

VARUNARJUN TRUST & ANR.

A

v.

UNION OF INDIA & ORS.

(Writ Petition (Civil) No. 787 of 2017)

SEPTEMBER 12, 2017

B

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

Indian Medical Council Act, 1956 – ss.10-A, 19-A – Application by petitioner for establishment of a new medical college, to the Ministry of Health and Family Welfare, from academic session 2016-17 onwards – Conditional approval-cum-Letter of Permission (LOP) granted by Central govt. – However, in view of certain deficiencies noticed during assessment conducted by Medical Council of India (MCI), Ministry vide letter dtd. 31.05.17, debarred the petitioner-college from admitting students for two years i.e. 2017-18 & 2018-19, and also authorised MCI to encash the bank guarantee – Writ petition by petitioner before High Court challenging this order – Pursuant to decision of High Court disposing of the writ petition, Hearing Committee considered the fresh representation given by petitioner and submitted its report to the Ministry – Relying on the said recommendation of Hearing Committee, Ministry vide order dtd. 19.08.17 reiterated its earlier decision dtd. 31.05.17 – Petitioner seeking quashing of the said order – Held: In the instant case, the deficiency of faculty and residents taken note of by the Hearing Committee and Central Government in the impugned decision, was significant and cannot be treated as trivial or unrelated to maintenance of high standards of imparting medical education – In view of the fact that petitioner failed to fulfil the conditions specified in the conditional LOP, the question of confirming the LOP for the academic session 2016-17 without removal of deficiencies in all respects does not arise – However, absence of faculty members and residents on the day of inspection could not be the basis for determining the efficiency and performance of the college for the rest of the academic session, as it is not the opinion of the Hearing Committee or of the Competent Authority that requisite number of faculty members and residents were not employed in the petitioner-college or that the claim of the

C

D

E

F

G

H

A *petitioner-college in that behalf was bogus – This aspect requires proper verification and consideration – MCI to send its Inspection Team within a period of three months to submit an assessment report regarding the overall performance and efficiency of the petitioner-college – Ministry to take a final decision within one month of the receipt of recommendation from MCI – Students already admitted in*
 B *petitioner-college on the basis of conditional LOP for the academic session 2016-17, to continue their studies – Respondents to treat the renewal application submitted by petitioner-college for the academic session 2017-18 as one for the academic session 2018-19.*

C **Disposing of the writ petition, the Court**

D **HELD: 1.1 In this case, the deficiency of faculty and residents was significant, besides the other two deficiencies taken note of by the Hearing Committee and the Central Government in the impugned decision. For that, the college did not produce supportive documents or evidence in respect of its claim of 6 (six) minor operations and list of paramedical non-teaching staff. These deficiencies cannot be treated as trivial or unrelated to maintenance of high standards of imparting medical education. [Para 13][765-B-C]**

E **1.2 The proposal under consideration was for establishment of a new medical college from academic session 2016-17 and that has to be examined keeping in mind the norms specified in the statutory scheme formulated regarding permission to establish a new medical college. That scheme postulates the minimum standard of education, which has been formulated by the MCI in terms of Section 19-A of the Act. The scheme provides for minimum infrastructure facilities and staff requirements for 100 admissions. It also provides guidance as to how deficiency in respect of those matters should be calculated. The Medical Council of India has published those norms and the schemes for requirements to be fulfilled by the applicant College(s) for obtaining Letter of Intent and Letter of Permission for establishment of a new medical college and for yearly renewal under Section 10-A of the Act. Considering the requirements of the scheme and as the petitioner college failed to fulfil the conditions specified by the Oversight Committee (OC)**
 H

constituted by Supreme Court, as incorporated in the formal conditional Letter of Permission dated 12th September, 2016, the question of confirming the Letter of Permission for the academic session 2016-17 without removal of deficiencies in all respects does not arise. The petitioner college must first remove all those deficiencies to become eligible for confirmation of LOP, as per the undertaking given by the college in that regard. [Paras 14, 15][[765-D-F; 771-B-C]

1.3 In the present case, the Hearing Committee has duly considered the explanation offered by the college. It has, however, rejected the same for the reasons recorded in the impugned decision. The fact that specific reference to the opinion of the OC is absent in the conclusion recorded by the Hearing Committee, it does not follow that the issue has not been considered by the Hearing Committee or by the Central Government. The Competent Authority in the final decision after adverting to the observations of the OC and also of the Hearing Committee has noted that the absence of such large number of faculties and residents during duty hours was unacceptable and, moreso, failure of the college to ensure presence of 5 (five) residents on night off and yet could not come, even late, for the head count nor was it reflected in the SAF. This aspect has not been dealt with by the OC in its opinion dated 14th May, 2017. Therefore, non-acceptance of the explanation offered by the college by the Hearing Committee and the Competent Authority of the Central Government, cannot be said to be irrelevant, unjust or for extraneous consideration. [Para 16][[771-F-G; 772-A-B]

