

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO. 594 OF 2018

1. Ajay s/o Ananda Nayakwadi **... Petitioners**
Age 26 years, Occu: Stgudent
R/o Yashwant Hospital, A/p Charan, Tq.
Shirala Dist. Sangle
2. Praveen s/o M. Dhakite
Age 30 years, Occu: Student
R/o Flat No.505, Janikrupa Arcade,
Sector-9, Airoli, Navi Mumbai
3. Darshan s/o Daulat Jadhav,
Age 25 years, Occu: Student,
R/o Shiv -Shilp Apartment,
Akashwani Tower, Gangapur Road,
Nashik.
4. Niravkumar s/o Babub hai Patel,
Agte 26 years, Occu: Student
R/o 11-Gokuldharm Society,
Modasa Road, Lunawada, Gujrat
5. Hardik s/o Satyawan More,
Age 24 years, Occu: Student,
R/o Dean Quarter, GMC, Chandrapur.
6. Jalaluddin Ahmed,
Age 30 years, Occu: Student,
R/o 125, Jafar Nagar Second Floor,
Nagpur.
7. Varun s/o Vinayak Nishandar,
Age 27 years, Occu: Student
r/o vishwa BK-A 147/294, Behind Kali Mata
Mandir, Kurla Camp, Ulhasnagar,
Dsit. Thane.

8. Robin s/o Surendra Gauhar
Age 26 years, Occu: Student
R/o 1403, Ajinath, Neelkanth Enclave, LBS
Marg, Ghatkopar (W)
Mumbai 400 086
9. Kaustubh s/o Sudhakar Thakur,
Age 30 years, Occu: Student,
R/o 103, Vivekanand Colony, Dabhadi Road,
Malegaon Camp, Nashik
10. Preeti d/o Mahesh Sharma,
Age 26 years, Occu: Student,
R/o 1001/1002, B-wing, Rustomjee Royale,
J.S.Road,Dahisar (W), Mumbai 400 068
11. Rahul s/o Vitthal Patil,
Age 27 years, occu: Student,
R/o 93, Sai Baba Society, Pandesara,
Surat, Gujrat.
12. Urmila d/o Madhavrao Dhanage
Age 27 yeas, Occu: Student
R/o Deogaon, Tq. Mukhed,
Dist. Nanded.
13. Shweta d/o Madhdukar Shinde
Age 27 years, Occu: Student
r/o Saraswati, Sahyadri Colony,
Behind KBP College, Islampur
Sangli 415409
14. Jagruti d/o Jagmohan Gulati
Age 26 years, Occu: Student,
R/o 24 Bldg. Room No.1, Vikhroli(W),
Mumbai 79
15. Shaikh Sara Tabassum Abdul Samad,
Age 25 years, Occu: Student,
R/o Near Karbala Bes, Raviwar Peth,
Ambejogai, Dist. Beed

16. Megha Suraj Wasnik,
Age 27 years, Ocu: Student
R/o S.M. Wasnik, Ashwini Nagar, South Gate
of Rajkumar College,
Sonkar Badi, Raipur, Chattisgarh
17. Suchita d/o Sadashivrao Bhusare,
Age 28 yers, Occu: Student,
R/o Shree Krishna Niwas, Shivaji nagar,
Behind Police Station, Ambad,
Jalna, 431 204
18. Vinayak s/o Rahunath Bhoi
Age 25 yers, occu: Student,
R/o Islampur, Vinayak Nagar Road No.1,
Raghunandan Tq. Walwa,
Dist. Sangli 415 409
19. Anjali Kurup
Age 30 years, Occu: Student,
R/o Kesava Sudanam, Kollakadavu, Alleppey
20. Shushruti s/o Suhas Dongargaonkar,
Age 25 years, Occu: Student,
R/o Sakar Eye Hospital, Opp. Gurudwara,
Datta Mandir Road, Manmad
21. Jay s/o Jayesh Bhanushali
Age 27 years, Occu: Student,
R/o 16, Hemkripa Apt. SN Road, Mulund (W),
Mumbai 400 080
22. Ashishkumar s/o Devidas Pagtil,
Age 30 years, Occu: Student,
R/o Plot No.12, Savitribai Fule Soceity B,
Near Gajanan Rose Nursery, Yawatmal

