

MEDICAL COUNCIL OF INDIA

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v.

LORD BUDDHA EDUCATIONAL SOCIETY & ORS.

(Civil Appeal No.10352 of 2018)

OCTOBER 09, 2018

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[ARUN MISHRA AND VINEET SARAN, JJ.]

Establishment of New Medical College Regulations, 1999 – Regulation 8(3)(1)(a) – When attracted – Government of India after granting hearing to the College in question, passed order dated 14.08.2017 reiterating its earlier decision to debar the college – Writ petition filed by College before Supreme Court – Supreme Court vide order dated 13.11.2017 directed the Medical Council of India (MCI) to consider the application of College for renewal of permission for the academic year 2017-18 to be valid for the academic year 2018-19 and to process the same in accordance with law – MCI again carried out inspection, gross deficiencies were found and recommended to the Central Government not to grant renewal of permission for admitting third batch of 150 MBBS students for the academic year 2018-19 and also to invoke Regulation 8(3)(1)(a) of the 1999 Regulations – Government of India granted opportunity of hearing to the College and requested MCI in view of the documents of compliance filed, to consider the same and to review the decision – College filed writ petition – High Court directed MCI to take decision within 5 weeks – Oversight Committee considered the matter and observed that once Regulation 8(3)(1)(a) had been invoked, it was impermissible for the Council/ Government of India to consider the compliance reported by the College – Writ petition filed by College – High Court directed the Central Government to take decision within 10 days – Central Government vide order dated 31.05.2018 decided not to grant renewal of permission for admission for the academic year 2018-19 – Writ petition filed by College, allowed by High Court inter alia directing the College to submit compliance – On appeal, held: Regulation 8(3)(1)(a) provides that if the deficiencies of teaching faculty and/or residents are found to be more than 30% and/or bed occupancy less than 50%, College shall not be entitled to make

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- A *them good and compliance of deficiencies will not be considered for issuance of letter of permission for same academic year – The College in question was well-aware that in view of the gross deficiencies found, an opportunity could not have been granted in view of Regulation 8(3)(1)(a) – College had filed successive writ applications in the High Court but did not pray for fresh inspection*
- B *knowing fully well that the MCI and the Oversight Committee had decided and again reiterated their decision that due to gross deficiencies found as per Regulation 8(3)(1)(a), compliance verification could not have been made – When Supreme Court passed order on 13.11.2017, it was observed that inspection should*
- C *be carried out and College should be given an opportunity to make compliance of deficiencies – In concluding portion it was observed that the decision has to be in accordance with law – Supreme Court never decided the question that in case deficiencies were found to be gross as contained in Regulation 8(3)(1)(a) whether the said Regulation has to be ignored – No case for quashing order dated*
- D *31.05.2018 made out – Judgment and order passed by the High Court set aside.*

Allowing the appeal, the Court

- E **HELD: 1.1 In view of the gross deficiencies found, no compliance verification could have been made in view of regulation 8(3)(1)(a). It was already a case of conditional permission which was granted subject to removal of deficiencies and in successive inspections, it was found that the college was not compliant and had not removed the deficiencies. When Supreme Court passed order on 13.11.2017, no doubt about it**
- F **was observed that inspection should be carried out and college should be given an opportunity to make compliance of deficiencies. In concluding portion it was observed that the decision has to be in accordance with law. This court never decided the question in case deficiencies were found to be gross as contained in regulation**
- G **8(3)(1)(a) whether the said regulation has to be ignored. The observations which were made by this court were obviously based upon the main provision which requires an opportunity to be given unless the deficiencies are such which can be termed to be “gross” as contemplated in proviso (a) to regulation 8(3)(1)(a) that has been amended. [Para 23] [942-G-H; 943-A-B]**
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1.2 Regulation 8(3)(1)(a) provides that if the deficiencies of teaching faculty and/or residents are found to be more than 30% and/or bed occupancy less than 50%, College shall not be entitled to make them good and compliance of deficiencies will not be considered for issuance of letter of permission for same academic year. The College had filed successive writ applications in the High Court of Delhi in 2018 but did not pray for fresh inspection in terms of the order passed by this Court knowing fully well that the MCI and the Oversight Committee had decided and again reiterated their decision that due to gross deficiencies found as per Regulation 8(3)(1)(a), compliance verification could not have been made. It was incumbent upon the College to timely press for the relief of considering compliance which it did not insist and thereafter it was too late in the day to order it by the High Court vide impugned order dated 1.8.2018 passed by the High Court even if it was permissible. [Paras 24, 25] [943-C-D]