1.4 The college had failed to produce supportive documents or evidence about 6 (six) minor operations on the day of assessment. No doubt, the OC accepted the explanation of the college by holding that there was no Minimum Standard Requirement ('MSR') in that behalf. The finding in the assessment report was that there was only one minor operation on the day of assessment whereas the college claimed to have conducted 6 (six) operations. Nothing prevented the college from producing documents or evidence in support of that claim before the Hearing Committee. The Hearing Committee has noted that even the relevant list/documents in relation to paramedical non-

A teaching staff was not produced before it. There is no reason to doubt the correctness of this factual position noted by the Hearing Committee. In any case, since the deficiencies in respect of faculty (16.79%) and residents (21.73%) remains unexplained and being significant, the same cannot be overlooked. This appears to be the view taken by the Hearing Committee and the Competent Authority of the Central Government. [Para 17][772-C-F]

1.5 However, the opinion of the Hearing Committee, which is the basis for passing the impugned decision, is founded on the performance of the college on the day of inspection dated 18th–19th November, 2016. The question is: Whether absence of faculty members and residents on the given day, assuming it to be substantial in number, per se, could be the basis for determining the efficiency and performance of the college for the rest of the academic session while considering the proposal for grant of permission? There is nothing in the opinion of the Hearing Committee or the decision of the Competent Authority that requisite number of faculty members and residents was not employed in the petitioner college or that the claim of the petitioner college in that behalf was bogus. The noting is about the absence of such large number of faculty and residents on the day of inspection and during the duty hours. Assuming that the college could not secure the presence of those persons at the time of inspection, it does not follow that those faculty members and residents were not on the pay roll and in the employment of the petitioner college. This aspect certainly requires proper verification and consideration by the concerned authority. [Para 18][772-F-H; 773-A-B]

Dr. Jagat Narain Subharti Charitable Trust & Anr. v. Union of India and Ors. 2017 (10) SCALE 308; *Gangajali Education Society & Anr. v. Union of India & Ors.* 2017 (10) SCALE 442; *Saraswati Educational Charitable Trust & Anr. v. Union of India & Ors.* 2017 (11) SCALE 68; *Apollo Institute of Medical Sciences & Research & Ors. v. Union of India & Anr.* 2017 (10) SCALE 451 – distinguished.

World College of Medical Sciences & Research v. Union of India 2017 (11) SCALE 136 – relied on.

A

Glocal Medical College & Super Speciality Hospital and Research Centre v. Union of India and Anr. 2017 (8) SCALE 356 – referred to.

Case Law Reference

B

2017 (8) SCALE 356 referred to Para 6

2017 (10) SCALE 308 distinguished Para 16

2017 (10) SCALE 442 distinguished Para 16

2017 (11) SCALE 68 distinguished Para 16

C

2017 (10) SCALE 451 distinguished Para 16

2017 (11) SCALE 136 relied on Para 19

CIVIL ORIGINAL JURISDICTION: Writ Petition (Civil) No.787 of 2017.

D

Under Article 32 of the Constitution of India.

Rajiv Dhavan, Sr. Adv., Abdhesh Chaudhary, Om Prakash Shukla, Amit Jaiswal, Rajiv Ranjan Dwivedi, Advs. for the Petitioners

Maninder Singh, ASG, Vikas Singh, Sr. Adv., Gaurav Sharma, Prateek Bhatia, Dhawal Mohan, Ms. Deepika Kaha, Ms. Srishti Banerjee, Ms. Amandeep Kaur, Advs. for the Respondents

E

The Judgment of the Court was delivered by

A. M. KHANWILKAR, J. 1. The petitioners made an application for establishment of a new medical college at Banthra, Shahjahanpur, U.P., in the name and style of Varunarjun Medical College from academic session 2016-17 onwards, to the Ministry of Health and Family Welfare, Government of India. The Ministry forwarded that application to the Medical Council of India (for short "MCI") for evaluation and making recommendations under Section 10A of the Indian Medical Council Act, 1956 (for short "the 1956 Act"). The MCI conducted an assessment of the petitioner college on 12th and 13th January, 2016. On the basis of the assessment report, the Executive Committee of MCI, in its meeting held on 30th January, 2016, decided to make negative recommendations, in view of a large number of deficiencies noticed in

