Royal Medical Trust vs Union Of India on 12 September, 2017

Equivalent citations: AIR 2017 SC (SUPP) 841, 2017 (16) SCC 605, (2017) 4 SCT 620, (2017) 11 SCALE 307, (2017) 4 ESC 667, 2017 (4) KLT SN 82 (SC), 2018 (1) ADJ 10 NOC

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Bench: A.M. Khanwilkar, Amitava Roy, Dipak Misra

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITIOIN (CIVIL) NO. 747 OF 2017

Royal Medical Trust and Another …Petitioner(s)
Versus
Union of India and Another …Respondent(s)

JUDGMENT

Dipak Misra, CJI.

In this writ petition, the petitioner-Trust and the college have prayed for issue of a writ of certiorari for quashing the order dated 31.05.2017 passed by the respondent No.1 whereunder the petitioners have been debarred from admitting 150 students in the MBBS course in the academic years 2017-18 and 2018-19 and further to restrain the respondent No.2, Medical Council of India (MCI), to encash the bank guarantee of Rs. 2 crores furnished by the petitioner-institution. That apart, the prayer is to quash the order dated 14.08.2017 passed by the respondent No.1 for reiterating the said order. The relief has been sought for issue of writ of mandamus, commanding the respondent No.1 to grant renewal for the academic year 2017-18 keeping in view the recommendations dated 14th May, 2017, submitted by the Oversight Committee constituted in terms of the order of this Court and to direct the respondents to permit the institution to admit 150 students in MBBS Course for the academic year 2017-18.

2. At the very inception, it is necessary to state that though many a document has been filed and prolonged, anxious, forceful and sometimes vehement arguments have been canvassed, yet the controversy, as we perceive, lies in a narrow compass. And to appreciate the same, we are required

to set out the chronology of litigation. Its life is not long.

3. The petitioner No.1, a Trust, established under the Indian Trust Act, 1882 decided to establish a new Medical College by the name of Kerala Medical College at Palakkad, Kerala. It submitted an application under Section 10-A of the Indian Medical Council Act, 1956 (for brevity, "the Act") to the respondent No.1 to establish the Medical College in the name and style of Kerala Medical College and Hospital seeking admission of 150 students in the MBBS Course for the academic year 2014-15. As certain deficiencies were pointed out by the MCI, it was not granted Letter of Permission (LOP) for the year 2014-15. Thereafter, in 2015, an application was filed for grant of LOP for the academic session 2016-17. A team of assessors of the respondent No. 2 conducted assessment of the college in regard to grant of LOP for the academic year 2016-17 and submitted its report. The respondent No.2, on the basis of the reports of the assessors dated 16.12.2015 and 17.12.2015 in its Executive Committee meeting dated 28.12.2015 made recommendation to the respondent No.1 not to grant LOP for the academic year 2016-17. On 18.01.2016, the respondent No.1 afforded an opportunity of hearing to the petitioner as contemplated under Section 10A(4) of the Act and the petitioner gave its explanation as regards the deficiencies pointed out by the respondent No.2 and the respondent No.1 being satisfied referred back the matter to the respondent No. 2 for review.

4. As the factual narration would evince, on 10th February, 2016, a team of assessors of the respondent No. 2 conducted verification assessment for grant of LOP for the academic year 2016-17. In the mean time, the Constitution Bench in Modern Dental College and Research Center and others v. State of Madhya Pradesh and others 1 constituted the Oversight Committee headed by Justice R.M. Lodha former CJI to oversee the functioning of the MCI. We shall refer the relevant paragraphs of the said judgment at a later stage. On 13th May, 2016, the report of the assessors team was considered by the Executive Committee of the respondent No.2 in its meeting dated 13.05.2016 and on 14.5.2016 the MCI recommended the disapproval of the scheme of the petitioner under Section 10-A of the Act for the academic year 2016-17. However, after Oversight Committee was constituted, the Central Government issued a public notice informing all the Medical 1 (2016) 7 SCC 353 Colleges to submit a compliance report concerning their respective colleges who had applied for LOP for 2016-17. As the facts would unfold, the 1st respondent sent the compliance report along with the reply of the MCI to the Oversight Committee for consideration which on 11.08.2016 approved the same for the year 2016-17 imposing certain conditions.

5. At this juncture, it is necessary to state in what circumstances the Oversight Committee was constituted by the Constitution Bench. It referred to the functioning of MCI and keeping in view certain other factors including a report of the Expert Committee directed the Central Government to consider and to take further appropriate action in the matter at the earliest. At the same time, however, in exercise of power under Article 142, the Court constituted the Oversight Committee to oversee the functioning of the MCI and all other matters. In this regard the Court said:-

> "In view of the above, while we do not find any error in the view taken by the High Court and dismiss these appeals, we direct the constitution of an Oversight Committee consisting of the following members:

1. Justice R.M. Lodha (former Chief Justice of India)

2. Prof. (Dr) Shiv Sareen (Director, Institute of Liver and Biliary Sciences)

3. Shri Vinod Rai (former Comptroller and Auditor General of India) A notification with respect to constitution of the said Committee be issued within two weeks from today. The Committee be given all facilities to function. The remuneration of the Members of the Committee may be fixed in consultation with them.

The said Committee will have the authority to oversee all statutory functions under the MCI Act. All policy decisions of MCI will require approval of the Oversight Committee. The Committee will be free to issue appropriate remedial directions. The Committee will function till the Central Government puts in place any other appropriate mechanism after due consideration of the Expert Committee Report. Initially the Committee will function for a period of one year, unless suitable mechanism is brought in place earlier which will substitute the said Committee. We do hope that within the said period the Central Government will come out with an appropriate mechanism."

6. As mentioned earlier, the Government constituted the Oversight Committee and thereafter the assessment report and the views of the Executive Committee were sent to the Oversight Committee.

7. The Oversight Committee, after some analysis, took the applications for consideration pertaining to establishment of Medical Colleges for the academic year 2016-2017, forwarded by Ministry of Health and Family Welfare (MHFW) on 22nd July, 2016. Dealing with the present college, the Oversight Committee directed as follows:-

"Kerala Medical College, Palakkad, Kerala, MBBS (150 seats), LOP for 2016-2-17 u/s 10A. The Institution had stated that all deficiencies (faculty/resident/clinical material and infrastructure) pointed out by MCI have been made up by them. The OC peruse the statement in the compliance report submitted by the college. These statements satisfy the criteria stated in para 3.1 above. Accordingly, the application is approved subject to conditions laid down in aforementioned para 3.2."

