

Padmashree Dr. D.Y. Patil Medical ... vs Medical Council Of India & Anr on 31 August, 2015

Equivalent citations: AIR 2015 SUPREME COURT 3320

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Bench: M.Y. Eqbal, Arun Mishra

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
SPECIAL LEAVE PETITION [C] NO.15043 OF 2015

Padmashree Dr. D.Y. Patil Medical College ... Petitioner

Vs.

Medical Council of India & Anr. ... Respondents

J U D G M E N T

ARUN MISHRA, J.

1. The petitioner has filed the present special leave petition aggrieved by the judgment and order dated 5.5.2015 passed by a Division Bench of the High Court of Delhi in L.P.A. No.235/2015 thereby reversing the judgment and order passed by the Single Bench in the matter of increase of seats for MBBS course from 150 to 250 from the academic session 2015-16. The petitioner preferred writ petition before the Single Bench of the High Court of Delhi on being aggrieved by the rejection of its application by the Central Government on the ground that essentiality certificate was not filed along with the application form. The petitioner claimed that it had filed the application for increase in the intake capacity on 30.8.2014. The essentiality certificate could not be submitted by the petitioner as it had not been issued to it by the Government of Maharashtra. It was issued on 3.9.2014 and was submitted to the Central Government on 5.9.2014. On 16.10.2014 the Central Government returned the application on the ground that the essentiality certificate and the consent of affiliation were not submitted by the petitioner along with the proposal dated 1.9.2014. The last date of submitting the

duly completed application was over on 31.8.2014. The petitioner was advised to submit a fresh application for the academic year 2016-17. On 24.10.2014, the petitioner requested for condonation of delay in submitting the essentiality certificate. Thereafter, the petitioner filed a writ application which was allowed vide order dated 8.4.2015 by the Single Bench of the High Court. On 17.4.2015, the Medical Council of India (for short “the MCI”) filed a Letters Patent Appeal No.235/2015 as against the judgment and order passed by the Single Bench which was allowed vide judgment and order dated 5.5.2015. Hence, the petitioner has assailed the same in the present special leave petition.

2. A Division Bench of the High Court has, inter alia, relied upon a decision of this Court in *Educare Charitable Trust v. Union of India & Anr.* [AIR 2014 SC 902] and held that for the present academic session 2015-16, no direction can be issued due to time schedule.

It was submitted on behalf of the petitioner that once the essentiality certificate was submitted by it, the application could not have been returned/rejected in a mechanical manner due to the aforesaid deficiency and the delay ought to have been condoned. In the circumstances, as delay was occasioned by the Government of Maharashtra, it was beyond the control of the petitioner. Illegality has been committed in rejecting the petitioner’s prayer to condone the delay on the ground that essentiality certificate was not submitted within the prescribed time limit. Reliance has been placed on the decisions of this Court in *S.L.P. [C] No.14838/2015 – Ponnaiyah Ramajayam Institute of Science & Technology Trust v. MCI & Anr.* decided on 15.7.2015, *C.A. No.8054/2013 – Royal Medical Trust (Regd.) v. Union of India & Anr.* decided on 10.9.2013; and *W.P. [C] No.414/2015 – Pondicherry Institute of Medical Sciences & Anr. v. Union of India & Anr.* ordered on 7.8.2015.

3. Per contra, it was contended on behalf of the respondents that the MCI is a statutory body and is governed by the Act and the rules and also by the directions issued by this Court for strict adherence to the time schedule and it has an obligation towards maintenance of highest standards of medical education. Time schedule and regulations are binding and mandatory. Under section 10A of the Indian Medical Council Act, 1956 (hereinafter referred to as “the Act of 1956”) prior permission of the Central Government for establishing any medical college or starting any higher course of study has to be obtained. Increase in the intake capacity is governed by “The Opening of a New or Higher Course of Study or Training (including Post-graduate Course of Study or Training) and Increase of Admission Capacity in any Course of Study or Training (including a Postgraduate Course of Study or Training) Regulations, 2000 (hereinafter referred to as “the Regulations of 2000”). The Regulations require the essentiality certificate to be necessarily appended to the application form.

4. It is also submitted by the MCI that the criteria set out in the Establishment of Medical College Regulations, 1999 is also required to be fulfilled. The schedule thereof prescribes the time schedule. The rejection of the application is appropriate as incomplete applications cannot be entertained. Time schedule is required to be observed as held by this Court in umpteen number of decisions and now if any inspection is ordered, it can be only for the academic year 2016-17 and not for the academic session 2015-

16. The decision-making process not only involves inspection but the decision by other competent bodies of the MCI and, thereafter, by the Central Government. The decision of the respondents is just and proper, no case for interference is made out in breach of time-schedule to make the inspection for the academic session 2015-16.

5. Section 10A of the Act of 1956 mandates prior permission to be obtained from the Medical Council of India/Government of India to establish new medical colleges/opening of a new or higher course of study/increase in the admission capacity. Various factors have been specified in Section 10A(7) which are to be taken into consideration by the MCI while making its recommendations to the Central Government. The Regulations of 2000 have been framed in exercise of power under section 10A read with section 23 of the Act of 1956. Regulation 1 requires an application to be filed before the Central Government with permission of the State Government. Regulation 3 deals with the qualification criteria. Regulation 3(2) requires the permission letter regarding desirability and feasibility of having an increase in the existing medical college/institution, which has to be obtained by the applicant from the respective State Government/Union Territory Administration. Regulations 1, 3, 4 and 6 are extracted hereunder :

“SCHEME FOR PERMISSION OF THE CENTRAL GOVERNMENT TO INCREASE THE ADMISSION CAPACITY IN ANY COUSE OF STUDY OR TRAINING (INCLUDING POST GRADUATE COURSE OF STUDY OR TRAINING) IN THE EXISTING MEDICAL COLLEGES/INSTITUTIONS.