1.3 What this Court intended by passing the order on 13.11.2017 was that the College be inspected afresh for the academic year 2018-19 but it was not even in contemplation of this Court at the time what would be the nature of deficiencies to be found on fresh inspection. The observation has to be considered only with respect to when deficiencies have been found to be such, more than 30% of faculty and of residents and/or the bed occupancy is less than 50%, no further compliance verification opportunity has to be given. The decision of this Court cannot be taken to be a decision with respect to it when deficiencies are found to be gross where the proviso to Regulation 8(3)(1) comes into play. The decision of this Court was based on the main provision that ordinarily an opportunity has to be given to removing the deficiencies which are removable not falling within the aforesaid percentage in Regulation 8(3)(1)(a). Thus, Court never intended to by-pass the provision of Regulation 8(3)(1)(a). It was not ordered that notwithstanding the provision of Regulation 8(3)(1)(a), compliance opportunity is to be afforded. A decision is an authority for the question considered and decided. This Court had not decided the aforesaid aspect nor was it germane as fresh inspection had not been carried out by 13.11.2017. Thus, the observations made by this Court cannot be taken to mean that

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A though deficiencies are found to be more than 30% of faculty and residents and bed occupancy is 50% and notwithstanding the provisions contained in Regulation 8(3)(1)(a), compliance opportunity should be given. Thus, the High Court has erred in law in considering purport of the order of this Court. [Para 26] [945-A-E]

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 1.4 Considering the nature of the deficiencies that had been found on fresh assessment and also the fact that the College had in fact never been granted clear recognition by the Government of India or MCI, it was only on the insistence of the Oversight Committee appointed by this Court that conditional permission was granted and gross deficiencies were found. Thus, the College was not entitled to any further indulgence; more so, in view of Regulation 8(3)(1)(a). No case for quashing order dated 31.5.2018 passed by the Government of India had been made out. The judgment and order passed by the High Court are thus liable to be set aside. [Paras 27, 28] [945-F, G; 946-A-B]

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 E *Medical Council of India & Ors. v. Vedantaa Institute of Academic Excellence Pvt. Ltd. & Ors. (2018) 7 SCC 225 ; Medical Council of India v. Malla Reddy Institute of Medical Sciences & Ors. Civil Appeal No.4812/2016 decided by Supreme Court on 27.04.2016 ; Royal Medical Trust (Registered) & Anr. v. Union of India & Anr. (2015) 10 SCC 19 - referred to.*

Case Law Reference

F (2018) 7 SCC 225 referred to Para 13
 (2015) 10 SCC 19 referred to Para 24

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10352 of 2018

G From the Judgment and Order dated 01.08.2018 of the High Court of Delhi at New Delhi in Writ Petition (C) No. 6656 of 2018.

Vikas Singh, Sr. Adv., Gaurav Sharma, Prateek Bhatia, Dhawal Mohan, Amandeep Kaur, Abhishek Srivastava, Advs. for the Appellant.

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Maninder Singh, ASG, Pradeep Rai, Sr. Adv., J. S. Bhasin, Nishant A
Shokeen, T. Mahipal, Sanjai Kumar Pathak, Anmol Chandra, Nalin
Kohli, Ms. Nimisha Menon, G. S. Makker, Advs. for the Respondents.

The Judgment of the Court was delivered by

ARUN MISHRA, J. 1. The background of the case indicates B
that the College was established pursuant to the directive issued by the
Oversight Committee vide letter dated 20.8.2016. The negative
recommendation was made by the MCI to the Government of India.
However, in view of the Oversight Committee's letter dated 20.8.2016,
conditional permission was granted by the Government of India to set up C
a medical college w.e.f. the academic year 2016-17 with an annual intake
capacity of 150 MBBS students. The conditions stipulated that during
the subsequent inspection if it was found that the College was deficient
then the medical college shall be debarred for two academic years.

2. On 7/8.11.2016, the assessment was carried out by a team of D
the MCI to ascertain whether the College had complied with the conditions
imposed by the Oversight Committee and the Government of India vide
letter dated 20.8.2016 by removing the deficiencies. On consideration of
the report of the assessors the Executive Committee of the MCI in its
meeting held on 22.12.2016 found gross deficiencies in the College and
it was observed that the College had failed to remove the deficiencies E
and to fulfill the conditions imposed and also failed to comply with the
undertaking and as such on 26.12.2016 a recommendation was made to
debar the College for two years i.e. 2017-18 and 2018-19 and to encash
the bank guarantee of Rs.2 crores furnished by the College.

3. The Government of India on due consideration of the F
recommendation of the Council made to it, accepted the recommendation
and debarred the College for two academic years, and also permitted
the Council to encash the bank guarantee vide order dated 31.5.2017.

4. The College filed W.P. [C] No.1825/2017 in the High Court of G
Chhattisgarh and it was disposed of vide order dated 3.8.2017. The Court
directed the Government of India to reconsider the case of the College
and decide the representation of the College by a reasoned order. Pursuant
thereto, the Government of India again granted an opportunity of hearing
to the College and passed a reasoned order on 14.8.2017 and the earlier
decision to debar the college from admitting students and to encash the
bank guarantee was reiterated. H

A 5. Aggrieved by the order dated 14.8.2017 passed by the Government of India, the College filed W.P. [C] No.776/2017 in this Court. This Court vide order dated 13.11.2017 directed the MCI to consider the application for renewal of permission for the academic year 2017-18 to be valid for the academic year 2018-19 and to process the same in accordance with law.

