REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C) NO. 411 OF 2017

GLOCAL MEDICAL COLLEGE AND SUPER SPECIALITY HOSPITAL & RESEARCH CENTRE ....PETITIONER

VERSUS

UNION OF INDIA AND ANOTHER ....RESPONDENTS

WITH

W.P. (C) NOS. 430, 432, 437, 436, 438, 441, 442, 445,448, 450, 468,477,511, 496, 511, 514, 515, 525 and 533 of 2017.

JUDGMENT

AMITAVA ROY,J.

In assailment is the order dated 31.05.2017 of the Government of India, Ministry of Health and Family Welfare (Department of Health and Family Welfare) whereby the conditional permission for the establishment of the medical colleges, involved herein with number of seats as mentioned, for the academic year 2016-17, granted on the basis of the approval of the Supreme Court Mandated Oversight Committee (for short, hereinafter to be referred to as "Oversight Committee")

has been cancelled and the colleges have been debarred from admitting students in the next two academic years i.e. 2017-18 and 2018-19. Thereby, the Medical Council of India, (for short, hereinafter to be referred to as "MCI'/Council") has also been authorised to encash the bank guarantees submitted by the colleges/institutions, as required for availing the conditional permission as above. The colleges/institutions have been directed not to admit students in the MBBS Course in the academic years 2017-18 and 2018-19.

2. We have heard M/s. Salman Khurshid, S.G. Hasnain, Gurukrishna Kumar, A. Sharan, P.S. Patwalia, Kapil Sibal, V. Giri, Nidhesh Gupta, R. Basant, Raju Ramachandran, Sanjay R. Hegde, Dr. Rajeev Dhawan, C.A. Sundaram, Vikas Singh, Maninder Singh, Ajit Kumar Sinha, Senior Advocates and Mr. Mishra Saurabh, learned counsel for the parties.

3. It is submitted across the Bar that the foundational facts, which constitute the essence of the dissension, are identical so much so that the sequence of events, if drawn from any of the petitions would suffice to comprehend the issues to be

addressed. Having regard to the striking likeness of the factual framework of the cases in hand, for the sake of brevity and convenience, facts in bare minimum as available in the pleadings of W.P. (C) No. 411 of 2017 – ***Glocal Medical College and Super Specialty Hospital and Research Centre vs. Union of India and Another*** and W.P.(C) No. 436 of 2017 – ***Gayatri Vidya Parishad Society & Another vs. Union of India and Another*** would be adverted to.

4. The colleges/institutions in this batch had, as required under Section 10A of the Indian Medical Council Act, 1956 (for short, hereinafter to be referred to as "the Act") and the Establishment of Medical College Regulations, 1999 (for short, hereinafter to be referred to as "Regulations") framed thereunder duly submitted schemes for grant of letter of permission to establish new medical college with annual intake of MBBS students, as mentioned in their individual applications, from the academic year 2016-17. As ordained in law, the Council caused an inspection of the colleges to be made by its Council of Assessors on 11th and 12th December, 2015, whereafter the

assessment report was laid before the Executive Committee of the MCI, which in its meeting dated 28.12.2015, on a consideration of the deficiencies pointed out, forwarded its recommendation to the Central Government disapproving the schemes for the academic year 2016-17 on 31.12.2015.

5. The Central Government in its turn, by letter dated 05.02.2016 consequently disapproved as well, the schemes of the petitioner colleges/institutions for the academic year 2016-17.

6. Shortly thereafter, this Court by its judgment and order dated 02.05.2016 rendered in ***Modern Dental College and Research Centre & Anr. vs. State of Madhya Pradesh & Ors***.[1] constituted the Oversight Committee, amongst others to oversee the functioning of the Council under the Act. As the records demonstrate, the Oversight Committee intervened in the process as reportedly many colleges/institutions did complain of denial of opportunity to submit their compliance write up, to the deficiencies pointed out by the assessors and by its communication dated 22.06.2016 permitted those

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colleges/institutions to submit their compliance inputs afresh to the Ministry of Health and Family Welfare and further directed the Council to conduct compliance verification inspection of those colleges/institutions and submit the inspection report to the Central Government.

7. Subsequent thereto, the Oversight Committee by its communication dated 11.8.2016 addressed to the Central Government, Ministry of Health and Family Welfare, for the reasons recorded, granted conditional approval to the colleges/institutions, as mentioned therein, subject to the following conditions:

> "(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 along with 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.
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> (b) In default of the conditions (i) and (ii) in 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."

