

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

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Date of decision: 16th September, 2015

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W.P.(C) No.6529/2015

RAJSHREE EDUCATONAL TRUST & ANR. Appellants

Through: Mr. Nidhesh Gupta, Sr. Adv. with Mr. Amit Kumar, Mr. Avijit Mani Tripathi & Mr. Ankit Rajgarhia, Advs.

Versus

UNION OF INDIA & ANR Respondents

Through: Mr. Rajesh Gogna, CGSC with Ms. L. Gangmei, Adv. for R-1.
Mr. Vikas Singh, Sr. Adv. with Mr. T. Singhdev, Ms. Biakthansangi & Ms. Puja Sarkar, Advs. for R-2/MCI.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. The petition impugns the recommendations dated 12th February, 2015 and 11th May, 2015 of the respondent No.2 Medical Council of India (MCI) to the respondent No.1 Union of India (UOI) to refuse permission to Rajshree Medical Research Institute (RMRI), Bareilly, U.P. established by the petitioner No.1 Trust (of which petitioner No.2 is the President Trustee) as well as the communication dated 15th June, 2015 UOI to the said RMRI

not to admit any students in second batch (150 seats) of MBBS course for the academic year 2015-16 and further notifying that admission in next batch of students for the year 2016-17 be made only after obtaining the permission of UOI.

2. The writ petition was entertained and counter affidavit has been filed by MCI and to which rejoinder has been filed by the petitioners. UOI has adopted the pleadings and arguments of MCI. The senior counsel for the petitioners and the senior counsel for MCI have been heard.

3. It is the case of the petitioners that:

- (i) They established the medical college aforesaid in or about September, 2013 and UOI vide letter dated 2nd July, 2014 granted conditional permission for establishment of the said medical college with annual intake of 150 students subject to fulfillment of certain conditions and upon the petitioners fulfilling the said conditions vide letter dated 10th July, 2014 granted permission to establish the said medical college with annual admission capacity of 150 MBBS seats for the academic year 2014-15 – this was without carrying out any inspection of

the medical college and in accordance with the order dated 18th December, 2014 of the Supreme Court in W.P.(C) No.469/2014 titled *Hind Charitable Trust Shekhar Hospital Pvt. Ltd. Vs. Union of India.*

- (ii) Mahatma Jyotiba Phule Rohilkhand University, Bareilly vide its letter dated 17th October, 2014 issued temporary consent of affiliation for admission to 150 MBBS seats for 2014-15 at the said medical college.
- (iii) As per the list of holidays declared by the aforesaid university for the year 2015, 24th and 26th January, 2014 were holidays and 25th January, 2015 was a Sunday.
- (iv) Regulation 8(3) of the Establishment of Medical College Regulations, 1999 (EMC Regulations) requires MCI not to conduct inspection of colleges three days prior and three days after important religious and festival holidays declared by the Central / State Government.
- (v) Communal tension was prevailing in Bareilly between 15th January, 2015 and 25th January, 2015; on account of curfew like

situation, shops etc. were closed for almost one week and people left the city for safer places.

- (vi) Three Assessors of MCI visited the medical college of the petitioners for conducting surprise inspection on 22nd and 23rd January, 2015.
- (vii) The inspection team refused to take into account faculty members who were not present at 11:00 a.m. on 22nd January, 2015 and also made the Dean of the medical college sign each page of their assessment report without furnishing a copy thereof.
- (viii) The said inspection team recorded vague remarks regarding patients being not genuine, without disclosing the basis of the said conclusion.
- (ix) The inspection report is motivated, incorrect, false and against the provisions of the EMC Regulations and the Assessors Guide for inspection of medical colleges for undergraduate i.e. MBBS course.

- (x) Though the said medical college has the requisite faculty but the faculty members were not present at 11:00 a.m. on 22nd January, 2015 due to law and order situation and communal riots.
- (xi) Even Residents who were on night duty were not present at 11:00 a.m. on 22nd January, 2015 and were wrongly not taken into account.
- (xii) MCI, vide impugned communication dated 12th February, 2015 to UOI, on the basis of the report aforesaid of the inspection recommended not to renew the permission to the said medical college for admitting students for the academic year 2015-16 and also applied Regulation 8(3)(1)(a) of the EMC Regulations on the basis of the deficiency in faculty and deficiency in Residents being of more than 30%.
- (xiii) The Executive Committee of MCI made the aforesaid recommendation without giving any opportunity of hearing to the petitioners / their medical college and without giving any

opportunity to the petitioners or their medical college to rectify the deficiencies found, as MCI in law is required to do.

