Karnataka High Court Jawaharlal Nehru Medical College vs Rajiv Gandhi University Of Health ... on 5 July, 1999 Equivalent citations: AIR 1999 Kant 483, ILR 2000 KAR 63 Author: G Bharuka Bench: G Bharuka ORDER G.C. Bharuka, J. 1. The petitioner is a medical college. It conducts the courses for under-graduate as well as post-graduate students in the faculty of medical science. In the present writ petition, the college desires quashing of letter dated 1 -9-1997 (Annexure 'K') issued by the respondent-Medical Council of India (in short, 'the MCI') by which the admission capacity of the college in respect of post-graduate courses for the academic year 1996-97 has been fixed. The petitioner-college has also questioned the consequential order dated 22-1-1997 (Annexure 'J') passed by the respondent-University by which the petitioner-college has been directed to discharge the students who have been admitted in excess of intake fixed by the MCI. There is a further prayer to regularise the admissions made in excess of the admission capacity so fixed by the MCI. The Genesis : 2. Indiscriminate admissions in professional Colleges without having any regard to the infrastructure requirements prescribed by the expert statutory bodies with tacit and express support of the State Government and affiliating Universities had been a regular feature in this State. As of fact, as found in Citizen of India's case, , which now stands affirmed by the Supreme Court in MCI v. State of Karnataka, , this rampant practice had acquired the proportion of a scandal. 3. This Court had received certain public complaints, wherein serious allegations were made against the State Government and the affiliating Universities of conspiring with the managements of the medical and dental colleges admitting students much in excess of the capacities befitting the infrastructure available with the institutions. Taking note of these allegations, this Court undertook a detailed enquiry by registering a suo motu public interest litigation in the name of Citizen of India, (supra) and on facts, the allegations were found to be true. At the first instance, the enquiry was restricted to under-graduate courses like MBBS and BDS. On a close analysis of the concerned Central and the State Laws and the constitutional scheme of distribution of legislative powers, it was inter alia held that:– "I. Section 53(10) of the State Universities Act and Section 4(1)(b) of the State Capitation Fee Act empowering the Universities and/or the State Government to fix or increase intakes of the medical college being repugnant to Sections 10-A, 10-B and 10-C of the Central Act, are held as void and inoperative. II. The power in relation to fixation and/or increase of the admission capacities of the medical colleges has to be governed strictly and exclusively under the provisions of Section 10-A/10-C of the Central Act. III. No medical college can admit any student in excess of its admission capacity fixed by the Council subject to any increase thereof as approved by the Central Government under and in accordance with the provisions of Section 10-A or Section 10-C of the Central Act. IV. The regulations framed on the aspects of medical education referred to in Sections 19-A and 33 of the Central Act are mandatory in nature." 4. The above view has been upheld by the Supreme Court in MCI's case (supra) by holding that (Pr. 31 of AIR) :– "Having thus held that it is the Medical Council of India which can prescribe the number of students to be admitted in medical courses in a medical college or institution,

it is the Central Government alone which can direct increase in the number of admissions but only on the recommendation of the Medical Council. In our opinion, the learned single Judge was right in his view that no medical college can admit any student in excess of its admission capacity fixed by the Medical Council subject to any increase thereof as approved by the Central Government and that Sections 10-A, 10-B and 10-C will prevail over Section 53 (10) of the State Universities Act and Section 41 (b) of the State Capitation Fee Act. To say that the number of students as permitted by the State Government and/or the University before June 1, 1992 could continue would be allowing an illegality to perpetuate for all time to come. The Division Bench, in our opinion, in the impugned judgment was not correct in holding that admission capacity for the purpose of increase or decrease in each of the medical colleges/institutions has got to be determined as on or before June 1, 1992 with reference to what had been fixed by the State Government or the admission capacity fixed by the medical colleges and not with reference to the minimum standard of education prescribed under Section 19-A of the Medical Council Act which the Division Bench said were only recommendatory. Nivedita Jain case, , does not say that all the regulations framed by the Medical Council with the previous approval of the Central Government are directory or mere recommendatory. It is not that only future admissions will have to be regulated on the basis of the capacity fixed or determined by the Medical Council. Plea of the State Government that power to regulate admission to medical colleges is the prerogative of the State has to be rejected." Re : Post-graduate courses and related controversy. 5. Few months before the initiation of the aforesaid proceedings in the Citizen of India's case , on 28th March 1996, Sri A. Ram Das, who happened to be a sitting MLA, had filed a public interest litigation (WP No. 8973 of 1996), inter alia, for restraining all the medical colleges in the State from admitting students to post-graduate medical courses in respect of enhanced intake or new courses started by them in respect of which the colleges had not obtained the permission of the. Central Government as required under the Indian Medical Council Act. In this case, on 2-4-1996, an interim restraint order was passed inter alia directing that- "in the meanwhile the Court directs that none of the Respondents shall pass any further orders where under any intake is either sought to be enhanced or any excess intake is sought to be approved of in respect of Post-Graduate Medical students. The Director of Medical Education shall also ensure that the views of this Court are specifically communicated to every one of the Institution under his jurisdiction in the State with a further warning that if there is even a single case of breach that may entail revocation of the recognition of the Institution." 