19<sup>th</sup> February*

H

2016) along with previous assessment report (2<sup>nd</sup> & 3<sup>rd</sup> November, 2015) and noted the following:- A

1. As per O.T. & Ward records in Surgical & allied branches, Radiodiagnosis and obstetrics & Gynaecology, full time working of many faculty members in the rank of Professors and Asso. Prof. could not be verified. B
2. Many patients were admitted with minor ailments without any major problem. The occupancy was tailor to suit assessment. E.g. One referred patient from Ophthalmology was lying in medical ward.
3. There were only 4 Major operations & 3 minor operations on day of assessment. C
4. Other deficiencies as pointed out in the assessment report.

In view of above, the Executive Committee of the Council decided to recommend to the Central Govt. not to renew the permission for admission of 5<sup>th</sup> batch of 150 MBBS students at Karpagam Faculty of Medical Sciences & Research, Coimbatore, Tamil Nadu under The Tamilnadu Dr. M.G.R. Medical University, Chennai u/s 10A of the IMC Act, 1956 for the academic year 2016-17. D

The above decision of the Executive Committee was communicated to the Central Govt. vide this office letter dated 14/05/2016. The Central Government vide its letter dated 10.06.2016 had conveyed its decision to the college authorities as well as other concerned authorities not to admit any students for the academic year 2016-17. E F

Thereafter, the Central Govt. vide its letter dated 20.08.2016 had granted approval to the said college for renewal of permission for admission of 5<sup>th</sup> batch (150 seats) u/s 10A of the IMC Act, 1956 for the academic year 2016-17, in the light of the directive of the Supreme Court Mandated Oversight Committee (OC) subject to submission of bank guarantees, affidavit and some other conditions. G

In continuation to the earlier letter dated 20.08.2016 the Central Govt. vide its letter dated 31.08.2016 had H

A forwarded the following documents as submitted by the college to the Ministry on 24.08.2016.

i. An affidavit dated 22.08.2016 from the Chairman of the Trust/ Society and the Dean/Principal of the college concerned.

B ii. A bank guarantee bearing No. 0507116BG0000170 dated 22.08.2016 Rs. 2 Cr. issued by State Bank of India in favour of MCI, with a validity of 1 year.

C The Executive Committee of the Council further noted that upon receipt of request through the Central Government u/s 11(2) of the IMC Act, 1956, the assessments to assess the standard of examination held by The Tamilnadu Dr. MGR Medical University, Chennai and to assess the physical and the other teaching facilities available for Recognition/Approval of Karpagam Faculty of Medical Science & Research, Coimbatore, Tamilnadu for the award of MBBS degree (150 seats) granted by The Tamilnadu Dr. MGR Medical University, Chennai u/s 11(2) of the IMC Act, 1956 as well as Compliance Verification Assessment for renewal of permission for admission of 5<sup>th</sup> batch (150 MBBS seats) u/s 10(A) of the IMC Act, 1956 for the Academic year 2016-17 with reference to the conditional approval accorded by Oversight Committee have been carried out by the Council assessors on 17<sup>th</sup> February, 2017 and 15<sup>th</sup> & 16<sup>th</sup> March, 2017 and noted the following:-

F 1. OPD attendance of 1,343 on day of assessment as provided by Institute appear to be highly inflated. On physical verification at 11 a.m. & 11:30 a.m., total OPD statistics as recorded in registers of all the departments was only 286.

2. There were NIL Normal Delivery & 2 Caesarean Section on day of assessment.

G 3. Histopathology & Cytopathology workload for the whole Institute was only 05 each on day of assessment.

4. Data of radiological investigations as provided by Institute appear to be inflated.

H 5. Wards: Ancillary facilities are not properly used in the wards.