?1. INSTRUCTIONS TO THE MEDICAL COLLEGE/ INSTITUTION:-

For increasing the number of seats in the MBBS, Post-graduate Diploma Degree/Higher Specialty courses, the medical college/institution should conform to the regulations prescribed by the Council. They should apply to the Central Government for this permission along with the permission of State Government, affiliation granted by an University recognized under University Grants Commission Act or State Act or Central Act and in conformity with the Medical Council of India Regulations, along with documentary evidence to show the additional financial allocation, provision for additional space and equipment and other infrastructural facilities and provision for recruitment of additional staff as per the Council norms.

?x x x x x

3. QUALIFICATION CRITERIA:-

The medical college/institution shall qualify to apply for increasing the number of admission in MBBS/PG Diploma/Degree/Higher Specialty Course in the existing medical college/institution if the following conditions are fulfilled :-

1. (1) The Medical College/Institution is recognized by the Medical Council of India for running MBBS/PG Diploma/PG Degree/Higher Speciality Courses ;

The above Clause has been substituted with the following in terms of Notification published. on 29.12.2009 in the Gazette of India and the same is also annexed at ANNEXURE-III :-

"The medical college/institution must be recognized by the Medical Council of India for running Bachelor of Medicine and Bachelor of Surgery/post Graduate Course; however, the medical college/institute which is not yet recognized by the Medical Council of India for the award of MBBS degree may apply for increase of intake in Post Graduate Courses in pre-clinical and para-clinical subjects of Anatomy, Physiology, Biochemistry, Pharmacology, Pathology, Microbiology, Forensic Medicine & Community Medicine at the time of 4th renewal i.e. along with the admission of 5th Batch for the MBBS Course".

Or (2) Medical College/Institution has received the formal permission of the Central Government under section 10A of the Indian Medical Council Act, 1956 (102 of 1956) and has started the post-graduate course in which the increase in admission capacity is sought.

2. The permission letter regarding desirability and feasibility of having an increase of seats in the existing medical College/institution for aforesaid Courses has been obtained by the applicant from the respective State Government or the Union Territory Administration.

3. Letter of University's permission for increasing the admission capacity in any course of study or training (including a postgraduate course of study or training) in seats in the existing medical college/institution has been obtained by the medical college/institution from the university to which it is affiliated.

The Clauses "3.2 and 3.3" have been substituted with the following in terms of Notification published on 29.12.2009 in the Gazette of India and the same is also annexed at ANNEXURE-III :-

"3.2 That the. Essentiality Certificate in the prescribed format regarding no objection of the State Government/Union Territory Administration for opening of New or Higher Course of Study or Training (Including Post Graduate Course of Study or Training) and Increase of Admission Capacity in any Course of Study or Training (Including a Post Graduate Course of Study or Training) in. the medical college/institution and availability of the adequate clinical material as per the Council Regulations' have been obtained by the applicant from the concerned State Government/Union Territory Administration, as the case may be.

3.3 That Consent of Affiliation in the prescribed format with respect to opening of New or Higher Course of Study or Training (Including Post Graduate Course of Study or Training) and Increase of Admission Capacity in any Course of Study or Training (Including a Post Graduate Course of Study or Training) has been obtained by the Medical College/institution from the University to which it is affiliated." 4 . That the medical college/institution has a feasible and time bound programme to provide additional equipment and infrastructural facilities like the number of staff, space,

funds, equipment and teaching beds etc., for increased numbers as laid down in the Medical Council of India Regulations.

5. The ratio of teaching staff and students shall be as laid down in the Medical Council of India Regulations on Minimum Standard Requirements for the Medical College for 50/100/150 Admissions in a medical college for Bachelor of Medicine and Bachelor of Surgery (MBBS) and the Post-graduate Medical Education Regulations for post-graduate admissions .

.....

4. REGISTRATION OF APPLICATION:-

Incomplete application will be returned to the medical college/institution by the Ministry of Health and Family Welfare along with the enclosures and application fee.

Application found complete in all respects will be registered by the Ministry of Health and Family Welfare and forwarded to Council within 30 days from the date of receiving it all for evaluation and recommendations. Acceptance of the application will only signify the acceptance of application for evaluation. It will, however, under no circumstances mean approval of the application for grant of permission.

5. x x x x x

6. EVALUATION BY MEDICAL COUNCIL OF INDIA :-

The Council shall evaluate the application to accept the desirability and prima facie feasibility for increasing the admission capacity at the existing medical college/institution and the capability of the medical college/institution to provide the necessary resources and infrastructure for the scheme.

While evaluating the application, the Council may seek further information, clarification or additional documents from the applicant as considered necessary and shall carry out a physical inspection to verify the information, clarification or additional documents supplied by the medical college. The dates of receipt of application for increase in admission capacity in postgraduate courses and processing dates are given in the schedule. The dates of receipt of application and processing of applications in respect of increase of seats in MBBS course shall be as per the schedule included in the Establishment of Medical College Regulations, 1999”.