VERSUS

1. The Union of India,
Ministry of Health and Family Welfare,A
Wing, Nariman Bhavan,

New Delhi 110011

2. The Medical Council of India
Through its President
Pocket 14, Sector 8, Dwarka Phase-1,
New Delhi 110077
3. The State of Maharashtra
Through its Secretary,
Medical Education and Drugs Department,
Mantralaya, Mumbai 400 032
4. The Director,
Medical Education and Research,
govt. Dental College and Hospital Building,
St. George's Hospital Compound, Near V.T.
Mumbai-01
5. Maharashtra University fo Health Sciences,
Mhasrul, Vani Dindori Road, Nashik,
Maharashtra 422 004
6. Annasaheb Chudaman Patil Memorial Medical
College, Through its Dean, Morane, Sakri
Road, Dhule, Maharashtra.
7. Jawahar Medical foundation, through its
Secretary, Morane, Sakri Road, Dhule,
Maharashtra.
8. Maharashtra Medical Council, Mumbai ... **Respondents**
189, Anand Complex, First Floor, Sane Guruji
Marg, Arthar Road Naka, Chinchpokali (W),
Mumbai-11

Ms P. S. Talekar i/by Talekar and Associates, Advocate for the petitioners.

Mr. S.B. Deshpande, A.S.G.for respondent No.1

Mr. S.K. Kadam, Advocate for respondent No.2,

Mr. P.S.Patil, AGP for the Respondent-State.

Mr. K.C. Sant, Advocate for respondent No.5,

Mr.S.P.Shah, Advocate for respondents 6 and 7

Mr. Gajanan Kadam, Advocate for respondent No.8

CORAM : **S. V. GANGAPURWALA & ANIL S. KILOR, JJ.**
RESERVED ON : **18th September, 2019**
PRONOUNCED ON : **20th March, 2020**

JUDGMENT (Per Anil S. Kilor, J.)

1. **“Education has never been commerce in this country. Making it one is opposed to the ethos, tradition and sensibilities of this nation. The argument to the contrary has an unholy ring to it. Imparting of education has never been treated as a trade or business in this country since time immemorial. It has been treated as a religious duty. It has been treated as a charitable activity. But never as trade or business.”** Unni Krishnan, J. P. -vs- State of A.P., reported in 1993 SCC (1) 645

2. By way of present petition the petitioners/students are raising a grievance against the respondent authorities as well as the respondent medical college, thereby alleging that by fraudulent misrepresentation by the respondent Nos. 2 to 8 the petitioners were made to believe that the respondent No. 7 college was a recognized college for PG admissions in the year 2017-18, and they were persuaded to seek admission to various specialization in P.G. course in medicine by paying daunting amount of fee, despite the college not having even basic infrastructure and renewal of

recognition.

3. Heard the learned counsel Ms. P.S. Talekar for the petitioners Shri S.B. Deshpande for respondent No.1 Union of India, Shri S.K. Kadam for respondent No. 2 Medical Council of India, Shri P.S. Patil for respondent No.3 State of Maharashtra and respondent No. 4 the Director Medical Education and Research, Shri K.C. Sant for respondent 5 Health University, Shri K.C. Shah for respondent No. 6 Medical college and respondent No. 7 Society.

4. Ms Talekar, the learned counsel for the petitioners vehemently argued that all the PG courses administered in the respondent college except pathology, have lost the recognition way back in 2015, whereas two other courses in 2016 and 2017. According to her none of these courses have been granted renewal of recognition despite the recognition period of 5 years having been completed way back in 2015.

5. She has alleged that the respondent college is run by a politically influential person who is the sitting Member of Legislative Assembly of the State, who has exerted his clout on all the authorities including the Medical Council of India, Directorate of Medical Education and Research and the Maharashtra University of Health sciences all of whom have joined hands in misrepresenting the petitioners to create a picture that the college is recognized for the 22 PG seats advertised for 2017-18 and trapped the

students by portraying false information on the official websites and in the brochure.

6. She argues that the petitioners took admission to post graduate courses under a bona fide belief that the respondent No. 7 college is recognized.

7. However, the MCI Executive Committee's Minutes of Meeting dated 20.11.2014, 17.08.2015 and 28.12.2015, demonstrate that the Executive Committee of the MCI as well as the Post-Graduate Medical Education Committee of the MCI have time and again conducted inspections in the respondent college and found that the infrastructure and facilities in the said college are lacking in every respect. The inspection reports also show that they have recommended in each of their minutes of the meeting to 'discontinue recognition of some of the MBBS course' or 'withdrawal of recognition of MBBS course' or 'return the PG applications and disapprove the scheme of admissions for 2017-18'.

8. She has also invited our attention to the MCI Executive Committee's minutes of meeting dated 28.04.2017, whereby it was recommended not to consider the respondent medical college for processing applications for PG courses in the academic year 2017-18 and issued show cause notice with regards to withdrawal of recognition of UG and PG courses alongwith directions of stoppage of admissions in PG

courses.

9. The petitioners further submit that it is only owing to political clout and extraneous considerations that despite having absolutely lacking infrastructure and non-renewal of recognition for more than 7 years in few of the courses and 3-4 years in most of the courses and despite of recommendation of the Executive Committee of the MCI to stop admissions of PG courses, the college has managed to continue to admit students, in collusion with other authorities.