- (xiv) The recommendation was also not as per Form-4 prescribed for the said purpose by the EMC Regulations.
- (xv) The UOI vide its letter dated 4th March, 2015 called the petitioners for hearing.
- (xvi) The petitioners, during the hearing on 12th March, 2015 before the UOI, submitted a detailed reply / explanation with respect to the deficiencies reported in the inspection aforesaid pleading that all the teachers are on regular pay roll and were not present on account of law and order situation.
- (xvii) The UOI, vide letter dated 24th March, 2015 directed MCI to review its recommendation dated 12th February, 2015.
- (xviii) MCI, vide impugned communication dated 11th May, 2015 reiterated its earlier recommendation, without carrying out any fresh inspection of the petitioner's medical college and without giving any fresh opportunity of hearing to the petitioners and

which is in contravention of the dicta of the Supreme Court in *Swamy Devi Dayal Hospital and Dental College Vs. The Union of India* (2014) 13 SCC 506.

(xix) The petitioners represented on 21st May, 2014 contending that Regulation 8(3)(1)(a) of the EMC Regulations could not be applied as inspection was carried out three days prior to the holiday declared by the State Government as at the relevant time riots like situation was prevailing.

(xx) UOI, without independently applying its mind and without giving any hearing, accepted the recommendation dated 11th May, 2015 of the MCI and vide impugned communication dated 15th June, 2015 refused renewal permission as aforesaid.

4. MCI, in its counter affidavit has *inter alia* pleaded that:

(a) The petitioners' medical college was obliged to be ready with the complete infrastructure, teaching faculty, clinical material and other physical facilities at the time of submitting its assessment and declaration forms for grant of renewal of permission for the academic year 2015-16.

(b) In the inspection on 22nd and 23rd January, 2015 of the petitioners' medical college, the following deficiencies were found:

- “1. Deficiency of teaching faculty is 63.20% as detailed in report.
2. Shortage of Residents is 79.26% as detailed in the report.
3. Clinical material : A large number of patients are not genuine.
4. OPD: Teaching area is available in OPDs of general Medicine, General Surgery & Ophthalmology only. Facilities are inadequate in Paediatrics & O.G. OPD.
5. Teaching Beds: There is no clear cut Department wise Unit wise demarcation of beds & wards. Patients of multiple specialties were seen in a single ward.
6. Wards: Nursing stations in most of the wards are outside the wards. Only 2 Demonstration Rooms are available. There were very few postoperative patients in beds earmarked for surgical specialties.
7. No Histopathology work is done in the Department of pathology.
8. Casualty: Ventilator and Defibrillator are not available.

9. O.T.s: 5 O.T.s are available against requirement for 6 as per Regulations. ENT/Ophthalmology O.T. has 2 tables which is not as per norms.
10. ICUs: There was no patient in ICCU & 1 patient in each MICU & PICU / NICU on the day of assessment.
11. Labour Room: Separate rooms for septic and Eclampsia cases are not available.
12. Only 1 USG is available against requirement of 2 as per Regulations.
13. Deans's Office is still under construction. It is presently located in the hospital.
14. Lecture theaters: Only 1 Lecture Theater is available against requirement of 2 as per Regulations. Facility of E class is not available.
15. Central Library: It is not air-conditioned. Capacity of Students' reading Room (outside) and Students' reading Room (inside) is 124 and 40 respectively against requirement of 150 each as per Regulations. Staff Reading Room has capacity of only 2. Journals available are 11 against requirement of 20 as per Regulations.
16. Central Photography Unit is not available.
17. Students' Hostel : Accommodation available is for 144 students against requirement of 225 as per

Regulations. Security of Girls' hostel is inadequate.
No female warden was present.

18. Residents' Hostel: Available accommodation is 32 against requirement of 76 as per Regulations.
19. Nurses' Hostel: Available accommodation is for 20 against requirement of 34 as per Regulations.
20. Residential Quarters: None available for non-teaching staff. Presently they are provided accommodation in a room in Nurses' Hostel which is grossly inadequate.
21. Common rooms for Boys and Girls are not functional.
22. Recreational facilities are not available.
23. MRD: It is partly computerized. ICD X classification of diseases is not used for indexing.
24. CSSD: It is not available.
25. Central Kitchen: It is not available.
26. Website; No information is provided as detailed in report. Citizen's Charter is not uploaded.
27. Anatomy department: Lockers are not available. Specimens are only 27.
28. Pathology department; Museum is not available. Audiovisual aids are not available in demonstration rooms.