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6. Appendix II to format of application is also relevant and the same is extracted below :

“APPENDIX -II FORMAT OF APPLICATION FOR PERMISSION OF THE CENTRAL GOVERNMENT TO INCREASE THE ADMISSION CAPACITY IN MEDICAL COLLEGES/INSTITUTIONS.

APPLICATION FOR INCREASE IN ADMISSION CAPACITY MBBS/ M.D. / M.S./ DIPLOMA/D.M./M.Ch./ COURSE..... ..

(Specify the name of the Course) PARTICULARS OF THE APPLICANT

- 1. NAME OF THE APPLICANT (IN BLOCK LETTERS)**
- 2. ADDRESS (IN BLOCK LETTERS)**
- 3. REGISTERED OFFICE (NO., STREET, CITY, PIN CODES, TELEPHONE, TELEX, TELEFAX)**
- 4. CONSTITUTION (STATE GOVERNMENT/ UNION TERRITORY ADMINISTRATION/ UNIVERSITY/ AUTONOMOUS BODY, SOCIETY/TRUST)**
- 5. REGISTRATION/ INCORPORATION (NUMBER AND DATE)**
- 6. NAME OF AFFILIATING UNIVERSITY**
- 7. NO. OF SEATS APPROVED AND DATE OF RECOGNITION BY MEDICAL COUNCIL OF INDIA.**

SIGNATURE OF APPLICANT NAME AND DESIGNATION OF MEDICAL COLLEGE.

LIST OF ENCLOSURES

- 1. Attested copy of the Essentiality Certificate issued by the respective State Government/ Union Territory Administration on the prescribed proforma.**
- 2. Attested Copy of the Consent of Affiliation issued by a recognised University.**
- 3. Authorization letter addressed to the Bankers of the Applicant authorizing the Central Government/ Medical Council of India to make independent enquiries regarding the financial track record of the applicant.**
- 4. Attested copy of the letter from Medical Council of India approving recognition of the college/ institution, if any.**

Note: All the copies shall be attested by any gazetted officer. "

Appendix to format of application for permission makes it clear that an attested copy of essentiality certificate is required to be enclosed with the application form so as to make it complete. It is also apparent from Regulation 6 that the time schedule included in the Establishment of New Medical College Regulations, 1999 (for short “the 1999 Regulations”) is applicable for increase in the intake capacity also.

7. The 1999 Regulations, as amended in 2012, prescribe different dates in its time schedule which are extracted below :

“1. (i) These Regulations may be called the “Establishment of Medical College Regulations (Amendment), 2012.

(ii) They shall come into force from the date of their publication in the Official Gazette”

6. In the “ESTABLISHMENT OF MEDICAL COLLEGE REGULATIONS, 1999”, in “SCHEDULE FOR RECEIPT OF APPLICATION FOR ESTABLISHMENT OF NEW MEDICAL COLLEGES AND PROCESSING OF THE APPLICATIONS BY THE CENTRAL GOVERNMENT AND THE MEDICAL COUNCIL OF INDIA”, the following shall be substituted as under

:-

?SCHEDULE FOR RECEIPT OF APPLICATIONS FOR ESTABLISHMENT OF NEW MEDICAL COLLEGES AND PROCESSING OF THE APPLICATIONS BY THE MEDICAL COUNCIL OF INDIA.

S. No.	Stage of processing	Last Date
1.	Receipt of applications by the	From 1st August Council to 31st August (both days inclusive) of any year
2.	Issue of Letter of Intent by	30th April the Council
3.	Receipt of reply from the	31st May applicant by the Council for consideration for issue of Letter of Permission
4.	Issue of Letter of Permission	15th June by the Council

Note : The time schedule indicate above may be modified by the Central Government, for reasons to be recorded in writing, in respect of any class or category of applications.

Note.---(1) The information given by the applicant in Part I of the application for setting up a medical college that is information regarding organisation, basic infrastructural facilities, managerial and financial capabilities of the applicant shall be scrutinised by the Medical Council of India through an inspection and thereafter the Council may recommend issue of letter of intent by the Central Government.

(2) Renewal of permission shall not be granted to a medical college if the above schedule for opening a medical college is not adhered to and admissions shall not be

made without prior approval of the Central Government.” It is apparent that the application is required to be submitted to the Central Government from 1st to 31st August and thereafter the applications, which are in order, are to be forwarded by the Central Government to the MCI and the MCI, in turn, is required to send its recommendations and the Central Government has to issue a Letter of Intent by 30th of April next year. The applicant has to send reply to the Central Government by 31st May. For issue of letter of permission by the Council last date was 15.6.2015.