10. Ms. Talekar points out that the condition of the respondent No. 7 college, is such that there are departments where there is no teaching faculty, most faculty members are ghost faculties who would never attend the college for teaching purposes, but would sign musters and provide signatures where ever needed. The few teachers who would regularly attend the college are being driven out due to non-payment of the salaries. Moreover, after the new norms of MCI and DMER, the bio metric scans of faculty members are necessitated in colleges owing to which most faculty members have resigned.

11. In the above said backdrop the petitioners made following prayers in this petition, which read thus:-

A. To direct the respondents to issue appropriate orders stopping the admission to PG courses in respondent No. 7 college from 2018-19 and reject the renewal proposal for courses pending

recognition or withdraw recognition, as the case may be, for PG courses administered in the respondent No. 7 college by issuing a writ mandamus or any other writ, order, direction as the case may be;

B. To direct the respondent Nos. 2 to 8 not to indulge the name of the respondent No. 7 college in the admission process for PG courses in the academic year 2018-19, pending hearing and final disposal of this petition;

C. To direct the respondents to absorb the petitioners in II year of their respective specialized PG courses in any other Government/Private recognized medical colleges in Maharashtra and protect their admissions in respective PG courses, by issuing a writ of mandamus or any other writ, order, direction as the case may be;

D. To direct the respondents not to take an adverse action against the petitioners including cancellation of their admissions in respective P.G. courses, pending hearing and final disposal of this petition;

E. To direct institution of enquiry into the collusion of authorities and misrepresentation by the respondents resulting into admissions of the petitioners in respective PG courses, by issuing a writ of mandamus or any other writ, order, direction as the case may be;

F. To direct the respondent college to pay compensation to the tune of INR 25 lakhs per head for mental harassment and loss of valuable education opportunity, by issuing a writ of mandamus or any other writ, order, direction as the case may be;

12. Per contra Shri Shah, the learned counsel for the respondent Medical college argues that a college is entitled to make admissions immediately after grant of permission u/s. 10-A of the Act of. Thus, according to him the students could be admitted even before recognition to the course u/s.

11. He submits that S. 11 (2) contemplates an application to be made by a Medical College for recognition of a course which it is already offering; but it is not so far recognized and included in the First Schedule.

13. He draws our attention to Rule 6 (2) of the Postgraduate Regulations, 2000, which provides that a Medical Institute shall apply for recognition when the first admitted batch is due to appear for examination conducted by the University i.e. the final examination at the end of third year in case of P.G. course. According to him in other words, an institution cannot make an application for recognition unless the students are already admitted and are due to appear for their final examination to be held at the end of third year.

14. Shri Shah, the learned counsel for the respondents No. 6 and 7, points out that provisions of S.10-A and S.10-B were inserted vide an amendment made in the year 1992. Prior to the amendment, the Indian Medical Council Act, 1956 had S.11 which speaks of recognition immediately after S. 10. Prior to the amendment, the institutes would start a Medical College without any permission and apply for recognition straightway when the first batch of students were due to appear for their final examination. Therefore, by way of an amendment S.10-A is inserted to provide that no course shall be started without prior permission u/s. 10-A.

15. Shri Shah has drawn our attention to the subsequent events namely Course in Diploma in Orthopedic is recognized on 29.05.2019 and Petitioners No. 11 and 15 have completed their Diploma Course and passed their examination.

16. He submits that the courses of Petitioners No. 2, 6 and 10 are not recognized. However, he points out that during the pendency of this Writ Petition, the MCI has recommended to recognize even these courses. Thus, he submits that, now, the interest of all the petitioners is protected. Degrees that would be obtained by all the petitioners would be recognized, therefore, according to the learned counsel Shri Shah nothing survives in the present petition.

17. While answering the allegation of misrepresentation, the learned counsel for respondent medical college denies the said allegations.

20. As far as infrastructure is concerned, the learned counsel for respondent Nos. 6 and 7 submits that all the deficiencies in respect of infrastructure and facilities pointed out in inspection of MCI, have already been removed and presently there are no deficiencies.

21. Shri Kadam, learned counsel for the MCI pointed out that the procedure to be followed in the matters relating to grant of recognition for post graduate medicine courses. He submits that when the first batch of students is going to appear in the final year examination, an assessment carries out by MCI assessors. The assessment reports then places before the Post Graduate Medical Education Committee of the Council. In case of no deficiencies in the medical college, then the Committee forwards their recommendation to the Central Government for grant of recognition,

however, in case of deficiencies in the medical college, the Council calls upon the concerned medical college to submit its compliance to the deficiencies, where after, compliance assessment is carried out. The opportunity of compliance is granted to the medical college till the time the college is fully complied with the minimum requirement prescribed under MCI Regulations.