6. Subsequently, for proper adjudication of the issues raised in the above PIL, by an order dt. 1-7-1996, the Education Secretary of the State was directed to file a personal affidavit by placing on record :– "i) details of the institutions which are presently conducting Post-Graduate Medical courses in the State with the name of Universities under which such institutions are affiliated, ii) details of intake capacity of each course, iii) date and the authority which has approved the conducting of such course." 7. Pursuant to the said order, the concerned Secretary filed his affidavit placing on record the required details for the academic years

1992-93, 1993-94, 1994-95 and 1995-96. But, since in the meantime, detailed enquiries had been undertaken in the Citizen of India's case , therefore, this case was also tied up with the above case. 8. On completion of enquiry regarding admission capacities of medical and dental colleges in respect of under-graduate courses and passing of final order in this regard in Citizen of India's case, second phase of enquiry regarding fixation of admission capacities of the colleges in respect of post-graduate courses was undertaken. In this connection, the following order was passed on 29-11-1996:– "Heard Mr. Srinivasa Reddy, learned Govt. Advocate for the respondents and the Registrar of the Rajiv Gandhi University of Health Sciences, who is present in person. 2. It will be open for the said University, which is now the only affiliating University for the Medical and Dental Colleges to finalise the admission capacity of all the colleges deemed to have been affiliated with it; keeping in view the provisions of the Medical Council Act, 1956, Dentist Act, 1948 and the Regulations framed thereunder as explained by this Court in the case of Citizen of India v. State of Karnataka, , to determine the Post-Graduate admission capacity of each of the colleges and intimate the same to the respective colleges as also to the State Government in order to facilitate the admission to those Colleges for the academic year 1996-97. 3. By next Friday, i.e. 6-12-1996 the Registrar of the said University should place on record the statement showing the permissible admission capacity of each of the Medical and Dental Colleges of the State." 9. It is a matter of record that in order to comply with the aforesaid direction, the Vice-Chancellor of the respondent-University, issued notices to the Chairmen/Principals of all medical and dental colleges in the State to furnish the required particulars in order to ascertain their permissible intake in "terms of the Medical and Dental Council Acts. On receiving the said informations from the colleges concerned, and those furnished by the MCI and the DCI, the University prepared a statement in respect of each of the medical/dental colleges conducting post-graduate degree and diploma courses. This statement was placed on record on 6-12-1996 along with the personal affidavit of the Registrar of respondent-University. The copies of the said statement was made available to all the concerned medical colleges. But, curiously, before the said report of the University could be considered in the above case, in which all the medical colleges were appearing as respondents, they preferred to question the validity of the report by filing independent writ petitions. The writ petition filed by the present petitioner was W.P. No. 35439 of 1996. 10. In the above writ petitions, one of the grounds taken for assailing the determination of admission capacity of post-graduate courses was that the respondent-University under no circumstance could have determined the intake capacity of the medical and dental colleges even if it was so done under the orders of this Court since the said power rests only with the MCI and DCI. All these writ petitions were disposed of by a common judgment by T.S. Thakur, J. In this case, it was held that, keeping in view the fact that the colleges have given admission to students in excess of admission capacities determined by the University and the same having been protected by the interim orders passed by the Court in the proceedings before him, it would be more advisable to direct the MCI/DCI to determine the admission capacities

of the colleges for the academic year 1996-97 and onwards by taking into account the infrastructures available with the institutions. Accordingly, the writ petitions were disposed of inter alia directing :–"(i) The Medical and Dental Councils of India shall take immediate and appropriate steps for the inspection of the petitioner-Medical and Dental Colleges as the case may be, with a view to determining their admission capacity for the academic year 1996-97 under the provisions of the Indian Medical Council Act and Dentists Act. The process of inspection and fixation of the admission capacities shall be completed within four months from today; (ii) The petitioner-Colleges shall within two weeks from today deposit with the Council concerned a sum of Rs. 25,000/- each towards the inspection fees of their respective Institutions and furnish all such information as the Council or the experts/Inspectors deputed by them may demand from them. The petitioners shall also extend all other facilities and cooperation to the Councils to ensure that the Inspection and consequent fixation of the capacities are completed within the time allowed. (iii) Regularisation and approval of the admissions already made by the petitioner-college shall await the determination