B 6. Thereafter, pursuant to the order passed by this Court on 13.11.2017 in the aforesaid writ petition, the Assessors of the MCI again carried out the inspection on 5/6.12.2017. The report of the Assessors was placed before the Executive Committee in its meeting held on 14.12.2017. Gross deficiencies were found in the College with respect to infrastructure, clinical material, teaching faculty, and other attendant physical facilities etc. Hence, the Executive Committee of the Council recommended to the Central Government not to grant renewal of permission for admitting third batch of 150 MBBS students for the academic year 2018-19 and also to invoke Regulation 8(3)(1)(a) of the Establishment of New Medical College Regulations, 1999 as the deficiency of 'teaching faculty', residents and bed occupancy was found much below the percentage prescribed in the said Regulations so as to renew them in the same academic year. The decision of the Executive Committee was considered by the Oversight Committee and thereafter the Council considered the matter and sent its recommendations to the Government of India on 6.1.2018. The Government of India granted an opportunity of hearing as is apparent from communication dated 12.2.2018. The Government of India requested the Council in view of the documents of compliance filed by the appellant, to consider the same and to review the decision.

F 7. On 23.2.2018 the case of the College was placed before the Sub-Committee of the Council in its meeting on 21.2.2018. Regulation 18(3)(1)(a) of the Regulations of 1999 had been invoked against the College. The matter was then referred to the Oversight Committee vide letter dated 23.2.2018. Before the final decision was reached, the College approached the High Court of Delhi by filing W.P. [C] No.2022/2018. The High Court vide order dated 6.3.2018 disposed of the petition and directed the MCI to take a decision within a period of 5 weeks.

G 8. The Oversight Committee considered the matter and vide letter dated 8.3.2018 approved the decision of the MCI and it was observed

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that once Regulation 8(3)(1)(a) had been invoked, as such it was impermissible for the Council/Government of India to consider the compliance reported by the College. A

9. The case of the College was placed before the Executive Committee of the Council on 24.3.2018. The Executive Committee in view of the decisions of this Court and considering the said Regulation decided to reiterate the earlier decision to recommend to the Central Government not to grant renewal of permission for the third batch of 150 MBBS students for the academic year 2018-19. The decision of the Council was communicated to the Oversight Committee on 28.3.2018. Ultimately it was communicated to the Government of India vide letter dated 13.4.2018. B C

10. Before the Government of India could take the final call, the College filed W.P. [C] No.4897/2018 which was decided by the High Court vide order dated 8.5.2018 and directed the Central Government to take a decision in the case of the College within a period of 10 days. The Central Government after considering the recommendation passed an order on 31.5.2018 and in view of the gross and serious deficiencies found in the assessment report, decided not to grant renewal of permission for admission for the academic year 2018-19. D

11. The College as against order dated 31.5.2018, filed W.P. [C] No.6656/2018. The High Court has allowed the same vide order dated 1.8.2018 and has ordered the College to submit compliance and directed the MCI to conduct an inspection of the College in order to reconsider the case for grant of renewal of permission for the academic year in question i.e. 2018-19. E

12. The High Court has opined that in view of the direction in the order passed by this Court on 13.11.2017 to grant opportunity to make compliance and remove deficiencies, ought to have been granted. Though this Court while passing the order did not consider the applicability of Regulation 8(3)(1)(a), the direction was binding as no clarification was sought from this Court. F G

13. Shri Vikas Singh, learned senior counsel appearing on behalf of the appellant, has submitted that while this Court decided the matter on 13.11.2017, it was never intended to decide as to the applicability of Regulation 8(3)(1)(a) as that was dependent upon the outcome of the H

- A inspection to be made in future and, in ordinary course, an opportunity of compliance has to be given, subject to exception contained in the cases covered under the proviso to Regulation 8(3)(1). However, considering the nature of the deficiencies which were found in the inspections made, in compliance of the direction issued by this Court on 13.11.2017, it was open to take a decision in accordance with law and only in case
- B deficiencies were not so much gross as contemplated under Regulation 8(3)(1)(a), an opportunity was required to be given to make compliance and not otherwise. He has relied upon the decisions of this Court in *Medical Council of India & Ors. v. Vedantaa Institute of Academic Excellence Pvt. Ltd. & Ors.* (2018) 7 SCC 225 and *Medical Council of India v. Malla Reddy Institute of Medical Sciences & Ors. – C.A. No.4812/2016* decided on 27.4.2016.

14. Per contra, on behalf of the respondents, it was contended that the direction of this Court was clear that an opportunity has to be granted to make compliance and the compliance reported ought to have been considered. Thus, there is a flagrant violation of the direction issued
- D by this Court, hence, no case for interference is made out as the order of the High Court directs only to comply with the direction issued by this Court.

15. What emerges from the factual scenario of the case is that the College had never been granted permission by the MCI. The Government of India was compelled to grant permission on the conditional basis that too in view of the direction issued by the Oversight Committee. As there were deficiencies and it was a case of conditional permission, thus deficiencies were required to be removed and thereafter in the inspection that was made in the year 2016 and again in 2017, it was
- F found that the College had not removed the deficiencies and did not fulfill conditions. After the Oversight Committee of this Court decided to grant conditional permission for the academic session 2016-17, the Government of India had to accept it as is apparent from the communication dated 20.8.2016. It was clearly a conditional permission
- G by the Government of India's order that in case the College was found to be deficient in complying with conditions then it shall be debarred for two academic years. Such conditional permissions are not ordinarily to be granted while a new College is required to be established. Nonetheless, it was granted in the wake of aforesaid facts and circumstances.