6. **RHTC: No independent activity in National Health Programmes is carried out.** A

7. **Other deficiencies as pointed out in the assessment report.**

*In view of the above, the college has failed to abide by the undertaking it had given to the Central Govt. that there are no deficiencies as per clause 3.2 (i) of the directions passed by the Supreme Court mandated Oversight Committee vide Communication dated 12/08/2016. The Executive Committee, after due deliberation and discussion, has decided that the college has failed to comply with the stipulation laid down by the Oversight Committee. Accordingly, the Executive Committee recommends that as per the directions passed by Oversight Committee in 19 as even after giving an undertaking that they have fulfilled the entire infrastructure for recognition/approval of Karpagam Faculty of medical sciences & Research, Coimbatore, Tamilnadu for the award of MBBS degree (150 seats) granted by The Tamilnadu Dr. M.G.R. Medical University, Chennai u/s 11(2) of the IMC Act, 1956 and Compliance Verification Assessment for renewal of permission for admission of 5<sup>th</sup> batch (150 MBBS seats) u/s 10(A) of the IMC Act, 1956 for the Academic year 2016-17, the college was found to be grossly deficient. It has also been decided by the Executive Committee that the Bank Guarantee furnished by the college in pursuance of the directives passed by the Oversight Committee as well as GOI letter dated 20/08/2016 is liable to be encashed.* B C D E

*The above decision of the Executive Committee is subject to approval of Oversight Committee.* F

*Two copy of assessment report is enclosed herewith.*

*Your faithfully,*

*Sd/-  
(Dr. Rajendra Wabale)  
Joint Secretary* G

*Encl: As above.*

*Endst. No. MCI-34(41)(RG-17)/2016-Med./179222*

*Date:24/03/17*

A

*Copy forwarded for information and necessary action to:-*

1. *The Secretary to Oversight Committee on MCI, 2<sup>nd</sup> Floor, Academic Block, National Institute of Health & Family Welfare, Munirka, New Delhi 110067*

B

2. *The Dean/Principal, Karpagam Faculty of Medical Sciences & Research, Pollachi Main Road, Othakkalmandapam, Coimbatore-641032 (Tamilnadu), Email: info@karpagam.com, karpagummedicalcollege@gmail.com*

C

*with the request to submit the detailed point-wise compliance with regard to recognition/approval (softcopy-in editable word format with C.D. also) with the documentary evidence in respect of the rectification of deficiencies pointed out as above within 15 days to the Council office alongwith the demand draft worth Rs. 3.00 lakhs (Rupees three lakhs only) in favour of The Secretary, Medical Council of India payable at New Delhi.*

D

*Sd/-*

*(Dr. Rajendra Wabale)*

*Joint Secretary”*

*(emphasis supplied)*

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The second communication sent by the Joint Secretary of the MCI to the Secretary to the Government of India, Ministry of Health and Family Welfare dated 29<sup>th</sup> April, 2017 reads thus:

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**“ANNEXURE P/9**

**MEDICAL COUNCIL OF INDIA**

**No. MCI-34(41)(RG-17)/2017-Med./**

**Date: 29<sup>th</sup> April, 2017**

**ITEM NO.61**

G

*The Secretary  
Govt. of India  
Ministry of Health & Family Welfare,  
Nirman Bhawan,  
New Delhi- 110011.*

H

*Sub: Recognition/Approval of Karpagam Faculty of medical A  
Sciences & Research, Coimbatore, Tamilnadu for the Award  
of MBBS degree (150 seats) granted by the Tamilnadu Dr.  
M.G.R. Medical University, Chennai u/s 11(2) of the IMC Act,  
1956.*

*Sir,*

*I am directed to inform you that an assessment to verify B  
the compliance submitted by the college authorities on the  
deficiencies pointed out in the assessment report (15<sup>th</sup> & 16<sup>th</sup>  
March, 2017) with regard to Recognition/Approval of  
Karpagam Faculty of Medical Science & Research, C  
Coimbatore, Tamilnadu for the award of MBBS degree (150  
seats) granted by the Tamilnadu Dr. MGR Medical University,  
Chennai u/s 11(2) of the IMC Act, 1956 as well as Compliance  
Verification Assessment for renewal of permission for  
admission of 5<sup>th</sup> batch (150 MBBS seats) u/s 10(A) of the D  
IMC Act, 1956 was carried out by the Council Assessors on  
10<sup>th</sup> April, 2017. The compliance verification assessment  
report (10<sup>th</sup> April, 2017) along with previous assessment report  
(15<sup>th</sup> & 16<sup>th</sup> March, 2017) was considered by the Executive  
Committee of the Council at its meeting held on 28.04.2017  
and it was decided as under: E*