8. Accordingly, the Central Government vide letter No. U-12011/13/2016-ME-I dated 20.8.2016, in deference to the above directions of the Oversight Committee, issued the letter of permission subject to the above conditions, initially for a period of one year and renewable on yearly basis also subject to the verification of the achievement of annual targets, as indicated in their schemes and re-validation of the performance bank guarantees. It was mentioned as well that the next batch of students of MBBS Course for the academic session 2017-18 would be admitted in the colleges only after obtaining permission from Central Government and on fulfilling the conditions laid down by the Oversight

Committee, as stipulated hereinabove.

9. The petitioners assert that on being intimated of the above order, they accordingly, through their authorised representatives, as directed submitted the affidavits of compliance affirming that they had rectified all the deficiencies pointed out in the inspection conducted by the Council on 11/12.12.2015 and also had furnished the bank guarantees, as required. The communications to this effect are on 30.8.2016 and 1.9.2016. The colleges/institutions, as have been mentioned in course of the arguments, have meanwhile, acting on this conditional letter of permission, admitted students to the academic year 2016-17.

10. The MCI caused another inspection of the colleges/institutions to be made by its Council of Assessors on 21/22.12.2016, whereafter on a consideration of the report submitted by its assessors, in its meeting held on 13.1.2017 did record, a number of persisting deficiencies. It was thus of the view that the colleges/institutions had failed to abide by the undertaking given by them to the Central

Government that there was no deficiency as per clause 3.2(1) of the communication dated 11.8.2016 of the Oversight Committee and as a consequence, recommended in terms of paragraph 3.2(b) of the above communication that the said colleges/institutions be debarred from admitting students in the MBBS Course for the two academic years i.e. 2017-18, 2018-19 and further that the bank guarantees furnished by them be encashed. As per the decision taken, a copy of the recommendations to the above effect was forwarded to the Central Government and the Oversight Committee.

11. The Central Government in turn, by its communication dated 2.2.2017, addressed to the petitioner colleges/institutions informed that an opportunity of personal hearing would be granted on 17.1.2017 and 8.2.2017 on the issue of the recommendation of the MCI for debarment of the colleges for two academic sessions, as above and for encashment of their bank guarantees. The colleges/institutions were instructed to depute their

authorised representatives to present their case vis-a-vis the recommendations of the MCI along with the requisite information in the prescribed format to be laid before the committee concerned.

12. In response, the petitioner colleges/institutions in time submitted their reply maintaining that almost all the deficiencies pointed out in the inspection carried on 11/12.12.2015 had been rectified and that the deficiencies noted in the subsequent inspection were not the same and further were at best minor in nature.

13. Item-wise replies with clarifications were furnished by the colleges vis-a-vis the deficiencies pointed out in the inspection held on 21st and 22nd December, 2016. The colleges/institutions claimed that in fact there was no deficiency and that they were making all efforts to overcome, if there be any, and prayed that the minor deficiencies be condoned and the conditional LOP (Letter of Permission) be confirmed.

14. A hearing was provided to the institutions/colleges

by a Hearing Committee of the Central Government on 17.1.2017 and 8.2.2017 and the comments of the Hearing Committee along with the recommendations/comments of the Director General of Health Services in respect of the colleges mentioned therein, were forwarded to the Central Government on 23.3.2017. As would be evident from this document, it contained four columns and the third and fourth thereof did set out the comments of the Hearing Committee and recommendations/comments of Director General of Health Services (for short "DGHS") respectively. It may be noted in the passing that whereas the comments of the Hearing Committee in respect of most of the colleges/institutions was "No satisfactory evidence available", the recommendations/comments of the DGHS disclosed that the said authority on noting the deficiencies highlighted did suggest some relaxation in the approach thereto, to be brought to the notice of the Oversight Committee and also recommended that the Oversight Committee may take necessary initiatives in this regard. As

this document would also reveal, the recommendations of the MCI and the comments of the Hearing Committee and the DGHS were forwarded to the Central Government be submitted for further directions/comments from the Oversight Committee.

15. A lull followed and it was only on 5.5.2017 that the Central Government forwarded the aforementioned recommendations dated 23.3.2017 to the Oversight Committee. As this communication would reveal, the Hearing Committee/DGHS had granted personal hearing to the colleges on 17.1.2017 and 8.2.2017. Noticeably, however though the contents of the proceedings dated 23.3.2017 of the Hearing Committee/DGHS were set out in that letter dated 5.5.2017, the column containing the recommendations/comments of the DGHS did not find place therein. In other words, as is patent, only a truncated version of the document dated 23.3.2017 was forwarded by the Central Government to the Oversight Committee. The letter mentioned that the observations of the Hearing

Committee constituted by the DGHS, be construed to be the views of the Ministry of Health and Family Welfare.