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16. Thereafter, an assessment was carried out in view of the conditional permission on 26.12.2016 and serious deficiencies were found in the College. Thus, a decision was taken by the Government of India on 9.6.2017 to debar the College for 2 years and to encash the bank guarantee. The College filed a writ petition in the High Court of Chhattisgarh. It was directed by the High Court vide order dated 3.8.2017 to reconsider and to decide the representation of the College. The Government of India considered the recommendation, granted the hearing and reiterated its earlier decision vide order dated 14.8.2017.

17. Thereafter, a writ petition was filed directly in this Court under Article 32 of the Constitution of India i.e. W.P. (C) No.776/2017 in which on 13.11.2017 this Court has passed the following order :

“This writ petition under Article 32 of the Constitution of India has been filed with the following prayers:-

- (i) Quashing of the decision dated 14.8.2017 of the Ministry of Health and Family Welfare, Government of India, directing the petitioner-institute not to admit students in the MBBS Course for the academic years 2017-18 and 2018-19 and also authorising the respondent no.2-Medical Council of India (MCI) to encash the bank guarantee of Rs. 2 crores submitted by the petitioner-institute.
- (ii) Quashing of the recommendations dated 26.12.2016 made by the respondent no. 2-Medical Council of India (MCI) to the Ministry of Health & Family Welfare, Government of India, in respect of the petitioner-institute.
- (iii) Issuance of directions to the respondent no.1-Union of India to grant first renewal permission for the academic year 2018-18 in terms of the Oversight Committee’s recommendation dated 14.5.2017, and also permit the petitioner-institute to admit 150 MBBS students for the academic year 2017-18.
- (iv) Issuance of directions to the respondent no. 1-Union of India to confirm conditional Letter of Permission (LOP) in terms of the Oversight Committee’s recommendations dated 14.5.2017 and directions to the respondent no.2 – Medical Council of India not to encash the bank guarantee of Rs.2 crores.

The petitioners have also moved an application for direction (IA No.82637 of 2017), with the same prayer as mentioned at S.No. (iii) above.

A Heard learned counsel for the petitioners, Mr. Maninder Singh, learned Additional Solicitor for the respondent no.1-Union of India and Mr. Gaurav Sharma, learned counsel for the respondent no.2-Medical Council of India.

B Having heard learned counsel for the parties and keeping in view the recent decisions of this Court in Royal Medical Trust and Anr. vs. Union of India and Anr., [In WP [C] No.747/2017 decided on 12.9.2017], Annai Medical College & Hospital and Anr. vs. Union of India and Anr., [In WP [C] No.525/2017 decided on 14.9.2017] and Medical Council of India vs. Ananta Charitable Educational Society and Ors., [In SLP [C] No.17732/2017 decided on 30.10.2017], it is directed that MCI shall allow the students admitted in the petitioner-institute on the basis of conditional LOP for the academic year 2016-17 to continue their studies. MCI shall send a team for inspection of the petitioner-institute as per schedule for the academic year 2018-19. The application filed by the institution for the academic year 2017-18 for renewal shall be treated as an application for the academic year 2018-19. If deficiencies are noted by the Inspection Team, the same shall be brought to the notice of the institution, and it shall be granted liberty to remove the same within a specified time. Thereafter, the matter shall be placed before the Executive Committee of MCI. If any deficiency is still required to be removed, the same shall be removed by the institution within a specified time, and if the institution is a compliant institution, the request for confirmation of LOP for the academic year 2016-17 and renewal of permission for the academic year 2018-19 may be dealt with appropriately.

F The Ministry shall take a final decision within one month of the receipt of the recommendation from the MCI by taking the assistance of the Hearing Committee as constituted by the Constitution Bench of this Court in Amma Chandravati Educational and Charitable Trust and Ors. vs. Union of India and Anr. [In WP [C] No.408/2017 decided on 18.7.2017] or other directions in the said decision and in accordance with law.

G We further direct that until the final decision is taken by the Ministry and communicated to the institution, the Bank Guarantee offered by the institution in the sum of Rs.2 crores shall not be

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encashed by MCI but the institution shall keep the same alive. If the Bank Guarantee has already been encashed by MCI in the meantime, the amount shall be refunded to the institution, which shall furnish a fresh Bank Guarantee in the like amount to the MCI within two weeks from the date of receipt of the amount.

Mr. Gaurav Sharma learned counsel for the MCI would submit that the petitioners will be required to pay the inspection fee if it is not paid, for the inspection to be conducted in terms of this order for considering confirmation of LOP for the academic year 2016-17 and renewal application for the academic year 2018-19.

In the event, the final decision of the Competent Authority of the Central Government is adverse to the institution, it will be open to the institution to take recourse to such remedies as may be permissible in law.