*'The Executive Committee of the Council considered the  
compliance verification assessment report (10<sup>th</sup> April 2017)  
alongwith previous assessment report (15<sup>th</sup> & 16<sup>th</sup> March,  
2017) alongwith a letter dated 12.04.2017 from Dr. L.P.  
Thangavelu, Faculty, Department of Surgery, Karpagam F  
Faculty of Medical Sciences and Research, Coimbatore and  
noted the following:-*

- 1. Deficiency of faculty is 17.16% as detailed in the report.*
- 2. Shortage of Residents is 16.25% as detailed in the report. G*
- 3. OPD attendance at 1.209 as claimed by Institute is highly  
inflated. When the assessors reached the Institute at 10:15  
a.m., a few patients were seen at Registration. After this the  
Institute brought healthy persons to register to inflate OPD  
attendance. H*

A 4. Bed Occupancy at 10 a.m. is 62.76% Institute's figure of 78% is highly inflated. The figures in the histopathology registers, grossly mismatch the number of surgeries. There is no register maintained in OT for handing over the specimens in histopathology. Many specimens, paraffin blocks and slides were missing on random checking. Cytopathology reported by Astit. Prof. and repetition of same diagnosis with the same findings. These were signed digitally.

B

C 5. (a) No. of at the time of visit at 1030 a.m. the pre operative OT list showed 21 patients for surgeries of All OTs but in pre OP waiting there were 5 patients. Completed surgeries were 2, and 2 surgeries were ongoing. Institute Statistics-18 inflated to suit the requirement.

D (b) 3 Surgeries were completed at 11 a.m. Minor surgeries were done in Major OT. Institute statistics-29 appear to be highly inflated.

E 6. Many patients in the hospital were admitted which were for superspeciality category, Superspeciality doctors are coming and attending these patients.

(a) In Surgery ward C1 patient named Chandranesi was admitted for chemotherapy.

(b) Mrs. Mylathal No. 1703038727/K/T030936 was admitted under urology as per records

F (c) In D2 Pediatrics ward there were total 14 patients at 11 a.m. All were admitted on 10<sup>th</sup> April, 2017. Hence no old patient.

(d) Few case sheet of patient like Charudershna were blank i.e. not seen in OPD before admission.

G 7. Inadequate clinical material as per verified case records and indoor register.

(a) Number of admissions in Pediatrics on 8<sup>th</sup> April, -03, 7<sup>th</sup> April-02, 9<sup>th</sup> April-02, 6<sup>th</sup> April-02.

General Surgery department on 8<sup>th</sup> April-05, 5<sup>th</sup> April-06, 6<sup>th</sup> April-09

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*(b) TB Chest male ward as per Indoor register no admission on 8<sup>th</sup>, 9<sup>th</sup>, 4<sup>th</sup>, 5<sup>th</sup> April. No admission from 27<sup>th</sup> March to 3<sup>rd</sup> April, 22<sup>nd</sup> March to 27<sup>th</sup> March no admissions.* A

*(c) Skin ward male no admission from 23<sup>rd</sup> March to 29<sup>th</sup> March no admission. 20<sup>th</sup> February to 6<sup>th</sup> March No admission. 5<sup>th</sup> April-2 admissions, 8<sup>th</sup> April-2 admissions.* B

*(d) Many of senior faculty on clinical departments are not working/participating in teaching.*

*(e) In Radiology – only one faculty was available. TB – No faculty.*

*(f) Histopathology section is in the Central Clinical Lab. No Histopathology section Pathology department.* C

*(g) No attendance register or Biometric record was available with Dean at 10 a.m.*

**8. Data of Radiological investigations as provided by the Institute are highly inflated.** D

**9. Wards: Pantry in wards do not appear to be used.**

**10. Other deficiencies as pointed out in the assessment report.**

*In view of the above, the Executive Committee of the Council decided to recommend to the Central Government not to recognize/approve Karpagam Faculty of Medical Sciences & Research, Coimbatore, Tamilnadu for the award of MBBS degree (150 seats) granted by The Tamilnadu Dr. M.G.R. Medical University, Chennai u/s 11(2) of the IMC Act, 1956 and further decided that the Institute be asked to submit the compliance for rectification of the above deficiencies within 01 month for further consideration of the matter. However in view of above, the Executive Committee decided to reiterate its earlier decision to recommend to the Central Govt. that the college should be debarred from admitting students in the above course for a period of two academic years i.e. 2017-18 & 2018-19 as per the directions passed by Oversight Committee in para 3.2(b) vide communication dated 12/08/2016'.* E  
F  
G