F

G

H

A the assessment report. A formal communication in that behalf was sent to the Central Government by MCI vide letter dated 31st January, 2016. The Ministry then afforded an opportunity of hearing to the college before a Hearing Committee on 25th February, 2016. The Hearing Committee concurred with the recommendation of MCI and submitted its observations to the Ministry to disapprove the proposal. Later on, compliance verification assessment was done by MCI on 30th March, 2016, which report was duly considered by the Executive Committee of MCI in its meeting held on 13th May, 2016. Once again, MCI in its meeting held on 13th May, 2016 decided to give negative recommendations in view of the deficiencies noticed in the compliance verification assessment. That opinion was formally communicated by the MCI to the Ministry vide letter dated 14th May, 2016. The Ministry accepted the recommendation of MCI and disapproved the application for establishment of a new medical college for academic session 2016-17 vide letter dated 8th June, 2016.

D 2. The Oversight Committee (for short "OC") constituted by this Court, however, issued a directive to the Ministry to obtain fresh compliance from the college and forward it to MCI. Pursuant to the said directive, MCI submitted its compliance to the Ministry citing various reasons. However, the OC approved the scheme of establishment of a new medical college with annual intake of 150 students for the academic year 2016-17, on certain conditions. The Central Government, therefore, issued a formal approval-cum-Letter of Permission (for short "LOP") on 12th September, 2016 incorporating the conditions imposed by the OC.

F 3. As per the conditions noted in the said LOP, an assessment with regard to verification compliance submitted by the college was conducted by the MCI on 18th & 19th November, 2016. During the said verification, certain deficiencies were noticed which were mentioned in the assessment report. The assessment report was duly considered by the Executive Committee of MCI in its meeting held on 22nd December, 2016. In view of the deficiencies, MCI decided to send a negative recommendation to the Ministry. The deficiencies noticed were as follows:

"i. Deficiency of faculty is 16.79% as detailed in the report.

ii. Shortage of Residents was 21.73% as detailed in the report.

H

- iii. *There was only 1 Minor Operation on day of assessment.* A
- iv. *There was 1 normal Delivery & NIL Caesarean Section on day of assessment.*
- v. *ICUs: There was only 1 patient each in MICU & SICU and 2 patients each in ICCU & PICU/NICU on day of assessment.* B
- vi. *Details of Paramedical & Non-teaching staff available in the Institute are not provided.*
- vii. *MRD: ICD X classification of diseases is not followed for indexing.*
- viii. *Central Library: It is not air-conditioned."* C

4. The decision of the MCI was formally communicated to the Ministry vide letter dated 26th December, 2016. After receipt of the recommendation from the MCI, the Ministry decided to afford a personal hearing to the college on 17th January, 2017 before the Director General of Health Services (DGHS). The Hearing Committee considered the oral and written submissions of the college, but was not satisfied with the explanation given by the petitioners for want of proper evidence. The Hearing Committee submitted its report to the Ministry, which in turn forwarded the same to the OC for guidance. The OC vide letter dated 14th May, 2017 conveyed its views to the Ministry as follows: D

(i) *Faculty: In the Standard Assessment Forms (SAF), Principal has mentioned that 4 faculty members had gone for exchange/ withdrawal of money from the bank with permission of the Principal and 3 were on sanctioned leave. Considering this explanation, the deficiency would be 6.15%, which is within the acceptable limits.* E

(ii) *Residents:- In the SAF, Principal has mentioned that 5 Residents had gone for exchange/withdrawal of money from the bank with permission of the Principal and 3 were on sanctioned leave. Considering these residents, the deficiency would be 4.34%, which is within the acceptable limits.* F

(iii) *Minor operation:- This deficiency is subjective. No MSR.*

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

(v) *ICCU & PICU/NICU:- This deficiency is subjective. No MSR.* G

A (vi) *Non-teaching staff:- There is no such mention in SAF 2.24.*

(vii) *Central Library:- There is no such mention in the previous assessment report. However, the explanation of the College is acceptable.*

B ***LOP Confirmed.***"

C 5. The Ministry after considering the recommendation of the MCI, the report of the DGHS and the views received from the OC, finally chose to accept the recommendation of the MCI. The decision of the Ministry was communicated to the petitioner college vide letter dated 31st May, 2017, debarring the college from admitting students for two years i.e. 2017-18 & 2018-19, and also authorising the MCI to encash the bank guarantee.

D 6. Feeling aggrieved by the said decision, the petitioners filed a writ petition before the Allahabad High Court, being WP (C) No.15302 of 2017 which was disposed of on 8th August, 2017 following the decision of this Court in the case of *Glocal Medical College & Super Speciality Hospital and Research Centre Vs. Union of India and Anr.*¹, decided on 1st August, 2017.