8. Reliance has been placed by the MCI on Dental Council of India v. S.R.M. Institute of Science & Technology & Anr. [(2004) 9 SCC 676] in which this Court has laid down that an incomplete application cannot be entertained. This Court held thus :

“10. In this case, the High Court made an interim order to complete the processing of the application including inspection even in the absence of the permission or essentiality certificate from the State Government in terms of the Regulations framed by the Dental Council of India. The process of the courts or the process of law should not be allowed to subvert the law. In cases of recognition of dental colleges or starting of higher courses, this Court has in several cases including Islamic Academy of Education v. State of Karnataka [2003 (6) SCC 697], State of Maharashtra v. Indian Medical Assn. [2002 (1) SCC 589] etc. held that they are of mandatory character and have got to be complied with. When that is the position in law, the High Court ought not to have made an interim order to process the application even in the absence of the permission or essentiality certificate because the application will not be complete without being accompanied by permission or essentiality certificate by the State Government along with certain other documents. An incomplete application cannot be processed either by the Central Government or the Dental Council. The argument advanced on behalf of the respondents will set at naught the law that in certain cases the courts need not insist on production of permission or essentiality certificate of the State Government, particularly, when the regulations insist upon the same. To decide such a matter even in the absence of the Dental Council and the State Government as if they have no role to play in the matter is only to bypass the law, when statutory duties have been assigned and each one of those authorities has got a separate role to play. It may be that the Government of India takes the ultimate decision in the matter but to state that these authorities only aid the Government of India and hence it is not necessary to make them a party to the proceedings is not at all appropriate or acceptable to us. However, that would not be the end of the matter. In the present case, pursuant to the interim direction issued by the High Court, inspection has taken place and a report has been submitted by an inspection team appointed by the Dental Council of India which is kept in a sealed cover by the Dental Council of India. It would be more appropriate to process the application on the first respondent furnishing the permission or essentiality certificate and other relevant documents as provided under the relevant Regulations and the scheme framed for the purpose of filing an application for starting a new or higher course in the college. On furnishing such permission or essentiality certificate, the Dental Council and the Government of

India shall take appropriate steps as provided under the relevant Act and Rules or Regulations. Shri P.P. Rao submits that a time of eight weeks may be granted to furnish the permission or essentiality certificate to the Government of India. We, therefore, direct that if such permission or essentiality certificate issued by the State Government is furnished within a period of eight weeks, the proposal of the first respondent for starting new/higher courses shall be processed by the Dental Council of India and the Government of India and appropriate orders made thereon within eight weeks thereafter”.

This Court has laid down that incomplete applications cannot even be processed by the Central Government or the Dental Council. The application will not be complete without being accompanied by permission letter or essentiality certificate issued by the State Government.

9. To contend that compliance with regulations is necessary to ensure standard medical education, reliance has also been placed on behalf of the MCI on a decision of this Court in *K.S. Bhoir etc. v. State of Maharashtra & Ors.* [(2001) 10 SCC 264] which is as follows :

“8. Coming to the first question, since long time past, establishing of a medical college and medical education therein are governed by the Indian Medical Council Act, 1956 (hereinafter referred to as “the Act”) and the Dentists Act, 1948. Despite there being such provisions, it was experienced that a 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 bring more stringent provisions in the Act. With the aforesaid view of the matter, in the year 1993, Sections 10-A, 10-B and 10-C were inserted in the Medical Council Act by amending Act 31 of 1993. Similarly, the provisions of Sections 10-A, 10-B and 10-C were also incorporated in the Dentists Act, 1948. Sub-section (1) of Section 10-A of the Act provides that no person shall establish a medical college or no medical college shall open a new or higher course of study or training or increase its admission capacity in any course of study or training except with the previous permission of the Central Government obtained in accordance with the provisions of the Act. Sub-section (2) thereof provides that every person or medical college desirous of opening a medical college or increase its admission capacity in any course of study or training, including a postgraduate course of study or training shall submit to the Central Government a scheme prepared in accordance with the provisions of the Act and the Central Government shall refer the said scheme to the Medical Council for its recommendation. Sub-section (3) of Section 10-A further provides that on receipt of such a scheme by the Council, it may obtain such other particulars, as may be considered necessary and consider the said scheme having regard to the factor referred to in sub-section (7) of

Section 10-A of the Act and send its recommendations to the Central Government. Under sub-section (4) of Section 10-A, the Central Government, on receipt of the recommendation of the Medical Council is empowered to either approve or disapprove the scheme. It may grant or refuse permission to open a medical college or increase its admission capacity. If it is found that the scheme is not in conformity with the provisions of the Act and Regulations framed thereunder, it may refuse to accord permission to increase the admission capacity in any course of study or training. Section 33 of the Act empowers the Medical Council to make regulations for carrying out the purposes of the Act. The Medical Council, in exercise of power conferred by Section 33 read with Section 10-A of the Act, has framed regulations known as “the Establishment of New Medical Colleges, Opening of Higher Courses of Study and Increase of Admission Capacity in Medical Colleges Regulations, 1993” (hereafter referred to as “the Regulations”). The said Regulations provide for eligibility criteria to be complied with even for making an application and part of the said Regulations deal with the requirements to be complied with when any medical college applies for increase in admission capacity in the college. A perusal of the provisions of Section 10-A read with the Regulations shows that it is mandatory on the part of the institution or management desirous of increasing its admission capacity in any course of study to submit a scheme complying with the provisions of sub-section (7) of Section 10-A and the requirements envisaged under the Regulations. If any of the infrastructure facilities, as required either under sub-section (7) or under the Regulations are absent, it is open to the Central Government to refuse permission for increase in the admission capacity in any course of study in a medical college. The object of compliance with requirements mentioned in sub-section (7) of Section 10-A and the Regulations is to ensure the maintenance of highest standard of education.