8. Para 3.2 of the said order read as follows:-

"3.2 The applicants for new private colleges for UG for 2016-17 whose applications, have been approved by OC, shall submit to MHFW, within 15 days of issue of notification of approval by MHFW u/s 10A(4) of IMC Act, 1956, the following:

(i) An affidavit from the Dean/Principal and Chairman of the Trust concerned, affirming fulfillment of all deficiencies and statements made in the respective compliance report submitted to MHFW by 22 June 2016,

(ii) A bank guarantee in the amount of Rs. 2 crore in favour of MCI, which will be valid for 1 year or until the first renewal assessment, whichever is later. Such bank

guarantee will be in addition to the prescribed fee submitted alongwith the application.

3.2(a) OC may direct inspection to verify the compliance submitted by the college and considered by OC, anytime after 30 September 2016.

(b) In default of the conditions (i) and (ii) para 3.2 above and if the compliances are found incomplete in the inspection to be conducted after 30 September 2016, such college will be debarred from fresh intake of students for 2 years commencing 2017-18."

9. In compliance of the conditional approval granted by the Oversight Committee, the assessment was carried out on 28th and 29th December, 2016, by the team of assessors and the following defects were pointed out:-

"1. Deficiency of faculty is 13.84% as detailed in the report.

2. Shortage of Residents is 8.69% as detailed in the report.

3. No Anti Sera are available in Microbiology laboratory.

4. Bed Occupancy is 50% at 10 a.m. on day of assessment as under:

#	Department	Beds	
		Available	Occupied
1	General Medicine	72	29
2	Paediatrics	24	20
3	TB & Chest	08	07
4	Psychiatry	08	06
5	Skin & VD	08	07
6	General Surgery	90	31
7	Orthopaedics	30	25
8	Opthamology	10	02
9	ENT	10	02
10	O.G.	40	21
	TOTAL	300	150

5. Casualty: Separate casualty for O.G. is not available. Crash Cart is not available.

6. O.T.: Preoperative beds are not available.

7. ICUs: There was only 1 patient in ICCU, SICU on day of assessment.

8. Only 1 out of 2 Static X-ray machines has AERB approval.

9. Blood Bank: Only 2 units were dispensed on day of assessment.

10. ETO Sterlizer is not available.

11. OPD: Separate Registration counters for OPD/IPD are not available.

12. Audiometry (Soundproof & Air-conditioned) is not available. There was no Audiometer.

13. Other deficiencies as pointed out in the assessment report."

10. The Executive Committee took into consideration the report of the assessors and letter dated 29th December, 2016 of the Principal, Kerala Medical College, Palakkad regarding promotion of Dr. Munir U.A. from Assistant Professor to Associate Professor in the department of Pediatrics and the clinical material and leave of the faculty and resident doctors during MCI assessment. Regard being had to the deficiencies, the MCI recommended to the Central Government not to grant Letter of Permission.

11. Thereafter, the Union of India passed an order on 31st May, 2017, debarring the petitioner-College to admit the students in the MBBS course in the academic years 2017- 2018 and 2018-2019 and also authorized the MCI to encash the bank guarantee of Rs.2.00 crore. The said order reads thus:-

"In continuation to this Ministry's letter dated 20.08.2016 granting conditional permission for establishment of a medical college 150 seats for the academic year 2016-2017 on the basis of approval communicated by Supreme Court Mandated Oversight Committee on MCI and after granting an opportunity of hearing to the College with reference to the recommendation of the MCI's letter NO.MCI-36(41)(e-86)/2016-

Med./167376 dated 15.01.2017, I am directed to convey the decision of the Central Government to debar Kerala Medical College, Palakkad from admitting students in next two academic years i.e. 2017-2018 & 2018-2019 and also to authorize MCI to encash the Bank Guarantee of Rs.2.00 crore.

You are therefore, directed not to admit students in the MBBS course in the academic years 2017-2018 & 2018-2019 at your College. Thereafter, next batch of students shall be admitted in the College only after obtaining permission of the Central Government for renewal.

Admissions made in violation of the above directives will be treated as irregular and action will be initiated under IMC Act & Regulations made thereunder."

12. The petitioner-Trust challenged the order of the Central Government before the High Court of Kerala at Ernakulam in Writ Petition (C) No.21195/2017 (Y) and the High Court placing reliance on the judgment passed by this Court in Glocal Medical College and Super Specialty Hospital & Research Centre v. Union of India 2 on 1st August, 21017, passed the following order:-

> "In the light of the order passed by the Apex Court in Writ Petition (Civil) No.411 of 2017 and connected matters on 01.08.2017, as the medical colleges involved in these cases are similarly placed, I deem it appropriate to pass an interim order directing the Central Government to consider afresh the materials on record pertaining to the issue of renewal or otherwise of the letter of permission granted to the petitioner colleges/institutions. Ordered accordingly. It is made clear that while undertaking this exercise, the Central Government shall re-evaluate the 2 (2017) 8 SCALE 356 recommendations/views of the MCI, Hearing Committee, Director General of Health Services and the Oversight Committee, as available on records. The Central Government shall also afford an opportunity of hearing to the petitioner colleges/institutions to the extent necessary.

The process of hearing and the final reasoned decision thereon, as ordered, shall be completed peremptorily, within a period of fifteen days from today."