of their admission capacities by the Council concerned, and the interim order of status quo continue to remain operative till formal orders are passed by the Councils; (iv) The petitioner-colleges shall not make any admission for the coming academic session i.e. 1997-98 except in accordance with the admission capacities determined by the Council concerned. In case, however, the process of determination of the said capacities is not for any reason completed the admissions to the Post-Graduate Course shall not be in excess of the capacities determined by the Rajiv Gandhi University of Health Sciences; (v) While fixing the admission capacities of the petitioner-institutions the Medical and Dental Councils of India may also consider the desirability of regularising the admission of the candidates already undergoing different courses, if admissions of such candidates are found to be in excess of the admission capacity determined by them. While doing so the Councils may impose such conditions as regards the infrastructure and other facilities as the Councils may deem fit and proper to prescribe; (vi) Depending upon the determination of the admission capacity by the Council concerned, the petitioners may if so advised seek enhancement in the same in accordance with the procedure prescribed by the Central enactments on the subject. 11. Pursuant to aforesaid directions, the MCI appointed its Inspectors and, after ascertaining the available infrastructures and facilities available in the colleges, fixed the admission capacities of the respective colleges for the academic year 1996-97 both for degree and diploma courses and the same was communicated to the colleges as well as the affiliating University. The petitioner-college was communicated of MCI's decision under letter dt. 1-9-1997 (Annexure 'K'). Based on the said fixation of admission capacities, the Registrar of the respondent-University, under its letter dt. 22-10-1997 (Annexure T) communicated (to) the principal of the petitioner-college about the approval of the candidates whose admissions were found well within its determined capacity with a further direction that the candidates who have been admitted in excess of the said capacity should be discharged. 12. The petitioner-college being aggrieved by the above communications of the MCI and

the University has preferred the present writ petition questioning the MCI's determination of its admission capacity on the following grounds :– i) MCI has not exercised its own discretion in fixing the capacity inasmuch as it has simply approved the recommendation of the Post-Graduate Medical Education Committee; ii) the reduction in the seats have been effected without compliance with the principles of natural justice. iii) no reasons have been given by the MCI for reduction of the admission capacity enjoyed by the college till up to the academic year 1995-96; iv) reports of the experts appointed by the MCI have not been give due consideration; and, v) MCI has failed to consider the request for regularisation of excess admissions in its proper perspective. RE: FIXATION OF ADMISSION CAPACITY: FACTS AND LAW 13. For proper appreciation and adjudication of the rival contentions raised regarding fixation of admission capacity by the Medical Council of India (in short the 'MCI') for the academic year 1996-97, I would prefer to examine the law on the subject with reference to fixation of 9 (nine) seats by the MCI for M.D. (General Medicine) as per the impugned communication at Annexure 'K' since Sri. Veerabhadrappa, learned counsel appearing for the petitioner-college, has confined his arguments only with respect to this subject. According to him, keeping in view the teacher-student ratio of 1:1, admission capacity for the above subject should have been fixed at 12 (twelve). His further contention was that fixation of admission capacity at 9 (nine) amounts to reduction in seats which could not have been done except by giving an opportunity of hearing and in any view of the matter, fixation was contrary to the statutory regulations. His further grievance against the impugned communication was that for fixing the admission capacity at a particular figure no reasons have been assigned. He had also complained that the impugned fixation has been done in a mechanical manner by the MCI by just relying on the recommendation of Post-Graduate Medication Education Committee (in short the 'P.G. Committee') and, therefore, it cannot be termed as fixation of admission capacity by the MCI. 14. Before examining the correctness of the above contentions, it may be noticed here that prior to coming into force of the Rajiv Gandhi University of Health Sciences Act, 1994 (in short the 'Health Sciences Act') with effect from 1-6-1996 i.e. academic year 1996-97, the petitioner-college was affiliated to Karnataka University established under the Karnataka State Universities Act, 1976. From the academic year 1996-97, because of the deeming provision contained in Section 5(3) of the Health Sciences Act, all the medical colleges including the petitioner-college got automatically, affiliated to the respondent-Rajiv Gandhi University of Health Sciences. 15. M.D. (Medicine) is a recognised medical qualification for the Karnataka University in terms of Section 11 of the MCI Act, 1956 (in short the 'MCI' Act) read with the First Schedule thereto. So far as the petitioner-college is concerned, the MCI had permitted it to start the course in the subject in question with 3 (three) seats in February, 1973. Prior to 1-6-1992, pursuant to certain orders of the State Government/ University, it was enjoying the intake of 8 (eight) and the same was continued by the Government for the academic years 1992-93, 1993-94, 1994-95 and 1995-96 under the Government Orders (i) G.O. HFW 67 MPS 92, dated 6-6-1992; (ii) HFW 603 MSF93, dated 7-9-1993; (iii) HFW 81