16. The letter No. OC/UG/2016-16 (Conditional Approvals) 258 dated 14.5.2017 of the Oversight Committee followed in response. As this letter would evince, the Oversight Committee on a detailed consideration of the factual backdrop and on an in-depth analysis of the deficiencies pointed out by the assessors of the MCI, the views of the Hearing Committee and of the Central Government, by recording reasons, dismissed the deficiencies enumerated and recommended confirmation of the conditional letter of permission earlier granted to the colleges/institutions concerned.

17. The impugned decision conveyed by the letter No. U.I2012/27/2016-ME-I [FTS.30844749] dated 31st May, 2017, as referred to hereinabove was thereafter issued. Thereby to reiterate, the decision of the Central Government to debar the petitioner colleges/institutions from admitting students in the next two academic years 2017-18 and 2018-

19 and also to authorise the MCI to encash the bank guarantees was communicated. Directions were also issued to the concerned colleges/institutions not to admit students in the MBBS course in the said academic years.

18. The quintessence of the contrasting contentions next needs to be outlined. It has been insistently urged on behalf of the petitioners that in the pronounced backdrop of facts outlining the march of events, the impugned decision is on the face of it, unsustainable being bereft of any reason or relevant consideration. It has been argued that the Oversight Committee having been constituted by this Court by its judgment and order dated 02.05.2016 in ***Modern Dental College Research Centre*** (supra) authorizing it to oversee all statutory functions under the Act and leaving it at liberty to issue appropriate remedial directions, the impugned order is in the teeth of the recommendations of the said Committee, as communicated in its letter dated 14.05.2017 overruling the deficiencies on the basis of which purportedly, the petitioner colleges/institutions are being

sought to be debarred from admitting students in the academic session for the years 2017-18 and 2018-19 and their bank guarantees are ordered to be encashed. It has been emphatically asserted that having regard to the status of the Oversight Committee and the role assigned to it by this Court, its recommendations/views, as conveyed by its letter dated 14.05.2017, by no means could have been disregarded. It has been stoutly canvassed that not only the Central Government in acting only on the recommendations of the MCI had proceeded in a manner which is grossly unfair and unreasonable vis-à-vis the petitioner institutions/colleges, the manner in which the impugned decision has been taken tantamounts to denial of hearing to them, as mandated by Section 10A(4) of the Act. It has been urged as well that the action of forwarding the incomplete proceedings of the Hearing Committee/DGHS to the Oversight Committee betrays inexplicable prejudice and a predetermined disposition against the petitioner colleges/institutions, rendering the impugned decision non

est in law.

19. As against this, it has been argued in emphatic refutation on behalf of the respondents that the Central Government being the final decision making authority under the Act on the issue of grant or refusal of permission/renewal of permission, there is no embargo on it to take a decision thereon, more so there being no mandate that it would be bound by the recommendations of the Oversight Committee. It has been contended that the views expressed by the Oversight Committee in its communication dated 14.05.2017 are contrary to its directives earlier issued in its letter dated 11.08.2016, recommending grant of conditional LOP to the petitioner institutions/colleges. It has been insisted that not only the petitioner institutions/colleges had failed to provide the minimum teaching, clinical, infrastructural and other facilities in the colleges as divulged in the successive inspections, they have been found to be non-compliant of the undertakings given by them to the Central Government as well. It has been argued

that the impugned decision, in the attendant facts and circumstances, is unassailable and does not merit any interference.

20. After hearing the learned counsel for the parties and on a consideration of the materials on record, to the extent essential, we are of the considered opinion that the impugned decision cannot be sustained in law as well as on facts. Significantly, the authenticity and correctness of the documents referred to by the parties are not disputed and form part of the records.