13. In pursuance of the aforesaid order, the Central Government on 14th August, 2017, passed an order declining Letter Of Permission to the petitioner-institution. The Central Government noted:-

> "Whereas, the MCI vide letter dated 15.1.2017 has informed and recommended to the Ministry as under:
>
> "In view of the above, the college has failed to abide by the undertaking it had given to the Central Govt. that there are no deficiencies as per clause 3.2(i) of the directions passed by the Supreme Court mandated Oversight Committee vide communication dated 11/8/2016. The Executive Committee, after due deliberation and discussion, have decided that the college has failed to comply with the stipulation laid down by the Oversight Committee. Accordingly, the Executive Committee recommends that as per the directions passed by Oversight Committee in para 3.2(b) vide communication dated 11/08/2016 the college should be debarred from admitting students in the above course for a period of two academic years i.e. 2017-18 & 2018-19 as even after giving an undertaking that they have fulfilled the entire infrastructure for establishment of new medical college at Palakkad by Royal Medical TGrust under Kerala University of Health Sciences, Thrissur the college was found to be grossly deficient. It has also been decided by the Executive Committee that the Bank Guarantee furnished by the college in pursuance of the directives passed by the Oversight Committee as well as GOI letter dated 20/08/2016 is liable to be enchashed. Ministry decided to grant a personal hearing to the College on 08.02.2017 by the DGHS. The Hearing Committee after considering the oral and written submission of the College, submitted its report to the Ministry. In its report, the

Hearing Committee observed as under:

Sl. No	Deficiencies reported by MCI	Observations of hearing committee
i.	Deficiency of faculty is 13.84% as detailed in the report.	No satisfactory justification for deficiencies.
ii.	Shortage of Residents is 8.69% as detailed in the report	
iii.	No Anti Sera are available in Microbiology laboratory.	
iv.	Bed occupancy is 50% at 10 a.m. on day of assessment as under	

#	Departure	Beds Available	Occupied
1	General Medicine	72	29
2	Paediatrics	24	20
3	TB & Chest	08	07
4	Psychiatry	08	06
5	Skin & VD	08	07
6	General Surgery	90	31
9	ENT	10	02
10	O.G.	40	21
	Total	300	150

v. Casualty : Separate Casualty for O.G. is not available. Crash Cart is not available vi. O.T. : Preoperative beds are not available vii. ICUs : There was only 1 patient in ICCU, SICU on day of assessment.

viii. Only 1 out of 2 Static X-ray machines has AERB approval.

ix. Blood Bank: Only 2 units were dispensed on day of assessment.

x. ETO Sterilizer is not available. xi. OPD : Separate Registration counters for OPD/IPD are not available.

xii. Audiometry (Soundproof & Air-conditioned) is not available. There was no Audiometer.

> Whereas, the Ministry forwarded the Hearing Committee report to the OC for guidance. The OC vide its letter dated 14.05.2017 conveyed their following views to the Ministry:-
>
> (i) Faculty:- Considering the 7 members of faculty (out of 8) as explained by the College, the deficiency is 3.03% which is within the acceptable limits.
>
> (ii) Residents:- Considering the 4 residents as explained by the College, there is no deficiency.
>
> (iii) No Anti Sera:- The deficiency is subjective though explained by the College.
>
> (iv) Bed occupancy:- The College has explained the grounds.
>
> (v) Casualty:- The College has explained the grounds. This deficiency is subjective. No MSR.
>
> (vi) OT:- The College has explained the grounds.
>
> (vii) ICUs:- The College has explained the grounds. This deficiency is subjective. No MSR.
>
> (viii) X-Ray machines:- The statement of College is correct as seen from the attached approvals.
>
> (ix) Blood Bank:- The ColLege has explained the grounds. This deficiency is subjective. No MSR.
>
> (x) ETO:- The College has explained the grounds.
>
> (xi) OPD:- The College has explained the grounds.
>
> (xii) Audiometry:- The College explanation is acceptable on the basis of photos attached.

LOP confirmed."

14. After so noting, the Central Government referred to its earlier order dated 31st May, 2017 and the order dated 2nd August, 2017, passed by the High Court of Kerala at Ernakulam and held thus:-

> "Now, in compliance with the above direction of Hon'ble High Court dated 2.8.2017, the Ministry granted hearing to the college on 8.8.2017. The Hearing Committee after considering the record and oral & written submission of the college submitted its report to the Ministry. Findings of Hearing Committee are as under:

> "MCI has pointed out deficiency of 9 faculty and 4 residents against the requirement. The shortfall is attributed by the college to leave opted by staffs during the Christmas – New Year week. Supporting documents such as bank statement Form-16 (for financial year 2015-16) were also submitted for the doctors on leave. It is observed that the appointment orders issued by the college are without any reference number. Nothing could be conclusively established about the faculty on leave.
>
> The submission of the college regarding static x-ray machine, pre-operative beds, ETO sterilizer, audiometry, etc. may be accepted. However, the college seems deficient in bed occupancy.
>
> In view of the Committee, the college is at LoP stage and the facilities have to be satisfactorily verified.
>
> The Committee agrees with the decision of the Ministry vide letter dated 31.05.2017 to debar the college for two years and also permit MCI to encash bank guarantee. Accepting the recommendations of Hearing Committee, the Ministry reiterates it earlier decision dated 31.5.2017 to debar the college from admitting students for a period of 2 years i.e., 2017-18 & 2018-19 and also authorize MCI to encash Bank Guarantee of Rs.2 crores." The said order is the subject matter of assail in this Writ Petition.

15. We have heard Dr. Rajiv Dhawan and Mr. Mukul Rohatgi, learned senior counsel for the petitioners, Mr. Ajit Kumar Sinha, learned senior counsel for the Union of India and Mr. Vikas Singh, learned senior counsel along with Mr. Gaurav Sharma, learned counsel for the MCI.

16. Learned counsel for the petitioners submit that the inspection that has been carried out by the MCI is a composite inspection for 2016-2017 and 2017-2018 and when the deficiencies are marginal and, in fact, it can be said there is really no deficiency, there is no justification to deny the LOP for 2017-2018. It is urged by them that the explanation offered by the petitioner-institution has really not been taken into consideration and had it been appositely appreciated, such an assessment could not have been made by the assessors. They have also highlighted that certain other institutions having more deficiencies have been extended the benefit of LOP for 2017-2018, but for no fathomable or acceptable reason, the institution in question has been deprived of the said benefit. It is urged with vehemence that the order passed by the Central Government is not in consonance with the judgments rendered by this Court in Glocal Medical College (supra), IQ City Foundation and Another v. Union of India & Ors3. That apart, it is contended that the inspection by the MCI was done during the Christmas and New Year, which is not permissible as per the Regulations and hence, the whole report deserves to be disregarded. Additionally, it is propounded that the status of the order passed by the Central Government still remains an unreasoned one and by stretch of reasoning, it can be conferred the distinction of a reasoned order. Dr. Rajiv Dhawan, pyramiding the aforesaid submissions along with Mr. Mukul Rohatgi, 3 (2017) 8 SCALE 369 submits that the Court does not sit in appeal over such order and, therefore, when the order is absolutely perverse and arbitrary, it should be overturned in exercise of power of judicial review and the institution should

be granted LOP for the academic year 2017-2018.