MPS 94, dated 22-12-1994; and (iv) HFW 107 MPS 95, dated 7-11-1995 respectively. These orders are referable to the powers of the State Government under Section 53(10)(b) of the State Universities Act read with Rule 5 of the Karnataka Medical Colleges and Dental Colleges Selection of candidates to P.G. Courses Rules, 1987. Under the above orders, the State Government had been specifying the total number of seats available in each subject and out of those how many were to be filled by the Government and the managements respectively. 16. According to the petitioner-college, the Karnataka University had sanctioned the intake of college for the subject M.D. (General Medicine) at 8, 10, 11, 12 and 13 for the academic years 1992-93 to 1996-97 respectively. But no documents supporting the said fact has been produced. Even if this is taken to be a fact, then it merely emphasizes and corroborates the general impression gathered by the experts in the field and the Courts that both the State Government and the University had been fixing the intake/admission capacity without taking into account the infrastructural facilities available in the medical colleges for conducting higher course in medical science as laid down by the MCI in its statutory regulations. By taking note of the empirical datas collected by this Court in Citizen of India's case (supra), the Supreme Court in the case of MCI v. State of Karnataka, (supra) has observed that (Para 29) :– "In the colleges in the State of Karnataka, the Medical Council prescribed the number of admissions that these colleges could take annually on the basis of these Regulations. Without permission of the Medical Council, the number of admissions could not be more than that prescribed at the time of granting recognition to the college. However, it appears that in violation of the provisions of the Medical Council Act, the Universities and the State Government have been allowing increase in admission intake in the medical colleges in the State in total disregard of the regulations and rather in violation thereof. These medical colleges cannot admit students over and above the intake fixed by the Medical Council. These colleges have acted illegally in admitting more students than prescribed. Universities and the State Government had no authority to allow increase in the number of admissions in the medical colleges in the State." 17. Faced with such a chaotic situation prevailing in the State and to finally set at rest the controversy regarding the permissible admission capacity of the colleges at least for the academic year 1996-97 and onwards, this Court in the earlier writ petition filed by the petitioner-college being W.P. No. 35439/96 and analogous cases, disposed of on 11-4-1997, judgment whereof has been placed at Annexure 'G', thought it proper to direct the MCI and DCI to fix the admission capacity for P.G. Courses for the year 1996-97 for the following reasons. "The real question is as to what should be the capacities of the institutions by reference to the norms laid down for fixing the same. This is something which shall have to be answered by the competent authority in the context of the infrastructure that is available with these institutions. Neither the University nor even this Court was or is in a position to satisfactorily answer or determine that aspect of the matter which makes a reference to the Councils concerned absolutely essential. When seen in the above background it is academic for this Court to examine in depth the validity of the criticism levelled against the findings returned by

the University". 18. It was in compliance to the direction of this Court, that the MCI appointed Inspectors to ascertain the infrastructural facilities available in the concerned colleges including the petitioner and thereafter on thorough examination of the reports of the Inspectors, the P.G. Committee, keeping in view the statutory regulations determined the admission capacities which was approved by the MCI as well. But still, the said determination has been questioned by the college on the grounds noticed above. 19. Before entering into further discussion, it will be appropriate to reproduce Section 10-A(1) of the MCI Act which reads as under :– 10A. 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 post-graduate 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. Explanation 1 – For the purposes of this section, "person" includes any University or a trust but does not include the Central Government. Explanation 2 – For the purposes of this section "admission capacity" in relation to any course of study or training (including post-graduate course of study or training) in a medical college, means the maximum number of students that may be fixed by the Council from time to time for being admitted to such course or training. 20. The above provision has come into force with effect from 1-6-1992. The mandatory effect of this provision has already been declared by the Supreme Court in MCI's. case (supra), in the passage reproduced hereinbefore. 21. Bearing in mind the facts noticed above, if one takes a legalistic view, then the Benchmark for application of Section 10-A of the MCI Act has to be taken as 3 (three) seats for the course in question as determined by the MCI for the academic year 1973-74. Even if some-what a liberal view is taken, the admission capacity as fixed by the Government/University for the academic year 1992-93 could not have been increased either by the State Government or University or even the MCI except under and in accordance with the procedure laid down under Section 10-A of the Act. Nonetheless, keeping in view the directions issued by this Court, in the previous writ petition as noticed above, the MCI undertook the process of de novo fixing of admission capacity by taking into account the infrastructural facilities available and the requirements of statutory regulations prescribed for maintenance of minimum standard of education in P.G. Courses. As of fact, fixation of 9 (nine) seats for the academic year 1996-97 amounts to increase of one seat as compared to the admission capacity enjoyed by the petitioner-college as on 1-6-1992. Therefore, determination of admission capacity by the MCI cannot by any stretch of imagination be termed as reduction thereof. 22. Moreover, in Citizen of India's case (supra), I had the occasion of examining the scope and purpose of the second explanation to Section 10-A of the Act. Paragraphs 59 to 63 are relevant on the point. These are- "Having so held, the next question to