29. Microbiology department; Infrastructure and facilities are not available.
30. Pharmacology department; Laboratories are under construction. Museum is not functional. Audio-visual aids are not available in the demonstration room.
31. Forensic medical department; 2nd demonstration room is not available. Museum Autopsy block is under construction. Audiovisual aids are not available.
32. Community Medicine Department: It is under construction.
33. Other deficiencies as pointed out in the assessment report.”

- (c) The aforesaid deficiencies are fundamental in nature and accordingly negative recommendation dated 12th February, 2015 was made to UOI and Regulation 8(3)(1)(a) of the EMC Regulations invoked.
- (d) UOI, after granting an opportunity of hearing to the petitioners, wrongly vide its letter dated 24th March, 2015 forwarded the representation / compliance dated 10th March, 2015 submitted by the petitioners’ medical college and directed MCI to review its recommendation in view of the documents submitted by the

petitioners when as per Regulation 8(3)(1)(a) of the EMC Regulations supra, upon finding deficiencies to the aforesaid extent, there was no occasion for the UOI to direct MCI to review / re-assess the petitioners' medical college.

- (e) The Executive Committee of the MCI in its meeting held on 29th April, 2015 considered the matter and concluded that the application of the petitioners for renewal of permission for admitting second batch of MBBS students could not be processed further for the academic year 2015-16 and vide impugned letter dated 11th May, 2015 to the UOI communicated so.

- (f) The contention of the petitioners with regard to the dates, including 24th January, 2015 being a Saturday and Basant Panchami and 26th January, 2015 being Republic Day is not tenable as during the hearing of W.P.(C) No.469/2014 titled *Hind Charitable Trust & Shekhar Hospital Pvt. Ltd.* supra, a time schedule was handed over for the academic year 2015-16 whereby the MCI was obliged to conduct the inspection of the

petitioners' medical college and send its recommendation by 31st January, 2015; the petitioners were thus fully aware of these dates and obliged to be ready with their complete infrastructure.

- (g) 22nd and 23rd January, 2015 when the inspection was carried out were not holidays owing to any important or religious festival as declared by either the Central Government or the State Government. Basant Panchami is neither an important religious or festive holiday as declared either by the Central Government or the State Government and thus the petitioners cannot claim shelter under Regulation 8(3) supra.
- (h) Moreover, the patients admitted in the hospital attached to the petitioners medical college cannot be discharged on account of either weekend or holiday; per contra, during long weekends and associated holidays, a lot of persons get common ailments and regular / minor surgical operations conducted.
- (i) Similarly, the Residents and faculty who discharge important functions in the treatment of patients in the hospital attached to

the medical college cannot be on leave during any such period as a matter of right.

- (j) Even if communal tension was prevailing in the city, it was incumbent upon the faculty members and Residents to be available so as to administer treatment to the victims.
- (k) The appointment of inspection team is made randomly through computer software and no human interface is involved.

5. Neither counsel during the hearing referred to the rejoinder filed by the petitioners to the aforesaid counter affidavit and thus need is not felt to refer thereto.

6. The senior counsel for the petitioners, during the hearing:

- (I) drew attention to Regulations 7 and 8 of the EMC Regulations and contended that:
 - (a) Regulation 7(a) of the EMC Regulations uses the word “inspections” indicating that respondent No.2 MCI is required to conduct more than one inspection;

- (b) Regulation 7(a)(8) requires MCI to in its factual report state whether the deficiency, if any found in infrastructure or faculty, are remediable or not;
- (c) Regulation 7 also requires the MCI to, if called upon by the Central Government, 'reconsider' its report. The said provision remained to be noticed by the Division Bench in judgment dated 28th May, 2015 in W.P.(C) No.5041/2014 in *Shree Chhatrapati Shivaji Education Society Vs. Union of India* and which led the Division Bench to hold that upon the provisos (a) to (d) of Regulation 8(3)(1) being attracted, no reconsideration has to be done by the MCI;
- (d) Regulation 8(3) further requires the MCI to ensure that inspections are not carried out at least three days before upto three days after important religious and festival holidays declared by the Central / State Government;