E 7. Pursuant to the aforementioned decision of the High Court, the Ministry granted a hearing to the petitioner college on 16th August, 2017. It appears that the Hearing Committee considered the record, oral and written submissions of the college also the fresh representation given by the college. The Hearing Committee then submitted its report to the Ministry. Relying on the said recommendation of the Hearing Committee, F the Ministry vide order dated 19th August, 2017 reiterated its earlier decision dated 31st May, 2017, debarring the college from admitting students for a period of two years i.e. 2017-18 & 2018-19 and also, authorising MCI to encash the bank guarantee of Rs.2 Crore. This decision of the Ministry was communicated to the petitioners. The crucial part of this decision is in paragraphs 17 and 18 which read as follows: G

"17. Now, therefore, in compliance with the above direction of Court, the Ministry granted hearing to the college on 16.8.2017. The Hearing Committee after considering the

records and oral & written submission of the college submitted its report to the Ministry. The findings of the Hearing Committee are as under: A

The college has tried to explain deficiency of 4 faculty and 5 residents in terms of visit to bank for currency exchange in the wake of demonetization. This could be a plausible explanation but the Committee is not inclined to accept it as it cannot be proved. Further, such absence during duty hours cannot be overlooked. The Committee inquired from the college why the 5 residents on night off could not come, even late, for the head count. They would have been accordingly reflected as such in the SAF. B C

The college claimed 6 minor operations on the day of assessment but could not produce supportive document or evidence, which they claimed to have submitted in the earlier hearing. D

The contention of college on MRD and library is accepted and the deficiency may not exist. The college should be having paramedical non teaching staff but they did not produce the list/documents before the Hearing Committee.

In view of the above 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. E

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

8. Aggrieved, the petitioners have prayed for quashing of the said order and further, directing respondent No.1 (Union of India through Secretary, Ministry of Health and Family Welfare) to issue first renewal of Letter of Permission for admission of the 2nd batch of 150 MBBS students in the petitioner college for the academic session 2017-18 and also refrain from encashing the bank guarantee dated 15th September, 2017 offered by the petitioners in favour of MCI in the sum of Rs.2 Crore. G H

A 9. According to the petitioners, they had placed all the relevant
material before the Competent Authority of the Central Government,
clearly indicating that the deficiencies noticed in the concerned assessment
report were insignificant and within permissible limit. Our attention was
invited to the communication sent by the MCI dated 26th December,
B 2016, highlighting the deficiencies noticed by the Council Assessors on
18th & 19th November, 2016. The petitioners have also relied on the
explanation offered by the petitioners before the Hearing Committee as
well as OC. It is contended that the explanation found favour with the
OC. The Competent Authority of the Central Government has, however,
C completely disregarded the opinion of the OC. It was then contended
that the recent report of the Hearing Committee does not take the matter
any further. The relevant portion of the said report has been extracted in
paragraph 17 of the impugned decision of the Ministry. On the one
hand, the Hearing Committee observed that the explanation offered by
D the petitioner college regarding absence of faculty and residents was
plausible, but it still chose to disregard that explanation on the specious
ground that it was not proved. Further, no analysis as to why the opinion
of the OC should be deviated is found in the observations of the Hearing
Committee. It is contended that the absence of faculty and residents on
the day of inspection ought to be excluded, in which case the deficiency
of faculty would stand reduced to only 6.15% and of residents to only
E 4.34%. Further, the adverse observations noted by the Hearing Committee
with regard to minor operations and paramedical non-teaching staff is
not consistent with the record produced by the petitioner college during
the hearing. It is submitted that in view of the recent pronouncements of
this Court in respect of other institutions, similar relief be given to the
F petitioner institution. A comparative chart of the deficiencies in respect
of the said institutions was produced before us to contend that in so far
as the petitioner college is concerned, the deficiencies were marginal
and relatively less. The main grievance of the petitioners is that despite
clear directions given by the Court to consider the proposal of the
petitioner college after taking into account the material produced and
G explanation offered by the petitioners, including the fresh representation,
neither the Hearing Committee nor the Competent Authority of the
Central Government has adverted to the explanation and material relied
upon by the petitioners. Moreso, neither the Hearing Committee nor the
Competent Authority of the Central Government has analysed the opinion
of the OC which had accepted the explanation or recorded any reason
H

to deviate from the same. The fresh decision of the Competent Authority of the Central Government is, again, a mechanical order, if not perverse. It is against the spirit of the directions issued by the Court to reconsider the proposal afresh and record reasons. It is, therefore, submitted that the impugned decision deserves to be quashed and set aside and further directions should be issued to the respondents to issue confirmation of Letter of Permission in favour of the petitioner college for the academic session 2016-17 and also allow the petitioner college to admit 150 students in the second batch of the MBBS course for the academic session 2017-18.