17. Mr. Ajit Kumar Sinha, learned senior counsel appearing for the Union of India, per contra, would contend that the Oversight Committee had passed a conditional order and when the conditions were not fulfilled, the institution has to face the consequences and in such a situation it is extremely hollow on the part of the petitioner- institution to set forth unacceptable criticism pertaining to the order passed by the Central Government. He would further submit that the order dated 31st May, 2017, as this Court has already held, was not an order which reflected reason, but the order impugned is irrefragably a reasoned one because there is reference to the history of the institution, the chronology of events, the report of the Oversight Committee, the opinion of the Hearing Committee and eventual expression of an opinion. According to him, if such an order is not given the stamp of a 'reasoned order', it will be granting premium to recalcitrant institutions, which are bent upon imparting medical education in an unscrupulous manner. According to Mr. Sinha, concept of negative equality is not within the ambit of Article 14 of the Constitution of India and, in any case, this Court has issued notice to the other institutions and, therefore, the petitioners cannot claim parity. Additionally, he would put forth that in most of the matters, this Court has directed for consideration of the LOP for the year 2018-2019 and the present fact situation does not exposit a different scenario and hence, this Court should not make any distinction in the present case.

18. Mr. Vikas Singh, learned senior counsel appearing for the MCI refuting the arguments advanced by the learned senior counsel for the petitioners, contends that ascribing of reasons by an administrative authority should not be equated to a judgment of the Court, for what is required is to see whether the reasons are discernible and whether there has been application of mind. Mr. Singh would further contend that the allegation made by the petitioner- institution that the Executive Committee has not considered the explanation offered by the competent authority of the college shows an attitude of obstinacy and deviancy. Learned senior counsel would contend that the in IQ City Foundation (supra) when this Court remanded the matter and in Glocal Medical College (supra) when this Court granted the benefit on proper appreciation, it would be quite lucent, the role conferred on the MCI of India and the reason for extending the benefit to an institution for 2017- 2018. That apart, propounds Mr. Singh, that the educational institutions cannot remain disobedient to the framework of the Regulations brought into existence under Section 33 of the Act and assert with stubbornness that they should be given the LOP. According to him, if such a situation is allowed to prevail, the Act, the Regulations and Minimum Standard Requirement (MSR) for the MCI would be tenuous and ultimately come within the tentacles of unscrupulous institutions.

19. This Court in IQ City Foundation (supra), after referring to Dr. Ashish Ranjan and Others v. Union of India and Others4 and Manohar Lal Sharma v. Medical Council of India and Others5, Medical Council of India v. Kalinga Institute of Medical Sciences (KIMS) and Others 6 and Royal Medical Trust (Registered) and Another v. Union of India and Another7 held thus:-

> "On a reading of Section 10-A of the Act, Rules and the Regulations, as has been referred to in Manohar Lal Sharma (supra), and the view expressed in Royal Medical Trust (supra), it would be inapposite to restrict the power of the MCI by laying down as an absolute principle that once the Central Government sends back the matter to

> MCI for compliance verification and the Assessors visit the College they shall only verify the mentioned items and turn a Nelson's eye even if they perceive certain other deficiencies. It would be playing possum. The direction of the Central Government for compliance verification report should not be construed as a limited remand as is understood within the framework of Code of Civil Procedure or any other law. The distinction between the principles of open remand and limited remand, we are disposed to think, is not attracted. Be it clearly stated, the said principle also does not flow from the authority in Royal Medical Trust (supra). In this context, the objectivity of the Hearing Committee and the role of the Central Government assume great significance. The real compliant institutions should not always be kept under the sword of Damocles. Stability can be brought by affirmative role played by the Central Government. And the 4 (2016) 11 SCC 225 5 (2013) 10 SCC 60 6 (2016) 11 SCC 530 7 (2015) 10 SCC 19 stability and objectivity would be perceptible if reasons are ascribed while expressing a view and absence of reasons makes the decision sensitively susceptible.

Having said this, we are not inclined to close the matter. The petitioners have been running the College since 2013-14. We have been apprised that students who have been continuing their education shall continue for 2017-18. As we find the order of the Central Government is not a reasoned one. It is obligatory on its part to ascribe reasons. For the said purpose, we would like the Central Government to afford a further opportunity of hearing to the petitioners and also take the assistance of the newly constituted Oversight Committee as per the order dated July 18, 2017 passed by the Constitution Bench in Writ Petition (Civil) No. 408 of 2017 titled Amma Chandravati Educational and Charitable Trust and others v. Union of India and another and thereafter take a decision within two weeks. Needless to say, the decision shall contain reasons. We repeat at the cost of repetition that the decision must be an informed one."

20. Section 10-A of the Act deals with permission for establishment of new medical college, new course of study, etc. Sub-section (7) of Section 10-A reads as follows:-

> "(7) The Council, while making its recommendations under clause (b) of sub-

section (3) and the Central Government, while passing an order, either approving or disapproving the scheme under sub-section (4), shall have due regard to the following factors, namely—

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

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

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

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

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

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

(g) any other factors as may be prescribed."

21. Section 3-B of Indian Medical Council (Amendment) Act, 2010, which confers the powers on the Board of Governors, reads as follows:-

> "3-B. Certain modifications of the Act.— During the period when the Council stands superseded— * * *
>
> (b) The Board of Governors shall—
>
> (i) exercise the powers and discharge the functions of the Council under this Act and for this purpose, the provisions of this Act shall have effect subject to the modification that references therein to the Council shall be construed as references to the Board of Governors;
>
> (ii) grant independently permission for establishment of new medical colleges or opening a new or higher course of study or training or increase in admission capacity in any course of study or training referred to in Section 10A or giving the person or college concerned a reasonable opportunity of being heard as provided under Section 10A without prior permission of the Central Government under that section, including exercise of the power to finally approve or disapprove the same; and
>
> (iii) dispose of the matters pending with the Central Government under Section 10A upon receipt of the same from it."

