

MEDICAL COUNCIL OF INDIA

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v.

THE CHAIRMAN, S. R. EDUCATIONAL AND CHARITABLE  
TRUST & ANR.

(Civil Appeal No. 10372 of 2018)

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OCTOBER 29, 2018

**[ARUN MISHRA AND VINEET SARAN, JJ.]**

*Education/Educational Institutions:*

*Medical Colleges – Denial of renewal permission/ recognition – Propriety of – On inspection of colleges by Medical Council of India (MCI) deficiencies found – Government of India/ Hearing Committee directed MCI to review the recommendation and consider the compliance reported – MCI declined to review its recommendation – Thereafter Government of India denied renewal/ recognition – Writ petition challenging the denial – High Court quashed the orders whereby permission was declined – Directed to admit students to the Colleges for academic year 2018-19 – Also directed MCI to carry out inspection to verify rectification of the deficiencies found at the time of earlier inspection – On appeal, held: For effective implementation of provision of s. 10A of Medical Council Act, 1999 Regulations have been made – The Regulations are binding with respect to availability of teaching faculty, infrastructural and other facilities – With the advancement of the batches, this requirement becomes more rigorous – Therefore, recommendations made by Hearing Committee to review and consider the compliance is not binding – Provisions of 8(3)(1)(a) and (b) are binding upon the Hearing Committee/Government of India and MCI – In case there are gross deficiencies, more than prescribed in the Regulation, for the concerned batch, then the compliance verification would not be considered in the same year – A decision taken by Union of India on the basis of recommendation of an expert body regarding the inadequacy of facilities cannot be interfered with lightly – Interference is permissible only when there are jurisdictional errors, ex facie perversity or mala fide – High Court has gravely erred in law in quashing Government's order, allowing the admissions for academic session 2018-19 without there being*

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- A *permission by Government of India and recommendation of MCI – Such general directions without considering the provisions of the Regulations are illegal and unwarranted and on inspection decision has to be taken in accordance with law as per regulations – However, it would be appropriate that MCI and Government of India take decision at an early date i.e. by the end of February or latest by*
- B *March and not by the end of the Scheduled date i.e. May – Establishment of Medical Colleges Regulations, 1999 – Regulation 8(3)(1)(a) and (b) – Judicial Review.*

**Allowing the appeals, the Court**

- C **HELD: 1. The Medical Council of India (MCI) has been established in order to streamline the standard of medical education. It has the power to supervise qualification and eligibility standards for admissions into medical institutions. [Para 22] [1061-E]**
- D *State of Kerala v. T. P. Roshna (1979) SCC 580; Medical Council of India v. State of Karnataka (1998) 6 SCC 131 : [1998] 3 SCR 740 – relied on.*
- E **2. For effective implementation of provisions of Section 10A of the Indian Medical Council Act, 1956 requiring prior permission from the Central Government for the establishment of medical colleges, regulations have been made in exercise of powers under Section 10A read with Section 33 of the Act. Consequently, the Establishment of Medical Colleges Regulations 1999 are binding with respect to availability of teaching faculty, infrastructural and other facilities and with the**
- F **advancement of the batches this requirement becomes more rigorous as there is more requirement in the faculty than the college is recognized after fulfillment of all the conditions as apparent from the provisions contained in the Regulations. With the aforesaid objective, the provisions contained in Regulation 8(3) have been carved out and amended in 2016. In case there**
- G **are gross deficiencies, more than prescribed in regulation for the concerned batch then the compliance verification would not be considered in the same academic year. [Paras 24-25] [1062-D-G]**

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*Dr. Preeti Srivastava v. State of Madhya Pradesh & Ors.*  
(1999) 7 SCC 120 : [1999] 1 Suppl. SCR 249 – relied  
on.

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3. It is apparent from regulation 8(3)(1)(a) of Regulations of 1999 that in the case of the third batch, if deficiencies of teaching faculty and/or residents are found to be more than 30% and bed occupancy less than 50%, a college cannot be given an opportunity for compliance in the same year. In the case of the 4<sup>th</sup> and 5<sup>th</sup> batch as provided in regulations 8(3)(1)(b), if the deficiencies of teaching faculty and the residents is more than 20% and bed occupancy is less than 65%, such college cannot be given opportunity of reporting compliance during the same academic year. [Paras 14 and 15] [1056-A-B]

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4. Considering the deficiencies in case of S.R. Educational Trust, Regulation 8(3)(1)(a) was attracted. In Al-Azhar Medical College and P. K. Dass Institute of Medical Sciences for 5<sup>th</sup> Batch deficiencies found by the assessors were gross so as to attract the provisions contained in amended Regulation 8(3)(1)(b). [Para 16] [1056-C]

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5. Therefore, the recommendations made by the Hearing Committee to review and to consider the compliance could not be said to be binding. The provisions of the regulations 8(3)(1)(a) and (b) are binding upon the Hearing Committee/Government of India and the MCI. It is only in a case when a report of the Assessors on the face of it, makes out that the same is incorrect, a reconsideration or review is called for. Otherwise, in the case of gross deficiency, the yardstick contained in regulation 8(3)(1)(a) or (b) has to be applied by the Hearing Committee, Government of India or the MCI, as the case may be. It is not open to the Government of India/ MCI or Hearing Committee to depart in a few cases and in some other to take a different stand. They have to scrupulously observe the provisions of regulations which are binding on them. [Para 26] [1036-B-D]

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*Royal Medical Trust (Registered) & Anr. v. Union of India & Anr.* (2015) 10 SCC 19; *Madha Medical College and Research Institute v. Union of India & Anr.* (2017) 15 SCC 791; *I.Q. City foundation and Anr. v. Union of India & Ors.* (2017) 16 SCC 249 – relied on.

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A           **6. It is high time for the MCI to ensure its functions well and eradicate all the loop-holes and decide the case within a reasonable time and not to lend the colleges in a situation with no legal remedy available once case is decided at the fag end of the academic session on 31<sup>st</sup> May. It would be appropriate that MCI and Government of India take a decision in all the cases at an early date and not by the end of May 2018. The next academic session has to commence from first of July of the Gregorian calendar year as such at least 3-4 months' time should be available to seek judicial review of the action or re-inspection, if any, so warranted by the MCI or Government of India. Once a petition is filed and even if in some cases the Court is inclined to grant a relief of re-inspection to a college, but due to the lapse of the time schedule and the admissions having already been made, it is not considered appropriate to disturb the uniform schedule of various Universities. It would be appropriate that the MCI, as well as the Government of India, should take a final decision after inspection, by the end of February or latest by the end of March. [Para 28] [1063-G-H; 1064-A-B]**

E           *Medical Council of India v. Vedantaa Institute of Academic Excellence Pvt. Ltd. & Ors. (2018) 7 SCC 225; Medical Council of India v. The Principal, KMCT Medical College, and Anr. (2018) 9 SCC 766 – relied on.*

F           **7. In the case of P.K. Dass Institute of Medical Sciences, as per the Assessors, the bed occupancy was 40.30% i.e. 262 patients out of 650 patients which were required. Whereas college claimed that 493 indoor patients were there at 10.00 am on 31.10.2017. There was 80% bed occupancy on 30-31.10.2017 and 1.11.2017. The College has drawn support from the website portal. Whatever college says is not a gospel truth. There is no case wherein college does not dispute the report of the Assessors and contend that there were no such deficiencies. It is clearly disputed fact. Firstly, the report of the Assessors cannot be lightly disbelieved. It is not open to examining the case set up by the college as facts found by Assessors are at great variance; secondly, in the judicial review, the report cannot be discarded relying on data put up by the college on self-serving website**

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portal. The High Court was right in discarding the explanation offered by the colleges with respect to deficiencies. Even the Hearing Committee with respect to the College did not doubt the report of Assessors as to bed occupancy. It is not what the institution asserts on website but what is actually found on inspection, that has to be considered by the court and while exercising judicial review it is settled law that court cannot sit in appeal over the report of the assessors. It was also observed that at the time of inspection faculty should be present barring certain exceptions otherwise the very purpose of the inspection would be defeated. The Report of the Assessors cannot be lightly faulted and the court cannot sit in an appeal and go into disputed facts. There were other deficiencies too but due to the aforesaid gross deficiencies, the provisions of regulations 8(3)(1)(b) were clearly attracted. [Paras 30-31] [1065-A-D, G-H; 1066-E-F]

*Medical Council of India v. N.C. Medical College & Hospital and Ors.* 2018 (9) JT 204; *Medical Council of India vs. Kalinga Institute of Medical Sciences (KIMS) & Ors.* (2016) 11 SCC 530 : [2016] 4 SCR 403 – relied on.