10. Per contra, the respondents submit that the final decision of the Competent Authority of the Central Government is just and proper, in the fact situation of the present case. Inasmuch as the Hearing Committee did not accept the explanation offered by the petitioner regarding the deficiencies relating to faculty members and residents. The Hearing Committee was also not convinced with the explanation given by the petitioners about their claim of 6 (six) minor operations as the college had failed to produce supporting documents and evidence in that regard. Similarly, the college failed to produce material to substantiate that the college had paramedical non-teaching staff which was one of the essential requirements. Learned counsel for the respondents submitted that the recent decisions rendered by this Court on which reliance has been placed, were on the facts of the concerned case. Our attention was also invited to the relevant provisions of the Act, Regulations and Statutory Scheme formulated for consideration of application for permission to establish a medical college. It is submitted that the assessment done by the MCI in the present case was with regard to the verification of the compliance submitted by the college for considering the proposal for confirmation of conditional LOP granted to the petitioner college for the academic session 2016-2017. For that reason, the minimum standards regarding infrastructure and academic requirements as postulated in the Statutory Scheme must govern the consideration of the proposal. The benchmark regarding infrastructure and academics to be fulfilled by the applicant college for permission to establish medical college are pre-conditions. However, without fulfilment of those conditions, conditional LOP was granted to the petitioner college on the basis of direction issued by the OC, which was then acted upon by the Central Government by issuing a formal LOP for the academic session

A

B

C

D

E

F

G

H

A 2016-2017 on conditions specified by the OC. The college has failed to fulfil those conditions as was noticed during the verification of compliance. It is submitted that no indulgence be shown to the petitioner college, much less, grant further relief claimed to allow the petitioner college to admit students in the second batch of the MBBS course for the academic session 2017-18.

B

11. Heard Mr. Rajiv Dhavan, learned senior counsel along with Mr. Abdhesh Chaudhary, learned counsel for the petitioner, Mr. Maninder Singh, learned Additional Solicitor General for Union of India and Mr. Vikas Singh, learned senior counsel along with Mr. Gaurav Sharma, learned counsel for the Medical Council of India.

C

12. We must first answer the submission of the petitioners that the satisfaction recorded by the OC whilst accepting the explanation offered by the petitioners was binding on the Central Government. We do not agree with this submission. It is one thing to say that the satisfaction/opinion recorded by the OC constituted by this Court is a relevant matter and which must receive due attention of the Hearing Committee as well as the Central Government. But it is not possible to accept the contention that the opinion of OC must bind the Hearing Committee and the Central Government whilst discharging their statutory duties, *moreso*, when the legislative scheme of the Act has bestowed the final authority upon the Central Government to grant or refuse to grant permission in terms of Section 10-A of the Act.

D

E

F

13. Having said this, we may now advert to the deficiencies noticed in the assessment report regarding verification of compliance submitted by the college. The deficiencies noticed in the said report in respect of faculty members and residents were sought to be explained by the college - that 4 (four) faculty members and 5 (five) residents had gone for exchange/withdrawal of money from the bank with permission of the Principal and 3 (three) were on sanctioned leave. This explanation commended to the OC as plausible and on that basis, the OC was of the view that deficiency in respect of faculty members would stand reduced to the permissible limit. Hence, the OC recommended confirmation of LOP. The Hearing Committee, however, observed that the petitioner college did not substantiate the stand so taken. Further, absence of such large number of faculties and residents during working-duty hours could not be countenanced. Additionally, the Hearing Committee was of the view that the college was not able to explain the absence of 5 (five)

G

H

residents who were on night off and yet could not come, even late, for the head count. Besides, no entry to that effect was recorded in the Standard Assessment Forms (for short, "SAF"). The OC, however, has not commented on this aspect of the matter at all. In our opinion, the view taken by the Competent Authority of the Central Government is a possible view. The pre-conditions to maintain high academic standards for imparting MBBS course cannot be undermined. In this case, the deficiency of faculty and residents was significant, besides the other two deficiencies taken note of by the Hearing Committee and the Central Government in the impugned decision. For that, the college did not produce supportive documents or evidence in respect of its claim of 6 (six) minor operations and list of paramedical non-teaching staff. These deficiencies cannot be treated as trivial or unrelated to maintenance of high standards of imparting medical education.