(e) Proviso (a) to Regulation 8(3)(1) requires only 60% bed occupancy and thus bed occupancy of less than 60% cannot be a huge deficiency;

(II) drew attention to the list of holidays in Academic Departments of Mahatma Jyotiba Phule Rohilkhand University, Bareilly and in Colleges affiliated thereto in the year 2015 mentioning the one day holiday on Saturday the 24th January, 2015 for the festival of Basant Panchami / Sh. Karpuri Thakur's Birthday;

(III) contended that the decision to grant approval or not is to be of the UOI; however, in the present case, the decision is of the MCI and not of UOI;

(IV) contended that there is no merit in the plea of MCI of having handed over time schedule during the hearing before the Supreme Court in *Hind Charitable Trust Shekhar Hospital Pvt. Ltd.* supra, inasmuch as that time schedule was not accepted by the Supreme Court;

(V) contended that even if it is to be believed that the MCI was following the time schedule handed over in the Supreme Court, the same cannot be contrary to the EMC Regulations;

(VI) contended that the time schedule does not mention any date for completion of inspection;

(VII) contended that the question of Proviso (a) to Regulation 8(3)(1) being attracted would arise only when there has been a valid inspection and if the inspection was contrary to the Regulations, the said proviso would not be attracted;

(VIII) drew attention to the newspaper cuttings to show that there were communal riots at Bareilly at the relevant time and that the bus of the petitioners' Medical College was also damaged in the said communal riots;

(IX) drew attention to the letter dated 16th June, 2015 of the Special Secretary, Uttar Pradesh Secretariat to the MCI confirming that during 22nd & 23rd January, 2015 religious stress was prevailing in the area and doctors and patients were not commutable to the Medical College

and that one bus of the petitioners' Medical College had also been damaged by the demonstrators;

(X) drew attention to Section 10A(7)(c) of the Indian Medical Council Act, 1956 (MCI Act) and contended that the MCI while making the recommendation is also to consider whether the necessary facilities in respect of staff, equipment etc. to ensure proper functioning of the Medical College have been provided "or would be provided within the time-limit specified in the scheme" and argued that thus the test to be applied is not only to be of whether the requisite faculty and infrastructure exists but also of whether, "can exist";

(XI) drew attention to the EMC Regulations to contend that the requirement therein also is not of all the infrastructures and faculty existing on the date of inspection but of satisfaction of existence thereof on paper, if proper explanation for absence at the time of inspection is rendered;

(XII) drew attention to Form-4 appended to the EMC Regulations of the form in which recommendation is to be made by the MCI to UOI

and contended that the same also in Clause 3(vii) requires MCI to take a call whether the deficiencies are remediable or not;

(XIII) contended that the form of recommendation having been statutorily prescribed, the recommendation has to be necessarily in the said form and if not in the said form is no recommendation at all;

(XIV) contended that the recommendation in the present case is not in the prescribed form and thus there is no recommendation and UOI ought to have rejected and not accepted the recommendation;

(XV) contended that the Supreme Court in *Swamy Devi Dayal Hospital and Dental College* supra has held that MCI also is to give an opportunity for rectification of deficiencies and it necessarily follows that if the Medical College reports having removed / rectified the deficiencies, is required to verify so by conducting another inspection and which has not been done;

(XVI) contended that MCI in any case was bound by the decision of the UOI contained in the letter dated 24th March, 2015 to MCI to review its recommendation qua the Medical College of the petitioners and which the MCI has failed to do;

(XVII) contended that the dicta of the Division Bench of this Court in *Shree Chhatrapati Shivaji Education Society* supra particularly in para 32 thereof is *per incuriam Swamy Devi Dayal Hospital and Dental College* supra and thus not good law;

(XVIII) contended that the Inspection Team of the MCI conducted the head account of faculty members only at 11 A.M. on 22nd January, 2015, though should have done for the whole day;

(XIX) contended that the petitioners, in para 2.18 of this petition, and of which there is no denial in the counter affidavit of the MCI, have given explanation for the missing faculty members at 11 A.M. on 22nd January, 2015;