8. A decision taken by the Union of India on the basis of a recommendation of an expert body regarding the inadequacy of facilities in medical colleges cannot be interfered with lightly. Interference is permissible only when the colleges demonstrate jurisdictional errors, *ex facie* perversity or *mala fide*. It is not open to the court in judicial review to accept tenuous objections as to bed occupancy in the absence of *mala fide*. [Para 32] [1067-B-C]

*Medical Council of India v. The Principal, KMCT Medical College, and Anr.* (2018) 9 SCC 766 – relied on.

9. The High Court has gravely erred in law while passing the impugned judgment and order in quashing Government's order, allowing the admissions for the academic session 2018-2019 without there being Government of India's permission and the recommendation of the MCI. The High Court has issued direction for fresh inspection and thereafter the MCI to consider the report after the grant of opportunity to remove defects if any.

A Firstly, it could not have issued such a direction in view of regulations and also the blanket direction that college should be permitted to remove the deficiencies if any found. Deficiencies can be removed, if found, within the permissible limits as provided in regulation 8(3), not in a case Regulation 8(3)(1)(a) or (b) is attracted. Thus, such kind of general direction issued without considering the provisions of the Regulations are wholly illegal and unwarranted and on inspection, the decision has to be taken in accordance with law as per regulations. [Para 33] [1067-C-F]

10. The case of D.M. Education and Research Institute of Medical Sciences is of recognition and admission. For the purpose of recognition, the Regulations of 1999 contains the provisions in Regulation 8(3)(1) wherein the 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 applicant and provide him an opportunity and time to rectify the deficiencies. It is the stand of the MCI also that the matter of recognition is under consideration and shall be considered in terms of said regulation after giving the opportunity to make good deficiency. However, with respect to admissions in 2018-19, the recommendation was made not to admit the students. [Paras 34 and 39] [1068-C-D; 1071-H; 1072-A-B]

11. It was clearly mentioned by the MCI in its letter dated 25.5.2018 that the matter could not be considered for renewal of permission for admission for the academic year 2018-2019, but compliance of the medical college for the purpose of recognition/ approval under Section 11(2) of the Act was under consideration of the MCI and compliance verification/assessment and recommendations of the MCI would be sent to Central Government in due course of time. The matter was under consideration before the MCI for recognition, renewal of permission for admission had been declined by the MCI on 28.5.2018. Thereafter, the Government of India has passed the order on 31.5.2018 declining admission for 2018-19. [Para 40] [1072-D-F]

12. In view of the deficiencies of faculty and of bed occupancy, the decision not to grant permission for admission in the year 2018-2019 was appropriate. However, the compliance that had been submitted by the college on 22.5.2018 will be considered for the purpose of recognition by the MCI as provided under the regulation 8(3). Let the MCI consider the matter for the purpose of recognition duly considering the compliance unfettered by the order passed by the Government of India on 31.5.2018. The Government of India also to consider the matter of recognition in accordance with the law. Let the decision be taken by the respondents- MCI and Government of India as expeditiously as possible. [Para 41] [1072-F-H]

*Mridul Dhar v. Union of India* (2005) 2 SCC 65 : [2005] 1 SCR 380; *Priya Gupta v. State of Chhattisgarh* (2012) (7) SCC 433 : [2012] 5 SCR 768 – relied on.

*Swamy Devi Dayal Hospital & Dental College v. Union of India & Ors.* AIR 2014 SC 284 : [2013] 14 SCR 105; *Priyadarshini Dental College and Hospital v. Union of India & Ors.* 2011 AIR SCW 2383 : (2011) 4 SCC 623 : [2011] 2 SCR 945; *D.M. Education and Research Foundation v. Union of India* [2016 KHC 171] 5 – referred to.

Case Law Reference

[2013] 14 SCR 105	referred to	Para 5	A
[2011] 2 SCR 945	relied on	Para 5	
2016 KHC 171	relied on	Para 5	B
(2018) 7 SCC 225	relied on	Para 6	
(2018) 9 SCC 766	relied on	Para 6	F
(2015) 10 SCC 19	relied on	Para 18	
(2017) 15 SCC 791	relied on	Para 18	
(2017) 16 SCC 249	relied on	Para 18	
[1998] 3 SCR 740	relied on	Para 23	G
(1979) SCC 580	relied on	Para 22	
2018 (9) JT 204	relied on	Para 31	
[2016] 4 SCR 403	relied on	Para 31	
[2005] 1 SCR 380	relied on	Para 40	
[2012] 5 SCR 768	relied on	Para 40	H

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10372  
of 2018

From the Judgment and Order dated 30.08.2018 of the High  
Court of Kerala at Ernakulum in W.P. (C) No. 19386 of 2018.

WITH

B C.A. Nos. 10373, 10374, 10375 of 2018.

Vikash Singh, Jaideep Gupta, Neeraj Kishan Kaul, Huzefa  
Ahmedi, C. S. Vaidyanathan, Ajit Kumar Sinha, Sr. Advs., Gaurav  
Sharma, Prateek Bhatia, Abhishek, Dhawal Mohan, Prasanna Mohan,  
C Vishal Arun, G. Prakash, Jishnu M. L., Ms. Beena Prakash, Divyanshu  
Srivastava, Vivekananda Bommineni, Varun Mathur, Hario Beeran,  
Usman Ghani Khan, Pallavi Pratap, Zulfiker Ali P. S, Radha Shyam  
Jena, K. V. Mohan, George Jacob, K. V. Balakrishnan, Anirudh Gupta,  
Gaurav Sharma, Venkita Subramani T. R., P. Sreekumar, Amit  
Sharma, Raghenth Basant, Mithun Verghis, Advs. for the appearing  
D parties.

The Judgment of the Court was delivered by

**ARUN MISHRA, J.** 1. The Medical Council of India (for short,  
“the MCI”) is aggrieved by the judgment and order dated 30.8.2018  
E passed by the High Court of Kerala at Ernakulam. The High Court has  
quashed the order passed by the Government of India declining to grant  
renewal permission/ recognition to respondents – medical colleges. The  
High Court has directed the Commissioner for Entrance Examinations,  
Government of Kerala to allot students to the colleges for the academic  
year 2018-2019 immediately. The MCI has also been directed to carry  
F out the inspection to verify whether the colleges had rectified the  
deficiencies found at the time of earlier inspection. In case they have  
not done so, the MCI shall be at liberty to take appropriate action against  
them including the enforcement of the Bank Guarantees. At the same  
time, it has been ordered that in case fresh deficiencies are detected, the  
G colleges shall be given the opportunity to rectify such deficiencies within  
a stipulated time.

