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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 4010/2012 & CM 8403/2012

% ***Judgment Pronounced on 3rd May, 2013***

KJ MEHTA GENERAL HOSPITAL & COLLEGE
OF MEDICAL SCIENCES & ANR

..... Petitioners

Through : Mr.P.S. Bindra, Adv.

versus

THE BOARD OF GOVERNOR IN SUPERSESSION
OF MEDICAL COUNCIL OF INDIA

..... Respondent

Through : Mr.Nidesh Gupta, Sr. Adv. for Mr.Ankit
Rajgarhia, Adv. for MCI.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. By the present writ petition the petitioner seeks a direction in the nature of certiorari for quashing the email dated 30.6.2012 whereby the petitioners' application for establishment of a college has been rejected by the respondent. The petitioner also prays for a writ of mandamus directing respondent Medical Council of India to forthwith grant letter of permission to petitioner no.1 college to admit students in the first year MBBS Course for the academic year 2012-2013 as per the criteria of the first batch.
2. Rule. With the consent of counsel for the parties present writ petition is set down for final hearing and disposal.
3. The necessary facts, to be noticed for disposal of the present petition, are that petitioner no.1 is a medical college and petitioner 2 is a trust. Petitioner no.2 made an application under Section 10A of the Indian

Medical Council Act (IMC) (hereinafter referred to as the Act) for establishing a medical college for 150 MBBS admissions annually. Respondent, upon satisfaction, regarding fulfillment of all the conditions, granted permission under Section 10A of the Act to petitioner no.2 to establish petitioner no.1 college from the academic year 2009-2010. Pursuant to the permission granted by the Government of India by the communication dated 10.7.2009 petitioner no.1 college admitted 150 students in the first year of the MBBS Course. As per Regulation 8 of the Medical College of India College Regulations, 1999, permission to establish a college and admit students may be granted initially for a period of one year and be renewed on yearly basis subject to verification of achievements of annual targets. A college has to apply for renewal of permission six months prior to expiry of the last permission granted.

4. In February, 2010, petitioners applied for grant of renewal of permission. According to the petition, the first renewal compliance was made in April, 2010, and pursuant thereto the renewal was granted to the petitioners and displayed on the website of respondent MCI. Before the permission could be conveyed to the petitioners the MCI was superseded in May, 2010, with the passing of the Indian Medical Council (Amendment) Act, 2010. Thereafter all the decisions were required to be taken by the Board of Governors itself under Section 10A of the Act and not by the Central Government. The renewal permission granted to the petitioner college was removed from the website and the petitioner was not granted renewal. By a letter dated 15.7.2010 the respondent, on the basis of an assessment report dated 21/22.6.2010 decided not to renew the permission of admission of the second batch of students for the academic year 2010-2011. By another letter dated 22.9.2010 respondent informed the petitioner no.1 that it had been decided not to renew the permission for

admission of second batch of students for the academic year 2010-2011. This decision of the respondent of not renewing the permission for admission of the second batch of students for the academic year 2010-2011 was challenged by petitioner no.1 college before this Court by filing a writ petition, being W.P.(C) 5495/2010. The lis between the parties ended with an order dated 25.10.2010 passed in LPA 661/2010, which was disposed of by the consent of the parties. The students studying in the college in the second year MBBS course filed a petition, being SCA No.16600/2010, in the Gujarat High Court, which was disposed of by a judgment dated 26.8.2011 whereby the students were distributed in other colleges of the State.

5. Aggrieved by the aforesaid order the students filed Special Leave Petition before the Supreme Court of India, which was dismissed on 12.9.2011, however, while dismissing the said Special Leave Petition the Apex Court permitted the petitioner no.1 college to comply with the requirements for the request of renewal for the fourth year. By the letter dated 7.12.2011, addressed to the respondent, the petitioners requested the respondent to inspect the college for verifying the infrastructure and other requirements to enable the petitioner to admit students in the first year MBBS course for the academic year 2012-2013 as per the criteria of the first batch and not the fourth batch as all the students admitted stood adjusted in other medical colleges. In its meeting held on 26.12.2011 after considering the documents including Essentiality Certificate and consent of affiliation respondent MCI decided to conduct the assessment for admission for fresh batch of students in the first year of MBBS course. In the meeting held on 23.1.2012 the respondent took a view that the Essentiality Certificate originally issued in favour of the petitioner college stood utilized, the petitioner college was called upon to submit an Essentiality

Certificate revalidated by the State authorities and also the consent of affiliation revalidated by the concerned university. Without admitting that the Essentiality Certificate issued by the State Government had been utilized and without prejudice the petitioner no.2 applied to the State Government and Bhavnagar University to revalidate the Essentiality Certificate and consent affiliation vide its letters dated 14.2.2012 and 15.2.2012. Respondent granted time for submission of fresh Essentiality Certificate and consent of affiliation till 15.4.2012. Meanwhile the State Government requested the petitioners to make a fresh proposal for grant of Essentiality Certificate which the petitioner college did. An inspection was conducted of the petitioner's college premises by a Committee consisting of officers and experts deputed by the State Government. Similarly Local Inspection Committee appointed by Bhavnagar University inspected the premises of the petitioner college on 29.3.2012 and submitted its report to the University whereby the petitioner was granted affiliation consent by the University.