22. Shri Kadam, learned counsel for MCI has drawn our attention to the amendment made in Post Graduate Medical Education Regulations 2000 vide Post Graduate Medical Education (Amendment) Regulation, notified on 05.04.2018. Regulation 6(2) of the amended regulation which provides that the degrees of the students admitted in the first four batches of the post graduate degree course and first three batches of post graduate diploma courses shall be recognized in the event the college fails to rectify the deficiencies. The amended Regulation 6(2) reads thus:

"(2) The Institution shall apply for recognition of the Post Graduate Medical qualification to the Central Government through the affiliating University, when the first admitted batch shall be due to appear for the examination to be conducted by the affiliating University.

In the event of deficiencies being found in the assessment, the Institution shall be granted an opportunity to submit compliance within 30 days from the date of communication of deficiencies by the Council. Such an opportunity to comply with the deficiencies shall be availed by the Institution only twice. The Postgraduate Medical Education Committee on finding the compliance satisfactory, shall convey the recommendation to recognize the course. In all others cases, the prior permission of the Central Government granted under sub-clause (1) shall be

deemed to have lapsed after four and three years for Postgraduate Degree/ Postgraduate Diploma respectively. Further, in such cases, recommendation shall be made to the Central Government to include the qualifications in the first schedule of the Indian Medical Council Act, 1956 only in respect of first four batches of Postgraduate Degree Courses and three batches of Postgraduate Diploma courses..."

23. Shri Kadam, learned counsel for MCI, accordingly points out that in the present case though after giving repeated opportunities to the respondent medical college to rectify the deficiencies, the college has failed to rectify all the deficiency. He points out from the affidavit of MIC dated 10th April, 2018, that the deficiencies in the respondent college relating to different specialization, the dates of inspections carried out by the concerned committee of the MCI, number of opportunities given to the respondent colleges for removal of deficiencies and the status as on the date of filing of the affidavit by MCI.

24. After going through the affidavit, we are of the opinion that MCI in every inspection found numerous deficiencies in respect of staff and infrastructure in the respondent Medical College.

25. The respondent Medical Council of India in its affidavit categorically made a statement that the Council has been granting opportunities to the respondent medical college to rectify the deficiencies, since beginning. It is only after the above mentioned deficiencies pointed out by the MCI Assessors, are removed and the college becomes fully compliant with MCI

Regulations, the college will become entitled to grant of recognition of the various postgraduate degree, diploma courses.

26. As far as the petitioners are concerned, the learned Counsel for MCI has pointed out that non recognition of postgraduate degree and diploma courses will not adversely affect the future of the first four batches of the students admitted in the postgraduate degree courses and first three batches of the postgraduate diploma courses, including petitioners.

27. At this juncture it is necessary to state that the statement made by the learned counsel for the MCI that the interest of the petitioners is protected in view of the amended regulations, the grievance of the petitioners in relation to cancellation of their admission or absorption of the petitioners in some other Government colleges does not survive.

28. However, since some serious issues about the infrastructure and facilities which need to be provided to the students, are also involved in this petition, we want to deal with those issues.

29. In the case of **Association of Medical Superspeciality Aspirants and Residents and others Vrs. Union of India and others** reported in **(2019) 8 Supreme Court Cases 607**, Hon'ble the Supreme Court of India has observed thus:

“22 . Article 21 of the Constitution of India imposes an obligation on the State to safeguard the right to life of every person. Preservation of human life

is thus of paramount importance. The Government hospitals run by the State and the Medical Officers employed therein are duty bound to extend medical assistance for preserving human life. Failure on the part of a Government hospital to provide timely medical treatment to a person in need of such treatment results in violation of his right guaranteed Under Article 21 of the Constitution. Therefore, in a welfare State it is the obligation of the State to ensure the creation and the sustaining of conditions congenial to good health.

23. Article 47 of the Constitution reiterates the constitutional obligation imposed on the State to improve public health. The Directive Principle provides as follows:

“47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health - The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.”

24 . In *Akhil Bharatiya Soshit Karamchari Sangh v. Union of India* MANU/SC/0058/1980 : (1981) 1 SCC 246 it was held that maintenance and improvement of public health have to rank high as these are indispensable to the very physical existence of the community and on the betterment of these depends the building of the society of which the Constitution makers envisaged. It was further observed in the above judgment that attending to public health, therefore, is of high priority-perhaps the one at the top.

25. It is for the State to secure health to its citizens as its primary duty. No doubt the Government is rendering this obligation by opening Government hospitals and health centers, but in order to make it meaningful, it has to be within the reach of its people, as far as possible, to reduce the queue of waiting lists, and it has to provide all facilities to employ best of talents and tone up its administration to give effective contribution, which is also the duty of the Government.