A            *The above decision of the Executive Committee is subject to approval of Oversight Committee.*

*A copy of assessment report is enclosed herewith.*

*Your faithfully,*

B

*Sd/-*

*(Dr. Rajendra Wabale)*

*Joint Secretary*

*Encl: As above.*

C

*Endst. No. MCI-34(41)(RG-17)/2017-Med./107430*

*Date: 29/04/17*

*Copy forwarded for information and necessary action to:-*

D

*1. The Secretary to Oversight Committee on MCI, 2<sup>nd</sup> Floor, Academic Block, National Institute of Health & Family Welfare, Munirka, New Delhi – 110067.*

E

*2. The Dean/Principal, Karpagam Faculty of Medical Sciences & Research, Pollachi Main Road, Othakkalmandapam, Coimbatore-641032 (Tamilnadu),  
E m a i l : i n f o @ k a r p a g a m . c o m,  
karpagammedicalcollege@gmail.com with the request to submit the detailed point-wise compliance with regard to recognition/approval (softcopy-in editable word format with C.D. also) with the documentary evidence in respect of the rectification of deficiencies pointed out as above within 1(one) to the Council office alongwith the demand draft worth Rs. 3.00 lakhs (Rupees three lakhs only) in favour of The Secretary, Medical Council of India payable at New Delhi.*

F

*Sd/-*

*(Dr. Rajendra Wabale)*

*Joint Secretary”*

*(emphasis supplied)*

G

*4. As mentioned above, the appellant has challenged the decision of the Competent Authority of the Central Government communicated*

H

vide letter dated 31<sup>st</sup> May, 2017. The decision was partly in favour of the appellant, confirming the renewal of permission granted for admitting students for the 5<sup>th</sup> batch in MBBS course for the academic session 2016-17 and also directing the MCI to return the bank guarantee of Rs.2 crore given by the appellant college. The latter part of the said decision, however, is adverse to the appellant, debarring the appellant college from admitting students in MBBS course (150 seats) for the academic session 2017-18.

5. The High Court vide order dated 19<sup>th</sup> July, 2017, which is impugned in this appeal, has issued notice to the respondents but refused to grant any interim relief to the appellant to allow them to admit students in MBBS course for the academic session 2017-18. As a result, the appellant approached this Court by way of present special leave petition which was heard on 11<sup>th</sup> August, 2017. On the basis of the arguments advanced by the parties, this Court directed the Central Government to reconsider the matter and accordingly, passed the following order:

*"Heard Mr. Mukul Rohatgi and Mr. Dushyant Dave, learned senior counsel, Mr. Gaurav Bhatia, learned counsel for the petitioners, Mr. Ajit Kumar Sinha, learned senior counsel for the Union of India and Mr. Gaurav Sharma, learned counsel for the Medical Council of India. Having heard learned counsel for the parties, it is directed that the Central Government shall afford an opportunity of hearing to the representatives of the Institutions and take assistance of the newly constituted Committee as per the judgment passed by the Constitution Bench in Amma Chandravati Educational and Charitable Trust and Others v. Union of India and Another [Writ Petition (C) No.408 of 2017], within ten days hence and pass a reasoned order by end of August, 2017. Be it noted, we have passed this order as the order impugned is the communication by the Central Government which is dated 31<sup>st</sup> May, 2017.*

*List the matter in the first week of September, 2017."*

6. In view of the directions given by this Court, the Central Government considered the matter afresh and has passed a detailed order (running into 5 pages) on 31<sup>st</sup> August, 2017. The relevant portion of the order is in paragraphs 16 & 17. The rest of the paragraphs refer

A to the previous proceedings reckoned by the Ministry. Paragraphs 16 & 17 of the said order read thus:

*“16. Now, in compliance with the above direction of Hon’ble Supreme Court dated 11.08.2017, the Ministry granted hearing to the college on 25.08.2017. A member of the Oversight Committee was present during the entire proceeding of the Hearing Committee. The Hearing Committee after considering the record and submission of the college submitted its report to the Ministry with the following conclusion:-*

C *The Hearing Committee is of the view that the bed occupancy as claimed by the college cannot be validated by this Committee and requires physical verification.*

*A copy of the Hearing Committee report containing the above observation is enclosed.*

D *17. Accepting the recommendations of Hearing Committee, the Ministry reiterates its earlier decision dated 31.5.2017 to confirm the conditional permission issued to the Karpagam Faculty of Medical Sciences & Research, Coimbatore, Tamil Nadu and directs the college not to admit MBBS students for the academic year 2017-18.”*

E

(emphasis supplied)

F 7. Aggrieved, the appellant has filed I.A. No.84171 of 2017 to challenge the correctness of the aforementioned decision of the Competent Authority of the Central Government, reiterating its earlier decision dated 31<sup>st</sup> May, 2017.