6. On 13.4.2012 petitioner received the Essentiality Certificate, which was sent to the respondent MCI by fax, email and Registered AD post on the same day, which happened to be a Friday. On the next working day the petitioner college also submitted the Essentiality Certificate by hand to the respondent. By a letter dated 24.4.2012, addressed to Mamlatdar, Shihor i.e. the area where the petitioner college is situated, the respondent while enclosing copies of ownership and possession of land issued by the President, Shihor, Taluka Panchayat and Certificate dated 23.10.2008 and copy of the Essentiality Certificate dated 13.4.2012 by State of Gujarat to the petitioner college requested the Mamlatdar to confirm the authority of the aforesaid document and clarify Point 3 of the Essentiality Certificate dated 13.4.2012. Point 3 of the condition of certificate reads as under:

“3. The trust has to resolve the issue of land or related to land if any, with Revenue Department of State by 31.5.2012.”

7. According to the petition, since there was no impending dispute with respect to the land the petitioners took up issue with the State Government. The State Government issued a fresh essentiality certificate on 25.4.2012. Petitioners were also called upon by the Medical Council of India to submit certain documents, which were submitted by the petitioners immediately. By a letter dated 31.5.2012 issued by the Medical Council of India petitioner was informed that inspection of petitioner's college would be conducted on 4/5.6.2012. On 4/5.6.2012 one of the assessors, Mr.Mohapatra, reached the petitioner college on 9.15 a.m. and informed the Chairman that they had received an anonymous letter, addressed to the Director, CBI, with copy to all the assessors. After the other assessors arrived, all the assessors had a long closed door meeting. After the meeting the assessors conveyed their inability to inspect the petitioner college in view of the anonymous letter, however, after the assessors spoke to the officers of the Medical Council of India they inspected the college. By a letter dated 19.6.2012 the Medical Council of India informed the petitioner college that the assessment report of the assessors, who inspected the petitioner college on 4/5.6.2012, had been considered by the respondent in their meeting held on 14.6.2012 and in view of the deficiencies the respondent decided not to approve the scheme for establishment of the petitioner college. Liberty, however, was granted to the petitioner to approach the respondent for personal hearing on 21.6.2012 with prior appointment. In the personal hearing granted the petitioners brought to the notice of the respondent that the so called deficiencies did not exist which was clear from the letter dated 21.6.2012

which dealt with each of the alleged deficiency. In the hearing the petitioners was advised to deposit the following documents:

- i. Form 16A for the faculty;
- ii. Affidavit of salary paid for May, 2012; *and*
- iii. Bank certificate stating salary paid from January, 2012, till May, 2012.

8. On 22.6.2012 petitioners submitted the aforesaid documents to the respondent. On 25.6.2012 a surprise inspection was conducted by the respondent of petitioner no.1 college. By an email dated 30.6.2012 respondent informed the college that they had not submitted documents, sought by the respondent on 21.6.2012 and the following deficiencies persisted and in view thereof respondent decided not to approve the scheme of establishment of college.

- a) The deficiencies in terms of Clinical material persist.
- b) The continuous presence of Nursing Staff in the teaching hospital is doubtful.
- c) There is discrepancy between the information furnished by the college regarding the teaching and other staff and the faculty staff actually present, as the college authorities have failed to provide the data to support their claim.
- d) The foregoing does not support the evidence of continuous presence of medical teachers/staff in this college.

9. It is the case of the petitioners that all the documents sought by the respondent have been submitted and further the alleged deficiencies do not exist.

10. Learned senior counsel appearing on behalf of the petitioners contends that the impugned action of the respondent is contrary to law and if it is allowed to stand it would result in serious miscarriage of justice. Attention of this Court is drawn to the tabular statement, which form part of the

grounds, to show that the alleged deficiencies existed on 4/5.6.2012 had been removed. It is next contended that after the second inspection was carried out on 25.6.2012 the assessor sent a letter dated 25.6.2012 to the respondent. None of the reasons mentioned in the Assessment Form, form part of the deficiencies mentioned in the letter dated 25.6.2012. Since in the hearing held on 21.6.2012 petitioner had clarified/explained a number of aspects, which do not find mention in the verification report by the assessors dated 25.6.2012. This is for the reason that the alleged deficiencies did not remain in existence after the grant of hearing on 21.6.2012. It is further contended that the deficiencies mentioned in the assessment report also do not form part of the impugned order dated 30.6.2012. Thus the reliance upon the assessment report is completely misplaced. It is also contended that it is not in dispute that the petitioners had paid salary to its staff for the month of May, 2012, and thus the petitioners have fulfilled the criteria laid down.

11. Learned senior counsel for the petitioner submits that there is no requirement by the respondent requiring a college to employ teachers, residents and other staff needed for the purpose of teaching any time before it has granted permission and, thus, the respondent cannot ask for the details for the last four months. Senior counsel further submits that the appointment of teaching staff, residents, etc., employed even a day prior to inspection for the purpose of grant of letter of permission for admission to the first batch of MBBS students would suffice under the Regulations. Senior counsel has strongly argued before this Court that the so called deficiencies, which have been pointed out by respondent, do not exist. It is also submitted that in any case the deficiencies, which have been pointed out, are vague and without any application of mind.