22. In Manohar Lal Sharma (supra), Section 3-B was interpreted thus:-

> "MCI, with the previous sanction by the Central Government, in exercise of its powers conferred by Sections 10-A and 33 of the Indian Medical Council Act, 1956,

made the Regulations known as the Establishment of Medical College Regulations, 1999. Regulation 8 of the 1999 Regulations deals with grant of permission for establishment of new college. Application/ Scheme submitted by the applicants is evaluated and the verification takes place by conducting physical inspection by the team of inspectors of MCI. The Board of Governors may grant LoP to the applicant for making admissions in the first year of MBBS course in the medical college and the permission is renewed every year subject to the college achieving the yearly target mentioned in "Minimum Standard Requirements for the Medical College for 150 Admissions Annually Regulations, 1999". Schedule I of the abovementioned Regulation provides for accommodation in the medical college and its teaching hospital. Schedule II deals with equipment required for various departments in the college and hospital. The requirements are statutorily prescribed and, therefore, the Board of Governors has no power to dilute the statutory requirements mentioned in the abovementioned Regulations."

23. In Royal Medical Trust (supra), the Court after due advertence to Section 10-A of the Act and the Regulations framed by the Medical Council of India, has ruled:-

"MCI and the Central Government have been vested with monitoring powers under Section 10A and the Regulations. It is expected of these authorities to discharge their functions well within the statutory confines as well as in conformity with the Schedule to the Regulations. If there is inaction on their part or non- observance of the time schedule, it is bound to have adverse effect on all concerned. The affidavit filed on behalf of the Union of India shows that though the number of seats had risen, obviously because of permissions granted for establishment of new colleges, because of disapproval of renewal cases the resultant effect was net loss in terms of number of seats available for the academic year. It thus not only caused loss of opportunity to the students community but at the same time caused loss to the society in terms of less number of doctors being available. MCI and the Central Government must therefore show due diligence right from the day when the applications are received. The Schedule giving various stages and time-limits must accommodate every possible eventuality and at the same time must comply with the requirements of observance of natural justice at various levels. In our view the Schedule must ideally take care of:

(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 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 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 medical college concerned should be given requisite permission/renewal. However, if there are any deficiencies or shortcomings, 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, 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 MCI and the Central Government. In cases where actual physical verification is required, 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." [Emphasis added]

24. On a perusal of the aforesaid, it is clear as crystal that the surprise inspection is permissible and the college is required to remain compliant. The thrust of the matter is whether the inspection is justified and the decision taken by the Central Government is correct or not. To appreciate the propriety and correctness of the inspection during Christmas and New Year, it is necessary to refer to clause 8(3)(1)(d) of the Establishment of Medical College Regulations, 1999. The said clause reads as follows:-

> "However, the office of the Council shall ensure that such inspections are not carried out at least 2 days before and 2 days after important religious and festival holidays declared by the Central/State Govt."

25. In the case at hand, the assessors had gone for inspection on 28th and 29th December, 2016. In Shri Venkateshwara University Through its Registrar & Another vs. Union of India and Another8 [Writ Petition (Civil) No. 445 of 2017] this Court has referred to the decision in Kanachur Islamic Education Trust (R) vs. Union of India and Another 9 and after reproducing few paragraphs has held:-

> "On a careful reading of the aforesaid judgment, we do not think that the clause has been interpreted as not to allow any inspection on a 2017 SCC Online SC 1034 9 (2017) 10 SCALE 321 Sunday, but the Court have said in the factual matrix of the said case that the Institution was a minority institution and a major festival for the said community was scheduled on 12th December, 2016 and the day previous thereto i.e. 11th December, 2016, was a Sunday and the said facts are not wholly irrelevant. The

said analysis cannot be regarded as the construction of the clause.

Having said that, we shall proceed to analyze what the clause precisely conveys. On a careful reading of the same, it is quite clear and unambiguous that the obligation of the MCI is to ensure that inspections are not to be carried out at least 2 days before and 2 days after an important religious and festival holidays declared by the Central/State Government. In the clause, the words which gain significance are "important religious and festival holidays". On 12th December, 2016, it was Milad-un-Nabi and it is the day of festival. The inspection was done on 9th December, 2016, which was a Friday. The amended clause of the notification state only covers 2 days before the festival declared as a holiday by the Central/State Government and 2 days thereafter. In the case at hand, the inspection team had gone for inspection on 9th December, 2016, and they were deprived to carry out the inspection. It was not covered by the concept of two days of moratorium."

26. At this juncture, it is pertinent to understand and appreciate the ratio of Kanachur Islamic Education Trust (R) (supra) because it is being highlighted in certain cases that there is no acceptability or permissibility to have a second inspection in quite succession. The paragraph that has been highlighted from Kanachur Islamic Education Trust (R) (supra) reads thus:-

> "That against the inspections conducted by the MCI, the petitioner's college/institution had submitted representations on 15.12.2016 and 16.1.2017 before the Central Government is a matter of record. That the report qua the inspection conducted on 17-18.11.2016 did not disclose any substantial deficiency warranting disapproval as observed by the Hearing Committee is also not in dispute. It is unambiguously clear that the inspection of the petitioner's college undertaken on 17-18.11.2016 did not divulge any substantial deficiency justifying disapproval of the LOP to it. The reason for the surprise inspection on 9- 10.12.2016, i.e. within three weeks of the first exercise and that too in absence of any noticeable substantial deficiency, is convincingly not forthcoming."

27. On a careful reading of the said paragraph, it is limpid that is not the ratio of the decision that there cannot be a surprise inspection and every time reasons have to be recorded. Be it noted, the Court has also clarified the position at the end of the verdict stating thus:-

> "We make it clear that the decision rendered and the directions issued are in the singular facts and circumstances of the case."

28. It is well settled in law that the ratio of a decision has to be understood regard being had to its context and factual exposition. The ratiocination in an authority is basically founded on the interpretation of the statutory provision. If it is based on a particular fact or the decision of the Court is guided by specific nature of the case, it will not amount to the ratio of the judgment. Lord Halsbury in Quinn v. Leathem10 has ruled:-

> "... every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found

> there are not intended to be expositions of the whole law, but are governed and qualified by the particular facts of the case in which such expressions are to be found."

29. A three-Judge Bench in Union of India and others v. Dhanwanti Devi and others 11 , while adverting to the concept of precedent under Article 141 of the Constitution, has opined thus:-

> "Before adverting to and considering whether solatium and interest would be payable under the 101901 AC 495 : (1900-03) ALL ER Rep 1 (HL) 11 (1996) 6 SCC 44 Act, at the outset, we will dispose of the objection raised by Shri Vaidyanathan that Hari Krishan Khosla case12 is not a binding precedent nor does it operate as ratio decidendi to be followed as a precedent and is per se per incuriam. It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates—(i) findings of material facts, direct and inferential.