G 8. During the arguments, the counsel appearing for the appellant invited our attention to the relevant documents to question the observation recorded by the Executive Committee of the MCI and the Hearing Committee. It is contended that the impugned decision refers to the observation of the Hearing Committee as reproduced in paragraph 16 of the impugned decision dated 31<sup>st</sup> August, 2017, which according to the appellant is contrary to the factual position emerging from the record. In any case, contends learned counsel that it is an inconclusive observation and could not have been the basis to pass the impugned decision. The respondents, on the other hand, have supported the orders passed by the

H

Competent Authority of the Central Government on 31<sup>st</sup> May, 2017 and 31<sup>st</sup> August, 2017 being well considered decisions. A

9. We have heard Mr. Mukul Rohatgi, learned senior counsel appearing for the appellant college, Mr. Vikas Singh, learned senior counsel appearing for the MCI and Mr. Maninder Singh, learned Additional Solicitor General appearing for Union of India. B

10. Ordinarily, we would have relegated the parties before the High Court where the writ petition is still pending. However, as the appellant invited the order dated 11<sup>th</sup> August, 2017 from this Court and thereafter participated in the proceedings before the Competent Authority of the Central Government, which in turn, has passed the impugned order dated 31<sup>st</sup> August, 2017 after re-consideration of the matter and as the appellant has chosen to assail the same by way of an I.A. filed in this appeal, coupled with the urgency of the matter, as the cut-off date for admission in MBBS course for the academic session 2017-18 was to expire on 31<sup>st</sup> August, 2017; and that cut-off date can be extended only by this Court in exercise of the plenary power under Article 142 of the Constitution of India, we permitted the appellant to agitate all the issues before this Court. C D

11. We have reproduced the order dated 31<sup>st</sup> May, 2017, passed by the Competent Authority of the Central Government, in its entirety to discern the real issue that needs to be answered in the present appeal. As noted earlier, the said order is partly in favour of the appellant. It is adverse only to the extent of debaring the appellant college from admitting students in MBBS course (150 seats) for the academic session 2017-18 and also not granting recognition/approval to the appellant college which had already started MBBS course and admitted five batches of students until the academic session 2016-17. E F

12. From the factual narration in the communications sent by the MCI to the Ministry vide letters dated 24<sup>th</sup> March, 2017 and 29<sup>th</sup> April, 2017, which *inter alia* were considered by the Competent Authority of the Central Government to form its opinion, it is indisputable that the appellant college was granted conditional renewal permission by the Central Government on 20<sup>th</sup> August, 2016 to admit 5<sup>th</sup> batch (150 seats) in MBBS course for the academic session 2016-17, on conditions specified by the Oversight Committee (for short "OC" constituted by this Court) in its communication dated 12<sup>th</sup> August, 2016. The appellant G H

A college accepted those conditions and had filed an affidavit of undertaking to remove all the deficiencies pointed out by the MCI within specified time. Thereafter, a compliance verification assessment was carried out by the MCI on 17<sup>th</sup> February, 2017 and 15<sup>th</sup> & 16<sup>th</sup> March, 2017 when the following deficiencies were noticed:

B *“1. OPD attendance of 1,343 on day of assessment as provided by Institute appear to be highly inflated. On physical verification at 11 a.m. & 11:30 a.m., total OPD statistics as recorded in registers of all the departments was only 286.*

C *2. There were NIL Normal Delivery & 2 Caesarean Section on day of assessment.*

*3. Histopathology & Cytopathology workload for the whole Institute was only 05 each on day of assessment.*

*4. Data of radiological investigations as provided by Institute appear to be inflated.*

D *5. Wards: Ancillary facilities are not properly used in the wards.*

*6. RHTC: No independent activity in National Health Programmes is carried out.”*