12. It is also submitted by learned senior counsel for the petitioners that the assessors in col. No.7 of the letter dated 25.5.2012 have stated that “*the quality of patients admitted were controversial*”, however in Clause 2 it is stated that “*there is also mismatch between the investigations done and OPD attendance as well as IPD shown in the hospital*”. Senior counsel further submits that no details were provided by the respondent with regard to patients who were controversial. Further there are not particulars of any alleged mismatch in the OPD attendance or attendance in the IPD. Thus, these objections cannot be the basis of rejecting the petitioners’ affiliation.
13. Senior counsel for the petitioner has placed reliance on ***B.D. Gupta v. State of Karnataka***, reported at 1973 (3) SCC 149 in support of his submission that in case the show cause notice merely states in vague general terms that the applicant’s reply to the charges and allegations was unsatisfactory, it is to be rejected. Para 9 of the judgment reads as under:

“The only ground on which the Government proposed to censure the appellant is the fact that the appellant's explanation dated 18 December 1956 in reply to the statement of charges and allegations had been found unsatisfactory by Government. By the expression "Charges, and allegations" in this "Show Cause ,notice", reference obviously is to the letter of 22 October 1956. That, letter, it will be remembered, contains two charges, namely, Charge 1 (a) and Charge 1(b). The appellant's explanation of 18 December 1956 which is said to have been found unsatisfactory by Government was a reply not only to Charge 1 (a) but also to Charge 1(b) of these two charges, so far as Charge 1 (a) is ,concerned the appellant had been completely exonerated in October, 1958. There is nothing, however, in the "Show Cause notice" of 26 October 1966 to indicate clearly that the dissatisfaction of Government with the appellant's reply of 18 December 1956 had nothing to do with Charge 1 (a). The "Show Cause notice" merely states in vague general terms that the appellant's 'reply to the charges and allegations was unsatisfactory. Even if 'we were to assume, though there is no reasonable ground for this assumption, that Government

did not have in mind the contents of Charge 1 (a) while serving this "Show Cause notice", there is nothing in the "Show Cause notice" to give any indication that the particular allegations regarding which the appellant had failed to furnish a satisfactory explanation were referable only to ,Charge 1(b). The notice is vague on other grounds as well. As one reads the first paragraph of the notice, the questions that at once assail ones mind are many: In what way was the explanation of the appellant unsatisfactory ? Which part of the appellant's explanation was so unsatisfactory ? On what materials did the Government think that the appellant's explanation was unsatisfactory. It is to our mind essential for a "Show Cause notice" to- indicate the precise scope of the notice and also to indicate the points on which the officer concerned is expected to give a reply. We have no manner of doubt that the "Show Cause notice" in the instant case did not give the appellant any real ,opportunity to defend himself against the complaint that his previous explanation of 18 December 1956 had been unsatisfactory. "The appellant did not, therefore, get any chance at all to show ,that he did not deserve a censure upon his conduct."

14. Reliance is also placed by senior counsel for the petitioner on a decision rendered by a Division Bench of Karnataka High Court titled as ***M.V.J. Medical College and Research Hospital v. Union of India***, W.P.(C) 27771/2011, in support of his plea that while scrutinizing the inspection report prepared by the respondent the deficiencies did not come in the way of first year MBBS course and the same were curable and the permission should not be withheld.
15. Strong reliance is also placed by senior counsel for the petitioners in the case of ***Al-karim Educational Trust & Another v. State of Bihar and Others***, reported at (1996) 8 SCC 330, more particularly paras 11 and 12, which read as under:

11. In the matter of grant of affiliation, it is ordinarily for the State Government after consulting the Medical council of India to arrive at a decision. However, if it is found that the affiliation is being withheld unreasonably or the decision is being prolonged for one reason or the other, this Court would, though reluctantly, be

constrained to exercise jurisdiction. We must make it clear that we are not diluting the importance of fulfilling the essential prerequisite set by the Medical Council before granting recognition. The facts of this case are very special and exceptional. In the present case, we take note of the following aspects:

(a) The appellant institution was granted temporary affiliation nearly 6 years ago (29.12.1989).

(b) More than three years ago, (on 16.7.1992) this Court directed that students may be admitted and permitted to take examination, subject to certain conditions and this has been so done.

(c) In view of the earlier orders of this that affiliation should be granted to the appellants.

(d) On more than three occasions, this Court, after perusal of the affidavits of the parties and report of the concerned authorities about the deficiencies pointed out, directed time-bound inspections, by Medical Council of India, along with other authorities bearing in mind that we are concerned with the post establishment stage.

(e) At one stage, it came to light that the original deficiencies having been removed, new or further deficiencies were pointed out by the Medical Council of India, which were ordered by this Court to be removed.

(f) Finally, the appellants filed a tabular statement along with an affidavit dated 4.9.1995, stating that even the new deficiencies pointed out have been removed and the averments in that behalf stand uncontradicted.

(g) The appellants, claim to be a minority institution and the difficulties/ or even the imponderables to start a new institution, cannot be gainsaid. To insist on fulfilling all requirements, at a stretch in modern conditions, is not a practical proposition and ordinarily, only those aspects or

requirements, which in the minimal will give a good start for effectively imparting education, with ancillary requisites may be considered sufficient, in the extra-ordinary circumstances of this case.

(h) It is impractical to insist, for a fool proof or absolute adherence to all requirements without regard to their importance or relevance, for the purpose of imparting education, in a practical way, especially because the institution has begun to function, students admitted to institution have taken the examination and the fate of a good many number of students should not hang in the balance in an unending or everlasting manner.