2. The High Court has decided the petitions of the four colleges  
by the common order. Probably, High Court had felt that the question on  
which it decided the matters was common, however, the facts of each  
and every college are different, the deficiencies found obviously varies  
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and the order of the High Court is subject to further judicial review. It would have been appropriate for the High Court to decide the matter by separate orders duly reflecting the facts of each case and the deficiencies found. Clubbing of matters in the method and manner it had been done may indicate non-serious approach. In three of the matters, question was that of admissions in the academic session 2018-2019 and in one of the matters, the question pertains to the grant of recognition as well as admissions.

3. The High Court has observed that there are many serious deficiencies and the lack of patients would result in a lack of exposure of the students in so far as treatment of patients was concerned. The deficiencies, such as lack of teaching faculty, residents, lack of a sufficient number of surgical procedures, though, are of nature which would have a serious impact on the quality of education, the explanation offered by the colleges on the deficiencies has not been found to be genuine to impress the court. Notwithstanding the aforesaid observations, the High Court has proceeded to grant the relief to the medical colleges.

4. The colleges had contended that they had rectified the deficiencies and the Hearing Committee had recommended the MCI to review the case. Accordingly, the Central Government had required the MCI to review its earlier stand. However, the Executive Committee of MCI refused to reconsider its earlier stand in view of the provisions contained in the Regulations 8(3)(1)(a) of the Establishment of Medical College Regulations, 1999 (for short, "the Regulations"). The MCI declined to review the order on the ground that the time for the MCI to send its recommendations to Central Government had already expired on 30<sup>th</sup> April 2018 and the schedule was required to be strictly adhered to.

5. The High Court had observed that opportunity of hearing would mean to make a representation. Timely assessment is integral to the scheme and such an opportunity is to be given not only when permission for the establishment of a new college is under consideration but even in cases of subsequent renewal of such permission. The High Court had referred to the decisions in *Swamy Devi Dayal Hospital & Dental College v. Union of India & Ors.* AIR 2014 SC 284 and *Priyadarshini Dental College and Hospital v. Union of India & Ors.*, 2011 AIR SCW 2383= 2011 (4) SCC 623. At the time of renewal what is required to be considered is whether the prescribed faculty and infrastructure is

A available. There is some difference between the renewal and the parameters prescribed for the establishment. The High Court has relied upon the decision in *D.M. Education and Research Foundation v. Union of India* [2016 KHC 171] in which a Division Bench of the High Court of Kerala held that the principle of natural justice has to be strictly adhered to. The stand taken by the MCI had been rejected and it was observed that compliance once reported was required to be considered, thus, the MCI ought to have reconsidered the matter. In the cases, the recommendation to review had not been considered, lack of time could not be accepted as an excuse to deny the petitioner the right claimed to which they were entitled.

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C 6. It was urged by learned senior counsel for the MCI that the High Court has failed to consider the provisions contained in the Regulation 8(3)(1)(a) of the Regulations that was attracted in the matter of grant of renewal/ recognition. If upon assessment the deficiencies had been found to be gross as provided in the aforesaid regulation, the college was not entitled to seek liberty of compliance and further verification in the same academic year. The decision of this court in *Medical Council of India v. Vedantaa Institute of Academic Excellence Pvt. Ltd. & Ors.* 2018 (7) SCC 225 though referred to in the judgment, has not been discussed but, the decision of the Division Bench of the High Court has been preferred which was contrary to it. Similarly, the decision of this Court in *Medical Council of India v. The Principal, KMCT Medical College, and Anr.* (Civil Appeal No.8429 of 2018) had not been adverted to. In the matter of *D.M. Education and Research Foundation* (supra) the compliance was reported by the college belatedly on 22.5.2018. Thus, considering the time schedule, it was not possible to make the inspection again for verification of the compliance. Therefore, it was not legally permissible to grant any relief for the academic session 2018-2019 to the said college. However, it was the case of recognition where the main provision of regulation 8 (3)(1) was applicable. For recognition, its case would be considered and admissions can be made only in the next academic session *i.e.* 2019-2020 if permitted.

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G 7. Shri Neeraj Kishan Kaul, learned senior counsel appearing on behalf of the two of the colleges contended that when the Government of India/Hearing Committee had directed the MCI to review the recommendation and consider the compliance reported, the order was binding upon the MCI. It was necessary for the MCI to consider the

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compliance that was reported and to conduct a fresh inspection for assessment, in case, it was so required and thereafter to take decision afresh. Declining to review the earlier recommendation clearly indicate that there was non-application of mind and subsequently Government of India erred in accepting the stand of the MCI declining to review and consider the compliance. Thus, the High Court was fully justified to permit the colleges to admit the students subject to removal of the deficiencies and liberty has been given to the MCI to inspect the colleges and in case of deficiencies still subsist, to take appropriate action.

8. Mr. C.S. Vaidyanathan, learned senior counsel appearing on behalf of the respondent college - P.K. Dass Institute of Medical Sciences vehemently contended that the report of the Assessors was absolutely incorrect. The website portal of the college clearly indicated the number of indoor patients occupying the beds in the hospital. The patients were more than 500. The Assessors had wrongly reported the number of indoor patients in their report. A large number of patients were in the operation theatre, bathrooms, and other places. They have been illegally excluded. He further contended that somebody is required to consider all these factual aspects. The High Court has also not considered the explanation offered. At some level, somebody is required to consider the compliance. Assessors cannot be said to be the final arbiter in such matters when the report is ex-facie incorrect as apparent from the explanation offered by the college. Thus, this court should look in the same and grant the relief to the college discarding the report of the Assessor.

9. Shri Hufeza H. Ahmedi, learned senior counsel appearing on behalf of D.M. Education and Research Foundation contended that the case of the respondent falls for recognition and proviso (a) to Regulation 8(3)(1) of Regulations was not attracted. The opportunity of compliance was required to be given and by not giving opportunity the regulation has been violated. Thus, the decision rendered by the MCI/Government of India cannot be said to be appropriate. The MCI, thus, deserves to be directed to take a decision afresh in the matter of college in question. No case for interference is made out in the matter of D.M. Education and Research Foundation as the matter was with respect to the recognition-cum-admission.

10. When we consider the report of the Assessors, in the case of S.R. Educational and Charitable Trust, the physical inspection was carried

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A out on 6<sup>th</sup> and 7<sup>th</sup> November 2017. The question involved was of 3<sup>rd</sup> Batch of 100 students for the academic year 2018-2019. A large number of deficiencies were found as observed in the order dated 31.5.2018 passed by the Government of India:

1. Deficiency of faculty is 12.64% as detailed in the report.
- B 2. Shortage of Residents is 15.21 % as detailed in the report.
3. OPD attendance at 2 p.m. on the day of assessment is 575 against the requirement of 600.
4. Bed Occupancy at 10 a.m. on the day of assessment is 37%.
- C 5. There was NIL Major Operation on the day of assessment.
6. There was NIL Normal Delivery on the day of assessment.
7. The workload of Histopathology was NIL on the day of assessment.
- D 8. OPD: Separate Registration counters for male/ female are not available. Registration counters for OPD/ IPD patients are not separate.
9. Audiometry room is not air-conditioned. Speech Therapy is not available.
- E 10. Casualty: Separate Casualty for O.G. is not available.
11. O.T.s: They are under renovation.
12. ICUs: There was NIL patient in SICU and only 1 patient in ICCU and 2 patients each in MICU, PICU/ NICU.
- F 13. Radiodiagnosis department: Only 1 Mobile X-ray machine is available against the requirement of 2. Only 1 Static X-ray machine is available against the requirement of 2.
14. C.T. Scan is not available.
15. CSSD: Receiving and Distribution points are not separate.
- G 16. Central Research Laboratory is not functional.
17. Lecture Theaters: 2 Lecture Theatres are available against the requirement of 3.
18. Central Library: Students Reading room (Outside) is not furnished. 2,968 books are available against the requirement of 3,000.
- H 19. Central Photography section is not available.