(XX) drew attention to para 149 of *Christian Medical College Vs. Union of India* (2014) 2 SCC 305 to contend that the Supreme Court has held that amendment to Regulation 8(3) of EMC Regulations is bad in law, inasmuch as the provisions of Section 19A(2) of MCI Act requiring *inter alia* consultation of the State Governments has not been followed and further contended that hence the Amended Regulation 8(3) is to be ignored and the Unamended Regulation 8(3)

has to be treated to be in force and which does not contain the provisos and thus in no case is there to be no hearing of the application for renewal permission;

(XXI) drew attention to *Priyadarshini Dental College and Hospital Vs. Union of India* (2011) 4 SCC 623, particularly to para 23 thereof to contend that cases of grant of permission for establishment of a medical college and of grant of renewal permission for admission of students are not to be treated similarly and the object of providing annual renewal of permission is to ensure that the infrastructural and faculty requirements are fulfilled in a gradual manner and not to cause disruption;

(XXII) contended that the petitioners in the present case in Grounds XIV and XXXIV have made allegations of *mala fides* against the Inspection Team (it was however agreed that the said allegations are without any particulars and only for the reason of the Inspection Team having not followed the procedure prescribed in EMC Regulations while conducting the inspection);

(XXIII) contended that the MCI failed to notice the average bed occupancy which was not deficient as is evident from the records filed;

(XXIV) contended that the note under the time schedule now prescribed in the Regulations and which was not in existence at the time when the judgment in *Priya Gupta Vs. State of Chhattisgarh* (2012) 7 SCC 433 was pronounced enables the UOI to extend the time schedule and thus, if it is found that the refusal of renewal permission by UOI to the petitioners Medical College is wrong; the said time schedule should be extended by the UOI and if not by the UOI by this Court;

(XXV) referred to *Secretary, Cannanore District Muslim Educational Association, Karimbam Vs. State of Kerala* (2010) 6 SCC 373 to contend that the prescribed date for grant of renewal permission having lapsed cannot be held against the petitioners, if the UOI and MCI are found to be at fault;

(XXVI) referred to:

(a) judgment dated 14th August, 2013 of the Division Bench of Madras High Court in Writ Appeal No.1600/2013 in ***Madha Medical College and Hospital Vs. Union of India*** (paras 7 and 10) and which was upheld by the Supreme Court vide judgment dated 5th September, 2013 in SLP No.28011/2013 titled ***Board of Governors in Supersession of Medical Council of India Vs. Madha Medical College and Hospital;***

(b) paras 16 & 17 of judgment dated 7th August, 2013 of the High Court of Madras in Writ Appeal No.1638/2013 titled ***Board of Governors in Supersession of Medical Council of India Vs. Tagore Medical College and Hospital.***

7. The senior counsel for MCI contended:

(A) that Regulation 8(3) of the EMC Regulations does not prohibit inspection three days before and three days after all holidays but only three days before and after important religious and festival holidays declared by Central / State Government. Thus, the list of holidays declared by Mahatma Jyotiba Phule Rohilkhand University, Bareilly is irrelevant. If the MCI is to go by the list of holidays declared by the

said University, then only 3-4 days of January would have been available for inspection, when January is the most important month for inspections. It is not the case of the petitioners that Basant Panchami was declared as a holiday by the State or Central Government. In any case, Basant Panchami is not an important religious festival. A list of holidays declared by the Government of State of Uttar Pradesh for the year 2015 was handed over to show that 24th January, 2015 / Basant Panchami was not declared as a holiday by the State Government;

(B) that the contentions of the petitioners on the basis of the dicta in *Swamy Devi Dayal Hospital and Dental College* supra are not correct. The Supreme Court in the said judgment was not concerned with the aspect of inspection;

(C) that the consideration by the MCI under Section 10A(3)(a) of the MCI Act is only a paper consideration and the opportunity for rectification is provided therein only. Per contra, the consideration by the MCI under Section 10A(3)(b) of the MCI Act is distinct and at

which stage no opportunity for rectification is required to be given by the MCI;

(D) that in fact Section 10A of the MCI Act nowhere provides for compliance verification, not also in sub-section (4) thereof; it is only the EMC Regulations which have provided for compliance verification;

(E) that in *Manohar Lal Sharma Vs. Medical Council of India* (2013) 10 SCC 60 it was held that the deficiencies which are fundamental and crucial, cannot be ignored in the interest of medical education and in the interest of student community;