We further make it clear that the respondent no.2 shall treat the renewal application submitted by the institution for the academic year 2017-18 as having been made for the academic year 2018-19 and process the same in accordance with law with promptitude.

The writ petition and IA No.82637 of 2017 are disposed of in the above terms, with no order as to costs.”

18. The inspection was carried out on 5/6.12.2017 by the Assessors of the MCI in which various gross deficiencies were found. It is also apparent that the Executive Committee of the MCI after considering the assessment report dated 5/6.12.2017 recommended to the Ministry vide its letter dated 6.1.2018 to invoke Regulation 8(3)(1)(a) and thereby to disapprove the application filed on behalf of the College. The said decision of the Executive Committee was approved by the Oversight Committee on 3.1.2018. On the aspect of Regulation 8(3)(1)(a), the College was granted a hearing on 5.2.2018. On 12.2.2018 the Ministry directed the MCI to consider the review and to make recommendations. The Sub-Committee of the MCI in its meeting on 21.2.2018 referred the matter to the Oversight Committee to consider the question of whether verification assessment was required to be carried out.

19. Questioning the decision of the Executive Committee of MCI dated 6.1.2018, the College filed W.P. (C) No. 2022/2018 which was disposed of by the High Court of Delhi on 6.3.2018. Following is the order passed by the High Court :

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A “Learned counsel for the petitioners submits that after the respondent No.2 had issued the impugned order dated 6.1.2018 recommending disapproval of the renewal of permission to the petitioner, respondent No.1 had granted a hearing to the petitioner on 5.2.2018 and upon hearing the petitioners, the respondent No.1 had remitted the matter back to respondent No.2 with a request to review the application of the petitioner.

B Today, the learned counsel for the petitioner submits that for the present, he would be satisfied, if a direction is given to respondent No.2 to review the case of the petitioner in a time-bound manner. He submits that keeping in view the deadline as laid down under the Regulations and the decision of the Supreme Court, grave prejudice would be caused in case, the respondents do not take a timely decision.

C Learned counsel for the respondents, who appear on advance notice, assure the Court that the decision on the review of the petitioner’s application will be taken by respondent No.2 within 5 weeks in accordance with the Regulations as also the contents of the letter dated 13.2.2018 written by respondent No.1 to respondent No.2.

D The present petition is accordingly disposed of binding respondent No.2 to the statement to decide the petitioner’s application within 5 weeks.

E Needless to say that the present order, has been passed without prejudice to the rights and contentions of both the parties.

F In case the petitioners are still aggrieved by any order passed by the respondents, they may take legal recourse as permissible under law.”

G It is apparent from the aforesaid order that in spite of the fact that College was aware that in view of Regulation 8(3)(1)(a), fresh inspection was not to be carried out in view of the deficiencies found by the Assessors and the compliance could not have been considered, the College in the aforesaid writ petition pressed only the prayer for review in a time-bound manner. It did not insist that the compliance should be considered as per orders of this Court; whereas the provisions of the aforesaid Regulations were already attracted.

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20. The Oversight Committee opined that compliance could not have been considered in view of the gross deficiencies found as provided in Regulation 8(3)(1)(a), in the following manner, and the decision of the Oversight Committee is extracted hereunder:

“In view of the provision of Regulation 8(3)(1)(a) of the Establishment of Medical College Regulations, 1999 referred above, wherein it is provided that “compliance of rectification of deficiencies from such an institute will not be considered for renewal of permission in that Academic Year”, it is not permissible in law for the Council to consider the compliance/representation submitted by the College.”

Thereafter the MCI had recommended disapproval of the renewal application for the academic year 2018-19.

21. It is apparent from the aforesaid that the petitioner was well-aware that in view of the gross deficiencies found, an opportunity could not have been granted in view of Regulation 8(3)(1)(a). The College filed W.P. [C] No.4897/2018 which was decided by the High Court on 8.5.2018. Following is the order passed by the High Court :

“Vide the present petition, the petitioners/Institutes have sought to quash of the decision dated 24th March 2018 passed by respondent no.2, recommending disapproval of the petitioners’ application to respondent no.1 for renewal/permission of the third batch of MBBS course (150 seats) for the Academic Year 2018-19. The petitioners have also sought issuance of direction to respondent no.2, to accept the Scheme of the petitioners as submitted for renewal of permission in respect of the aforesaid batch and if necessary grant an opportunity to furnish compliance verification and, therefore, issue a letter of permission.

At this stage, learned counsel for the petitioners submits that vide order dated 6th March 2018, this Court had recorded the undertaking of respondent no. 2/MCI to decide the petitioners’ pending application and forward the same to respondent no.1 within five weeks. He submits that till date, the respondent no.1 has not informed the petitioners about any decision of respondent no.2.

Ms. Arora, who appears on advance notice for the respondent no.1 submits that within ten days of receipt of the recommendations

A from respondent no.2, the respondent no.1 will pass a final order deciding the petitioners' pending application.

On the one hand, Mr. T.Singhdev, learned counsel for respondent no.2, submits that its recommendations in respect of the petitioners' application have already been sent to respondent no.1 on 13th April 2018 itself.