20. Students' Hostels: They are shared with BDS students. A
  21. Residents' Hostel: It is not available.
  22. Residential Quarters: NIL quarters are available for Non-teaching staff.
  23. Pathology department: Audiovisual aids are not available. Specimens are not available in the Museum. 4 Service Laboratories are not available. B
  24. Microbiology department: Audiovisual aids are not available. The museum is not available. 7 Service Laboratories were not available. Media Preparation facility, Autoclaving are not available. C
  25. Pharmacology department: Audiovisual aids are not available. The museum is not available. Clinical Pharmacology laboratory is not available.
  26. Forensic Medicine department: Audiovisual aids are not available. Museum is not available. Cold storage is not available. Autopsy block is under construction. D
  27. Community Medicine department: Audiovisual aids are not available. Museum is not available. Practical Laboratory is not available. It is not furnished.
  28. RHTC: Cold chain equipment is not available. Survey/ MCH/ Immunization/ FW Register are not available. E
  29. CME: There was no CME activity during the year.
  30. Other deficiencies are as pointed out in the assessment report.
11. In the matter of Al-Azhar Medical College and Super Specialty Hospital the Government of India in its order dated 31.5.2018 has mentioned the deficiencies found by the Assessors in the inspection made, in the matter of renewal of permission for 5<sup>th</sup> Batch of 150 seats in MBBS course for the academic year 2018-2019. The deficiencies mentioned are extracted herein: F
1. Deficiency of faculty is 37.12% as detailed in the report. G
  2. Shortage of Residents is 100 % as detailed in the report.
  3. Residents and Assistant Professors are drawing more salary than Professors and HOD. All Senior and Junior Residents have been appointed with orders mentioning duty hours from 8 am to 4.30 pm. Hence, they have not been counted as SR/JR. H

- A 4. OPD attendance up to 2 p.m. on the day of assessment is 592 against the requirement of 1200.
5. Bed Occupancy at 10 a.m. on the day of assessment was 46.15%.
6. Patients:
- B (a) In Pediatric wards case sheets of 35 patients shows IV Antibiotics going on but on cross verifying with patients, relatives it was found that no injections were given. Also, none of such patients had IV Cannulas inserted hence they were not counted.
- (b) In Pulmonary Medicine Department, female ward 9 patients had a diagnosis of COPD, Bronchiectasis, Pneumonia etc. on taking history and examining the patient, no corroborative clinical findings were found. Also, none of the patients had Chest X-rays done. Hence, they were not counted.
- C (c) In Orthopedics ward, 15 patients with complaints of Neck Pain, Leg pain under evaluation were not counted as they were asymptomatic also did not have x-rays.
- (d) In Ophthalmology female ward, 3 patients were kept with diagnosis of corneal opacity. On examination, no such findings were seen. Hence not counted.
- D 7. There were only 3 Major Operations on the day of assessment.
8. There was only 1 Normal delivery & NIL Caesarean Section on the day of assessment.
9. Histopathology workload was only 4 & Cytopathology workload was 2.
- E 10. OPD: Plaster Cutting room is not available.
11. Casualty: Separate Casualty or O.G. is not available.
12. ICUs: There was only 1 patient in NICU & 2 patients each in PICU, SICU on the day of assessment.
- F 13. There was NIL issue of Blood on the day of assessment.
- G 14. Residential Quarters: 24 quarters are available for faculty against requirement of 26.
15. Anatomy Department: Band Saw is not available.
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16. Physiology department: Mammalian Laboratory is not available. A
17. RHTC: Cold Chain equipment are not available. Immunization is not available.
18. Dean has refused to sign the assessment report.

The provision contained in Regulation 8(3)(1)(a) of the Regulation had been invoked by the MCI and the decision had been taken not to grant permission for admission in the academic session 2018-2019. B

12. In the case of P.K. Dass Institute of Medical Sciences, Palakkad, Kerala the matter pertains to the renewal of permission for admission of 5<sup>th</sup> Batch of 150 seats in MBBS course for the academic year 2018-2019. On the basis of the report of the Assessors dated 31<sup>st</sup> October & 1<sup>st</sup> November 2017 the matter was considered and following deficiencies were noted: C

1. Deficiency of faculty is 9.2% as detailed in the report.
2. OPD attendance up to 2 p.m. is 1,060 against the requirement of 1,200. D
3. Bed Occupancy is 40.60 % at 10 a.m. on the day of assessment.
4. There were only 09 Major Operations on the day of assessment.
5. Central Kitchen: No register is available in the kitchen. E
6. Other deficiencies as pointed out in the assessment report.

13. Regulation 8(3)(1)(b) of the Establishment of Medical College Regulation (Amendment), 2010, had been applied by the MCI as the bed occupancy was less than 65%. As per the MCI, the compliance of rectification of the deficiencies could not have been considered for renewal of the permission in the same academic year. F

14. Regulation 8(3) is extracted hereinunder:

**“8. GRANT OF PERMISSION:**

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

A and allied equipment's, 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 the performance bank guarantee for the required sums are furnished by the person and after consulting the Medical Council of India.

B (2) The formal permission may include a time-bound program 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.

C ***The following shall be added:***

D 8(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 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 applicant and provide him an opportunity and time to rectify the deficiencies.

E **8(3)(1)(a) Colleges in the stage of Letter of Permission up to II renewal (i.e.) Admission of the third Batch**

F 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 in that Academic Year.)

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

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

(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 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 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 recommendations 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 IMC Act, 1956 along with direction of stoppage of admissions in permitted postgraduate courses. C  
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8(3)(1)(d): However, the office of the Council shall ensure that such inspection are not carried out at least 2 days before and 2 days after important religious and festival holidays declared by the Central/ State Government.”

(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. F

(3) The procedure for ‘Renewal’ of recognition shall be same as applicable for the award of recognition. G

(4) Failure to seek timely renewal of recognition as required in subclause (a) supra shall invariably result in stoppage of admissions to the concerned Undergraduate Course of MBBS at the said institute.”

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A It is apparent from the aforesaid regulation that in the case of the third batch, deficiencies of teaching faculty and/or residents are found to be more than 30% and bed occupancy less than 50%, a college cannot be given an opportunity for compliance in the same year.

B 15. In the case of the 4<sup>th</sup> and 5<sup>th</sup> batch as provided in regulations 8(3)(1)(b), if the deficiencies of teaching faculty and the residents is more than 20% and bed occupancy is less than 65%, such college cannot be given opportunity of reporting compliance during the same academic year.

C 16. Considering the aforesaid deficiencies in case of S.R. Educational Trust, Regulation 8(3)(1)(a) was attracted. In Al-Azhar Medical College and the college at Palakkad for 5<sup>th</sup> Batch deficiencies found by the assessors were gross so as to attract the provisions contained in amended Regulation 8(3)(1)(b).

D 17. Regulation 8(3)(1)(a) came up for consideration in the case of *Vedantaa Institute* (supra) and while upholding vires of the provisions, precluding opportunity of re-verification, this court has observed:

E “10. Though Regulation 8(3)(1)(a) was challenged in the Writ Petition filed by Respondent No. 1 and 2, they did not press the relief. They restricted their challenge to the manner in which the inspection was done and for a direction to the Appellant-Council to carry out a fresh inspection. The interpretation of Regulation 8(3)(1)(a) by the High Court is patently erroneous in as much as the High Court did not take note of the proviso to Regulation 8(3)(1). Without a proper examination of the provision, the High Court fell in error in holding that Regulation 8(3)(1)(a) would be applicable only to the Colleges seeking second renewal i.e. admissions of the third batch. Admissions up to the second renewal i.e. admissions to the third batch would fall under Regulation 8(3)(1)(a). In other words, the proviso is not restricted only to second renewal cases. Even the first renewal is covered by proviso (a) to Regulation 8(3)(1) as the language used is “up to second renewal”. We do not see any conflict between Section 10-A (3) and (4) of the Act on one hand and Regulation 8(3)(1)(a) on the other. Regulation 8(3)(1) (a) is complementary to Section 10-A of the Act. Fixing minimum standards which have to be fulfilled for the purpose of enabling a medical College to seek

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fresh inspection would not be contrary to the scheme of Section 10-A. In fact, Regulation 8(3)(1) provides that an opportunity shall be given to the Medical College to rectify the defects. But, the proviso contemplates that certain minimum standards are to be satisfied i.e. there should not be a deficiency of teaching faculty and/or residents more than 30 percent and/or bed occupancy should not be less than 50 percent. This prescription of standards for availing an opportunity to seek re-inspection is not ultra vires either the Regulation or Section 10-A of the Act.