In *Medical Council of India v. State of Karnataka* [1998 (6) SCC 131] and *Preeti Srivastava (Dr) v. State of M.P.* [1999 (7) SCC 120], it was held that the Regulations framed by the Medical Council under Section 33 of the Act are mandatory. In *Medical Council of India v. State of Karnataka* [1998 (6) SCC 131], while dealing with the admission made in excess of intake capacity fixed by the Council, this Court observed thus: (SCC p. 157, para

29) “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.” The compliance with the requirements under the Act and the Regulations being mandatory, in the absence of their compliance, no permission can be granted by the Central Government for increase in admission capacity in any course in any medical college. In the present case, the State Government sought one-time increase in admission capacity in various medical colleges on the premise that medical colleges possessed all the facilities. This was not sufficient.

What was required, was that medical colleges desirous of one-time increase in admission capacity should have submitted a scheme prepared in accordance with the Act and the Regulations to the Central Government. No such scheme was submitted to the Central Government and the Medical Council has no occasion to verify the sufficiency of the facilities and other requirements. There being no compliance with requirements under the Act, the Central Government was justified in refusing the permission for one-time increase in the admission capacity in the medical colleges. We do not, therefore, find any infirmity in the order of the Central Government when it refused to grant permission to the State Government to have one-time increase in admission capacity in Medicine and Dentistry in various medical colleges located in the State of Maharashtra.

10. The decision in Govt. of A.P. & Anr. v. Medwin Educational Society & Ors. [(2004) 1 SCC 86] regarding essentiality certificate has also been pressed into service by learned counsel for the respondent-MCI which is to the following effect :

“23. It is not in dispute that one of the qualifying criteria to render an association eligible for permission to set up a new medical and dental college is to the following effect:

“Essentiality certificate regarding the desirability and feasibility of having the proposed medical college/dental college at the proposed location has to be obtained by the applicant from the respective State Governments or the Union Territory Administration and that the adequate clinical material is available as per the Medical Council of India’s requirements.”

24. The statutory requirements as laid down in the Act and the Regulations are, therefore, required to be complied with before application filed by the person or association for setting up a medical college is taken up for consideration.”

11. The time schedule which has statutory force, has been ordered to be strictly adhered to by this Court in a plethora of decisions. This Court in Mridul Dhar (Minor) & Anr. v. Union of India & Ors. [(2005) 2 SCC 65] has laid down that for establishment of new medical colleges/increase in intake capacity, application should be filed within the prescribed period and only such applications which are complete in all respects, deserve/have to be treated as applications under section 10A. The complete applications are required to be forwarded to the MCI within the time frame that is by 30th September. In Mridul Dhar (supra), it was held as under :

“27. In exercise of the powers conferred by Section 10-A read with Section 33 of the Act, MCI made the establishment of new medical colleges, opening of higher courses of study and increase of admission capacity in the Medical Council of India Establishment of Medical College Regulations, 1999. The Regulations, inter alia, provided as a qualifying criterion that the eligible organisation shall abide by the Indian Medical Council Act, 1956 as modified from time to time and the Regulations framed thereunder and shall qualify to apply for permission to establish new medical colleges only if the conditions therein are fulfilled. One of the conditions is that

essentiality certificate regarding the desirability and feasibility of having the proposed medical college at the proposed location has been obtained and that the adequate clinical material available as per Medical Council of India requirements has been obtained by the applicant from the respective State Government or the Union Territory Administration. It also provides that the applicant own and manage a hospital of not less than 300 beds with necessary infrastructural facilities and capable of being developed into a teaching institution as prescribed by the Medical Council of India, in the vicinity of the proposed medical college. MCI has also made the establishment of the Medical College Regulations, 1999 in exercise of powers conferred by Section 10-A and Section 33 of the Act, inter alia, prescribing the form of essentiality certificate as a qualifying criterion to make application for permission to establish a medical college. These Regulations stipulate that essentiality certificate in Form 2 regarding no-

objection of the State Government/Union Territory Administration for the establishment of the proposed medical college at the proposed site and availability of adequate clinical material as per the Council Regulations, have been obtained by the person from the State Government/Union Territory Administration concerned. The form of essentiality certificate requires a certificate from the competent authority to the following effect:

“It is certified that:

The applicant owns and manages a 300-bedded hospital which was established in....

It is desirable to establish a medical college in the public interest.

(c) Establishment of a medical college at ... by (the name of society/trust) is feasible.

Adequate clinical material as per the Medical Council of India norms is available.

It is further certified that in case the applicant fails to create infrastructure for the medical college as per MCI norms and fresh admissions are stopped by the Central Government, the State Government shall take over the responsibility of the students already admitted in the college with the permission of the Central Government.” x x x x x

30. It cannot be doubted that proper facilities and infrastructure including a teaching faculty and doctors is absolutely necessary and so also the adherence to time schedule for imparting teaching of highest standards thereby making available to the community best possible medical practitioners. It cannot be said that such facilities are not insisted upon for Section 10-A seats. No instance has been brought to our notice where a Section 10-A seat in a government college has not been recognised under Section 11. The all-India quota seats are applicable only to government colleges. In many colleges, full-fledged seats for all intent and purposes insofar as medical education is concerned, whether in a new medical college or in the increased intake in an existing college, are continuing as Section 10-A seats. Prima facie, we see no reason why such seats shall not be taken into

consideration for calculating 15% share of all-India quota. The 15% quota seats get substantially reduced by not taking into account Section 10-A seats. We direct the Central Government, DGHS and MCI to examine this aspect in detail and submit a report, on consideration whereof we would finally decide the matter regarding inclusion of Section 10-A seats for working out 15% all-India quota.