A

B

C

14. We are conscious of the fact that the proposal under consideration was for establishment of a new medical college from academic session 2016-17 and that has to be examined keeping in mind the norms specified in the statutory scheme formulated regarding permission to establish a new medical college. That scheme postulates the minimum standard of education, which has been formulated by the MCI in terms of Section 19-A of the Act. The scheme provides for minimum infrastructure facilities and staff requirements for 100 admissions. It also provides guidance as to how deficiency in respect of those matters should be calculated. The Medical Council of India has published those norms and the schemes for requirements to be fulfilled by the applicant College(s) for obtaining Letter of Intent and Letter of Permission for establishment of a new medical college and for yearly renewal under Section 10-A of the Act. Inter alia, it provides as follows:-

D

E

F

"Notes:

For purpose of working out the deficiency:

(1) The deficiency of teaching faculty and Resident Doctors shall be counted separately.

(A) For Teaching Faculty:

(a) For calculating the deficiency of faculty, Prof. Assoc Prof., Asst. Prof & Tutor in respective departments shall be counted together.

(b) Any excess teaching faculty in higher cadre can compensate the deficiency of lower cadre of the same department only.

G

H

A

(c) Any excess teaching faculty of lower cadre/category in any department cannot compensate the deficiency of any teaching faculty in the higher cadre/category of the same department or any other department. e.g excess of Assistant Professor cannot compensate the deficiency of Associate Professor or Professor.

B

(d) Excess/Extra teaching faculty of any department cannot compensate the deficiency of any teaching faculty in any other department.

(B) For Resident Doctors:

C

(a) Excess of SR can be compensated to the deficiency of JR of the same department only.

(b) Excess SR/JR of any department cannot compensate the deficiency of SR/JR in any other department.

(c) Any excess of JR cannot compensate the deficiency of SR in same or any other department.

(d) Any excess/extra teaching faculty of same or any other department cannot compensate the deficiency of SR/JR

D

e.g. excess of Assistant Professor cannot compensate the deficiency of SR or JR.

(2) A separate department of Dentistry/Dental faculty is not required where a dental college is available in same campus/city and run by the same management.

E

(3) College running PG programme require additional staff, beds & other requirements as per the PG Regulations – 2000.

F

Designation	LOP (1 st Batch)	Ist Renewal (2 nd Batch)	IInd Renewal (3 rd Batch)	IIIrd Renewal (4 th Batch)	IVth Renewal (5 th Batch)	Recog- nition
Faculty total	59	85	89	97	106	106
Resident Total	45	47	47	54	62	62

G

15. It may be useful to advert to the Scheme dealing with grant of permission as substituted in terms of Gazette Notification dated 08.02.2016. The same reads thus:-

"8. GRANT OF PERMISSION:

(i) The Central Government, on the recommendation of the Council for Letter of Permission, may issue a letter to set up a

H

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

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

The following shall be added:

“(3)(1). The permission to establish a medical college and admit students may be granted initially for a period of one year and may be renewed on yearly basis subject to verification of the achievements of annual targets. It shall be the responsibility of the person to apply to the Medical Council of India for purpose of renewal six months prior to the expiry of the initial permission. This process of renewal of permission will continue till such time the establishment of the medical college and expansion of the hospital facilities are completed and a formal recognition of the medical college is granted. Further admissions shall not be made at any stage unless the requirements of the Council are fulfilled. The Central Government may at any stage convey the deficiencies to the application and provide him an opportunity and time to rectify the deficiencies.

PROVIDED that in respect of

(a) Colleges in the stage upto II renewal (i.e. Admission of third batch):

- A *If it is observed during any regular inspection of the institute that deficiency of teaching faculty and/or Residents is more than 30% and/or bed occupancy is <60%, such an institute will not be considered for renewal of permission in that Academic Year.*
- B (b) Colleges in the stage from III renewal (i.e. Admission of fourth batch till recognition of the institute for award of M.B.B.S. degree:
If it is observed during any regular inspection of the institute that the deficiency of teaching faculty and/or Residents is more than 20% and/or bed occupancy is <70%, such an institute will not be considered for renewal of permission in that Academic Year.
- C (c) Colleges which are already recognized for award of M.B.B.S. degree and/or running Postgraduate Courses:
If it is observed during any regular inspection of the institute that the deficiency of teaching faculty and/or Residents is more than 10% and/or bed occupancy is <80%, such an institute will not be considered for processing applications for postgraduate courses in that Academic Year and will be issued show cause notices as to why the recommendation for withdrawal of recognition of the courses run by that institute should not be made for Undergraduate and Postgraduate courses which are recognized u/s 11(2) of the IMPC Act, 1956 along with direction of stoppage of admissions in permitted Postgraduate courses.
- D (c) Colleges which are found to have employed teachers with faked/forged documents:
If it is observed that any institute is found to have employed a teacher with faked/forged documents and have submitted the Declaration Form of such a teacher, such an institute will not be considered for renewal of permission/recognition for award of M.B.B.S. degree/processing the applications for postgraduate courses for two Academic Years – i.e. that Academic Year and the next Academic Year also.
- E
- F
- G
- H

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

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

(2) The procedure for 'Renewal' of recognition shall be same as applicable for the award of recognition.