(i) In the final analysis, the question to be posed, is whether there exists the minimal and satisfactory requirements to keep the matter going, and not whether better arrangements that will render the set up more efficient and more satisfactory, should be insisted as "a wooden" rule.

(j) It may be that there are some minor deficiencies here and there which call for rectification. Time can certainly set right such matters. What is required is a total, practical, overall view in the light of the latest tabular statement filed along with the affidavit dated 4.9.1995. material placed before the Court goes to show that there has been "substantial" though not literal compliance with the deficiencies pointed out in the latest report dated 28.6.1995.

(k) Lapse of time and the turn of events call for urgent action and any delay on that score will entail untold hardship to the students and the institution.

12. In the totality of the circumstances disclosed in the case and having regard to the fact that at each stage new deficiencies are being pointed out, the latest being the report dated 28.6.95 (explained by the subsequent affidavit of the appellants dated 4.9.95), we are satisfied beyond any manner of doubt, that the deficiencies have been substantially complied with and minor deficiencies pointed out in the last mentioned report of 28.6.95 are

not such as to permit withholding of the affiliation to which the appellants' institution is entitled, From the manner in which the deficiencies have been pointed out from time to time ,each time the old deficiencies are shown to have been removed, new deficiencies are shown, gives the impression that the affiliation is unnecessarily delayed. For the removal, of the minor deficiencies pointed out in the report of 28.6.95, a compliance affidavit dated 4.9.1995 is filed. Once the institution feels secure on the question of affiliation, we have no doubt that these minor deficiencies, if they exist, shall be taken care of by those in charge of the institution. For taking such further steps, the grant of affiliation need not wait. We make this position clear. The steps for the grant of affiliation to the appellants' institution may now be expedited and we direct the respondents to issue the necessary orders without loss of time. The appeal is disposed of accordingly. In the facts and circumstances of the case, we make no order as to costs.”

16. Per contra, Mr.Amit Kumar, learned counsel for respondent, submits that under the provisions of the Indian Medical Council Act, 1956, great responsibility has been bestowed on the Medical Council of India in discharging its duty for the maintenance of high standards of medical education in the country. In support of this plea, learned counsel for the respondent has drawn the attention of the Court to the observations made by the Supreme Court of India in the case of *State of Kerala v. T.P. Roshna*, reported at (1979) SCC 580. Para 16 reads as under:

“16. 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....”

17. Mr.Kumar further while relying upon the case of *Medical Council of India v. State of Karnataka*, reported at (1998) 6 SCC 131, more particularly para 29, has submitted that the Apex Court has emphasized the need to have properly trained students and also students should be admitted as per the Regulations of MCI. Para 29 reads as under:

“A medical student requires gruelling study and that can be done only if proper facilities are available in a medical college and hospital attached to it has to be well equipped and teaching faculty and doctors have to be competent enough that when a medical student comes out he is perfect in the science of treatment of human being and is not found wanting in any way. Country does not want half-baked medical professionals coming out of medical colleges when they did not have full facilities of teaching and were not exposed to the patients and their ailments during the course of their study. The Medical Council, in all fairness, does not wish to invalidate the admissions made in excess of that fixed by it and does not wish to take any action of withdrawing recognition of the medical colleges violating the regulation. Henceforth, however, these medical colleges must restrict the number of admissions fixed by the Medical Council. After the insertion of Sections 10A, 10B and 10C in the Medical Council Act, the Medical Council has framed regulations with the previous approval of the Central Government which were published in the Gazette of India dated September 29, 1993 (though the notification is dated September 20, 1993). Any medical college or institution which wishes to increase the admission capacity in MBBS/higher courses (including diploma/degree/higher specialities) has to apply to the Central Government for the permission along with the permission of the State Government and that of the university with which it is affiliated and in conformity with the regulations framed by the Medical Council. Only the medical college or institution which is recognised by the Medical Council can so apply.”

18. Reliance is also placed by learned counsel for the respondent on Section 10A of Indian Medical Council Act, 1956, more particularly 10A (7) (a) to(c):

“10A Permission for establishment of new medical college, new course of study:

(7) The council, while making its recommendations under clause (b) of sub-section (3) and the Central Government, while passing an order, either approving or disapproving the scheme under sub-section (4), shall have due regard to the following factors, namely:

(a) Whether the proposed medical college or the existing medical college seeking to open a new or higher course of study or training would be in a position to offer the minimum standards of medical education as prescribed by the Council under Section 19A or, as the case may be, under Section 20 in the case of post-graduate medical education;

(b) Whether the person seeking to establish a medical college or the existing medical college seeking to open a new or higher course of study or training or to increase its admission capacity has adequate financial resources;

(c) Whether necessary facilities in respect of staff, equipment, accommodation, training and other facilities to ensure proper functioning of the medical college or conducting the new course of study or training or accommodating the increased admission capacity have been provided or would be provided within the time-limit specified in the scheme.”

19. Mr.Kumar submits that as per Section 10A (7) of the Indian Medical Council Act a duty is cast on the authority to form an opinion with regard to capacity of a college to provide necessary faculties in respect of staff, equipment, accommodation, training and other facilities to ensure proper functioning of the medical college or increase of admission capacity. Based on Section 19(a) (viii) learned counsel for the respondent contends that there is a subjective satisfaction of the expert body regarding the capability of the medical college seeking renewal of permission.