x x x x x

32. Having regard to the professional courses, it deserves to be emphasised that all concerned including Governments, State and Central both, MCI/DCI, colleges — new or old, students, Boards, universities, examining authorities, etc. are required to strictly adhere to the time schedule wherever provided for; there should not be midstream admissions; admissions should not be in excess of sanctioned intake capacity or in excess of quota of anyone, whether State or management. The carrying forward of any unfilled seats of one academic year to next academic year is also not permissible.

x x x x x

35. Having regard to the aforesaid, we issue the following directions:

1 to 3. x x x x x

4. It shall be the responsibility of all concerned including Chief Secretaries of each State/Union Territory and/or Health Secretaries to ensure compliance with the directions of this Court and requisite time schedule as laid down in the Regulations and non-compliance would make them liable for requisite penal consequences.

x x x x x

14. Time schedule for establishment of new college or to increase intake in existing college, shall be adhered to strictly by all concerned.

15. Time schedule provided in the Regulations shall be strictly adhered to by all concerned failing which the defaulting party would be liable to be personally proceeded with.”

12. This Court in *Medical Council of India v. Manas Ranjan Behera & Ors.* [(2010) 1 SCC 173] has reiterated the directions issued by this Court in *Mridul Dhar's case* (supra) which is in terms following :

“2. It may be noticed in *Mridul Dhar v. Union of India* [(2005) 2 SCC 65] this Court directed that all the parties shall comply with the directions issued by this Court as regards admission of students in the medical and dental colleges. In Direction 15 of para 35 of the judgment, we had also indicated, “Time schedule provided in the Regulations shall be strictly adhered to by all concerned failing which the defaulting

party would be liable to be personally proceeded with.” In view of these directions, the High Court should not have passed the impugned order.”

13. This Court in *Priya Gupta v. State of Chhattisgarh & Ors.* [(2012) 7 SCC 433] has laid down that every person, officer or authority who disobeys directions of this Court of adherence to the time schedule, shall be liable to be prosecuted under the provisions of the Contempt of Courts Act. Relevant portions of the directions issued by this Court in the said case are extracted hereunder :

“40. The schedules prescribed have the force of law, inasmuch as they form part of the judgments of this Court, which are the declared law of the land in terms of Article 141 of the Constitution of India and form part of the Regulations of the Medical Council of India, which also have the force of law and are binding on all concerned. It is difficult to comprehend that any authority can have the discretion to alter these schedules to suit a given situation, whether such authority is the Medical Council of India, the Government of India, State Government, university or the selection bodies constituted at the college level for allotment of seats by way of counselling. We have no hesitation in clearly declaring that none of these authorities are vested with the power of relaxing, varying or disturbing the time schedule, or the procedures of admission, as provided in the judgments of this Court and the Medical Council of India Regulations.

41. Inter alia, the disadvantages are:

x x x x x (3) The delay in adherence to the schedule, delay in the commencement of courses, etc. encourage lowering of the standards of education in the medical/dental colleges by shortening the duration of the academic courses and promoting the chances of arbitrary and less meritorious admissions.

42. The Medical and Dental Councils of India, the Governments and the universities are expected to act in tandem with each other and ensure that the recognition for starting of the medical courses and grant of admission are strictly within the time-frame declared by this Court and the Regulations. It has come to the notice of this Court that despite warnings having been issued by this Court and despite the observations made by this Court, that default and non-adherence to the time schedules shall be viewed very seriously, matters have not improved. Persistent defaults by different authorities and colleges and granting of admission arbitrarily and with favouritism have often invited criticism from this Court.

x x x x x

45. The maxim *boni judicis est causas litium dirimere* places an obligation upon the Court to ensure that it resolves the causes of litigation in the country. Thus, the need of the hour is that binding dicta be prescribed and statutory regulations be enforced, so that all concerned are mandatorily required to implement the time schedule in its true spirit and substance. It is difficult and not even advisable to keep some windows open to meet a particular situation of exception, as it may pose impediments

to the smooth implementation of laws and defeat the very object of the scheme. These schedules have been prescribed upon serious consideration by all concerned. They are to be applied *stricto sensu* and cannot be moulded to suit the convenience of some economic or other interest of any institution, especially, in a manner that is bound to result in compromise of the abovementioned principles.

x x x x x

47. All these directions shall be complied with by all concerned, including the Union of India, Medical Council of India, Dental Council of India, State Governments, universities and medical and dental colleges and the management of the respective universities or dental and medical colleges. Any default in compliance with these conditions or attempt to overreach these directions shall, without fail, invite the following consequences and penal actions:

47.1. Every body, officer or authority who disobeys or avoids or fails to strictly comply with these directions *stricto sensu* shall be liable for action under the provisions of the Contempt of Courts Act. Liberty is granted to any interested party to take out the contempt proceedings before the High Court having jurisdiction over such institution/State, etc. 47.2. The person, member or authority found responsible for any violation shall be departmentally proceeded against and punished in accordance with the Rules. We make it clear that violation of these directions or overreaching them by any process shall tantamount to indiscipline, insubordination, misconduct and being unworthy of becoming a public servant.

47.3. Such defaulting authority, member or body shall also be liable for action by and personal liability to third parties who might have suffered losses as a result of such default.

x x x x x 78.4. With all the humility at our command, we request the High Courts to ensure strict adherence to the prescribed time schedule, process of selection and to the rule of merit. We reiterate what has been stated by this Court earlier, that except in very exceptional cases, the High Court may consider it appropriate to decline interim orders and hear the main petitions finally, subject to the convenience of the Court. We may refer to the dictum of this Court in *Medical Council of India v. Rajiv Gandhi University of Health Sciences* [2004 (6) SCC 76], SCC para 14 in this regard.