An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in the judgment. Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. It would, therefore, be not profitable to extract a sentence here and there from the judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein. The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent. The concrete decision alone is binding between the parties to it, but it is the abstract 12 (1993) Supp (2) 149 ratio decidendi, ascertained on a consideration of the judgment in relation to the subject-matter of the decision, which alone has the force of law and which, when it is clear what it was, is binding. It is only the principle laid down in the judgment that is binding law under Article 141 of the Constitution. A deliberate judicial decision arrived at after hearing an argument on a question which arises in the case or is put in issue may constitute a precedent, no matter for what reason, and the precedent by long recognition may mature into rule of stare decisis. It is the rule deductible from the application of law to the facts and circumstances of the case which constitutes its ratio decidendi.

Therefore, in order to understand and appreciate the binding force of a decision it is always necessary to see what were the facts in the case in which the decision was given and what was the point which had to be decided. No judgment can be read as if it is a statute. A word or a clause or a sentence in the judgment cannot be regarded as a full exposition of law. Law cannot afford to be static and therefore, Judges are to employ an intelligent technique in the use of precedents."

30. In Bussa Overseas and Properties Private Limited and Another vs. Union of India and Another 13 , while dealing with the precedential value of the decision in Thungabhadra Industries Limited vs. State of A.P. 14 , the two-Judge Bench held:-

> 13 (2016) 4 SCC 696 14 AIR 1964 SC1372 "The aforesaid decision in Thungabhadra Industries Ltd. case when properly appreciated clearly reveals that it pertains to the stage when objection is to be taken. It does not lay down that a special leave petition against a review petition is maintainable or not. The focus on the stage of taking objection is fact-centric but not principle-

oriented. To elaborate, the said decision does not lay down as a principle that the Court is bereft of power to hear on maintainability. If we understand the view expressed therein, it can be said that the Court has been guided by the concept of propriety." [Emphasis supplied]

31. In Royal Medical Trust (supra), this Court has clearly held that there can be surprise inspection as that ensures that the required facilities and infrastructure are always in place and not borrowed or put in temporarily.

32. In IQ City Foundation and Another (supra), after referring to Royal Medical Trust (supra), the Court has held:-

> "Therefore, the emphasis is on the complaint institutions that can really educate doctors by imparting quality education so that they will have the inherent as well as cultivated attributes of excellence."

33. Thus, in our considered opinion what has been stated in Royal Medical Trust (supra) and IQ City Foundation (supra) has the precedential value under Article 141 of the Constitution. We have no hesitation in saying that the pronouncement in Kanachur Islamic Education Trust (R) (supra) has to rest on its own facts.

34. Having said that, it is necessary to scrutinise the explanation offered by the Principal of the petitioner- institution. The Principal has justified the leave availed of by the faculty and the residents during the period of inspection of the assessors of the Medical Council of India. We think it appropriate to reproduce the said explanation:-

> "We would like to bring to your kind notice that few faculty and residents were on leave and half day leave on various reasons during the assessment conducted by MCI in Kerala Medical College, Palakkad on 28-12-2016. The details are mentioned below for your kind perusal.
>
> 1. Dr. Gurusiddana Gowda, Associate Professor of Radio Diagnosis.

His father had expired two weeks back and he had gone to perform the rituals of his father as per Hindu religious custom. He is the elder son in the family. Form 16, salary statement from bank and

attendance register copy is enclosed herewith.

2. Dr. R. Balamurugan Ramdas, Associate Professor of Bio Chemistry.

He had gone to his native Pondichery during Christmas Holidays taking leave till 01-01-2017 because of personal reasons.

Form 16, salary statement from bank and attendance register copy is enclosed herewith- leave submission form.

3. Dr. MS Ramaiyah, Associate Professor of Medicine.

He was on half day leave on 28-12-2016 and reported in the afternoon. He was presented before the inspectors but not accepted as he was not present at the time of taking attendance at 11 a.m. Form 16, salary statement from the bank and attendance register copy is enclosed herewith.

4. Dr. N. Natarajan, Associate Professor of Medicine.

He was on half day leave on 28-12-2016 and reported in the afternoon. He was presented before the inspectors but not accepted as he was not present at the time of taking attendance at 11 a.m. Form 16, salary statement from the bank and attendance register copy is enclosed herewith.

5. Dr. MS Dhananjaya, Professor of OBG. His cousin brother had expired and the 12th day ritual ceremony was on 28-12-2016 and he had been sanctioned leave. He is present on 29-12- 2016 and presented before the assessors. Form 16, salary statement from the bank and attendance register copy is enclosed herewith.

6. Dr. Ravi Chandra, Associate Professor of Surgery.

He had gone to his native during Christmas holidays taking leave till 31-12.2016 because of personal reasons.

Salary statement from bank and attendance register copy is enclosed herewith.

7. Dr. Asha S Jagtap, Professor of PSM She had gone to her native during Christmas holidays taking leave till 31-12-2016 because of personal reasons.

Form 16, salary statement from the bank and attendance register copy is enclosed herewith.

8. Dr. Girist A, Senior Resident in Medicine. He was on half day leave on 28-12-2016 and reported in the afternoon. He was presented before the inspectors but not accepted as he was not present at the time of taking attendance at 11 a.m. Salary statement from the bank and attendance register copy is enclosed herewith.

9. Dr. Basavaraj SK, Senior resident of Medicine. He had gone to his native during Christmas holidays taking leave till 31-12-2016 because of personal reasons.

Salary statement from bank and attendance register copy is enclosed herewith.

10. Dr. B. Ravindra Shivaji, Senior Resident of Radio Diagnosis.

He had gone to his native during Christmas holidays taking leave till 31-12-2016 because of personal reasons.

Salary statement from bank and attendance register copy is enclosed herewith.

11. Dr. Harithakumari Landa, Senior Resident of pulmonary medicine.

She had gone to his native during Christmas holidays taking leave till 31-12-2016 because of personal reasons.

Salary statement from the bank and attendance register copy is enclosed herewith."

35. It is submitted by the learned senior counsel appearing for the petitioners that the Medical Council of India as well as the Central Government should have accepted the leave position and, in any case, it was within the permissible limit.