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11. On perusal of the material on record, we are of the opinion that the conclusion reached by the High Court regarding the manner in which inspection was conducted is also not correct. Bed occupancy at 45.30 percent on random verification was the claim of Respondent No. 1 and 2. However, the inspection report shows that out of the required minimum of 300 patients only 3 were available at 10.00 am on 25th September 2017. This Court in Kalinga (supra) has held that medical education must be taken very seriously and when an expert body certifies that the facilities in a medical College are inadequate, it is not for the Courts to interfere with the assessment, except for very cogent jurisdictional reasons such as malafide of the inspection team, ex facie perversity in the inspection, jurisdictional error on the part of the M.C.I., etc. The submission relating to the cyclone being a reason for the number of patients being less is not acceptable. We are in agreement with the submission made on behalf of the Appellant that the Resident Doctors are required to be in the hospital at all points of time.”

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(emphasis supplied)

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18. In *Medical Council of India vs. Principal, KMCT Medical College and Anr.* (Civil Appeal No.8429 of 2018) decided on August 21, 2018, this Court has again considered the provisions of Regulations 8(3)(1)(a) and the applicability of clause 8(3)(1)(c) and the submission raised on the strength in *Royal Medical Trust (Registered) & Anr. v. Union of India & Anr.* 2015 (10) SCC 19. This Court after considering the decision in *Madha Medical College and Research Institute v. Union of India & Anr.* 2017 (15) SCC 791 and *I.Q. City Foundation and Anr. v. Union of India & Ors.* 2017 (16) SCC 249 observed that the recommendation of the Hearing Committee at best had the force of

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A observation for conducting the review. Physical verification of compliance can be done only by the MCI. The manner of verification of the compliance has to be necessarily left to the appellant-MCI. The Court observed:

B “14. The conclusion of the High Court that a second inspection ought not to have been conducted by the MCI is contrary to the law laid down by this Court in the judgments referred to supra. We are also not in agreement with the High Court that the MCI was bound to comply with the direction issued by Respondent No.2 and that a recommendation ought to have been made by the Appellant without verification. It is relevant to note that the

C Hearing Committee was prima facie convinced that the deficiencies pointed out in the inspection conducted on 18th/19th September 2017 appeared to have been rectified on the basis of documentary evidence furnished by the College. Therefore, the Hearing Committee suggested that the Appellant may review and make a revised recommendation without any need for compliance verification. On the basis of such recommendation of the Hearing Committee, the matter was sent back to the Appellant by Respondent No.2. At best, the observation of the Hearing Committee, as affirmed by Respondent No.2, is a suggestion. Remand of the matter to the Appellant -MCI for conducting a review is due to the fact that the physical verification for compliance can be done only by the Appellant - MCI. The manner of verification of the compliance has to be necessarily left to the Appellant -MCI. We are of the view that it is open to the Appellant to choose the manner of compliance verification. Remand by the Government of India to MCI for a review does not place any restriction of verification to only the deficiencies pointed out earlier. MCI is competent to conduct the inspection regarding the compliance of the minimum standards as prescribed by the Regulations as well.”

(emphasis supplied)

G 19. In *Royal Medical Trust* (supra), the Court observed that when verification is required, it should be before deadline fixed for taking a decision:

H “31. ... .. (A) Initial assessment of the application at the first level should comprise of checking necessary requirements such

as essentiality certificate, consent for affiliation and physical features like land and hospital requirement. If an applicant fails to fulfil these requirements, the application on the face of it, would be incomplete and be rejected. Those who fulfill the basic requirements would be considered at the next stage. (B) The inspection should then be conducted by the Inspectors of MCI. By very nature, such inspection must have an element of surprise. Therefore sufficient time of about three to four months ought to be given to MCI to cause inspection at any time and such inspection should normally be undertaken latest by January. Surprise inspection would ensure that the required facilities and infrastructure are always in place and not borrowed or put in temporarily. (C) Intimation of the result or outcome of the inspection would then be communicated. If the infrastructure and facilities are in order, the medical college concerned should be given requisite permission/renewal. However, if there are any deficiencies or shortcomings, MCI must, after pointing out the deficiencies, grant to the college concerned sufficient time to report compliance. (D) If compliance is reported and the applicant states that the deficiencies stand removed, MCI must cause compliance verification. It is possible that such compliance could be accepted even without actual physical verification but that assessment be left entirely to the discretion of MCI and the Central Government. In cases where actual physical verification is required, MCI and the Central Government must cause such verification before the deadline. (E) The result of such verification if positive in favour of the medical college concerned, the applicant ought to be given requisite permission/renewal. But if the deficiencies still persist or had not been removed, the applicant will stand disentitled so far as that academic year is concerned.”

(emphasis supplied)

20. There can be a statutory prohibition on fresh inspection. Same has been created by amending regulation of 1999 in 2016. In *Madha Medical College and Research Institute* (supra) this Court has observed:

“17. While considering the above submissions, we must make it clear at the outset that we are not impressed with the argument that MCI is prohibited from conducting a second or subsequent inspection. The purpose of inspection by an expert team of

A assessors is to verify whether a medical college has the requisite infrastructure and facilities including faculty, residents as well as clinical and nonclinical material. The basic purpose of the inspection is to verify whether the college possesses the wherewithal and resources to provide a quality legal education consistent with the statutory regulations which hold the field.

B The powers of MCI cannot be constricted by prohibiting it from carrying out another inspection, even if it were to come close on the heels of an earlier inspection. As an expert statutory body, MCI may have legitimate reasons for seeking a reverification of the observations contained in a prior inspection. There may be

C reasons to doubt the genuineness of the picture which has been made out by the College during the course of an inspection. MCI may have prima facie reasons to believe that the actual possession of resources and infrastructure is at variance with what was portrayed before its team of assessors. MCI has been conferred with statutory powers to protect the cause of medical education.

D MCI is a custodian of public interest and acts in trust for the welfare of society. Access to medical care requires the presence of qualified health professionals. Verification of the conditions which prevail in medical colleges is central to the role discharged by MCI. Hence, it would be manifestly contrary to public interest to restrict the powers of MCI to carry out a fresh inspection even though in its considered decision, such an inspection is necessary. This Court cannot sit in judgment over the wisdom of an expert body and we find no basis to hold in law that there is a prohibition in carrying out a fresh inspection. In the absence of a statutory interdict, the court will not read such a restriction into the powers of MCI. In these circumstances, we find no merit in the submission.”