In view of the categorical statement made by learned counsel for the respondent no.2 that the recommendations have already been forwarded on 13th April 2018, the respondent no.1 is directed to take a final decision on the petitioners' application within ten days from today.

It is made clear that in case the respondent no.1 is still not in possession of recommendations made by respondent no.2 vide its order dated 13th April 2018, respondent no.1 would be at liberty to seek immediately a fresh copy of the same from respondent no.2.

Needless to say that the said final decision taken by respondent no.1, will be communicated to the petitioner who will be free to take legal recourse as permissible under law.

The petition and pending applications are disposed of in the aforesaid terms.”

It is apparent from the aforesaid order that the College again did not insist that fresh inspection should be carried out and it may be permitted to comply with the deficiencies.

22. Pursuant to the direction issued, the Government considered the recommendations of the MCI and passed the impugned order on 31.5.2018 disapproving the scheme of the institution and declined to renew the permission for admission of 150 MBBS students for the academic year 2018-19. Following deficiencies were noted by the Government of India :

“The Executive Committee of the Council considered the assessment report (5th and 6th December 2017) carried out in compliance of the Order dated 13.11.2017 passed by the Hon'ble Supreme Court of India in Writ Petition (C) No.776/2017 filed by Lord Buddha Educational Society & Anr. Vs. Union of India & Anr., and noted the following: -

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1. Deficiency of faculty is 21% as detailed in the report. A

2. Shortage of Residents is 24.48% as detailed in the report.

3. In respect of Dr. Nitika Jain, morning & evening signatures are not matching.

4. In respect of Dr. R.W. Kamble, appointment order is as Asst. Prof. of Tb & Chest but has presented as Senior Resident. B

5. As many as 27 faculty & residents cannot be considered due to reasons mentioned in detail in the assessment report.

6. Patients C

A. In the department of Gen. Medicine of the 38 patients on 72 beds with respective case files, 22 are invalid for UG teaching purposes because of following reasons: 8 cases of fever without any investigative work up or relevant treatment, not actually requiring hospitalization, 9 patients of hypertension without any investigative work up or relevant treatment not requiring hospitalization, 1 patient of acidity not requiring hospitalization, 2 patients of acute gastroenteritis without prescription of any IV fluids or relevant investigations and treatment suggesting that patient does not have an illness worth hospitalization, 1 patient of renal colic without any investigative evidence and relevant treatment not requiring hospitalization, 1 with vague abdominal pain without any investigations and relevant treatment not requiring hospitalization. Of all these patients, 5 were admitted today and as many as 9 were admitted on 4.12.2017. Surprisingly the dates of admission as recorded on the case files did not match with what was told by the patients to the assessor when they were asked by the assessor as to when they were admitted in the hospital. Many patients could not tell the exact date of admission and looked up to either staff nurse or Medical Superintendent or the Doctor or accompanying the assessor. All these observations suggest non-genuineness of these patients. Admission discharge register had no proper entry like a diagnosis for so many cases. This leaves a Total of 16 valid patients to be counted as clinical material.

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- A B. In the Department of Pediatrics of the 20 patients on 24 beds, 14 are invalid because of following reasons: - 10 beds had no patients but case files were lying on the bed, 3 patients had URI without any treatment or even an x-ray. 1 patient was of UTI without any evidence on case file and any relevant treatment.
- B 1 patient Bhisma of operated PUJ was hospitalized for no valid reason.
- C C. In the department of TB & Respiratory Medicine on the 8 beds 6 patients were available on beds. Case file of none had any diagnosis; all were receiving the same treatment in an injectable form asking to show the drugs, they were neither available neither with the patient nor in the ward with the sister or in the ward store suggesting that entire thing is on paper and not genuine.
- D D. In the Department of Psychiatry on the 8 beds 6 patients were available on beds, case files of none had any diagnosis; all were receiving the same treatment in injectable form. On asking to show the drugs, they were neither available neither with the patient nor in the ward with the sister or in the store suggesting that entire things are on paper and not genuine.
- E E. In the Department of Dermatology of the 6 patients available on 8 beds, all 6 had a diagnosis of scabies and appeared to be persons from destitute homes/old age homes. On asking to show the drugs being administered, no drug could be shown either with the patient or with the sister at the nursing station or in the store of the ward.
- F F. In the department of Gen. Surgery 42 patients were available on 90 beds. Following 15 patients are not considered valid for counting as follows: - 2 patient of UTI without any evidence on investigation or treatment not requiring hospitalization. 2 patients of gastritis not requiring hospitalization. 1 patient Gayatri's case file showed the diagnosis of acute appendicitis on the front page of the case sheet but inside it was written as diabetic foot exam of her foot, it was found normal. 1 patient Minakshi's attendant told that she had been admitted for not being able to speak but on file the diagnosis written was Hernia and on examination of the patient by the assessor, no hernia anywhere was found. 1 patient Durpati was admitted as operated lipoma on 2.12.2017 but on
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examination by the assessor, no dressing or operated sutured A
incision or any dressing on the operated lipoma was found.
1 patient Sunita Bai was admitted as operated fibroadenoma on
2/12/17 but on examination by the assessor, no dressing or operated
sutured incision was found. 1 patient Pacho Bai had the symptom
of headache on asking by the assessor but case file showed the B
diagnosis of Acute Appendicitis. 1 patient Hiteshwari had features
of vague abdominal pain but diagnosis documented on case file
was lipoma and on examination, there was no lipoma. 1 patient
Kunj Rani was admitted with the diagnosis of hypertension in
surgical ward (not a surgical patient). 1 patient Sridhar was admitted
with multiple joint pains in surgery wad (not a surgical patient). C
1 patient Lekhroo was admitted with pain elbow in surgery ward
(not a surgical patient). 1 patient Chelliya Sahu was admitted
with osteoarthritis in surgery was (not a surgical patient). 1 patient
Nand Lal was admitted with backache in surgery ward (not a
surgical patient). D