78.5. We have categorically returned a finding that all the relevant stakeholders have failed to perform their duty/obligation in accordance with law. Where the time schedules have not been complied with, and rule of merit has been defeated, there nepotism and manipulation have prevailed. The stands of various authorities are at variance with each other and none admits to fault. Thus, it is imperative for this Court to ensure proper implementation of the judgments of this Court and the regulations of the Medical Council of India as well as not to overlook the arbitrary and colourable exercise of power by the authorities/colleges concerned.”

14. The MCI is required to undertake inspections and thereafter is required to point out the deficiencies to institutions, invite comments and send its recommendations to the Central Government. There are various stages which are time-consuming and the schedule has a purpose of bringing uniformity of commencement of academic session at the same time.

15. In the instant case, the application was admittedly incomplete when it was filed. Though there is a dispute whether it was filed before 31st August, 2014. It was submitted on behalf of the MCI that it was filed on 02.09.2014. Be that as it may. Even assuming that it was filed before 31.8.2014, admittedly it was an incomplete application as the essentiality certificate issued by the Government of Maharashtra was not enclosed along with the application form due to which application came to be rejected and delay has taken place for which the petitioner has to blame itself. A Division Bench of the High Court has relied upon the decision in *Educare Charitable Trust v. Union of India & Anr.* (supra) in which this Court has laid down thus :

"14. As per the aforesaid time-schedule, the applicant-college desirous of increasing the admission capacity is to submit the application from 1st August to 30th September. This was done by the petitioner. However, what was found that the petitioner was not meeting the qualifying criteria as on that date because with respect to existing admission capacity, it had not been recognized so far. The applications are to be forwarded by the Central Government, once they are found to be in order and meeting the qualifying criteria laid down in Regulation 19, by 31st October in respect of BDS course. This time was extended upto 31st December in this year. After an application is forwarded to the DCI, DCI is supposed to evaluate the scheme for increasing admission capacity as per the procedure laid down in Regulation 21 which lays down that the DCI is required to ascertain the desirability and prima facie feasibility for increasing the admission capacity at the Dental College. It is also required to satisfy itself about the capability of the Dental College to provide necessary resources and infrastructure for the scheme. DCI is even required to conduct physical inspection of the college before forming an opinion as to whether the applicant satisfies the condition of feasibility of increasing the admission capacity. This process, naturally, is time consuming. As per the time-schedule referred to above, time upto 15th June is given for the DCI to make recommendation to the Central Government. Such a report containing its recommendation is to be given in terms of Regulation 22. Thereafter, Central Government is required to go into the said recommendation and if it is found that applicant-college deserves the permission to increase the admission capacity, Letter of Permission is to be issued by 15th July. This time frame is to ensure timely admissions of students.

15. Having regard to the above, it is not possible to accede to the request of the petitioner to change the time-schedule when the last date for admitting the students, which was July 15, 2013, expired long ago. If the Central Government forwards the application to the DCI at this juncture, DCI shall hardly have any time to look into the feasibility of the scheme as per the requirements contained in Regulation 21. We have to keep in mind that in the schedule annexed to the Regulations 2006, six to eight

months time is given to the DCI for this purpose. We are, thus, of the view that the High Court did not commit any error in holding that in the given circumstances mandamus could not be issued to the Central Government to exercise its discretionary powers in a particular manner to modify the time- schedule. Sanctity to the time-schedule has to be attached. It is too late in the day, insofar as present academic session is concerned, to give any direction. This Court has highlighted the importance of cut off date for starting the professional courses, particularly medical courses, and repeatedly impressed upon that such deadline should be tinkered with. (See: Priya Gupta Vs State of Chhattisgarh (2012) 7 SCC 433 and Maa Vaishno Devi Mahila Mahavidyalaya Vs. State of U.P. (2013) 2 SCC 617)."

This Court has reiterated the law laid down in Priya Gupta (supra) and the sanctity to the time schedule has to be attached.

16. In W.P. [C] No.705/2014 – Royal Medical Trust (Regd.) and Anr. v. Union of India & Anr. decided on 20.8.2015, this Court has observed that the Schedule must take care of following aspects :

“(A) Initial assessment of the application at the first level should comprise of checking necessary requirements such as essentiality certificate, consent for affiliation and physical features like land and hospital requirement. If an applicant fails to fulfil these requirements, the application on the face of it, would be incomplete and be rejected. Those who fulfil the basic requirements would be considered at the next stage.

(B) Inspection should then be conducted by the Inspectors of the MCI. By very nature such inspection must have an element of surprise. Therefore, sufficient time of about three to four months ought to be given to the MCI to cause inspection at any time and such inspection should normally be undertaken latest by January. Surprise inspection would ensure that the required facilities and infrastructure are always in place and not borrowed or put in temporarily.

(C) Intimation of the result or outcome of the inspection would then be communicated. If the infrastructure and facilities are in order, the concerned Medical College should be given requisite permission/renewal.

However if there are any deficiencies or shortcomings, the MCI must, after pointing out the deficiencies, grant to the college concerned sufficient time to report compliance.