E *7. Other deficiencies as pointed out in the assessment report.”*

13. The Executive Committee of the MCI, in its meeting held on 21<sup>st</sup> March, 2017, considered the relevant assessment reports submitted by the Assessors periodically and, noting the deficiencies, recommended to the Central Government not to renew the permission for admission of 5<sup>th</sup> batch of 150 students in MBBS course for the academic session 2016-17, and to debar the appellant college. The relevant portion of the communication dated 24<sup>th</sup> March, 2017 sent by the MCI to the Ministry, reproducing the recommendation, reads thus:

G *“In view of the above, the college has failed to abide by the undertaking it had given to the Central Govt. that there are no deficiencies as per clause 3.2 (i) of the directions passed by the Supreme Court mandated Oversight Committee vide Communication dated 12/08/2016. The Executive Committee, after due deliberation and discussion, has decided that the college has failed to comply with the stipulation laid down by*

H

*the Oversight Committee. Accordingly, the Executive Committee recommends that as per the directions passed by Oversight Committee in 19 as even after giving an undertaking that they have fulfilled the entire infrastructure for recognition/approval of Karpagam Faculty of medical sciences & Research, Coimbatore, Tamilnadu for the award of MBBS degree (150 seats) granted by The Tamilnadu Dr. M.G.R. Medical University, Chennai u/s 11(2) of the IMC Act, 1956 and Compliance Verification Assessment for renewal of permission for admission of 5<sup>th</sup> batch (150 MBBS seats) u/s 10(A) of the IMC Act, 1956 for the Academic year 2016-17, the college was found to be grossly deficient. It has also been decided by the Executive Committee that the Bank Guarantee furnished by the college in pursuance of the directives passed by the Oversight Committee as well as GOI letter dated 20/08/2016 is liable to be encashed.*

*The above decision of the Executive Committee is subject to approval of Oversight Committee.”*

(emphasis supplied)

14. A copy of this communication was forwarded to the Secretary of the OC as well as the appellant college with a request to submit a detailed, point-wise compliance with respect to the recognition/approval (soft copy in editable word format with CD also) along with documentary evidence in respect of the rectification of the deficiencies pointed out by the Assessors.

15. On 10<sup>th</sup> April, 2017, a compliance verification assessment was carried out in respect of which an assessment report was submitted to MCI. The Executive Committee of MCI in its meeting held on 28<sup>th</sup> April, 2017 considered the relevant assessment reports including the compliance verification report dated 10<sup>th</sup> April, 2017 with regard to recognition/approval of the appellant college under Section 11(2) of the Act. The Executive Committee noted 10 deficiencies (as reproduced in the communication dated 29<sup>th</sup> April, 2017 – Annexure P/9) and decided to send a negative recommendation to the Central Government on the proposal for recognition/approval, including to debar the appellant college from admitting students for two academic sessions 2017-18 & 2018-19 as per the directions passed by the OC in paragraph 3.2(b) vide

- A communication dated 12<sup>th</sup> August, 2016. The said decision of MCI was communicated to the Central Government vide communication dated 29<sup>th</sup> April, 2017 and copies of the said communication were also forwarded to the Secretary of OC and the appellant college with a request to submit a detailed, point-wise compliance with regard to recognition/ approval along with documentary evidence in respect of rectification of deficiencies pointed out in the said communication. On the basis of the aforesaid recommendation of the MCI, the Competent Authority of the Central Government took a decision which was partly in favour of the appellant college. In other words, the Ministry did not accept the recommendation of the MCI in toto. The Ministry, instead, vide order dated 31<sup>st</sup> May, 2017 merely directed the appellant college not to admit students for the academic session 2017-18, which position has been reiterated in the order dated 31<sup>st</sup> August, 2017 passed after reconsideration. It is this part of the direction which is adverse to the appellant.
16. The fact that the Competent Authority of the Central Government has confirmed the renewal of permission in favour of the appellant for academic session 2016-17, it would not follow that the appellant college is entitled to grant of recognition/approval under Section 11(2) of the Act from the academic session 2017-18 as a matter of course, without removing the deficiencies pointed out in the latest assessment report dated 10<sup>th</sup> April, 2017. The appellant, however, would contend that the correctness of the report dated 10<sup>th</sup> April, 2017, is seriously in doubt. For, the previous assessment reports made no reference to the deficiencies regarding faculty and residents in particular. The Dean of the appellant college had registered his protest and made such noting on the said report - that he did not agree with most of the findings in the report and that he would submit a detailed reply. Indeed, the assessment reports dated 17<sup>th</sup> February, 2017 and 15<sup>th</sup>/16<sup>th</sup> March, 2017 have noted deficiencies which are not identical to the deficiencies noted in the assessment report dated 10<sup>th</sup> April, 2017. It must, however, be kept in mind that the reports are in respect of the factual position noticed during the inspection carried out on the relevant dates. The variation of deficiencies may be on account of different situations. Therefore, it may not be correct to discredit the 10<sup>th</sup> April, 2017 assessment report on the basis of such variations. It is one thing to say that the college is in a position to explain the deficiencies but whether to accept that explanation,