(F) that the question of the deficiencies being remediable can arise only when the deficiencies are above the threshold provided in Provisos (a) to (d) of Regulation 8(3)(1) and where the deficiencies are below the said threshold, the Regulations treat them as not remediable;

(G) that the Supreme Court in *Priya Gupta* supra has held that the schedule cannot be altered;

(H) attention was invited to the Assessors Guide of the MCI for Undergraduate Assessment for the year 2015-2016 to show that the verification of faculty / residents has to be at 11 A.M. only on the first date of the inspection;

(I) that there are no averments of bias or *mala fides* against the members of the Inspection Team who are from Government Medical Colleges of different regions;

(J) that the entire inspection is videographed and if the report is guided by extraneous reasons, the same would be evident on the videograph and it is not the case of the petitioners that what has been reported is contrary to the position at the situs;

(K) that the ground of communal riots which in any case were seven days prior to the inspection, is no ground as the hospitals are expected and required to run over time at such times and not to shut down shop.

8. The senior counsel for the petitioners in rejoinder contended:

- (i) that 26th January, 2015 being undisputedly an important holiday, the inspection at least to the extent on 23rd January, 2015 was within three days before the said holiday and thus bad (the senior counsel for the MCI pointed that verification of faculty and residents is only on the first day i.e. 22nd January, 2015);
- (ii) that the riots had continued till 25th January, 2015;
- (iii) that while computing the strength of faculty and residents, the roster of night duties was not seen;
- (iv) that the Supreme Court in *Swamy Devi Dayal Hospital and Dental College* supra has held that MCI is to give an opportunity not only for removal / rectification of paper deficiencies but also of deficiencies found during the inspection;
- (v) that the provision in the Regulations for reconsideration by the MCI is not in any manner relatable to, whether the deficiencies are remediable or not;
- (vi) that the Division Bench in *Shree Chhatrapati Shivaji Education Society* supra has approved rather than differed from the

judgment dated 3rd January, 2014 of the High Court of Andhra Pradesh in W.P. No.27112/2013 titled *Aditya Educational Society Vs. Union of India* MANU/AP/0003/2014.

9. I have considered the aforesaid rival contentions.

10. I have since the conclusion of hearing in this petition pronounced judgment dated 1st September, 2015 in W.P.(C) No.7128/2015 titled *Kanachur Islamic Education Trust (R) Vs. The Ministry Of Health and Family Welfare* and judgment dated 20th August, 2015 in W.P.(C) No.5941/2015 titled *Jamia Hamdard (Deemed University) Vs. Union of India* and in which judgments several of the issues as raised herein have been dealt with. In fact, the senior counsel for the petitioners herein was the senior counsel for the petitioner in *Kanachur Islamic Education Trust (R)* supra as well. Need is thus not felt to reiterate the reasoning therein. Suffice it is to record that it has been held therein:

(A) that Section 10A(3)(a) of the MCI Act does not impose any obligation on the MCI to, after inspection of the medical college and if finding any deficiency therein, given any opportunity to the medical college to rectify the defects;

(B) that *Shree Chhatrapati Shivaji Education Society* supra cannot be said to be not good law for being *per incuriam* to *Swamy Devi Dayal Hospital and Dental College* supra;

(C) that the Division Bench in *Shree Chhatrapati Shivaji Education Society* supra has held that if the deficiencies found in the medical college fall within any of the Clauses (a) to (d) of Proviso to Regulation 8(3)(1) then, even the Central Government under Section 10A(4) is not required to provide an opportunity and time to the medical college to rectify the deficiencies and even if has recommended to MCI to reconsider, MCI would not be required to reconsider, inasmuch as UOI is as much bound by the said Regulations as the MCI and the direction of the UOI to MCI to reconsider would be contrary to the Regulations;

(D) that the view taken in *Jamia Hamdard (Deemed University)* supra remains unaffected by the judgment of the same date i.e. 20th August, 2015 of the three Judges Bench of the Supreme Court in W.P.(C) No.705/2014 titled *Royal Medical Trust (Regd.) Vs. Union of India*;

(E) that the controversy whether the report of inspection is factually correct or not, cannot be adjudicated without examination and cross-examination of the witnesses and for which a writ is not the appropriate fora;

(F) that even if the recommendation of the MCI is not in Form-4 prescribed in the EMC Regulations, when no prejudice is found to have been caused therefrom and when the recommendation, though not in Form-4 is found to contain all the particulars required in Form-4 to be contained therein; the literal non-compliance with Form-4 is of no avail.