be considered is that keeping in view The object of incorporating Sections 10-A, 10-B and 10-C in the Central Act and the language employed therein, what has to be the true connotation of the expression 'increase its admission capacity'. 60. According to the New Lexicon Webster Dictionary the word 'increase' means to become greater in size, amount, number, value, degree etc. According to the Random House Dictionary the said term means to make greater in any respect etc. According to Black's Law Dictionary it means enlargement, increment, addition etc. Therefore, for ascertaining whether the admission capacity of any college is deemed to have been increased for the purpose of Section 10-A of the Central Act, there has to be a benchmark of admission capacity i.e. the standard thereof with which the increase therein can be compared with. 61. Now the material and the crucial question is as to whether the admission capacity of a medical college as fixed on or before 1-6-1992 by the State Government, will form the benchmark for finding out the increase-therein for the purpose of applying the regulatory provisions contained in Section 10-A of the Central Act or the admission capacities fixed by the Council, with reference to the minimum standard of medical education prescribed under Section 19-A of the said Act, will form the benchmark for the said purpose. 62. In my opinion, the Parliament having fully delved into the said aspect, has very clearly provided that it is the admission capacity which has been fixed by the Council, will form the benchmark for the purpose of Section 10-A of the Central Act. It is so because of the Explanation 2 to Section 10-A(1) of the said Act which provides that for the purpose of the said Section"admission capacity" mean the maximum number of students that may be fixed by the Council from time to time for being admitted to the medical course in a given college. The Parliament has not given any credence to the admission capacities or intakes fixed by any State Government or the Universities which was for the obvious reasons, as noticed in the statement of objects and reasons of the Amendment, namely, that the State Governments were not adhering to the requirements of maintaining even the minimum standard of medical education while fixing the admission capacities and were working under various pressures. Therefore, it has to be conclusively held that it is the admission capacity which is fixed by the Council from time to time will form the benchmark for determining any increase therein for the purpose of Section 10-A(1) requiring previous permission from the Central Government and any violation thereof will visit the consequences envisaged under Section 10-B(3) of the Central Act, 63. The next question is whether the admission capacity of a medical college determined by the Council in the 2nd Explanation to Section 10-A(1) is one time exercise or it can be so done from time to time i.e. more than once. In the aforesaid explanation the Parliament has expressly used phrase 'time to time'. It is a well settled rule of statutory construction that "in the interpretation of statutes the Court always presume that the Legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect. (See J. K. Cotton Mills) . It appears to me that the power to determine admission capacity from time to time has been advisedly provided in the 2nd Explanation to Section 10-A(1) and is well thought of measure to ensure maintenance of minimum

standards by the medical colleges. It is for the reason that under the Scheme of the Central Act, the power to inspect and supervise the maintenance of minimum standards has been conferred only on the Council. There is no such power with any other authority including the Central Government. Therefore, even after the grant of permission by the Central Government to increase the admission capacity, if subsequently the Council, pursuant to inspection and/ or other relevant materials on records resolves that the infrastructure in college has fallen short of the required minimum standards entitling it to maintain the approved level of admission capacity, then the college cannot be permitted to admit students beyond that level unless it undertakes the statutory process contemplated under Section 10-A(1) seeking approval of the Central Government for increasing its admission level. This in-built legislative mechanism of constant vigil and overseeing the infrastructural requirements expected of the medical colleges is salutary and is aptly befitting to the object of the Act. It also ensures that the discretion in the matters of determining the admission capacities is not concentrated in any one authority thereby which minimises the chances of abuses in this regard." The above view as noticed by me has been impliedly approved by the Supreme Court in MCI's case (supra) by restoring the entire judgment. BASIS OF FIXATION 23. The MCI in the Statement of Objections, has stated that its P.G. Graduate Committee had fixed the admission capacity of the P.G. Course in question on the basis of the criterion laid down in the regulations framed under Section 33 of the MCI Act providing for minimum infrastructure required for imparting P.G. Medical Education. These regulations were framed on the basis of the recommendations of the MCI, dated 12-2-1971. Admittedly, the determination of the P.G. Committee was subsequently ratified in the General Meeting of the MCI as well. 24. In the case of Ajay Pradhan v. State of M.P., , the Supreme Court has held that the Regulations, which have been revised from time to time, have the status of Regulations under Section 33 of the MCI Act