26. Right to health is integral to the right to life. Government has a constitutional obligation to provide health facilities. The fundamental right to life which is the most precious human right and which forms the ark of all other rights must therefore be interpreted in a broad and expansive spirit so as to invest it with significance and vitality which may endure for years to come and enhance the dignity of the individual and the worth of the human person. The right to life enshrined in Article 21 cannot be restricted to mere animal existence. It means something much more than just physical survival. The right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter, and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings. Every act which offends against or impairs human dignity would constitute deprivation pro tanto of this right to live and the restriction would have to be in accordance with reasonable, fair and just

procedure established by law which stands the test of other fundamental rights."

30. Hence, it is clear that Article 21 of the Constitution of India imposes an obligation on the State to safeguard the right to life of every person. Preservation of human life is thus of paramount importance and therefore maintenance and improvement of public health has to rank high as these are indispensable to the very physical existence of the community and on the betterment of these, depends the building of the society of which the constitution makers envisaged. Therefore, attending to public health is of high priority, perhaps the one on the top. But in order to achieve this, it has to provide all facilities to employ best talents which is possible only if the required infrastructure and complete and full facilities for training each student who is admitted in various disciplines are made available, so as to give them complete medical education.

31. If the Medical Council of India and Central Government would be grateful to ensure that the Medical Colleges / Institutions have the requisite infrastructure and facilities including faculty, residence as well as clinical and non-clinical material, the said goal can be achieved.

32. At this juncture, therefore, it is necessary to refer to the scheme of Indian Medical Council Act, more particularly about the permission for establishment of new college, recognition of medical college etc.

33. The Indian Medical Council Act, 1956 (hereinafter referred to as the "1956 Act"), which was enacted, to provide for reconstitution of the Medical Council of India and maintenance of medical register for India and for matters connected therewith.

34. After the promulgation of 1956 Act, no person would be entitled to establish a medical college, except in the manner provided in section 10-A, which, in addition provides that no medical college shall open a new or higher course of study or training including a postgraduate course of training, which would enable a student of such course or training to qualify himself for the award of recognized medical qualification, except with the previous permission of the Central Government. It also applies to increase in admission capacity in any course of study or training, including postgraduate study or training.

35. In the case of **K.S. Bhoir v. State of Maharashtra, (2001) 10 SCC 264**, the Supreme Court of India, has held that since long time past, establishing of a medical college and medical education therein are governed by the Indian Medical Council Act, 1956 and the Dental Act, 1948. Despite there being such provisions, it was experienced that large number of persons and institutions established medical colleges without providing therein the minimum necessary and proportionate infrastructure i.e. teaching and other facilities required for them. As a result, it was found that there was sharp decline in the maintenance of higher standard

of medical education. In order to put a check on unregulated mushroom growth of medical colleges and maintain high standard of medical education, it was thought to be more stringent provisions in the Act and accordingly section 10-A, 10-B and 10-C were inserted in the year 1993 in the Act of 1956.

36. Thus, at this stage it is necessary to refer to important and relevant provisions of the 1956 Act which are as follows :-

"10-A. Permission for establishment of new medical college, new course of study, etc.—

(1) Notwithstanding anything contained in this Act or any other law for the time being in force—

(a) no person shall establish a medical college; or

(b) no medical college shall—

(i) open a new or higher course of study or training (including a postgraduate course of study or training) which would enable a student of such course or training to qualify himself for the award of any recognised medical qualification; or

(ii) increase its admission capacity in any course of study or training (including a postgraduate course of study or training), except with the previous permission of the Central Government obtained in accordance with the provisions of this section.

(2)(a) Every person or medical college shall, for the purpose of obtaining permission under sub-section (1), submit to the Central Government a scheme in accordance with the provisions of clause (b) and the Central Government shall refer the scheme to the Council for its recommendations.

(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 19-A or, as the case may be, under Section 20 in the case of postgraduate 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;

(d) whether adequate hospital facilities, having regard to the number of students likely to attend such medical college or course of study or training or as a result of the increased admission capacity, have been provided or would be provided within the time-limit specified in the scheme;

(e) whether any arrangement has been made or programme drawn to impart proper training to students likely to attend such medical college or course of study or training by persons having the recognised medical qualifications;

(f) the requirement of manpower in the field of practice of medicine; and

(g) any other factors as may be prescribed.