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(emphasis supplied)

G 21. In *I.Q. City Foundation vs. Union of India* (supra) the Court has emphasized ‘objectivity’ in the decision-making process, it observed:

H “31. On a reading of Section 10-A of the Act, Rules and the Regulations, as has been referred to in *Manohar Lal Sharma* [*Manohar Lal Sharma v. Medical Council of India*, (2013) 10 SCC 60: 6 SCEC 578], and the view expressed in *Royal Medical Trust* [*Royal Medical Trust v. Union of India*, (2015) 10 SCC 19:

7 SCEC 429], it would be inapposite to restrict the power of the MCI by laying down as an absolute principle that once the Central Government sends back the matter to MCI for compliance verification and the assessors visit the college they shall only verify the mentioned items and turn a Nelson's eye even if they perceive certain other deficiencies. It would be playing possum. The direction of the Central Government for compliance verification report should not be construed as a limited remand as is understood within the framework of Code of Civil Procedure or any other law. The distinction between the principles of open remand and limited remand, we are disposed to think, is not attracted. Be it clearly stated, the said principle also does not flow from the authority in Royal Medical Trust [Royal Medical Trust v. Union of India, (2015) 10 SCC 19 : 7 SCEC 429]. In this context, the objectivity of the Hearing Committee and the role of the Central Government assume great significance. The real compliant institutions should not always be kept under the sword of Damocles. Stability can be brought by affirmative role played by the Central Government. And the stability and objectivity would be perceptible if reasons are ascribed while expressing a view and absence of reasons makes the decision sensitively susceptible.”

22. The MCI has been established in order to streamline the standard of medical education. It has the power to supervise qualification and eligibility standards for admissions into medical institutions, as observed in *State of Kerala vs. T.P. Roshna* (1979) SCC 580:

“The Indian Medical Council Act, 1956 has constituted the Medical Council of India as an expert body to control the minimum standards of medical education and to regulate their observance. Obviously, this high-powered Council has power to prescribe the minimum standards of medical education. It has implicit power to supervise the qualifications or eligibility standards for admission into medical institutions. Thus, there is an overall invigilation by the Medical Council to prevent sub-standard entrance qualifications for medical courses.”

23. In *Medical Council of India vs. State of Karnataka* 1998 (6) SCC 131 the Court observed that the country does not want a half-baked medical professional to come out of the medical colleges. The

A college should be well equipped with faculty and competent doctors. The Court has observed:

“A medical student requires grueling study and that can be done only if proper facilities are available in a medical college and the hospital attached to it has to be well equipped and the teaching faculty and doctors has to be competent enough that when a medical student comes out, he is perfect in the science of treatment of human beings and is not found wanting in any way. The country does not want half-baked medical professionals coming out of medical colleges when they did not have full facilities of teachings and were not exposed to the patients and their ailments during the course of their study. ....”

The Court has further observed that the regulations of the MCI are binding and mandatory. There cannot be any contrary State enactment. The said view was affirmed by this Court in *Dr. Preeti Srivastava v. State of Madhya Pradesh & Ors.* 1999 (7) SCC 120.

24. For effective implementation of provisions of Section 10 A of the Indian Medical Council Act, 1956 (for short, “the Act”) requiring prior permission from the Central Government for the establishment of medical colleges, regulations have been made in exercise of powers under Section 10 A read with Section 33 of the Act.

25. Consequently, the regulations of 1999 are binding with respect to availability of teaching faculty, infrastructural and other facilities and with the advancement of the batches this requirement become more rigorous as there is more requirement in the faculty than the college is recognized after fulfillment of all the conditions as apparent from the provisions contained in the Regulations. With the aforesaid objective, the provisions contained in Regulation 8(3) have been carved out and amended in 2016. In case there are gross deficiencies, more than prescribed in regulation for the concerned batch then the compliance verification would not be considered in the same academic year. Regulation 8(3)(1)(a) shall be applicable to an institution which has been established and is at the stage of second renewal of permission and in case deficiency of faculty and/or residents are found more than 30% and/or bed occupancy is found less than 50%, institute shall not be given opportunity to rectify such deficiency in same academic year. In case discrepancies are less, then the opportunity is afforded to make compliance. In the case of recognition, an opportunity of compliance

has to be given as per Regulation 8(3)(1), once recognition is denied no admissions can be made. A

26. Considering the aforesaid provisions and the deficiencies found in the case of the aforesaid three medical colleges, we are of the considered opinion that the recommendations made by the Hearing Committee to review and to consider the compliance could not be said to be binding. The provisions of the regulations 8(3)(1)(a) and (b) are binding upon the Hearing Committee/Government of India and the MCI. It is only in a case when a report of the Assessors on the face of it, makes out that the same is incorrect, a reconsideration or review is called for. Otherwise, in the case of gross deficiency, the yardstick contained in regulation 8(3)(1)(a) or (b) has to be applied by the Hearing Committee, Government of India or the MCI, as the case may be. It is not open to the Government of India/ MCI or Hearing Committee to depart in a few cases and in some other to take a different stand. They have to scrupulously observe the provisions of regulations which are binding on them. B  
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27. It is unfortunate that the High Court has made a passing reference to the decision of this Court in *Medical Council of India v. Vedantaa Institute of Academic Excellence Pvt. Ltd. & Ors. (supra)* and *Medical Council of India v. The Principal, KMCT Medical College, and Anr. (supra)*. It was incumbent upon the High Court in pith and substance to follow the mandate of *Vedantaa Institute of Academic Excellence Pvt. Ltd. & Ors. (supra)*. The High Court has relied upon other judgments which were not based upon the consideration of the amended provisions of the regulation 8(3)(1). It could not have relied upon its own decision of the Division Bench in *D.M. Education and Research Foundation v. Union of India (supra)* which was clearly contrary to the aforesaid decisions of this Court. E  
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28. It is high time for the MCI to ensure its functions well and eradicate all the loop-holes and decide the case within a reasonable time and not to lend the colleges in a situation with no legal remedy available once case is decided at the fag end of the academic session on 31<sup>st</sup> May. We are constrained to observe that it would be appropriate that MCI and Government of India take a decision in all the cases at an early date and not by the end of May 2018. The next academic session has to commence from first of July of the Gregorian calendar year as such at least 3-4 months' time should be available to seek judicial review of the G  
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A action or re-inspection, if any, so warranted by the MCI or Government of India. We find that once a petition is filed and even if in some cases we are inclined to grant a relief of re-inspection to a college, but due to the lapse of the time schedule and the admissions having already been made, it is not considered appropriate to disturb the uniform schedule of various universities. In our opinion, it would be appropriate that the  
B MCI, as well as the Government of India, should take a final decision after inspection, by the end of February or latest by the end of March.

29. Now, we consider the submission raised by Mr. C.S. Vaidyanathan in the case of P.K. Dass Institute of Medical Sciences in regard to the correctness of the report of the Assessors as to the  
C occupancy of the bed, wherein bed occupancy had been found to be 40.60% at 10.00 am on the date of the inspection held on 31 October and 1<sup>st</sup> November, 2017 for the purpose of renewal of permission for admission of fifth batch of 150 seats in MBBS Course or 2018-2019. The provisions contained in Regulation 8(3)(1)(b) had been applied.  
D The Executive Committee on 16.01.2018 considered the representations dated 5.1.2018 submitted by the college, forwarded to it by the Ministry. The Hearing Committee had observed that attendance was counted till 2.00 p.m. the college has explained the deficiency of faculty and deficiency of attendance in OPD, however, it was observed that the submission of the college regarding bed occupancy was not entirely satisfactory. The  
E case was referred to the MCI for review including considering the imposition of Regulation 8(3)(1)(b). After considering the recommendation decision was taken by the MCI, as the aforesaid regulation was applicable, the decision was taken not to renew the permission for admission of 5<sup>th</sup> Batch of MBBS course.

F 30. It was further contended on behalf of the college that the performance of the students and result of the examination was extremely good and bed occupancy was more as shown on the college website. With respect to the bed occupancy, it was reported by the Assessor that there were 262 patients out of 650 required beds at 10.00 am on the first  
G day. It was submitted by the learned senior counsel that there were approximately 500 patients admitted as indoor patients as apparent from the web portal of the college in question thus, the report of the Assessors was absolutely incorrect and this aspect should be looked into by this Court. It was contended that the Assessors had counted patients available on the beds at that time. Assessors did not count patients who were  
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under investigation procedures and operation theatre and those who were in the washrooms, pantry etc. As per the Assessors, the bed occupancy was 40.30% *i.e.* 262 patients out of 650 patients which were required. Whereas college claimed that 493 indoor patients were there at 10.00 am on 31.10.2017. There was 80% bed occupancy on 30-31.10.2017 and 1.11.2017. The learned senior counsel has drawn support from the website portal.