36. In this regard, Mr. Vikas Singh learned senior counsel for the MCI has drawn our attention to the extract of the Minutes of the Executive Committee dated 21st August, 2014. It reads as follows:-

> "Regarding specifying the type of acceptable leave during inspection of medical colleges.
>
> Read: the matter with regard to regarding specifying the type of acceptable leave during inspection of medical colleges.
>
> The Executive Committee of the Council considered the report of the Sub Committee dt. 17.04.2014 as constituted by the Executive Committee at its meeting held on 14th March, 2014 and decided to accept the report with the following amendments:-
>
> (1) The faculty who is on leave due to the following reasons would be accepted;
>
> (a) For attending International/National conferences organized by the respective International/National Associations or Societies;
>
> (b) For attending any work assigned by Medical Council of India, either at headquarters or for assessment of a medical college;

(c) For conducting examination of the concerned subject in a medical college in Central/State University;

(d) For attending Courts;

Provided that appropriate documents certifying the same which are countersigned by the dean are furnished.

(2) The faculty who is on sanctioned Maternity leave would be accepted provided the appropriate leave sanction order issued by the sanctioning authority and countersigned by the Dean is furnished with all necessary certificates."

37. The said resolution is strenuously contested by the learned senior counsel for the petitioners. It is urged with immense vehemence that the resolution smacks of gross arbitrariness and reveals a sense of hidden base for use of power of an absolute tyrant and a despot. Mr. Singh explaining the same would submit that a hospital to remain compliant has to have the requisite number of doctors and staff, and to run a medical college constant compliance is imperative. According to him, when a college is granted LOP for the first year, 5% margin with regard to absence is granted and that is why certain categories of leave have not been mentioned in the resolution, but that does not mean that the college can grant leave to the doctors at its whim and fancy. Be that as it may, the absence of faculty members which has been taken note of by the Medical Council of India and accepted by the Central Government cannot be allowed to pale into total insignificance. In this regard, a submission advanced by the learned senior counsel for the petitioners requires to be noted. It is urged by them that the engagement of the faculty members are to be believed as they are paid their salaries by the petitioners and it is shown in the necessary Income Tax form.

38. It needs no special emphasis to state that the said submission cannot be the guiding factor for our analysis. The issue is the deficiency of the doctors and the absence of the doctors during the period of inspection. We have already held that the period in which the assessors inspected cannot be said to be a period covered under the Regulations. That apart, as is noticeable, the Hearing Committee which has been constituted on the basis of the decision in Amma Chandravati Educational and Charitable Trust (supra), has also held that the college is deficient in bed occupancy at the conditional LOP stage other facilities have to be specifically verified and in the absence of satisfaction, the LOP ought not to be granted.

39. In the course of hearing, Mr. Rohatgi, learned senior counsel for the petitioners has placed heavy reliance on Krishna Mohan Medical College and Hospital & Anr v. Union of India & Anr 15 (Writ Petition (Civil) No. 448 of 2017 decided on 01.09.2017) and Dr. Jagat Narain 2017 SCC Online SC 1032 Subharti Charitable Trust & Anr v. Union of India & Ors16.

40. In Krishna Mohan Medical College (supra), this Court has held:-

"... as the Act and Regulations framed thereunder have been envisioned to attain the highest standards of medical education, we direct the Central Government/MCI to

> cause a fresh inspection of the petitioner college/institution to be made in accordance therewith for the academic year 2018-19 and lay the report in respect thereof before this Court within a period of eight weeks herefrom. A copy of the report, needless to state, would be furnished to the petitioner college/institution at the earliest so as to enable it to avail its remedies, if so advised, under the Act and the Regulations. The Central Government/MCI would not encash the bank guarantee furnished by the petitioner college/institution. For the present, the impugned order dated 10.8.2017 stands modified to this extent only. The direction for a writ, order or direction to the respondents to permit the petitioner college/institution to admit students for the academic year 2017-18, in the facts of the case, is declined."

41. In Dr. Jagat Narain Subharti Charitable Trust (supra), the Court, while granting the benefit for academic session 2017-2018, opined:-

> "Thus, there has been substantial compliance of the said requirement by the petitioners.
>
> (2017) 10 SCALE 308 Assuming that the notification dated 16.10.2015 applied even to the proposal of the petitioners, suffice it to observe that failure to furnish information in the prescribed Form-5 cannot be held against the petitioners. In any case, that is not a deficiency relating to infrastructure or academic matters as such, which may require a different approach."

42. The aforesaid decisions speak for themselves and, therefore, reliance on the same by the petitioners is of no avail.

43. Dr. Rajiv Dhawan would submit that this Court should not exercise appellate jurisdiction which is fundamentally called an error jurisdiction or rectification of errors. We are absolutely conscious of the appellate jurisdiction and the jurisdiction this Court is required to exercise while determining the controversy in exercise of power of judicial review under Article 32 of the Constitution. The principle of judicial review by the constitutional courts have been lucidly stated in many an authority of this Court. In Tata Cellular v. Union of India17, dealing with the concept of Judicial Review, the Court held:-

> 17 (1994) 6 SCC 651 "Lord Scarman in Nottinghamshire County Council v. Secretary of State for the Environment proclaimed:
>
> 'Judicial review' is a great weapon in the hands of the judges; but the judges must observe the constitutional limits set by our parliamentary system upon the exercise of this beneficial power." Commenting upon this Michael Supperstone and James Goudie in their work Judicial Review (1992 Edn.) at p. 16 say:
>
> "If anyone were prompted to dismiss this sage warning as a mere obiter dictum from the most radical member of the higher judiciary of recent times, and therefore to be

> treated as an idiosyncratic aberration, it has received the endorsement of the Law Lords generally. The words of Lord Scarman were echoed by Lord Bridge of Harwich, speaking on behalf of the Board when reversing an interventionist decision of the New Zealand Court of Appeal in Butcher v. Petrocorp Exploration Ltd. 18-3-1991." Observance of judicial restraint is currently the mood in England. The judicial power of review is exercised to rein in any unbridled executive functioning. The restraint has two contemporary manifestations. One is the ambit of judicial intervention; the other covers the scope of the court's ability to quash an administrative decision on its merits. These restraints bear the hallmarks of judicial control over administrative action.
>
> Judicial review is concerned with reviewing not the merits of the decision in support of which the application for judicial review is made, but the decision-making process itself."