(D) If compliance is reported and the applicant states that the deficiencies stand removed, the MCI must cause compliance verification. It is possible that such compliance could be accepted even without actual physical verification but that assessment be left entirely to the discretion of the MCI and the Central Government. In cases where actual physical verification is required, the MCI and the Central Government must cause such verification before the deadline.

(E) The result of such verification if positive in favour of the Medical College concerned, the applicant ought to be given requisite permission/renewal. But if the deficiencies still persist or had not been removed, the applicant will stand disentitled so far as that academic year is concerned.” It is apparent from the aforesaid decision and the regulations that the application at the first instance is required to be complete and incomplete applications are liable to be rejected. Thereafter, there has to be an inspection and other stages of decision-making process.

17. In S.L.P. [C] No.7846/2014 – Medical Council of India v. N.K.P. Salve Institute of Medical Sciences & Anr. filed against the judgment dated 24.2.2014 of the High Court of Judicature at Bombay, Bench at Nagpur, this Court vide order dated 14.3.2014 has disposed of the special leave petition considering the time-schedule with a direction to consider the application for starting a medical college for the next year provided the respondents submitted it along with the relevant documents as per the practice in vogue.

18. The MCI has also referred to decision of this Court in W.P. [C] No.172/2014 – Singhad Technical Education Society v. Union of India decided on 3.5.2014 in which the application for the academic year 2014-15 was directed to be considered for the academic year 2015-16.

19. The MCI has also cited the decision in C.A. No.6564/2014 – Medical Council of India v. Shree Balaji Medical College & Hospital & Anr., in which this Court vide order dated 18.7.2014 directed the application for academic year 2014-15 to be considered for next year i.e 2015-16. In another decision in S.L.P. [C] No.14759/2014 – Medical Council of India v. Society for Advancement of Environmental Sciences & Ors. wherein vide order dated 2.7.2014 the pending application for the academic year 2014-15 was ordered to be treated as an application for the academic year 2015-16 and the inspection was ordered to be completed by 31.10.2014.

20. On an analysis of the aforesaid decisions, it is crystal clear that the time schedule is required to be strictly observed. Hence, it would not be appropriate to issue any direction for consideration of petitioner’s case for the ongoing academic session 2015-16 in which inspection is yet to be made. It is too late in the day to direct inspection for the session 2015-16 as all the dates fixed in the time schedule are over and fixation of time schedule has a purpose behind it and from a particular date the session has to commence and part of seats to be filled by a competitive examination held on all-India basis. Any relaxation in the time schedule would make holding of examinations on an all India basis a farce and several complications would arise. Everything cannot be allowed to go haywire. The entire curriculum would be unsettled in case breach of time schedule is permitted. The power given to Central Government to relax can be exercised in exceptional circumstances and that too without disturbing the academic session. The decision-making process after inspection has various steps and it cannot be ordered to be done in haste resulting in sub- standard education and half-baked doctors.

21. On behalf of the petitioner, reliance has been placed on a decision of this Court in S.L.P. [C] No.14838/2015 – Ponnaiyah Ramajayam Institute of Science and Technology Trust v. Medical Council of India & Anr. (decided on 15.7.2015) wherein this Court has directed the inspection to be made and to submit the recommendation in a sealed cover after four weeks to this Court. No doubt

about it that the application which was filed was for the academic session 2015-16 but this Court has not decided the question whether inspection would enure for the benefit of the ongoing academic session 2015-16 and in case on inspection it is decided to recommend the prayer made whether it would be for academic year 2016-17 or for the ongoing session 2015-16 and also question of breach of time schedule. What has not been decided, cannot be deduced by inferential process. What would be the ultimate recommendation on inspection, can also not be anticipated. The requisite Committee of the MCI and Central Government have to ultimately consider the report/recommendations. Various aspects including time schedule are required to be taken into consideration for issuance of any positive direction as to session.

22. Reliance has also been placed by petitioner on a decision of this Court in Royal Medical Trust (Regd.) v. Union of India & Anr. decided on 10.9.2013 in which a direction was issued by this Court to make inspection and to decide the fate of the application in accordance with law within one month's time. The rejection of application in a mechanical manner was held to be bad in law. A direction was issued to pass appropriate orders in accordance with law. No positive direction has been issued by this Court to start the college. Even otherwise in view of the decisions in Priya Gupta (supra) and Mridul Dhar (supra), other decisions and recent order dated 10.8.2015 passed by this Court in S.L.P. [C] No.22472/2014 – Medical Council of India v. Subharti Medical College, Meerut in which the application for the session 2015-16 was dismissed and the MCI was directed to ensure that necessary inspection for the academic year 2016-17 shall be done within six weeks, it would be appropriate to direct inspection for session 2016-17.

23. Considering the statutory time schedule and that the same is already over and in the facts and circumstances of the case, it would not be appropriate to direct inspection to be made and thereafter a decision to be taken for the current academic session 2015-16 as that would be in breach of the law laid down in various decisions of this Court which is binding. Thus, we direct that the application which has been submitted by the college for the academic session 2015-16 be considered for the next academic session, subject to fulfilment of other requisite formalities, as may be necessary, and thereafter the MCI shall conduct an inspection well- in-time as per the time schedule fixed under the Regulations of 1999. The Special Leave Petition is dismissed with the aforesaid modification. Ordered accordingly.

No costs.

.....J.

(M.Y. Eqbal)

New

Delhi;

.....J.

August 31, 2015.

(Arun Mishra)