is within the domain of the expert body. There is nothing to indicate in the communication dated 29<sup>th</sup> April, 2017 sent by the MCI or, for that matter, the impugned decision of the Competent Authority of the Central Government dated 31<sup>st</sup> May, 2017, that any plausible explanation was offered by the appellant college in regard to the stated deficiencies. Even the order dated 31<sup>st</sup> August, 2017, does not indicate as to whether any explanation was offered by the appellant college during the hearing for reconsideration by the Central Government. Notably, a member of the OC constituted by this Court was present during the hearing on 25<sup>th</sup> August, 2017. The Hearing Committee was of the view that the bed occupancy as claimed by the college cannot be validated by the Committee unless physical verification was done for that purpose. That finding pre-supposes that the explanation offered by the appellant college, if any, did not commend to the Hearing Committee. The fulfilment of benchmark regarding bed occupancy for grant of recognition/approval under Section 11(2) of the Act is essential. That is a precondition for grant of recognition and can certainly be a relevant factor to be considered by the MCI as well as the Hearing Committee.

17. The bed occupancy noticed in the assessment report dated 10<sup>th</sup> April, 2017 is 62.76% as against the claim made by the college of 78%. The claim of the college was found to be highly inflated. Even in the earlier assessment reports comments have been made regarding the bed occupancy to be tailor made to suit the assessment. Suffice it to observe that the Hearing Committee, during the reconsideration, was not convinced about the deficiency regarding bed occupancy until it was physically verified. It is not for this Court to sit over the satisfaction of the expert body and of the Competent Authority of the Central Government as a Court of appeal.

18. The appellant would then contend that it was not permissible for the MCI to carry out successive inspections. Reliance has been placed on the dictum of this Court in *Kanachur Islamic Education Trust Vs. Union of India and Anr.*<sup>1</sup>, decided on 30<sup>th</sup> August, 2017. This submission does not commend us. For, in the aforementioned case, this Court found that it was unambiguously clear that the inspection of the concerned college was already conducted on 17<sup>th</sup>/18<sup>th</sup> November, 2016 and it did not divulge any substantial deficiency so as to justify disapproval. Further, no reason was assigned for the surprise inspection carried out

<sup>1</sup>(2017) 10 SCALE 321

A on 9<sup>th</sup>/10<sup>th</sup> December, 2016, in a short span of less than one month. In that backdrop the Court held that the justification for such surprise inspection was not explained by the MCI. In the subsequent decision in the case of *Royal Medical Trust & Anr. Vs. Union of India & Anr.*<sup>2</sup>, the decision in Kanachur Islamic Education Trust (supra) has been explained and the argument under consideration has been rejected. B that as it may, in the present case, it is not a case of successive surprise inspections. For, the inspection conducted on 17<sup>th</sup> February, 2017 was followed by compliance verification assessment on 15<sup>th</sup>/16<sup>th</sup> March, 2017 for considering the proposal for confirmation of renewal of LOP for the academic session 2016-17; and the inspection carried out on 10<sup>th</sup> April, C 2017 was for considering the proposal regarding recognition/approval for the college from academic session 2017-18.