and keeping in view the statutory provisions which were in force at the material time, it was inter alia held that there cannot be any increase in the number of seats without sanction of the MCI. Regulations in its paragraph 4 under the heading 'Post-Graduate Medical Education' has provided the criterion on the basis of which the number of admission to P.G. course are to be fixed. These are- 4. The number of admissions to post-graduate courses should be based on the following criteria : (a) The number of post-graduate students shall not exceed one candidate per recognised postgraduate teacher per year. (b) The number of teaching beds available for the training of the students in the subjects of training shall also determine the number of candidates to be admitted. (c) The out-patient attendance, work turnover, the research work in the department, ambulatory care provided to patients and other variables will also be taken into consideration in fixing a ceiling on the number of candidates who may be admitted for training. (d) *** *** *** 25. From the above criteria, it is quite clear that the teacher-student ratio by itself is not a conclusive basis for fixing the admission capacity of a college imparting P.G. Courses. The other two factors noticed above are also equally important for determining the capacity because under the heading 'Method of Training' it has been specif-

ically emphasised that training cannot be based merely on didactic lectures. The in-service training requires the candidate to be a resident in the campus and should be given graded responsibility in the management and treatment of patients. Therefore, for a meaningful in-service training, the availability of teachers or hospital with certain number of beds by itself is not enough. For effective training to expertise in medical sciences, there has to be also sufficient number of out-patient, work turnover and ancillary facilities for the same. 26. Coming to the facts of the present case, keeping in view the aforesaid statutory requirements and Regulations, in the Statement of Objections filed by the MCI on 4-1 -1999, it has been categorically stated that the petitioner-college, which claims six units in the Department of General Medicine distributed between two hospitals, namely the District Hospital and the K.L.E. Society Hospital, with a combined bed capacity of 344 beds of both hospitals put together was found wanting in many aspects in both hospitals. Though clinical material in the District Hospital was excellent but in K.L.E. Society hospital only ICU beds including Cardiology were occupied which demonstrably proved that clinical material in KLE Society Hospital, where three units were there, was palpably deficient. The Secretary of the MCI has further disclosed in the above affidavit that- "KLE Society Hospital OPDs are basically super-speciality service such as Cardiology, Neurology, Diabetes, Endocrinology, Asthama, Allergy, Nephrology etc. Meaning thereby that these clinical material was basically pertaining to super-specialities whereas the recognition for the course as stated is for MD General Medicine. The K.L.E. Society Hospital does not have a regular Out-Patient Department for general patients. In view of this, the three units claimed at the K.L.E. Society Hospital in the Department of General Medicine could not be found in any way useful for training of Post-Graduate students in General Medicine, nor could it be said to qualify for training of Post-Graduate students in this Department at this Hospital." 27. In the above view of the matter, as stated in the Statement of Objections, the P.G. Committee, by taking liberal view of the matter and taking into consideration the availability of three units in the department of General Medicine at District Hospital, allowing maximum of three students per unit to be admitted for training per year, fixed the admission capacity in the P.G. Course of the Department at 9. 28. Though, in the reply filed by the petitioner-college on 8-1-1999, efforts have been made to dispute the assessment of admission capacity made by MCI by pleading certain facts, but, in my considered opinion, these aspects cannot be gone into by this Court in the writ jurisdiction since under the Explanation-II of Section 10-A of the MCI Act read with directions issued by this Court in W.P. 35439/96 (dated 11-4-1997), it is the MCI, as an expert body, who was to make assessment of the infrastructure available for imparting training in P.G. Course and thereupon determine the admission capacity. This Court cannot sit in appeal over the decision of the MCI. Moreover, as I have noticed above, going by strict letters of law, till up to 1 -6-1992, the admission capacity of the college in respect of the subject at hand was only 8 and the same has to be restricted only to that figure. But since pursuant to the order of this Court which has attained its finality, admission capacity for the academic year 1996-97 has been determined

by the MCI at 9, it will be unjust to disturb the same. On facts and in law, it would have been more advisable on the part of the petitioner-college to remain fully contented with the said fixation by the MCI instead of raising grudges and grievances against the same. 29. The next objection raised regarding fixation of admission capacity is that the same has not been done by the MCI itself but at the first instance, the decision has been taken by the P.G. Committee. In this connection, it may be recalled that the MCI has been constituted under Section 3 of the MCI Act. Section 9 of the Act empowers the MCI to constitute amongst its members, an Executive Committee and such other Committees for general or special purpose as the MCI deems necessary to carry out the purposes of the Act. Fixation of admission capacity of a medical college in terms of Explanation II to Section 10-A of the MCI Act, needs to be done by the MCI and, therefore, in terms of Section 9 of the MCI Act, it had the competence to entrust the task of ascertaining the admission