31. We have no hesitation in rejecting the submission as it has no legs to stand. Whatever college says is not a gospel truth. There is no case wherein college does not dispute the report of the Assessors and contend that there were no such deficiencies. It is clearly disputed fact. Firstly, the report of the Assessor cannot be lightly disbelieved. It is not open to examining the case set up by the college as facts are found by Assessors are at great variance secondly, in the judicial review, the report cannot be discarded relying on data put up by the college on self-serving website portal. In our view, the High Court was right in discarding the explanation offered by the colleges with respect to deficiencies. Even the Hearing Committee with respect to P.K. Dass Institute of Medical Sciences did not doubt the report of Assessors as to bed occupancy. This Court has considered the value of a website portal and such objections in *Medical Council of India v. N.C. Medical College & Hospital and Ors.* (Civil Appeal No.9519 of 2018) decided on 13.9.2018 in which the decision of *Medical Council of India vs. Kalinga Institute of Medical Sciences (KIMS) & Ors.* 2016 (11) SCC 530 has been referred to. The Court observed:

“18. On the one hand, the High Court has doubted the report of inspection and for that surprisingly relied on the self-serving contents of the website of the college. There is nothing to vouch for the authenticity of the website information. It is not what the institution asserts on website but what is actually found on inspection, that has to be considered by the court and while exercising judicial review it is settled law that court cannot sit in appeal over the report of the assessors as observed in *Medical Council of India v. Kalinga Institute of Medical Sciences (KIMS)*, (2016) 11 SCC 530 thus:

“21. A perusal of the decision of the High Court clearly indicates that it considered the latest report of the Inspection Team as if it was hearing an appeal against the report. In doing so, the

A High Court went into great details on issues relating to the number of teaching beds in the hospital, the limitations in the OPD Department, the number of units available in the subjects of General Medicine, Pediatrics etc., bed occupancy, number of Caesarean sections, discrepancy in data of major and minor operations, computerization in the institution, number of patients in the ICU, number of static X-ray machines, deficiency of examination halls, lecture theatres, library, students hostel, interns hostel, playground etc. etc. Surely, this was not within the domain of the High Court in the exercise of its jurisdiction under Article 226 of the Constitution. 22. The High Court did not appreciate that the inspection was carried out by eminent Professors from reputed medical institutions who were experts in the field and the best persons to give an unbiased report on the facilities in KIMS. The High Court under Article 226 of the Constitution was certainly not tasked to minutely examine the contents of the inspection report and weigh them against the objections of KIMS in respect of each of its 18 items. In our opinion, the High Court plainly exceeded its jurisdiction in this regard in venturing into seriously disputed factual issues.”

(emphasis supplied)

E It was also observed that at the time of inspection faculty should be present barring certain exceptions otherwise the very purpose of the inspection would be defeated. The Report of the Assessors cannot be lightly faulted and the court cannot sit in an appeal and go into disputed facts. There were other deficiencies too but due to the aforesaid gross deficiencies, the provisions of regulations 8(3)(1)(b) were clearly attracted.

F 32. In *Medical Council of India v. The Principal, KMCT Medical College* (supra) it was contended that the inspection was not properly conducted. The submission had been rejected thus:

G “15. We do not deem it necessary to deal with the submission made on behalf of the College regarding the inspection not being properly conducted. This Court has repeatedly said that a decision taken by the Union of India on the basis of a recommendation of an expert body regarding the inadequacy of facilities in medical colleges cannot be interfered with lightly. Interference is permissible only when the colleges demonstrate jurisdictional

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errors, ex facie perversity or mala fide. [See:- Manohar Lal Sharma v. Medical Council of India 4 and Medical Council of India v. Kalinga Institute of Medical Sciences (KIMS) 5 ]. As no case is made out by the College for interference with the inspection report, we decline the request of Mr. Sibal for remand of the matter to the High Court.”

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(emphasis supplied)

In our opinion, in view of the aforesaid legal position, it is not open to the court in judicial review to accept tenuous objections as to bed occupancy in the absence of mala fide.

33. In view of the aforesaid discussion, we are of the considered opinion that the High Court has gravely erred in law while passing the impugned judgment and order in quashing Government’s order, allowing the admissions for the academic session 2018-2019 without there being Government of India’s permission and the recommendation of the MCI. The High Court has issued direction for fresh inspection and thereafter the MCI to consider the report after the grant of opportunity to remove defects if any. Firstly, it could not have issued such a direction in view of regulations and also the blanket direction that college should be permitted to remove the deficiencies if any found. Deficiencies can be removed, if found, within the permissible limits as provided in regulation 8(3), not in a case Regulation 8(3)(1)(a) or (b) is attracted. Thus, such kind of general direction issued without considering the provisions of the Regulations are wholly illegal and unwarranted and on inspection, the decision has to be taken in accordance with law as per regulations. Obviously, regulations would come into play as per outcome of an assessment. It cannot be predicted in advance what would be the outcome of inspection to decide in advance opportunity of removal of deficiencies. There may be a case where deficiencies are found by Assessors to be gross as contemplated in the proviso to Regulation 8(3)(1), they cannot be removed in that year. Even otherwise, the Court could not have at all ordered the admissions, as directed in the instant matter. High Court at the same time has ordered inspection and if the deficiencies are found to exist then the MCI and Government of India have been given liberty to take appropriate decision. Such orders may ruin the entire career of the students. Once permission to admit students is granted, it should not be such conditional one. Considering the deficiencies, it would be against the efficacious medical education and

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- A would amount to permit the unequipped medical college to impart medical education without proper infrastructure and faculty, patients serve as the object of teaching by such an approach ultimately interest of the society would suffer and half-baked doctors cannot be left loose on society like drones and parasites to deal with the life of patients in the absence of proper educational training. It would be dangerous and against the right to life itself, in case unequipped medical colleges are permitted to impart substandard medical education without proper facilities and infrastructure.

**In re: D. M. Education and Research Institute of Medical Sciences:**

- C 34. Coming to the case of recognition and admission in of D.M. Education and Research Institute of Medical Sciences established by D.M. Education Research Foundation Trust, it was a case of recognition and admission. In the inspection dated 27.2.2018 and 14/15 March 2018 various deficiencies were found supported by photographs, videography etc. The deficiencies which were found as mentioned in the Government of India order dated 31.5.2018 are extracted hereunder:

E “The Executive Committee of the Council considered the assessment report (27.2.2018) and 14<sup>th</sup> & 15<sup>th</sup> March 2018) along with photographs/ videography and letters/ representation dated 15.03.2018 from Dean of the Institute with regard to Recognition/ Approval of DM Wayanad Institute of Medical Sciences, Kerala and noted the following:

- F 1. “Deficiency of faculty is 18.93% as detailed in the report.
- F 2. OPD: On both days, at 09.40 a.m., most of the faculty & residents were not available.
- G 3. Bed Occupancy at 10 a.m. on the day of assessment was 61.69%; however about 15% of the patients were not genuine reducing Bed Occupancy to 46%. Out of these, most of the patients were admitted on a day prior to assessment.
- H 4. Patients: On verification of the patients on the beds (from among the 401), the following patients were notified in most of the wards, indicating the nongenuine patients. For example:-