11. That leaves only the additional arguments as recorded hereinabove to be considered.

12. I am unable to hold that from mere mention of inspection in plural in Regulation 7(a), it can be held that the MCI is bound to conduct repeated inspections and / or to, after inspection, give an opportunity to rectify the deficiencies to the medical college, when the same is otherwise not borne out, neither from the Act nor from the Regulations. It cannot be forgotten that the time during which inspections can be carried out is limited and

considering the number of applications, such repeated inspections are even otherwise not feasible. Also, once it is found that the medical college, though had declared itself to be fulfilling all the parameters, is deficient in some of them, cannot be said to be having any right to rectify the deficiencies found.

13. As far as the contention, of the report / recommendation of the MCI being required to state whether the deficiencies are remediable or not is concerned, as held in *Shree Chhatrapati Shivaji Education Society* supra, the said discretion has been taken away from the inspection team and the MCI and the Regulations themselves in the proviso (a) to (d) of Regulation 8(3)(1) provide as to what deficiencies are not remediable. All other deficiencies are remediable. The deficiencies found in the present case were not remediable under the Regulations.

14. Though undoubtedly, the part of Regulation 7 dealing with “Reconsideration” was not dealt with in *Shree Chhatrapati Shivaji Education Society* but the said part cannot be read in isolation and the Regulations have to read as a whole. The Regulations, read as a whole, do not provide for an opportunity and time to rectify the deficiencies mentioned

in Clauses (a) to (d) of the proviso to Regulation 8(3)(1) to be given. As held in *Shree Chhatrapati Shivaji Education Society*, the UOI / Central government is as much bound by the Regulations as the MCI and once certain deficiencies having been made non-rectifiable, there cannot be any direction from the UOI / Central Government also to the MCI for reconsideration of the recommendation pointing out the said deficiencies.

15. The senior counsel for the petitioners, as would be evident from the narration aforesaid of the hearing, gave up the argument of inspection being not possible on 22nd January, 2015 for the same being declared a holiday by the affiliating university, within the meaning of Regulation 8(3) of the Act. The only question which thus remains to be considered is the effect of the second day of the inspection i.e. 23rd January, 2015 being within three days preceding the national holiday on 26th January, 2015. The same, in my view would not make any difference inasmuch as the essential parameters were to be inspected and assessed on the first day of the inspection only i.e. on 22nd January, 2015. I am even otherwise of the opinion that the provision in the Regulations, of the MCI ensuring that the inspections are not carried out three days before upto three days after important religious and festival holidays declared by the Central / State Government is to be applied not

mechanically but only when it is found to be affecting the inspection. In the entirety of the facts and circumstances of the present case, the factum of the second day of the inspection being within three days before the holiday on 26th January, 2015 is not found to be having the effect of annulling the inspection altogether.

16. There is absolutely no merit in the contention, that the proviso (a) of Regulation 8(3)(1) requires only 60% of the bed occupancy. The said proviso is dealing with the non rectifiable deficiencies. Else, the requisite bed occupancies have been described in the Regulations.

17. I am also unable to accept that the decision in the present case is of the MCI and not of the UOI. It is the UOI, which has after receiving the recommendation / communications aforesaid of the MCI, decided upon non renewal of permission. It cannot be lost sight of MCI is an expert body statutorily constituted to make recommendations and its recommendations are definitely entitled to due weightage by the Government. From the factum of the Central Government / UOI simpliciter accepting the recommendation of the MCI, it cannot be said that the decision is of the MCI and not of the Central Government / UOI.

18. I also tend to agree with the contention of the senior counsel for the MCI that prevalence of riot like situation cannot be an explanation for the deficiencies in a medical college and hospital and that rather the same require a higher degree of functioning by the hospital than on peaceful days. A hospital cannot be permitted to be shut down for such reasons.