"10-B. Non-recognition of medical qualifications in certain cases.—(1) *Where any medical college is established except with the previous permission of the Central Government in accordance with the provisions of Section 10-A, no medical qualification granted to any student of such medical college shall be a recognised medical qualification for the purposes of this Act.*

(2) *Where any medical college opens a new or higher course of study or training (including a postgraduate course of study or training) except with the previous permission of the Central Government in accordance with the provisions of Section 10-A, no medical qualification granted to any student of such medical college on the basis of such study or training shall be a recognised medical qualification for the purposes of this Act.*

(3) *Where any medical college increases its admission capacity in any course of study or training except with the previous permission of the Central Government in accordance with the provisions of Section 10-A, no medical qualification granted to any student of such medical college on the basis of the increase in its admission capacity shall be a recognised medical qualification for the purposes of this Act.*

Explanation.—For the purposes of this section, the criteria for identifying a student who has been granted a medical qualification on the basis of such increase in the admission capacity shall be such as may be prescribed."

1. Recognition of medical qualifications granted by universities or medical institutions in India.—(1) *The medical qualifications granted by any university or medical institution in India which are included in the First Schedule shall be recognised medical qualifications for the purposes of this Act.*

(2) *Any university or medical institution in India which grants a*

medical qualification not included in the First Schedule may apply to the Central Government to have such qualification recognised, and the Central Government, after consulting the Council, may, by notification in the Official Gazette, amend the First Schedule so as to include such qualification therein, and any such notification may also direct that an entry shall be made in the last column of the First Schedule against such medical qualification declaring that it shall be a recognised medical qualification only when granted after a specified date."

37. Thus it is clear that Section 10-A speaks of permission and not recognition on a year-to-year basis. Recognition follows once the newly-established medical colleges/institutions satisfactorily complete five years with the graduation of the first batch of students admitted to the institution when initial permission is granted. It also provides that it shall be the responsibility of the applicant to apply to the Medical Council for renewal of permission six months before the expiry of the initial permission and that the process of renewal of permission will continue till all the required formalities are completed and a formal recognition to the medical college is granted.

38. It is further clear that under section 10-A (2) (a)-- the council has been authorized to scrutinize the scheme and make such suggestions as may be necessary, to rectify in a defect and, thereafter, to forward the same, together with its recommendations, to the central governments.

39. Sub-section 7 of section 10-A provides that the Council while

making its recommendation shall take into consideration the factors mentioned therein. Thus, it is clear that although the Central Government is the authority to grant sanction to establishment of medical college, it is the council which plays the major role in deciding whether such sanction would be given by the Central Government.

40. Section 10-B deals with non recognition of medical qualifications in certain cases. If a medical college is established except with the previous permission of the central government, as provided under section 10-A, no medical qualification granted to any student of such medical college shall be recognized as a medical qualification for the purposes of the Act

41. Section 11 of the 1956 Act deals with recognition of medical qualifications granted by universities or medical institutions in India.

42. Similarly, reference may be made to the "Establishment of Medical College Regulations, 1999", framed by the Medical Council of India in exercise of powers conferred under Section 10-A read with Section 33 of the 1956 Act, and notified on 30-7-1999. The same came into force on their publication in the Official Gazette on 28-8-1999, is necessary and are hereinafter referred to as "the 1999 Regulations".

43. Regulation 8 of the 1999 Regulations is the provision for grant of permission which reads thus:

"8. Grant of permission.—(1) *The Central Government on the recommendation of the Council may issue a letter of intent to set up a new medical college with such conditions or modifications in the original proposal as may be considered necessary. This letter of intent will also include a clear-cut statement of preliminary requirements to be met in respect of buildings, infrastructural facilities, medical and allied equipments, faculty and staff before admitting the first batch of students. The formal permission may be granted after the above conditions and modifications are accepted and the performance bank guarantees for the required sums are furnished by the person and after consulting the Medical Council of India."*

44. From the aforesaid provisions it is very clear that recognition to a degree awarded by a newly-established medical college can be given only after all the requirements for the establishment of the medical college and expansion of the hospital facilities are completed. It has also been stipulated that further admissions shall not be made at any stage unless the requirements of the Council are fulfilled.

45. In the case of **Medical Council of India vs. State of Karnataka**, reported in (1998) 6 SCC 131, while dealing with admissions made in excess of intake capacity fixed by the Council, the Hon'ble Supreme Court of India has observed thus:

"29. A medical student requires gruelling study and that can be done only if proper facilities are available in a medical college and the hospital attached to it has to be well equipped and the teaching faculty and doctors have to be competent enough that when a medical student comes out, he is perfect in the science

of treatment of human beings and is not found wanting in any way. The country does not want half-baked medical professionals coming out of medical colleges when they did not have full facilities of teaching and were not exposed to the patients and their ailments during the course of their study."

46. In the case of **Manohar Lal Sharma v. Medical Council of India**, reported in **(2013) 10 SCC 60**, the Hon'ble Supreme Court of India has observed thus:

16. MCI is a body constituted under the provisions of the Indian Medical Council Act, 1956 and has been given the responsibility of discharging the duty of maintenance of the standards of medical education in the country. It has the power to supervise the qualifications or eligibility standards for admission into the medical institutions.