- I. Mini C.K. WIMS No.258951, Gen. Med-3, was admitted on 14.3.2018 at 9.40 pm when the institution was inspecting at 9.30 am on 14.3.2018. Nurses clinical chart was entered even for 13<sup>th</sup> doctors notes too, thereby indicating that case sheets with non-genuine patients are prepared in advance. A
- II. Raimanath – WIMS No.310182, OBG Ward, was admitted twice on 13.3.2018 and 14.3.2018. No case notes of the patient in the case sheet and no treatment. B
- III. Mr. Sivan WIMS No.212033 – Gen Medicine Only admission request form – entire inpatient case records including names blank. C
- IV. Prabhashini WIMS No.39575, OBG Ward 2 – admitted with complaints of excessive bleeding PV, on enquiry, she gives a history of no bleeding at all, but only pain abdomen. The same was endorsed by the Resident in the ward on the case sheet. No investigations and treatment were given. Taking this into account in the wards, around 15% of the patients were non-genuine, taking the effective bed occupancy to around 46%. D  
Also apart from this, in the wards, more than 50% of the patients were admitted on 13.3.2018, the day before the assessment.
5. Data of Radiological & Laboratory investigations given by the Institute include data of private patients & Super specialties patients which is not permissible. E
6. Wards: There is no signage of Unit-wise bed distribution, no faculty & residents were available inwards during the round. F
7. ICUs: There was only 1 patient in PICU on the day of assessment.
8. 4 Mobile X-ray machines are available against the requirement of 6. G
9. Microbiology department: 6 Service laboratories are available against requirement of 7.
10. Pharmacology department: There are NIL Specimen & NIL Model in the Museum. H

- A 11. Forensic Medicine Department: Cold Storage is not available.
12. RHTC: Cold Chain equipment are not available.
13. Residents' Hostel: On verification, about 15-20% of Residents are found to be not staying in the campus. Rooms allotted to them were closed on inspection by the assessors."
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35. The background facts indicate that the college was granted permission for the academic sessions 2013-2014 and 2015-2016. For the academic year 2016-2017, it was granted conditional permission on the recommendation of the Oversight Committee to the effect that in case of failure to remove the deficiencies, it would be debarred for two academic years. Thereafter, on inspection assessment that was made on 5<sup>th</sup> and 6<sup>th</sup> December 2016, gross deficiencies were found and due to that the MCI on 28.1.2017 recommended the Central Government to debar the college for two academic years and to encash the bank guarantee. On 31.5.2017, Government of India accepted the recommendations of the MCI. As the first batch admitted in the college reached the final year, the application was filed by the college for grant of recognition. The college, aggrieved by the Government of India's decision on 31.5.2017 filed Writ Petition (C) No.19753 of 2017 for permission to admit fresh batch of 150 M.B.B.S. students for the academic year 2017-2018. The writ petition was decided by order dated 2.8.2017 the High Court directed Government of India to give a personal hearing to the college and thereafter to pass a fresh reasoned order. The Government of India after considering the recommendation of the Hearing Committee decided on 14.8.2017 to confirm the conditional renewal of permission for the academic year 2016-2017 and that no fresh batch for 2017-2018 may be allowed.

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36. Writ Petition No.19753 of 2017 came to be filed for grant of admission in 2017-18 in which interim order was granted by the High Court on 25.8.2017. This Court set aside the interim order of the High Court on 6.9.2017, however, permitted the college to approach this court under Article 32 of the Constitution of India. Thereafter, Writ Petition (C) No.838 of 2017 was filed in this Court. This Court vide order dated 22.9.2017 while permitting the students admitted for the academic year 2017-2018 to continue, directed the college to remove the deficiencies. The order was passed to safeguard the interest of the students already admitted pursuant to the interim order dated 25.8.2017.

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37. In order to consider the case of the respondent – medical college for recognition, an inspection was carried out on 27.2.2018 and 14/15, March 2018. In the assessment report, various deficiencies as noted above were found. The Executive Committee decided not to recommend the recognition in regard to MBBS degree. It was also recommended to the Central Government not to grant renewal of permission for the admission of a fresh batch of 150 MBBS students for the academic year 2018-19. The decision of the Executive Committee was communicated to the Oversight Committee, which in turn vide order dated 28.3.2018 approved the same.

38. The Executive Committee then vide letter dated 20.04.2018 communicated to the Government of India. At the same time, the MCI vide letter dated 20.04.2018 requested the respondent-Medical College to rectify the deficiencies and submit compliance within one month for further consideration of its case for grant of recognition. As against recommendation made by the MCI, the college filed the Writ Petition (C) No.15171 of 2017 before the High Court of Kerala. The High Court directed Government of India to grant a hearing and to pass final order on or before 31.5.2018. The Government of India granted hearing opportunity on 21.5.2018. The college reported compliance on 22.5.2018. The MCI vide letter dated 25.5.2018 requested the Oversight Committee to consider the matter. The Oversight Committee on 28.5.2018 directed the MCI to follow the regulations. The Government of India was informed by the MCI on 28.5.2018 that last date to send recommendation by MCI was up to 30.04.2018 which was already over, as such the case of the college could not have been considered for admission for 2018-2019 and the matter of the recognition was under consideration of the MCI and shall be decided appropriately after considering compliance. The Central Government passed the impugned order on 31.5.2018 and in view of the gross deficiencies decided not to grant renewal of permission admission for the batch of 150 MBBS students in the academic year 2018-2019. Aggrieved by the same, Writ Petition (C) No.19543 of 2018 was filed in which prayer was made to grant recognition and to permit the students to be admitted. The said writ petition had been allowed by the impugned common judgment.

39. For the purpose of recognition, the Regulations of 1999 contains the provisions in Regulation 8(3)(1) wherein the process of renewal of permission will continue till such time the establishment of the medical

A 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 applicant and provide him an opportunity and time to rectify the deficiencies. It is the stand of the MCI also that the matter of recognition is under consideration and shall be considered in terms of said regulation after giving the opportunity to make good deficiency. However, with respect to admissions in 2018-19, the recommendation was made not to admit the students.

40. It is apparent that when the Hearing Committee has ordered on 21.5.2018 to consider the compliance and to make a fresh recommendation, the MCI declined to do so on the ground that time to make a recommendation was already over on 30.04.2018. The decision of *Mridul Dhar v. Union of India*, 2005 (2) SCC 65, *Priya Gupta v. State of Chhattisgarh* 2012 (7) SCC 433 and *Royal Medical Trust (Regd.) & Anr. v. Union of India* 2015 (10) SCC 19 were referred to. It was clearly mentioned by the MCI in its letter dated 25.5.2018 that the matter could not be considered for renewal of permission for admission for the academic year 2018-2019, but compliance of the medical college for the purpose of recognition/approval under section 11(2) of the Act was under consideration of the MCI and compliance verification/assessment and recommendations of the MCI would be sent to Central Government in due course of time. The matter was under consideration before the MCI for recognition, renewal for permission for admission had been declined by the MCI on 28.5.2018. Thereafter, the Government of India has passed the order on 31.5.2018 declining admission for 2018-19.

41. In view of the deficiencies of faculty and of bed occupancy, the decision not to grant permission for admission in the year 2018-2019 was appropriate. However, the compliance that had been submitted by the college on 22.5.2018 will be considered for the purpose of recognition by the MCI as provided under the regulation 8(3). Let the MCI consider the matter for the purpose of recognition duly considering the compliance unfettered by the order passed by the Government of India on 31.5.2018. The Government of India also to consider the matter of recognition in accordance with the law. Let the decision be taken by the respondents-MCI and Government of India as expeditiously as possible.

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42. Resultantly, the appeals are allowed. The impugned judgment and order are set aside. However, it would be open to the colleges to stake their claim for permission for admission for next academic session *i.e.* 2019-2020, in accordance with law. No costs. A

Kalpana K. Tripathy

Appeals allowed.