20. Learned counsel for the respondent submits that the Apex Court has held in a number of judgments that the scope of judicial review is very limited

in the matters relating to academic nature. In support of this submission, counsel has relied upon *Chairman J&K State Board of Education v. Feyaz Ahmed Malik*, reported at (2003) 3 SCC 59. Relevant portion of which reads as under:

“ ... The Hon’ble Supreme Court while stressing on the importance of the functions of the expert body observed that the expert body consisted of persons coming from different walks of life who were engaged in or interested in the field of education and had wide experience and were entrusted with the duty of maintaining higher standards of education. The decision of such an expert body should be given due weightage by Courts.

21. Learned counsel for the respondent submits that the Supreme Court of India in a number of judgments has held that the scope of judicial review is very limited in matters relating to academic nature. In support of this submission, counsel for the respondent has relied upon the following decisions:

- (i) In the case of *Medical Council of India v. Sarang*, reported at (2001) 8 SCC 427, the Apex Court has reiterated the legal principle that the court should not normally interfere or interpret the rules and should instead leave the matter to the experts in the field.
- (ii) In the case of *B.C. Mylarappa alias Dr. Chikkamylarappa v. Dr. R. Venkatasubbaiah*, reported at (2008) 14 SCC 306, wherein the Apex Court has again reiterated the legal principles and observed regarding importance of the recommendations made by the expert committees.
- (iii) In the case of *Rajbir Singh Dalal (Dr.) v. Chaudhari Devi Lal University, Sirsa*, reported at (2008) 9 SCC 284, wherein the Court has held that it is not appropriate for the Supreme Court to sit in appeal over the opinion of the experts.

- (iv) In the case of *All India Council for Technical Education v. Surinder Kumar Dhawan*, reported at (2009) 11 SCC 726, wherein it is held that it is a rule of prudence that courts should hesitate to dislodge decisions of academic bodies.

22. Learned counsel for the respondent submits that the above position of law has been time and again reiterated by the Supreme Court in various judgments including the judgment rendered on 11.1.2012 in *Medical Council of India v. JSS Medical College*, AIR 2012 SC 726. Counsel further submits that in the case of *Medical Council of India v. Rama Medical College Hospital & Research Centre*, reported at 2012 (6) SCALE 219, it has been held in para 11 of the judgment that ‘*further admissions shall not be made at any stage unless the requirements of the Council are fulfilled.*’. Counsel has next relied upon in the case of *Union of India v. Era Educational Trust*, reported at (2000) 5 SCC 57 wherein the Apex Court has categorically held that in case the expert body has rejected a case on the basis of deficiencies pointed out in the educational institution the Courts should refrain from entering in the shoes of experts and grant permission on their own. Relevant portion reads as under:

“In similar set of circumstances, in Civil Appeal Nos.5045 and 5046 of 1998 in *Medical Council of India, New Delhi v. State of H.P. and Another*, this Court on 16.2.2000 observed that since the refusal was based on deficiencies for running a Medical College, it would have been appropriate for the High Court to have remitted the matter to the Medical Council of India or the Union of India for reconsideration, even if it was of the opinion that the order of the Medical Council of India deserved to be set aside and the Court ought not to have issued a writ of Mandamus directing grant of permission.”

23. Counsel for the respondent further submits that even in cases where students had continued their studies for more than one year the Apex Court did not recognize such admissions. (See *Andhra Pradesh Christian*

Medical Educational Society vs. Government of Andhra Pradesh 1986 (2) SCC 667) . Counsel also contends that the Apex Court had cautioned grant of admissions by way of interim orders. It has been observed in the case of *Krishna Priya Ganguly & Ors. v. University of Lucknow* 1984 (1) SCC 307 that provisional admissions should not be granted as a matter of course and on the mere asking unless the Court is fully satisfied that the petitioner has a cast iron case which is bound to succeed or the error is so gross or apparent that no other conclusion is possible.

24. Relying on the aforesaid judgments learned counsel for the respondent thus prays that a writ of mandamus cannot be issued directing grant of permission to the petitioners and at best the matter can be remanded back. (See *Dental Council of India v. State of Himachal Pradesh* 2000 (5) SCC 63).
25. On the merits of the matter Mr.Gupta, learned senior counsel for the respondent submits that the petitioners were denied renewal of permission at the stage of renewal of permission for admission of the second batch on the ground of various deficiencies. Counsel contends that the assessment of the petitioner Medical College was carried out by experts in the field on two occasions i.e. on 4th and 5th June 2012 and thereafter a surprise inspection was also carried out on 25th June 2012 to verify the compliance which the petitioners submitted on 23rd June 2012 in respect of deficiencies pointed out in the earlier inspections of 4th and 5th June 2012. Mr.Gupta next contends that on both the occasions it was found that there are gross deficiencies in the availability of clinical material i.e. patients and the data provided by the petitioners was inflated. Deficiencies were also found in infrastructure and having regard to the same permission could not have been granted especially a medical college to teach and train MBBS students. Reliance is placed on the report of the assessors as

per which the attendance of patients in the OPD was scanty with only 30 to 40 patients. The plaster room was not utilized and the resident available in the plaster room was from the Medicine department. There was no separate space for casualty for obstetrics and gynaecology patients besides the emergency OT was hardly used. With regard to the indoor wards there was no files maintained for the patients admitted and in surgery wards all female patients were 20 to 25 years of age who complained of headache, abdominal pain with OPD slips and no indoor files were available and moreover on the next day of the inspection the wards were found to be empty.