17. This Court in *State of Kerala v. T.P. Roshana*, observed as follows: (SCC p. 580, para 16) "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 substandard entrance qualifications for medical courses."

47. In the case of **Medical Council of India Vs. Rama Medical College Hospital and Research Centre**, reported in **2012 (8) SCC 80**,

Hon'ble the Supreme Court of India has held that

"56. We repeat that by allowing itself to get confused with the use of the expression "recognition" in Regulation 3(1) of the 2000 Regulations, both the learned Single Judge and the Division Bench of the High Court came to the erroneous conclusion that once permission had been granted under Section 10-A to establish a new medical college/institution, the question of having to take fresh permission each year for any subsequent steps to be taken after grant of such permission till the fifth year of the course was completed, did not arise.

57. The aforesaid position would be doubly clear from the provisions of sub-section (3) of Section 10-B, which, in no uncertain terms, provide that:

"10-B. (3) *Where any medical college increases its admission capacity in any course of study or training except with the previous permission of the Central Government in accordance with the provisions of Section 10-A, no medical qualification granted to any student of such medical college on the basis of the increase in its admission capacity shall be a recognised medical qualification for the purposes of the Act."*

In other words, without the previous permission of the Central Government within the scheme as prescribed under Section 10-A i.e. without the recommendation of the Medical Council, any degree granted would not be recognised as a medical degree which would entitle such degree-holder to function as a medical practitioner.

58. *There is no getting away from the fact that Section 10-A lays down the criteria for grant of permission for establishme MCI on the basis of the reports, regular and compliance, is legally obliged to form an opinion with regard to the capacity of the college to provide necessary facilities in respect of staff, equipments, accom MCI on the basis of the reports, regular and compliance, is legally obliged to form an opinion with regard to the capacity of the college to provide necessary facilities in respect of staff, equipments, accommodation, training and other facilities to ensure proper functioning of the medical college accommodation, training and other facilities to ensure proper functioning of the medical college of a new medical college and that Section 10-B supplements the same by making it clear that even while increasing the number of seats in a medical college/institution, the procedure indicated in Section 10-A, and in particular Section 10-A(2), would have to be followed. At every stage, it is the Council which plays a very important role in either the grant of permission to establish a new medical college or to increase the number of seats. Furthermore, on account of the Regulations of 1999 and 2000, the norms of MCI on the basis of the reports, regular and compliance, is legally obliged to form an opinion with regard to the capacity of the college to provide necessary facilities in respect of staff, equipments, accommodation, training and other facilities to ensure proper functioning of the medical college relating to eligibility criteria, as set out in the 1999 Regulations, as also in the 2000 Regulations, have to be complied with, with MCI on the basis of the reports, regular and compliance, is legally obliged to form an opinion with regard to the capacity of the college to provide necessary facilities in respect of staff, equipments, accommodation, training and other facilities to ensure proper functioning of the medical college for the purpose of grant of permission for establishing a new medical college or for introducing a new course of study along with the intention of increasing the number of students in the medical institution.*

48. In a case of **Dental Council of India v. Subharti K.K.B. Charitable Trust, (2001) 5 SCC 486**, it is held by the Honourable Supreme Court of India that normally the Court should not interfere with the functioning of the Educational institutions, particularly, expert bodies likes MCI or DCI. However, the Court has power to set right such arbitrary exercise of powers by such authorities. Paragraph 11 of the said judgment reads thus:

"11. Hence, it is to be reiterated that law as it stands, the court's jurisdiction to interfere with the discretion exercised by such expert body is limited even though the right to education is concomitant to the fundamental rights enshrined in Part III of the Constitution. It is equally true that unless there are proper educational facilities in the society, it would be difficult to meet with the requirements of the younger generation who have a keen desire to acquire knowledge and education to compete in the global market. It is required to be accepted that for establishing educational institutions, government machinery or funds are neither sufficient nor adequate and the necessity of private institutions cannot be denied. However, since ages our culture and civilization have recognized that education is one of the pious obligations of the society to be discharged by the "learned" and/or the State. It is for us to preserve that rich heritage of our culture of transcending (sic) the education continuously unpolluted. In the recent past, a notion has developed that it is a religious and charitable object to establish and administer an educational institution."

49. Thus it is clear that at every stage, it is the Medical Council of India which plays a very important role in either the grant of permission to

establish a new Medical College or to increase the number of seats. In terms of the Scheme of the Act and the Regulations framed by the Medical Council of India, it is the Central Government which is empowered to grant recognition to a Medical College or Institution on the recommendation of the Medical Council of India. The role of Medical Council of India in the grant of recognition to a Medical Collage / Institution is recommendatory and the Council has no power to grant recognition to a Medical Institution. Such power lies with the Central Government.