G. In the department of Orthopedics of the 24 patients admitted
on 30 beds, 9 are invalid for following reasons for UG teaching
purposes: - 6 were admitted with lumbar radiculopathy without
and clinic investigative evidence suggesting they have been
admitted to show increased count but actually do not have an E
illness worth hospitalization. They were lying comfortably and
were not prescribed appropriate treatment. 1 patient of claudication
was admitted in ortho ward. 1 patient of claudication was admitted
in Ortho ward. 1 patient of osteoarthritis and 1 of polyarthralgia
were admitted without a clinico-investigative evidence without
any proper treatment. F

H. In the department of ENT 6 patients on 10 beds, which 2 are
not be counted. 1 was admitted with acute pharyngitis without
any clinical evidence and relevant treatment thus suggesting that
it did not require hospitalization and the other was a cataract patient
admitted in ENT. G

I. In the department of OB & GYN, 25 patients were on 40
beds. 10 Gynec patients and 15 obstetric patients. They can be
taken as valid patients.

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- A 7. Most of the patients in General Medicine, Psychiatry, Skin & VD, Tb & Chest wards appeared to be brought from Destitute homes/old age homes.
8. In view of the above, Bed occupancy of genuine patients was 33% as detailed in the report at 10 a.m. on the day of assessment.
- B 9. OPD attendance up to 2 p.m. on the day of assessment as verified by Assessors was 521 against the requirement of 750.
10. PNDT approval is not available for USG machines.
11. OPD: Various sections of OPDs are haphazard and spread here and there and are highly disorganized.
- C 12. Data of Radiological & Laboratory investigators as submitted by the Institute appear to be inflated.
13. Casualty: Separate Casualty for O.G. is not available. Disaster Trolley, Crash Cart is not available.
- D 14. ICUs: There was NIL patient in ICCU & 1 patient each in SICU, NICU/PICU on the day of assessment.
15. 2 Static X-ray machines are available against the requirement of 3.
- E 16. Lecture Theaters: Only 2 Lecture Theaters are available against the requirement of 3. Arrangement is not proper as detailed in the report.
17. Students' Hostels: Accommodation is available for 292 students against the requirement of 339.
- F 18. Residents' Hostel: Rooms on I floor are not furnished.
19. Anatomy department: Only 5 cadavers are available.
20. RHTC: It is actually a CHC and the Institute is only permitted to use it. The control is not with the Dean. All registers are maintained by the staff of CHC and not by college staff. Activities under National Health Programmes are done by the staff of CHC & not by the staff of the college.
- G 21. UHC: Survey/MCH/Immunization/FP registers are not available. Specialists' visits are not organized.
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22. Website: Information uploaded is sketchy as detailed in the report. A

23. MEU: It is not available as per regulations.

24. Other deficiencies as pointed out in the assessment report.

The Executive Committee noted that Regulation 8(3)(1)(a) B
of the Establishment of Medical College Regulation (Amendment),
2010 (Part II), dated 16th April 2010 and amended on 18th March
2016 provides as under: -

“8(3)(1) C

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

If it is observed during any inspection/assessment of the institute
that the deficiency of teaching faculty and/or Residents is more D
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.”

In view of the deficiencies as noted above, the Executive
Chairman of the Council decided to recommend to the Central E
Govt. to invoke Regulation 8(3)(1)(a) of the Establishment of
Medical College Regulation, 1999 and disapprove the application
of the Raipur Institute of Medical Sciences, Raipur, Chhattisgarh
under Chhattisgarh Ayush and Health Sciences University, Raipur
u/s 10A of the IMC Act, 1956 for renewal of permission of MBBS F
course 3rd batch (150 seats) for the academic year 2018-2019.”

The Government of India also considered Regulation 8(3)(1)(a)
and the decisions are taken by the Oversight Committee and the MCI
while passing the aforesaid order. The deficiency of the faculty was
21%, shortage of residents was 24.48%, bed occupancy was found to G
be 33%, OPD attendance was also found less than the requirement.
There were other deficiencies of equipment's and infrastructure as noted
above. Regulation 8(3)(1)(a) was clearly attracted which is extracted
hereunder:

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A “8. GRANT OF PERMISSION:

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

D Note: In the above clause, “six months” shall be substituted by “as per latest time schedule”:

Provided that in respect of—

(a) Colleges in the stage of letter of permission up to II renewal (i.e. admission of third batch)

E 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.”