26. Reliance is also placed by the learned senior counsel on the assessment report wherein it has been observed that the wards were having less than 50% of the bed occupancy in most of the wards and it was further observed "*it seems that most of the patients were hired for the inspection purpose.*" It was also recorded that most of those patients admitted on 3rd June 2012 i.e. a date prior to the date of the inspection i.e. 4th June 2012 and thus the data of patients provided by the petitioners appeared inflated and records of those patients were not available in the wards. Mr.Gupta also contends that as per the data provided by the petitioners 7 to 8 major surgical operations and 8 to 11 minor surgical operations were carried out daily at an average. Counsel submits that this data provided by the petitioners was not reliable as when the blood bank of the hospital was inspected on 4th/5th June 2012 it was found that letter of permission for storage of blood was received by the petitioners only on 16th May 2012 and not a single bag of blood had been issued from the blood bank since then. It is thus contended that having regard to the number of surgical procedures carried out daily as per the petitioners it seemed highly unlikely that with the number of surgeries not a single bag of blood was

used. Deficiencies were found in the infrastructure available as well. It was observed that the training rooms for medical students were insufficient in number and space. In the OPD section there were only 4 demonstration rooms with insufficient area and furniture. There was no indoor casualty for patients of obstetrics and gynaecology and the emergency operation theatre seemed hardly used. The Department of ENT and its indoor ward was situated in the corridor of the hospital, besides the residential quarters for the staff of college and the hospital were also found to be very old and in an unlivable condition, besides most doctors were living approximately 30 km away from the hospital. There was also shortage of manpower i.e. nursing staff in the hospital. No female staff nurses were available and the male nurses available were very few and deficient in the terms of the norms of the Medical Council of India (MCI). Moreover, the credentials of the available male nurses were also not verified. It has also been strongly urged before this Court that as proof of salary paid to the faculty members the Dean of the petitioners produced salary certificates for the month of May 2012. However, no TDS certificates/Form 16A were produced in respect of 90% of the faculty members. The assessment team had also received complaints of non-payment of salary/stipend from the resident doctors recorded by the petitioners about two months back. Mr.Gupta also submits that the petitioners had submitted its compliance report on 23rd June 2012 and had also appeared before the Board of Governors for a personal hearing when the deficiencies were denied and it was further claimed that deficiencies, if any, stood rectified. Counsel submits that to verify the claims of the petitioners a surprise inspection was carried out by the assessors appointed by the MCI on 25th June 2012 and it was found that the deficiencies pointed out earlier were still in existence and not rectified by

the petitioners and in view thereof the Board of Governors decided not to approve the scheme for establishing of medical college for the academic year 2012-2013. Counsel for the respondent further contends that the Board of Governors while passing the impugned order of 30th June 2012 considered all the relevant information, documents submitted by the petitioners, oral submissions at the time of hearing to reports of the assessors and came to the conclusion that the deficiencies in the clinical material i.e. OPD, IPD and the surgeries still persisted and had not been rectified. The Board of Governors also reached a conclusion that the details provided in respect of Nursing Staff and Faculty members indicated that the employment and the presence of the staff was not continuous and was merely shown as employed for the purpose of inspection. It is also contended that it was observed in the impugned order that the bank statements submitted from State Bank of India by the petitioners dated 22nd June 2012 certified that the petitioner had paid salary to their employees for the months of January to May 2012 and further an amount of Rs.38,77,200/- was paid in the month of May 2012. Whereas according to the affidavit submitted by the college authorities it had been shown that 116 teachers have been paid salary by different cheque numbers. In view thereof, the Board of Governors concluded that the salary to teachers did not match with the information furnished by the bank although the amount shown as total amount paid to 116 teachers matched with the bank statement.

27. I have heard learned counsel for the parties and considered their rival submissions. By the present writ petition, the petitioners have sought quashing of email dated 30.6.2012 whereby the petitioners' application for establishment of a college from the academic year 2012-2013 has been rejected. A writ of mandamus is also sought requiring the respondent to

forthwith grant letter of permission to the petitioner no.1 college to admit students in the first year MBBS Course from the academic year 2012-2013 as per the criteria laid down by the Medical Council of India for admission of first batch of MBBS Course.

28. The submission of learned senior counsel for the petitioners is that the action of the respondent is contrary to the law laid down by the Medical Council of India and in case it is allowed to stand it would lead to a serious miscarriage of justice. It is the case of the petitioners that all the deficiencies pointed out by the respondent, pursuant to the inspection carried out on 4.6.2012 and 5.6.2012, stand removed and, thus, there was no reason for the respondent to have rejected the application of the petitioners for establishment of a college for the academic session 2012-2013. It is further the case of the petitioner that the opportunity of hearing granted to the petitioners was neither genuine nor meaningful and the decision taken by the respondent was in a pre-decided manner. In support of his plea that where the deficiencies would not come in the way of the first year MBBS course and the same are curable the permission should not be declined to the institute, reliance has been placed by learned senior counsel for the petitioners in the case of *M.V.J. Medical College and Research Hospital* (supra). Strong reliance has also been placed by senior counsel for the petitioner in the case of *Al-karim Educational Trust & Another* (supra) in support of his argument that the Supreme Court of India has recognized the fact that it is impractical to insist for a fool proof or absolute adherence to all requirements without regard to their importance or relevance, for the purpose of imparting education in a practical way.
29. It is also the case of the petitioners that the petitioners have a established and fully functional 300 bedded hospital with necessary infrastructure

facilities and also there is no regulation of the respondent requiring a college to employ teachers, residents and other staff needed for the purposes of teaching any time before it is granted letter of permission to enable it to make admission of students in the MBBS course and even after appointment of teaching staff, residents, etc., even a day prior to the date of inspection would be suffice under the Regulations.