capacity of the medical colleges, as has been done in the present case, to any of its Committees. Admittedly, the decision taken by the P.G. Committee was duly ratified and approved by the MCI in its general meeting. Therefore, the objection taken regarding the decision of the P.G. Committee is totally misplaced and is accordingly rejected. RE : REGULARISATION 30. Much was sought to be inferred from the direction given by the learned single Judge in W.P. 35439/96 and analogous cases (dated 11-4-1997) (supra), wherein in substance it was stated that if the admissions to the P.G. Courses during the academic year 1996-97 were found to be in excess of the admission capacity determined by the MCI, the latter may consider the desirability of regularising such admissions. But, keeping in view this direction, the Secretary of the MCI, in her affidavit dated 18-11-1998 has clearly and rightly averred that (para 10):– "The PG Committee has also considered the possibility and desirability of regularising the excess admissions, if any, for the year 1996-97 on the fixation of the admission capacity as directed by this Hon'ble Court. Having noticed that the same was not feasible, nor statutorily permissible, and under the circumstances had taken a conscious decision, it directed the Universities and colleges to discharge the students who are found to be in excess. This decision regarding the desirability or otherwise of regularising the excess admission in the light of the directions contained in the orders of this Hon'ble Court is taken by the PG Committee on behalf of the Council as is the practice in all other matters pertaining to the PG Medical education. There is no deviation by the Council on this aspect of the matter nor it can be characterised as there being no decision by the Council as per the directions of this Hon'ble Court". 31. The reply given on behalf of the MCI on the above count can conveniently be bisected into two parts, (i) keeping in view the infrastructure available at the college, the regularisation of admission of three excess admissions given in M.D. (General Medicine) was not feasible, and (ii) even otherwise, the statutory provisions contained in the MCI Act, does not authorise the MCI to give legal sanction to such illegal admissions. 32. So far as the 1st part is concerned, I have discussed in detail about the infrastructure found by the MCI and its Committee which does not, in the opinion of the Council, justify admission of more than 9 students in the P.G. Course in ques-

tion. This decision of the MCI, which is a statutorily constituted expert body, cannot be interfered with by this Court by way of judicial review and muchless in the absence of any allegation of mala fide which has not been pleaded in the present case. Therefore, the stand of the MCI based on non-feasibility of regularisation is quite justifiable. 33. Apart from the above ground, statutory, impressibility on the part of the MCI to regularise the excess illegal admissions is of more importance. Once it is conceded that the power to approve the increase in admission capacity, over and above what is fixed by the MCI, lies only with the Central Government and that too on submission of a Scheme in terms of Section 10-A of the Act, it is impossible to conceive that the MCI can still, under the guise of regularisation, be permitted to have the power of approving increase in admission capacities. Any direction to any statutory authority to act in derogation or contravention of any mandatory statutory provision will be destructive of the rule of law and bound to create chaos and indiscipline in the administration of statutory provisions. In support of this view of mine, I may usefully refer to the decision of the Supreme Court in the case of State of Punjab v. Renuka Singla, , wherein the Supreme Court in para 8 has held that- "But, at the same time, a counter attempt is also apparent and discernible, by which the candidates who are not able to get admissions against the seats fixed by different statutory authorities, file writ applications and interim or final directions are given to admit such petitioners. We fail to appreciate as to how the High Court or this Court can be generous or liberal in issuing such directions which in substance amount to directing the authorities concerned to violate their own statutory rules and regulations, in respect of admissions of students. It cannot be disputed that technical education, including medical education, requires infrastructure to cope with the requirement of giving proper education to the students, who are admitted. Taking into consideration the infrastructure, equipment, staff, the limit of the number of admissions is fixed either by the Medical Council of India or Dental Council of India. The High Court cannot disturb that balance between the capacity of the institution and number of admissions, on"compassionate ground". The High Court should be conscious of the fact that in this process they are affecting the education of the students who have already been admitted, against the fixed seats, after a very tough competitive examination. According to us, there does not appear to be any justification on the part of the High Court, in the present case, to direct admission of respondent No. 1 on"compassionate ground" and to issue a fiat to create an additional seat which amounts to a direction to violate Section 10-A and Section 10-B(3) of the Dentists Act referred to above." 34. In the case of Guru Nanak Dev University v. Parminder Kr. Bansal, , it was found by the Supreme Court that admission of one ineligible candidate was allowed to be continued in the internship course pursuant to interim order and subsequently final order was passed by the High Court as a logical corollary and consequence of implementation of the interim orders by directing that internship to be regularised. In appeal before the Supreme Court, Mr. Gambhir, learned counsel for the University took an exception to the order of the High Court by raising a plea that such type of orders would introduce element of indiscipline in aca-