F 23. In view of the gross deficiencies found, no compliance verification could have been made in view of Regulation 8(3)(1)(a). It was already a case of conditional permission which was granted subject to removal of deficiencies and in successive inspections, it was found that the College was not compliant and had not removed the deficiencies. When this Court has passed an order on 13.11.2017, no doubt about it that this Court has observed that inspection should be carried out and College should be given an opportunity to make compliance of deficiencies. In concluding portion it was observed that the decision has

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to be in accordance with law. This Court never decided the question in case deficiencies were found to be gross as contained in Regulation 8(3)(1)(a) whether the said Regulation has to be ignored. The observations which were made by this Court were obviously based upon the main provision which requires an opportunity to be given unless the deficiencies are such which can be termed to be “gross” as contemplated in proviso (a) to Regulation 8(3)(1)(a) that has been amended.

24. The effect the Regulations as well as the decision in *Royal Medical Trust (Registered) & Anr. v. Union of India & Anr.* (2015) 10 SCC 19 came up for consideration of this Court in *Vedantaa* (supra). Regulation 8(3)(1)(a) provides that if the deficiencies of teaching faculty and/or residents are found to be more than 30% and/or bed occupancy less than 50%, College shall not be entitled to make them good and compliance of deficiencies will not be considered for issuance of letter of permission for same academic year. This Court held that compliance verification could not have been ordered in view of Regulation 8(3)(1)(a). The relevant observations in *Vedantaa* (supra) are extracted hereunder:

“10. Though Regulation 8(3)(1)(a) was challenged in the writ petition filed by Respondents 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 inasmuch 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 fresh inspection would not be contrary to

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A 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
B bed occupancy should not be less than 50%. This prescription of
standards for availing an opportunity to seek reinspection is not
ultra vires either the Regulation or Section 10-A of the Act.

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.
C Bed occupancy at 45.30 percent on random verification was the
claim of Respondents 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 *Medical Council of India v. Kalinga Institute of Medical Sciences*,
D (2016) 11 SCC 530 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
E 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.”

F 25. It is apparent that the College had filed successive writ
applications in the High Court of Delhi in 2018 but did not pray for fresh
inspection in terms of the order passed by this Court knowing fully well
that the MCI and the Oversight Committee had decided and again
reiterated their decision that due to gross deficiencies found as per
G Regulation 8(3)(1)(a), compliance verification could not have been made.
It was incumbent upon the College to timely press for the relief of
considering compliance which it did not insist and thereafter it was too
late in the day to order it by the High Court vide impugned order dated
1.8.2018 passed by the High Court even if it was permissible.

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26. What this Court intended by passing the order on 13.11.2017 was that the College be inspected afresh for the academic year 2018-19 but it was not even in contemplation of this Court at the time what would be the nature of deficiencies to be found on fresh inspection. The observation has to be considered only with respect to when deficiencies have been found to be such, more than 30% of faculty and of residents and/or the bed occupancy is less than 50%, no further compliance verification opportunity has to be given. The decision of this Court cannot be taken to be a decision with respect to it when deficiencies are found to be gross where the proviso to Regulation 8(3)(1) comes into play. The decision of this Court is based on the main provision that ordinarily an opportunity has to be given to removing the deficiencies which are removable not falling within the aforesaid percentage in Regulation 8(3)(1)(a). Thus, Court never intended to bye-pass the provision of Regulation 8(3)(1)(a). It was not ordered that notwithstanding the provision of Regulation 8(3)(1)(a), compliance opportunity is to be afforded. A decision is an authority for the question considered and decided. This Court had not decided the aforesaid aspect nor was it germane as fresh inspection had not been carried out by 13.11.2017. Thus, the observations made by this Court cannot be taken to mean that though deficiencies are found to be more than 30% of faculty and residents and bed occupancy is 50% and notwithstanding the provisions contained in Regulation 8(3)(1)(a), compliance opportunity should be given. Thus, the High Court has erred in law in considering purport of the order of this Court and the ratio of the decision in *Vedantaa* (supra) was clearly applicable in the case.

27. Considering the nature of the deficiencies that had been found on fresh assessment and also the fact that the College had in fact never been granted clear recognition by the Government of India or MCI, it was only on the insistence of the Oversight Committee appointed by this Court that conditional permission was granted and gross deficiencies were found. Thus, the College was not entitled to any further indulgence; more so, in view of Regulation 8(3)(1)(a), that too after the period of grant of sanction etc. was over and also the admissions. The High Court has ignored the academic calendar also. In such facts and circumstances, the fresh inspection could have been directed for the academic year 2018-19, and the fresh decision by the Government of India and the MCI.

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- A 28. Resultantly, we find that no case for quashing order dated 31.5.2018 passed by the Government of India had been made out. The judgment and order passed by the High Court are thus liable to be set aside and the appeal deserves to be allowed. The judgment and order are set aside and the appeal is hereby allowed. Parties to bear their own costs.
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Divya Pandey

Appeal allowed.