30. It has been strongly urged before this Court by learned senior counsel appearing on behalf of the petitioners that according to the MCI itself, the MCI Regulations require the existences of a hospital where the teaching staff, residents, etc., are required for that purpose, which should be available only after letter of permission is granted and on that stage the college becomes entitled to make admission of students in MBBS teaching and not for a period prior thereto.
31. Present petition has been vehemently opposed by counsel for the respondent. It is the stand of the respondent that the Indian Medical Council Act, 1956, has cast a great responsibility on the Medical Council of India in discharging its duty for maintenance of high standards of Medical Education in the country.
32. Mr.Gupta, learned counsel for the respondent, has placed reliance on various judgments to show that the Apex Court has emphasized the need to have properly trained students and students should be admitted only as per the Regulations of the MCI. It is further submitted by Mr.Gupta that the MCI has been bestowed with the role to prescribe a minimum standard of medical education and also the power to supervise the qualifications or eligibility standards for admissions into medical institutions. Mr.Gupta has strongly urged before this Court that the scope of judicial review is very limited in matters relating to academic nature. Reliance has been placed by Mr.Gupta on *Chairman J&K State Board of Education*

(supra); *Medical Council of India v. Sarang*, (supra); *B.C. Mylarappa alias Dr. Chikkamylarappa* (supra); *Rajbir Singh Dalal (Dr.)* (supra); and *All India Council for Technical Education* (supra).

33. It is also contended by Mr.Gupta umar, learned counsel for the respondent, that having regard to the fact that the inspections are carried out by the experts in their field, the Court should not sit in appeal over the opinion of the experts.
34. On the merits of the matter, Mr.Gupta submits that the inspection of the college was carried out on 4.6.2012 and 5.6.2012 and upon inspection and on the basis of the assessment report submitted by the experts the Medical Council of India informed the petitioner that in view of the deficiencies it was decided not to approve the scheme of establishment of petitioner no.1 college. Counsel further contends that the petitioners were granted a personal hearing and thereafter a surprise inspection was carried out and on the basis of the surprise inspection the final order of rejection was issued to the petitioners. Mr.Gupta also submits that upon physical verification the Medical Council of India was not satisfied with the genuineness of the faculty members produced by the petitioners before the assessment team. The respondent was also not satisfied as the petitioners did not furnish the bank account number from which the amount of salary was disbursed and the bank statement provided by the college only showed withdrawal of a lump sum amount by the college. It is further submitted that the petitioners have admitted that they have employed teachers soon before the inspection. It is also submitted by Mr.Gupta that learned senior counsel for the petitioners has only magnified the minor deficiencies such as presence of wooden stools, which have now been replaced with plastic chairs, renovation of dilapidated quarters and shifting of ENT wards from a corridor, however, the major deficiencies of

clinical material i.e. patients, staff strength, etc. did not repose any confidence and the assessment team was of the opinion that admission of fake patients was made to show inflated bed occupancy, there was non-maintenance of records of IPD patients, non production of proof of employment, genuineness of the faculty members produced by the petitioners and shortage of nursing staff having been rectified. It is next submitted that reliance placed by learned senior counsel for the petitioner in the case of *Mohinder Singh Gill v. Chief Election Commissioner*, reported as (1978) 1 SCC 405 is misplaced as the Supreme Court of India in the case of *Chairman, All India Railway Recruitment Board & Another v. K. Shyam Kumar*, reported at (2010) 6 SCC 614 has clarified the scope of the judgment rendered by the Supreme Court in the case of *Mohinder Singh Gill* (supra) in the following words:

“38. We are also of the view that the High Court has committed a grave error in taking the view that the order of the Board could be judged only on the basis of the reasons stated in the impugned order based on the report of vigilance and not on the subsequent materials furnished by the CBI. Possibly, the High Court had in mind the constitution bench judgment of this Court in *Mohinder Singh Gill and Anr. Vs. The Chief Election Commissioner, New Delhi and Anr.* (1978) 1 SCC 405.

39. We are of the view that the decision maker can always rely upon subsequent materials to support the decision already taken when larger public interest is involved. This Court in *Madhyamic Shiksha Mandal, M.P. v. Abhilash Shiksha Prasar Samiti and Others*, (1998) 9 SCC 236 found no irregularity in placing reliance on a subsequent report to sustain the cancellation of the examination conducted where there were serious allegations of mass copying. The principle laid down in *Mohinder Singh Gill*'s case is not applicable where larger public interest is involved and in such situations, additional grounds can be looked into to examine the validity of an order.”