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

As per the terms of Notification published on 16.04.2010 in the Gazette of India.

In terms of Gazette Notification dated 18.03.2016 the following additions/modifications/deletions/substitutions, shall be, as indicated therein: D

3.(1) In Clause 8(3)(1)(a) under the heading of "Colleges in the stage upto II renewal (i.e. Admission of third batch)" shall be substituted as:- E

(a) Colleges in the stage of Letter of Permission upto II renewal (i.e. Admission of third batch).

If it is observed during any inspection/assessment of the institute that the deficiency of teaching faculty and/or Residents is more than 30% and/or bed occupancy is <50% (45% in North East, Hilly terrain, etc.), compliance of rectification of deficiencies from such an institute will not be considered for issue of Letter of Permission (LOP/renewal of permission that Academic Year. F

In Clause 8(3)(1)(b) under the heading of "Colleges in the stage from III renewal (i.e. Admission of fourth batch) till recognition of the institute for award of M.B.B.S. degree" shall be substituted as:- G

A *(b) Colleges in the stage of III & IV renewal (i.e. Admission of fourth & fifth batch)*

If it is observed during any inspection of the Institute that the deficiency of teaching faculty and/or residents is more than 20% and/or bed occupancy is <65% compliance of rectification of deficiencies from such an institute will not be considered for renewal of permission in that Academic Year.

B

In Clause 8(3)(1)(c) under the heading of "Colleges which are already recognized for award of M.B.B.S, degree and/or running Postgraduate courses" shall be substituted as:-

C

(C) Colleges which are already recognised for award of M.B.B.S. degree and /or running Postgraduate courses.

If it is observed during any inspection/assessment of the institute that the deficiency of teaching faculty and/or Residents is more than 10% and/or bed occupancy is <70%, compliance of rectification of deficiency from such an institute will not be considered for issue of renewal of permission in that Academic Year and further such ain institute will not be considered for processing applications for Postgraduate courses in that Academic Year and will be issued show cause notices as to why the recommendations for withdrawal of recognition of the courses run by that institute should not be made for undergraduate and postgraduate courses which are recognised u/s 11(2) of the IMC Act, 1956 along with direction of stoppage of admissions in permitted postgraduate courses.

D

E

F

In Clause 8(3)(1)(d) under the heading "Colleges which are found to have employed teachers with fake/forged documents: the second paragraph shall be substituted as:-

G

"However, the office of the Council shall ensure that such inspections are not carried out at least 2 days before and 2 days after important religious and festival holidays declared by the Central/State Govt."

4. The Council may obtain any other information from the proposed medical college as it deems fit and necessary.

H

Whenever the Council in its report has not recommended the issue of Letter of Intent to the person, it may upon being so

required by the Central Government reconsider the application and take into account new or additional information as may be forwarded by the Central Government. The Council shall, thereafter, submit its report in the same manner as prescribed for the initial report."

A

Considering the requirements of the scheme and as the petitioner college failed to fulfil the conditions specified by the OC as incorporated in the formal conditional Letter of Permission dated 12th September, 2016, the question of confirming the Letter of Permission for the academic session 2016-17 without removal of deficiencies in all respects does not arise. The petitioner college must first remove all those deficiencies to become eligible for confirmation of LOP, as per the undertaking given by the college in that regard.

B

C

16. The petitioners have relied upon recent decisions of this Court dealing with similar issues in the cases viz *Dr. Jagat Narain Subharti Charitable Trust & Anr. Vs. Union of India and Ors.*²; *Gangajali Education Society & Anr. Vs. Union of India & Ors.*³; *Saraswati Educational Charitable Trust & Anr. Vs. Union of India & Ors.*⁴; *Apollo Institute of Medical Sciences & Research & Ors. Vs. Union of India & Anr.*⁵, to contend that in similar situations, this Court preferred to rely on the opinion given by the OC and overturned the conclusion reached by the Competent Authority of the Central Government for debarring the concerned institution from admitting students for a period of two years and authorising MCI to encash bank guarantee of Rs.2 Crore. This submission does not commend us. For, the dictum in those cases is contextual and on facts of those cases. In the present case, the Hearing Committee has duly considered the explanation offered by the college. It has, however, rejected the same for the reasons recorded in the impugned decision. The fact that specific reference to the opinion of the OC is absent in the conclusion recorded by the Hearing Committee, it does not follow that the issue has not been considered by the Hearing Committee or by the Central Government. The Competent Authority in the final decision after adverting to the observations of the OC and also of the Hearing Committee has noted that the absence of such large number of faculties and residents during duty hours was unacceptable

D

E

F

G

² Writ Petition (C) No. 513 of 2017, decided on 30.08.2017.