19. The reference in Section 10A(7)(c) of the MCI Act to the assessment of whether the medical college would be in a position to provide the requisite faculty and infrastructure within the time limited specified in the Scheme is a reference to the stage wise provision for faculty and infrastructure under the Scheme and is not to be an explanation for non existence of the infrastructure and faculty which is required to be provided and available at the stage for which renewal permission is sought. I am therefore not able to accept that the MCI, during the inspection, is also required to assess whether the infrastructure and faculty prescribed to be available on the date of inspection if not available, is capable of being made available by the time of commencement of the academic session. The medical college, on the day of applying for renewal permission is required to declare having the requisite infrastructure and faculty for that stage and cannot be heard to say that though the requisite infrastructure and faculty is

not available but would be made available by the date of commencement of the academic session. If that were to be the case, there would be no need for inspection or surprise inspection as has been emphasized by the Supreme Court in *Manohar Lal Sharma* supra. If the only assessment required to be done by the MCI is to be of the readiness to have the requisite faculty and infrastructure available by the date of commencement of the academic session, there would have been no need for an inspection on a date prior thereto.

20. As far as the argument, of the amendment to Regulation 8(3) being required to be ignored is concerned, the challenge if any thereto has to be made before the Division Bench of this Court and not before this Bench. Moreover, there have been a number of judgments of the Supreme Court and of this Court on the amended Regulation 8(3) and I am at this stage not willing to be drawn into the said controversy.

21. I am also unable to read the dicta of the Supreme Court in *Priyadarshini Dental College and Hospital* supra as permitting grant of renewal permission even where the infrastructural and faculty requirements required to be fulfilled at that particular stage of renewal permission have

not been fulfilled or where the deficiency is in the arena of non rectifiable limits. It cannot be lost sight of that the petitioners' medical college got establishment / initial permission from UOI and MCI, without being put to the scrutiny of inspection and merely on the basis of its unilateral declaration of having complied with the requisite parameters in accordance with the general order of the Supreme Court in *Hind Charitable Trust Shekhar Hospital Pvt. Ltd.* supra pertaining to the admissions to the year 2014-15. The petitioners' medical college has been inspected now for the first time and which has revealed huge deficiencies leading to the inference that the declaration made by the petitioners for the previous year was false. For this reason also, at least qua the petitioners' medical college it cannot be said that the scrutiny at this stage should have been less severe than at the stage of grant of permission for establishment of medical college.

22. I am also unable to read the Regulations and the Assessors Guide as permitting bed occupancy to be computed on the basis of records maintained and ignoring the bed occupancy found in the inspection. Again, if the purport was to assess the bed occupancy on the basis of records maintained by the hospital, there would have been no need to provide for verification / assessment thereof during the surprise inspection. I may state that cases are

not unknown of medical colleges and attached hospitals fudging the bed occupancy in the records. It is for this reason only that physical inspection thereof has been provided in law.

23. My attention has also been drawn to the following recent judgments / orders:

- (i) Judgment dated 1st July, 2015 of the Division Bench of the High Court of Madhya Pradesh in W.P.(C) No.7521/2015 titled ***RKDF Medical College Hospital & Research Centre Vs. Union of India*** and the order dated 8th September, 2015 of the Supreme Court in SLP(C) No.19513/2015 preferred by the MCI thereagainst.
- (ii) Order dated 31st August, 2015 of the Supreme Court in SLP(C) Nos.16556-16557/2015 preferred against the judgment of the Division Bench of this Court in ***Shree Chhatrapati Shivaji Education Society*** supra with the counsel for the MCI contending that though leave has been granted by the Supreme Court but no stay of operation of the judgment been ordered.

- (iii) Order dated 24th August, 2015 of the Supreme Court of dismissal of SLP(C) Nos.23278-23279/2015 preferred by MCI against the judgment dated 5th August, 2015 of the Division Bench of this Court in *Career Institute of Medical Sciences & Hospital Vs. Union of India*.
- (iv) The Division Bench of this Court has in W.P.(C) No.8541/2015 titled *Lord Buddha Siksha Pratisthan Vs. Union of India* and in W.P.(C) No.7106/2015 titled *Malla Reddy Institute of Medical Sciences Vs. Union of India* referred the view taken by the Division Bench in *Shree Chhatrapati Shivaji Education Society* supra to a larger Bench.
- (v) Judgment dated 31st August, 2015 of the Supreme Court in SLP(C) No.15043/2015 titled *Padamashree Dr. D.Y. Patil Medical College Vs. Medical Council of India*.

Suffice it is to state that the view aforesaid has been taken after considering the aforesaid.

24. I am resultantly, unable to find any merit in the petition.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 16, 2015

'gsr/bs'