35. Mr.Gupta, learned counsel for the respondent, submits that the regulations require existence of a running hospital with at least 300 beds and it is impossible to run such a hospital without Doctors, staff and Residents. Further as per the criteria laid down it is for the MCI to be satisfied with regard to the quality of infrastructure, facilities, faculties, clinical material, etc. The MCI is also duty bound to determine that the quantity projected by the medical college is also qualitatively justified and genuine.
36. Along with the writ petition, the petitioners have annexed photographs of faculty members, hospital with persons waiting, to show that it is a fully functional hospital.
37. There is no quarrel to the proposition that the minor deficiencies should not come in the way for establishing a medical college. In the case of *Al-karim Educational Trust & Another* (supra) the Court had observed as under:

“(h) It is impractical to insist, for a fool proof or absolute adherence to all requirements without regard to their importance or relevance, for the purpose of imparting education, in a practical way, especially because the institution has begun to function, students admitted to institution have taken the examination and the fate of a good many number of students should not hang in the balance in an unending or everlasting manner.

(i) In the final analysis, the question to be posed, is whether there exists the minimal and satisfactory requirements to keep the matter going, and not whether better arrangements that will render the set up more efficient and more satisfactory, should be insisted as "a wooden" rule.

(j) It may be that there are some minor deficiencies here and there which call for rectification. Time can certainly set right such matters. What is required is a total, practical, overall view in the light of the latest tabular statement filed along with the affidavit dated 4.9.1995. material placed before the Court goes to show that

there has been "substantial" though not literal compliance with the deficiencies pointed out in the latest report dated 28.6.1995."

38. The observations of the Apex Court cannot be read in isolation. The aim and object of the Apex Court is that minor deficiencies may be overlooked and time may be granted to rectify the same. It has also been observed by the Apex Court that the MCI should not insist for a fool proof or absolute adherence to all the requirements without regard to their importance or relevance for the purpose of imparting education in a practical way as in the present case wooden stools and dilapidated quarters (the deficiencies as pointed out by the MCI) would certainly not come in the way of imparting education to the students but in case there is a shortage of Doctors, patients, faculty, nursing staff or in case the experts are of the view that it is not a fully functional hospital or the infrastructure in terms of the manpower and patients available at the time of inspection do not repose confidence then the respondent would be well within its right not to grant permission to establish a medical college.
39. While rejecting the request of the petitioners the following factors, as mentioned in the order dated 30.6.2012 passed by the respondent, have been pointed out for rejecting the permission:
- “Based upon the foregoing, the Board of Governors in their meeting dt 27.6.12 concluded that:
- a) The deficiencies in terms of Clinical material persist.
 - b) The continuous presence of Nursing staff in the teaching hospital is doubtful.
 - c) There is discrepancy between the information furnished by the college regarding the teaching and other staff and the faculty staff actually present, as the college authorities have failed to provide the data to support their claim.
 - d) The foregoing does not support the evidence of continuous presence of medical teachers/staff in this college.”

40. While the minor deficiencies can surely be overlooked and time can be granted to rectify and cure such deficiencies the Court is extremely reluctant to differ or sit in appeal over the decision taken by the experts as has been laid down by the Apex Court in a large number of decisions. The assessment report, which has been placed on record, has observed that the attendance of the patients was scanty i.e. only 30 to 40 patients were present. Surely a 300 bedded hospital would have more than 30 to 40 patients at the OPD.
41. The Court cannot lose track of another observation, which goes to the very route of the matter, that the indoor patients, which were females between 20-25 years of age, having minor complaint of headache and abdominal pain. For the beds occupied by them they had only OPD slips and the male nurses present there had not made any admission entry in the Admission Register. On the following day of the inspection the wards were almost empty. It seems that most of the patients were hired only for the purposes of showing headcounts to the inspection team and they were admitted on 3.6.2012 a day prior to the date of inspection. There is no explanation as to how only female patients between the age of 20-25 years were admitted without their names in the admission register and with OPD slips complaining either headache or abdominal pain, which seems to be the simplest answer, a hired patient could have given i.e. the headache or stomach ache. The data provided by the petitioners reveals that 7-8 major surgical operations and 8-11 minor surgical operations were being carried out. During the inspection it was found that permission for storage of blood was received by the petitioners only on 16.5.2012 and not a single blood bag had been issued by the petitioner from the blood bank till the date of inspection. Another aspect, which remains unexplained as it is highly improbable that during such a large number of

surgeries not even a single blood bag was used. It was also observed that the emergency operation theatre of the hospital seems hardly to have been used and in the absence of livable quarters for the staff most of the Doctors were staying 30 kms away from the hospital. There is also no explanation as to why not a single female nurse was available at the time of inspection nor could the credentials of the male staff verified. The experts were also not satisfied with the salary certificates and the assessment team had also received complaints of the non-payment of salary/stipend from the Residents Doctors, who were recruited by the petitioners about two months back. There is also no clarity with regard to the amount of salary paid. According to the petitioners the salary had been paid to 116 teachers from different cheques, however, the bank statement of the petitioners shows that the amount of Rs.3,77,200/- was paid.

42. The Court cannot lose track of the fact that the experts, who have inspected the college, must be satisfied with the criteria as laid down by the MCI for granting permission to run a medical college, and the facilities, staff, infrastructure, patients are available and they shall not be available only on the date of inspection.
43. I find no infirmity in the order dated 30.6.2012 passed by the respondent. Accordingly, no grounds are made out. Writ petition and application are dismissed. No costs.

G.S.SISTANI, J

MAY 03, 2012

msr