50. Medical Council of India has been given the responsibility of discharging the duty of maintenance of the standards of medical education in the country. It has the power to supervise the qualifications or eligibility standards for admission into the medical institutions. Thus there is an overall invigilation by the Medical Council to prevent substandard entrance qualifications for medical courses.

51. Hence, it is expected that unless there are proper educational facilities in the society, it would be difficult to meet with the requirements of the younger generation who have a keen desire to acquire knowledge and education to compete in the global market. A medical student requires gruelling study and that can be done only if proper facilities are available in a medical college and the hospital attached to it has to be well equipped and the teaching faculty and doctors have to be competent enough that when a medical student comes out, he is perfect in the science of

treatment of human beings and is not found wanting in any way. The country does not want half-baked medical professionals coming out of medical colleges when they did not have full facilities of teaching and were not exposed to the patients and their ailments during the course of their study, as observed Hon'ble the Supreme Court of India in the case of *Medical Council of India vs. State of Karnataka (supra)*

52. In the said back drop, role of MCI is important who is legally obliged to form an opinion on the basis of inspection report with regard to the capacity of the college to provide necessary facilities in respect of staff, equipments, accommodation, training and other facilities to ensure proper functioning of the medical college.

53. The MCI and the Central Government have been vested with monitoring powers. It is expected of these authorizes to discharge their functions well within the statutory confines. MCI and the Central Government must therefore show due diligence right from the day when the applications are received. These authorities have been conferred with statutory powers to protect the cause of medical education. MCI is a custodian of public interest and acts in trust for the welfare of the society. The purpose of inspection by expert team of assessors is to verify whether a medical college has the requisite infrastructure and facilities including faculty, residence as well as clinical and non clinical material. The basic purpose of inspection is to verify whether the college possesses the

requisite infrastructure and facilities and resources to provide quality medical education consistent with the statutory requirement which hold the field.

54. It has been experienced that unless there is required infrastructure available in the medical college, the standard of medical education would decline. Unless an institution can provide complete and full facilities for training to each student who is admitted in various disciplines, the medical education would be incomplete and the medical professional would come out without proper and complete knowledge which in turn would adversely affect public health system and in turn the public in general. Thus the council is obliged to ensure that the medical college has the requisite infrastructure and facilities including faculty, residence as well as clinical and non clinical material.

55. In the present matter from the affidavit of MCI it is clear that repeatedly the opportunities have been granted by Council to the respondent medical college to rectify the deficiencies. However, deficiencies were not rectified and the same has not been removed by the respondent college.

56. The career of the petitioners could be saved only because of the amendment brought into Regulation 6(2) of Regulation 2000. The said

amendment to the Regulation 2000 was made in the interest of students however the fact remains that even after addition of stringent provisions in the Act by way of amendment, there is a sharp decline in the maintenance of high standard of medical education and yet MCI could not bring check on unregulated mushroom growth of medical colleges and maintenance of high standard of medical education. The respondent Medical College is the example of the same.

57. As observed by the Supreme Court of India in the case of Dental Council of India Vs. Subhuti K.K.B. Chhabildas Trust (Supra) that the Education Institution should not be permitted to be commercialized for earning money but at the same time the courts can do very little in this field as it is the function of expert bodies such as the medical council of India or the Dental Council of India.

58. The Supreme Court of India further observed that however, citizens would lose faith in such institution if the allegations made are repeatedly made with regard to the inspection report and granting of approval by the Central Government. The Honorable Supreme Court of India left the said question for the central government to deal with appropriately as it is the function of the authorities to pluck the loopholes and see that in such matters nothing hanky-panky happens.

59. These observation had been made by the Supreme Court in the year 2001, however, from the present matter it can be seen that there is no change in the working of MCI or the Central Government in the matters of medical colleges.

60. We therefore, express our serious concern about the functioning of MCI and Central Government while granting permissions to medical colleges and also express fear that because of not providing requisite infrastructures and facilities as well as clinical and non clinical material as the medical students who will come out from such medical colleges might not be half backed medical professionals for want of full facilities of teaching and for want of exposure to the patients and their ailments during course of their studies.

61. We therefore expect that the Medical Council of India and the Central Government would discharge their statutory functions with due diligence and in the public interest and for the welfare of the society.

62. In the light of observations made herein above, we direct the respondent MCI and the Central Government to consider the postgraduate degrees and diploma courses of the petitioners, for grant of recognition and take decision within a period of six weeks from the date of this Judgment, if such recognition is pending and till date the same is not

decided.

64. It is further directed that if recognition is not granted to any course or diploma of the petitioners, the respondents-State shall take necessary steps to see that career of student should not be hampered, in any manner.

65. Accordingly the writ petition is partially allowed in above terms.
No order as to costs.

(ANIL S. KILOR, J.) (S.V.GANGAPURWALA, J.)

JPC