19. Considering the above, it is not possible to doubt the decision of the Ministry dated 31<sup>st</sup> May, 2017, as confirmed on 31<sup>st</sup> August, 2017 after re-consideration. The fact that there are some factual errors D committed in paragraph 13 of the impugned decision dated 31<sup>st</sup> August, 2017, regarding the chart pertaining to the some other inspection has been fairly admitted by the counsel for the respondents as a clerical error. But that would not vitiate the order dated 31<sup>st</sup> August, 2017. Because, the decision dated 31<sup>st</sup> May, 2017 is founded on the factual E position stated in the recommendation of the MCI vide communications dated 24<sup>th</sup> March, 2017 and 29<sup>th</sup> April, 2017, in particular. The latter communication pertains to the proposal for grant of recognition/approval to the appellant college under Section 11(2) of the Act:

20. Counsel for the appellant while referring to the communication dated 5<sup>th</sup> April, 2017 sent by the Under Secretary to Government of F India, Ministry of Health and Family Welfare to the appellant college (Annexure-A/9) vehemently contended that the personal hearing before the Ministry was scheduled on 11<sup>th</sup> April, 2017, but the inspection of the college was conducted one day earlier. The argument, though attractive at first blush, will have to be rejected. In that, the personal hearing G scheduled on 11<sup>th</sup> April, 2017, in terms of the said communication dated 5<sup>th</sup> April, 2017, was for considering the proposal for confirmation of renewal permission for 5<sup>th</sup> batch (150 seats) of students in MBBS course for the academic session 2016-17, under Section 10(A) of the Act and not related to the issue of grant of recognition/approval under Section

H. <sup>2</sup>W.P.(C) No.747 of 2017, decided on 12<sup>th</sup> September, 2017

11(2) of the Act which was for the academic session 2017-18. Whereas, the inspection conducted on 10<sup>th</sup> April, 2017 was for considering the proposal for grant of recognition under Section 11 of the Act and not pertaining to the proposal for renewal of permission for the academic session 2016-17. Indisputably, the renewal of permission for the academic session 2016-17 has been confirmed by the Central Government vide order dated 31<sup>st</sup> May, 2017, despite the negative recommendation given by the MCI in that behalf. Suffice it to observe that the argument of the appellant is replete with confusion in reference to the record and proceedings relating to two different proposals, namely, one for confirmation of renewal of LOP for the academic session 2016-17 under Section 10A of the Act and another for grant of recognition/approval from academic session 2017-18 under Section 11 of the Act. The benchmark and the minimum standards for these proposals are bound to be different and we must presume that the expert body, such as MCI and the Hearing Committee in which one member of the OC also participated, were fully aware of the essentialities and pre-conditions for grant of recognition/approval. Since the decision of the Competent Authority of the Central Government is based on such inputs, it is not open for us to sit over that decision as a Court of appeal. Further, as ordained in the decision of *Royal Medical Trust* (supra), the relief to permit the appellants to admit students for academic session 2017-18 cannot be countenanced. In that decision, in paragraph 52, this Court has also rejected the challenge to the order such as dated 31<sup>st</sup> August, 2017, being bereft of reasons. That dictum applies on all fours to the present case.

21. Accordingly, we find no merit in this appeal. Since we have already examined all the issues raised by the appellant for assailing the correctness of the order dated 31<sup>st</sup> May, 2017 and confirmation thereof on 31<sup>st</sup> August, 2017 by the Competent Authority of the Central Government, nothing would survive for consideration in the writ petition filed by the appellant before the High Court of Madras. As a result, Writ Petition No.18334 of 2017 be deemed to have been disposed of in terms of this judgment.

22. We may, however, make it clear that the proposal for grant of recognition/approval submitted by the appellant college for the academic session 2017-18 be treated as having been made for the academic session 2018-19 and be processed by the respondents accordingly, in accordance

- A with law. For that purpose, the MCI is directed to conduct inspection of the appellant college within two months and inform the appellant about the deficiencies, if any, with the option to remove the same within the time limit specified in that regard. The appellant college shall then report its compliance and communicate the removal of deficiencies to MCI,
- B whereafter it will be open to the MCI to undertake verification of the compliance and then prepare its report to be submitted to the Central Government. The Central Government shall take appropriate decision, as may be advised, in accordance with law, within one month therefrom and forthwith communicate the same to the appellant college. If the appellant college is aggrieved by the said decision, it will be open to the
- C appellant to take recourse to remedies as may be available in law.

23. The appeal and interlocutory application are disposed of in the above terms. No order as to costs.

Ankit Gyan

Appeal disposed of.