demic life and expose the system to ridicule and render any meaningful control of academic work impossible. Keeping in view these aspects, the Supreme Court set aside the order of the High Court by holding that (para 6) :– "Sri Gambhir is right in his submission. We are afraid that this kind of administration of interlocutory remedies, more guided by sympathy quite often wholly misplaced, does no service to anyone. From the series of orders that keep coming before us in academic matters, we find that loose, ill-conceived sympathy masquerades as interlocutory justice exposing judicial discretion to the criticism of degenerating into private benevolence. This is subversive of academic discipline, or whatever is left of it, leading to serious impasse in academic life. Admissions cannot be ordered without regard to the eligibility of the candidates. Decisions on matters relevant to be taken into account at the interlocutory stage cannot be deferred or decided later when serious complications might ensue from the interim order itself. In the present case, the High Court was apparently moved by sympathy for the candidates than by an accurate assessment of even the prima facie legal position. Such orders cannot be allowed to stand. The Courts should not embarrass academic authorities by itself taking over their functions." 35. As noticed above, right from the inception of the academic year 1996-97, the petitioner-college was well aware of the provisions contained in Section 10-A of the Act and the order dated 2-4-1996 passed by this Court in W.P. No. 897/96 and also of the order dated 29-11-1996 passed in Citizen of India's case pursuant to which second phase of enquiry was undertaken. Still, it admitted excess students and appears to have continued them pursuant to the interim order passed by this Court in W.P. No. 35439/96 and analogous cases at its own risk. For these reasons, no regularisation of illegal/excess admission is permissible. 36. Before parting, it may be worthwhile to notice here that now statutory regulations under Section 108/33 of the MCI Act for identification of students admitted in excess of admission capacity fixed in terms of Section 10-A have been framed. These Regulations are called "Medical Council of India (Criteria for Identification of Students Admitted in Excess of Admission Capacity of Medical Colleges) Regulations, 1977 (in short the"Regulations'). 37. Regulation 4 of the Regulations, reads thus :– "4. Sanctioned in-take capacity in medical college :– The Council shall every year, prior to the start of under-graduate/post-graduate academic medical course, intimate the medical colleges and State/Union Territory Governments, the sanctioned intake capacity of students for undergraduate/post-graduate courses of medical colleges. 38. The above regulation casts a statutory duty on the MCI to intimate every year, prior to the start of the course, to the medical colleges and respective Governments about the admission capacities of the under-graduate and post-graduate courses as per Section 10-A of the MCI Act. Now, it is a matter of record that the Secretary, MCI in her affidavit dated 2-2-1999, has placed on record the communication made by the MCI to the colleges in the State and the State Government regarding admission capacity of the colleges in the State. 39. On the other hand, Regulations 5 and 6 of the Regulations cast a mandatory duty on the part of the medical colleges to furnish a year-wise list of students admitted by them from the academic year 1992-93. These Regulations read as under

:– 5. Medical colleges to furnish year-wise list of students :– All medical colleges conducting under-graduate/post-graduate course shall, within three months of publication of these regulations in the Official Gazette, furnish year-wise list of students admitted during the academic sessions commencing in the year 1992 till the year in which these regulations are published for Bachelor of Medicine and Bachelor of Surgery and post-graduate course (for each course separately) to the Council. 6. The Competent Authority shall furnish lists of students admitted during each academic year for Bachelor of Medicine and Bachelor of Surgery and post-graduate course to the Council and the State Medical Council and the affiliating University, within one month of the closure of admission or 31st October of that year, whichever is earlier. 40. According to Regulation 5 of the Regulations, year-wise list of students admitted during the academic sessions 1992-93 to 1996-97 was required to be furnished by 23-11-1997. Thereafter, as per Regulation 6, the colleges and the respective authorities entrusted with the duty of giving admission (competent authority) are required to furnish the list of candidates admitted during each of the academic years within one month of the closure of the admission or 31st October of that year whichever is earlier. 41. Regulation 7 requires that the above lists of students admitted should be necessarily supported by affidavit of Dean or Principal of the medical college clearly stating the sanctioned admission capacity of the college and that no admission has been made in excess of the said capacity. This regulation also provide the manner of determination of students admitted in excess of the capacity fixed by the MCI and on such identification the concerned student will have to face the consequences of non-recognition for the purposes of the Act. The Regulations also provide for adjudication of dispute arising out of the identification of excess admission by the Central Government whose decision is to be final. 42. Now, keeping in view these statutory regulations, in my opinion, the malpractices so far undertaken by the unscrupulous medical colleges should come to an end. For the aforesaid reasons and the observations, the petitioner is not entitled to the reliefs as claimed in the writ petitions which are accordingly dismissed. No order as to costs.