44. After so stating, reference was made to the law enunciated in Chief Constable of the North Wales Police v. Evans18 wherein, it has been ruled:-

> "Judicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made.
>
> * * * Judicial review is concerned, not with the decision, but with the decision-making process. Unless that restriction on the power of the court is observed, the court will in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power."

45. In the said case, the Court also referred to R. v. Panel on Take-overs and Mergers, ex. P. Datafin plc19 wherein Sir John Donaldson, M.R. commented:-

> "An application for judicial review is not an appeal."

46. The three Judge Bench further held:-

> "The duty of the court is to confine itself to the question of legality. Its concern should be:
>
> 1. Whether a decision-making authority exceeded its powers?
>
> 2. Committed an error of law, 18 (1982) 3 All ER 141 19 (1987) 1 All ER 564
>
> 3. committed a breach of the rules of natural justice,
>
> 4. reached a decision which no reasonable tribunal would have reached or,

5. abused its powers."

47. The Court further opined that in the process of judicial review, it is only concerned with the manner in which the decisions have been taken. The extent of the duty is to act fairly. It will vary from case to case. Explicating further, it ruled:-

> "Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:
>
> (i) Illegality : This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.
>
> (ii) Irrationality, namely, Wednesbury unreasonableness.
>
> (iii) Procedural impropriety.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in R. v. Secretary of State for the Home Department, ex Brind, Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, "consider whether something has gone wrong of a nature and degree which requires its intervention".

48. Thereafter, the Court referred to the authorities in R. v. Askew 20 and Council of Civil Service Unions v. Minister for Civil Service21 and further expressed:-

> "At this stage, The Supreme Court Practice, 1993, Vol. 1, pp. 849-850, may be quoted:
>
> "4. Wednesbury principle.— A decision of a public authority will be liable to be quashed or otherwise dealt with by an appropriate order in judicial review proceedings where the court concludes that the decision is such that no authority properly directing itself on the relevant law and acting reasonably could have reached it. (Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., per Lord Greene, M.R.)" We may hasten to add, though the decision was rendered in the context of justification of grant of contract but the principles set out as regards the judicial review are of extreme significance.

49. Discussing at length, the principle of judicial review in many a decision, the two Judge Bench in Reliance Telecom Ltd. & Another v. Union of India & Another22, has held:-

> 20 (1768) 4 Burr 2186 : 98 ER 139 21 (1985) 1 AC 374 : (1984) 3 All ER 935 : (1984) 3 WLR 1174 22 (2017) 4 SCC 269 "As we find, the decision taken by the Central Government is based upon certain norms and parameters. Though criticism has been advanced that it is perverse and irrational, yet we are disposed to think that it is a policy decision which subserves the consumers' interest. It is extremely difficult to

> say that the decision to conduct the auction in such a manner can be considered to be mala fide or based on extraneous considerations."

50. Thus analysed, it is evincible that the exercise of power of judicial review and the extent to which it has to be done will vary from case to case. It is necessary to state with emphasis that it has its own complexity and would depend upon the factual projection. The broad principles have been laid down in Tata Cellular (supra) and other decisions make it absolutely clear that judicial review, by no stretch of imagination, can be equated with the power of appeal, for while exercising the power under Article 226 or 32 of the Constitution, the constitutional courts do not exercise such power. The process of adjudication on merit by re-appreciation of the materials brought on record which is the duty of the appellate court is not permissible.

51. The duty of the Court in exercise of the power of judicial review to zealously guard the human rights, fundamental rights and the citizens' right of life and liberty as also many non-statutory powers of governmental bodies as regards their control over property and assets of various kinds. (See : Union of India and Anr. v S.B. Vohra23)

52. What Dr. Dhawan submits basically is that as the order passed by the Central Government after the order passed by the High Court of Kerala does not really reflect any reason, this Court should axe the same treating it as arbitrary and grant the LOP and that would be within the power of judicial review. The order passed by the Central Government has to be appreciated in its entirety. We repeat at the cost of repetition that neither the Central Government nor the Hearing Committee is expected to pass a judgment as a Judge is expected to do. The order must reflect application of mind and should indicate reasons. We may reiterate that the order dated 31st May, 2017, was bereft of reason, but the order impugned, that is the order dated 14th August, 2017, cannot be said to be sans reason. Learned senior counsel would contend with all the vigour at his command that it is not a reasoned one and for the same 23 (2004) 2 SCC 150 our attention has been drawn to the penultimate paragraph of the order.

53. We are of the considered opinion that the order of the present nature has to be appreciated in entirety and when we peruse the entire order, we find that substantial reasons have been ascribed and, therefore, we are compelled to repel the submissions so assiduously and astutely advanced by Dr. Dhawan.

54. Keeping in view the facts and circumstances of the case, we sum up our conclusions and directions, thus:-

> (a) The petitioners are not entitled to Letter Of Permission (LOP) for the academic session 2017-2018. We direct that the order passed in the present writ petition shall be applicable hereafter for the academic session 2017-2018 since the cut off date for admissions to MBBS course for academic session 2017-2018 is over and the academic session has commenced. No petition shall be entertained from any institution/college/society/trust or any party for grant of LOP for 2017-2018. We say so as the controversy for grant of LOP for the academic year 2017-2018 should come

to an end and cannot become an event that defeats time. The students who are continuing their studies on the basis of LOP granted for the academic year 2016-2017 should be allowed to continue their studies in the college and they shall be permitted to continue till completion of the course.

(b) The applications submitted for 2017-2018 shall be treated as applications for 2018-2019 and the petitioners shall keep the bank guarantee deposited with the Medical Council of India alive and the MCI shall not encash the same.

(c) The Medical Council of India shall conduct a fresh inspection as per the Regulations within a period of two months. It shall apprise the petitioner-institution with regard to the deficiencies and afford an opportunity to comply with the same and, thereafter, proceed to act as contemplated under the Act.

(d) The inspection shall be carried out for the purpose of grant of LOP for the academic session 2018-2019.

(e) After the Medical Council of India sends its recommendation to the Central Government, it shall take the final decision as per law after affording an opportunity of hearing to the petitioners. Needless to say, it shall take the assistance of the Hearing Committee as constituted by the Constitution Bench decision in Amma Chandravati Educational and Charitable Trust (supra) or other directions given in the said decision.

55. The writ petition is, accordingly, disposed of. There shall be no order as to costs.

.....CJI (Dipak Misra) ....J. (Amitava Roy) .....J. (A.M. Khanwilkar) New Delhi, September 12 , 2017.