21. A bare perusal of the letter dated 31.05.2017 would demonstrate in clear terms that the same is de hors any reason in support thereof. It mentions only about the grant of conditional permission on the basis of the approval of the Oversight Committee, and an opportunity of hearing vis-à-vis the recommendations of the MCI in its letter dated 15.01.2017 highlighting the deficiencies detected in course of the inspection undertaken on 21st and 22nd December, 2016, but is conspicuously silent with regard to the outcome of the

proceedings of the Hearing Committee, the recommendations recorded therein both of the Committee and the DGHS and more importantly those of the Oversight Committee conveyed by its communication dated 14.05.2017, all earlier in point of time to the decision taken. This assumes importance in view of the unequivocal mandate contained in the proviso to Section 10A(4) of the Act, dealing with the issue, amongst others of establishment of a medical college. The relevant excerpt of sub-section 4 of Section 10A of the Act for ready reference is set out hereinbelow:

> "(4) The Central Government may, after considering the scheme and the recommendations of the Council under sub-section (3) and after obtaining, where necessary, such other particulars as may be considered necessary by it from the person or college concerned, and having regard to the factors referred to in sub-section (7), either approve (with such conditions, if any, as it may consider necessary) or disapprove the scheme and any such approval shall be a permission under sub-section (1);
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> Provided that no scheme shall be disapproved by the Central Government except after giving the person or college concerned a reasonable opportunity of being heard:"

22. Though as the records testify, a hearing was provided to the petitioner colleges/institutions through the Hearing Committee constituted by the DGHS (as mentioned in the proceedings dated 23.3.2017) qua the recommendations of the MCI contained in its letter dated 15.01.2017, as noted hereinabove, the proceedings of the Hearing Committee do reflect varying views of the Hearing Committee and the DGHS, the latter recommending various aspects bearing on deficiency to be laid before the OC for an appropriate decision. The Central Government did forward, albeit a pruned version of the proceedings of the Hearing Committee to the Oversight Committee after a time lag of almost six weeks. The reason therefor is however not forthcoming. The Oversight Committee, to reiterate, though on a consideration of all the relevant facts as well as the views of the MCI and the proceedings of the Hearing Committee as laid before it, did cast aside the deficiencies minuted by the MCI and recommended confirmation of the letters of permission of the

petitioner colleges/institutions, the impugned decision has been taken by the Central Government which on the face of it does not contain any reference whatsoever of all these developments.

23. As a reasonable opportunity of hearing contained in the proviso to Section 10A(4) is an indispensable pre-condition for disapproval by the Central Government of any scheme for establishment of a medical college, we are of the convinced opinion that having regard to the progression of events and the divergent/irreconcilable views/recommendations of the MCI, the Hearing Committee, the DGHS and the Oversight Committee, the impugned order, if sustained in the singular facts and circumstances, would be in disaccord with the letter and spirit of the prescription of reasonable opportunity of hearing to the petitioner institutions/colleges, as enjoined under Section 10A(4) of the Act. This is more so in the face of the detrimental consequences with which they would be visited. It cannot be gainsaid that the reasonable opportunity of

hearing, as obligated by Section 10A(4) inheres fairness in action to meet the legislative edict. With the existing arrangement in place, the MCI, the Central Government and for that matter, the Hearing Committee, DGHS, as in the present case, the Oversight Committee and the concerned colleges/institutions are integral constituents of the hearing mechanism so much so that severance of any one or more of these, by any measure, would render the process undertaken to be mutilative of the letter and spirit of the mandate of Section 10A(4).

24. Having regard to the fact that the Oversight Committee has been constituted by this Court and is also empowered to oversee all statutory functions under the Act, and further all policy decisions of the MCI would require its approval, its recommendations, to state the least, on the issue of establishment of a medical college, as in this case, can by no means be disregarded or left out of consideration. Noticeably, this Court did also empower the Oversight Committee to issue appropriate remedial directions. In our

view, in the overall perspective, the materials on record bearing on the claim of the petitioner institutions/colleges for confirmation of the conditional letters of permission granted to them require a fresh consideration to obviate the possibility of any injustice in the process.

25. In the above persuasive premise, the Central Government is hereby ordered to consider afresh the materials on record pertaining to the issue of confirmation or otherwise of the letter of permission granted to the petitioner colleges/institutions. We make it clear that in undertaking this exercise, the Central Government would re-evaluate the recommendations/views of the MCI, Hearing Committee, DGHS and the Oversight Committee, as available on records. It would also afford an opportunity of hearing to the petitioner colleges/institutions to the extent necessary. The process of hearing and final reasoned decision thereon, as ordered, would be completed peremptorily within a period of 10 days from today. The parties would unfailingly co-operate in compliance of this

direction to meet the time frame fixed.

26. Let these matters be listed on 24.8.2017.

.....J.
[**Dipak Misra**]

.....J.
[**Amitava Roy**]

.....J.
[**A.M. Khanwilkar**]

New Delhi;
August 1, 2017.