³ Writ Petition (C) No.709 of 2017, decided on 31.08.2017.

⁴ Writ Petition (C) No. 515 of 2017, decided on 01.09.2017.

⁵ Writ Petition (C) No. 496 of 2017, decided on 31.08.2017.

H

A and, moreso, failure of the college to ensure presence of 5 (five) residents
on night off and yet could not come, even late, for the head count nor
was it reflected in the SAF. This aspect has not been dealt with by the
OC in its opinion dated 14th May, 2017. Therefore, non-acceptance of
the explanation offered by the college by the Hearing Committee and
B the Competent Authority of the Central Government, cannot be said to
be irrelevant, unjust or for extraneous consideration.

17. As stated earlier, the college had failed to produce supportive
documents or evidence about 6 (six) minor operations on the day of
assessment. No doubt, the OC accepted the explanation of the college
by holding that there was no Minimum Standard Requirement (for short
C 'MSR') in that behalf. The finding in the assessment report was that
there was only one minor operation on the day of assessment whereas
the college claimed to have conducted 6 (six) operations. Nothing
prevented the college from producing documents or evidence in support
of that claim before the Hearing Committee. It was open to the petitioners
D to invite the attention of the Hearing Committee to such documents, if
already placed on record during the earlier hearing. That was obviously
not done. Else, the Hearing Committee in its conclusion submitted to the
Ministry may have referred to it. The Hearing Committee has noted that
even the relevant list/documents in relation to paramedical non-teaching
staff was not produced before it. There is no reason to doubt the
E correctness of this factual position noted by the Hearing Committee. In
any case, since the deficiencies in respect of faculty (16.79%) and
residents (21.73%) remains unexplained and being significant, the same
cannot be overlooked. This appears to be the view taken by the Hearing
Committee and the Competent Authority of the Central Government.

F 18. Be that as it may, the opinion of the Hearing Committee, which
is the basis for passing the impugned decision, is founded on the
performance of the college on the day of inspection dated 18th – 19th
November, 2016. The question is: whether absence of faculty members
and residents on the given day, assuming it to be substantial in number,
G per se, could be the basis for determining the efficiency and performance
of the college for the rest of the academic session while considering the
proposal for grant of permission? There is nothing in the opinion of the
Hearing Committee or the decision of the Competent Authority that
requisite number of faculty members and residents was not employed in
the petitioner college or that the claim of the petitioner college in that
H

behalf was bogus. The noting is about the absence of such large number of faculty and residents on the day of inspection and during the duty hours. Assuming that the college could not secure the presence of those persons at the time of inspection, it does not follow that those faculty members and residents were not on the pay roll and in the employment of the petitioner college. This aspect certainly requires proper verification and consideration by the concerned authority. A
B

19. A priori, we may adopt the course as in the case of *World College of Medical Sciences & Research Vs. Union of India*⁶, by directing the respondents to allow the students already admitted in the petitioner college on the basis of conditional LOP for the academic session 2016-17, to continue their studies. The MCI shall send its Inspection Team within a period of three months to submit an assessment report regarding the overall performance and efficiency of the petitioner college and deficiencies, if any, and give time to the petitioner college to remove those deficiencies within the time specified in that regard. The petitioner medical college shall then report its compliance and communicate the removal of deficiencies to MCI, whereafter it will be open to the MCI to verify the position and then submit its recommendation to the Central Government. The Ministry shall take a final decision within one month of the receipt of the recommendation from the MCI. Until such decision is taken and communicated to the petitioners, the Bank Guarantee offered by the petitioners in the sum of Rs. Two Crore shall not be encashed by the MCI but the petitioners shall keep the same alive. In the event the final decision of the Competent Authority of the Central Government is adverse to the petitioners, it will be open to them to take recourse to such remedies as may be available in law. C
D
E

20. Be it noted that the purpose of the stated inspection would be to consider the confirmation of LOP in favour of petitioner college for the academic session 2016-2017. We further direct the respondents to treat the renewal application submitted by the petitioner college for the academic session 2017-18 as having been made for the academic session 2018-19 and process the same in accordance with law with promptitude. F
G

21. Writ petition is disposed of in the aforementioned terms. No order as to costs.