

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO.8429 of 2018**

(Arising out of Special Leave Petition (Civil) No.19919 of 2018)

**Medical Council of India**

**.... Appellant**

***Versus***

**The Principal KMCT Medical College  
& Anr.**

**....Respondent(s)**

**J U D G M E N T**

**L. NAGESWARA RAO, J.**

Leave granted.

- 1.** The High Court directed the Appellant to recommend grant of permission to the Respondent No.1 – College for admission of 150 seats in 1<sup>st</sup> year MBBS for the academic session 2018-19. By the impugned judgment, the High Court also directed Respondent No.2 – Union of India to issue a letter of permission on the

basis of recommendation of the Appellant. Aggrieved thereby, the MCI has filed this appeal.

**2.** Respondent No.1 (hereinafter referred to as “the College”) was granted permission to start a medical college for the academic year 2008-09 with an intake of 100 students. Thereafter, a Notification was issued under Section 11(2) of the Medical Council of India Act, 1956 granting recognition of the course. The College applied for enhancement of the intake of students from 100 to 150 for the academic session 2016-17. The Appellant recommended for grant of approval to increase the intake which was accepted by the Government of India. The application for renewal of permission with an enhanced intake of 150 students for the academic year 2017-18 was also considered favourably by the Appellant and Respondent No.2.

**3.** The College applied for renewal of permission for the 3<sup>rd</sup> Batch of admissions with the intake of 150 students for the year 2018-19. An inspection was conducted on 18<sup>th</sup>/19<sup>th</sup> September, 2017. The Executive Committee of the Appellant-MCI considered the

Assessment Report pursuant to the inspection conducted on 18<sup>th</sup>/19<sup>th</sup> September, 2017 and noted the following deficiencies :

*“1. CT Scan is single slice against minimum 16 slice required.*

*2. Examination Hall: Out of 2 Examination Hall available, 1 is actually an Auditorium which cannot be considered as Examination Hall; hence there is deficit of 1 Examination Hall.*

*3. Other deficiencies as pointed out in the assessment report.”*

**4.** In view of the above deficiencies, the Executive Committee of the MCI decided to recommend not to renew the request for permission to admit 3<sup>rd</sup> Batch of MBBS students against the enhanced intake of 150 students. The deficiencies found in the inspection conducted on 18<sup>th</sup>/19<sup>th</sup> September, 2017 were communicated to the College. The College was informed about a hearing to be conducted on 19<sup>th</sup> December, 2017. A representation was made by the College to the Hearing Committee which found that the two deficiencies pointed out appear to have been rectified on the basis of the documentary evidence submitted by the College. The Hearing Committee

suggested that the Appellant ***“may review and make revised recommendation without any need for compliance verification.”*** Respondent No.2 referred the matter back to the Appellant along with the representation submitted by the College and requested the Appellant to conduct a review.

**5.** The Appellant directed another inspection to be conducted on 14<sup>th</sup> March, 2018. On the basis of the inspection, the assessors submitted a Compliance Verification Assessment Report noting the following deficiencies:

*“1. Deficiency of faculty is 7.75% as detailed in the report.*

*2. Shortage of Residents is 16.12% as detailed in the report.*

*3. Bed Occupancy at 10 a.m. on day of assessment was 53.11%.*

*4. Patients: Many patients in different wards were admitted since two to three months. In one male medicine ward 22 patients out of 34 were admitted since 29<sup>th</sup> January/ some from 30<sup>th</sup> January some from 31<sup>st</sup> January till date. There was only one patient in Dermatology ward rest of the patients as per the HOD*

*Dermatology were shifted from Orthopaedics Ward. Also 49 patients admitted in different wards did not require admission were admitted for minor complaints like low backache/ osteoarthritis/ vertigo etc. One patient Mr. Raju with amputated leg with prosthesis explained himself that he doesn't have any health problem. Wards are not as per MCI norms.*

*5. There is no separate record of OPD & IPD patients in the laboratory.*

*6. Number of Haematology tests in the register/ in the system could not be shown to the assessors during visit.*

*7. Cytopathology workload on day of assessment was only 3.*

*8. Examination Hall: Capacity of 1 Examination Hall is 227 against requirement of 250.*

*9. Other deficiencies as pointed out in the assessment report."*

**6.** The Executive Committee of the Appellant considered the Compliance Verification Assessment Report dated 14<sup>th</sup> March, 2018 along with the previous Assessment Report of the inspection conducted

on 18<sup>th</sup>/19<sup>th</sup> September, 2017 and the photographs/ videography. A decision was taken to recommend not to renew the permission for admission against the enhanced intake of 150. The Executive Committee of the Appellant further decided to invoke Clause 8(3)(1)(c) of the Establishment of Medical College Regulation (Amendment) Act, 2010. The Appellant communicated its decision of disapproval to Respondent No.2 which was accepted. Respondent No.2 directed the College not to admit more than 100 students in the MBBS course for the Academic Session 2018-19. The College was granted liberty to apply afresh for the next academic year in accordance with the provisions of the Indian Medical Council Act, 1956 and the Regulations framed thereunder.

**7.** The College challenged the said decision of Respondent No.2 in the High Court of Kerala and sought for a *Mandamus* to Respondent No.2 to take a decision on the basis of the earlier inspection conducted on 18<sup>th</sup>/19<sup>th</sup> September, 2017.

**8.** The High Court allowed the Writ Petition and directed the Appellant to recommend increase of intake of students from 100 to 150 to Respondent No.2 -Union of India, within a period of three days from the date of the judgement. There was a further direction to the Respondent No.2 - Union of India to issue the letter of permission within three days thereafter. The Writ Petition was allowed solely on the ground that the Appellant ought to have made a recommendation without any further verification. The High Court was of the opinion that the Appellant is bound to comply with the direction given by Respondent No.2 - Union of India and that the inspection conducted on 14<sup>th</sup> March, 2018 was unwarranted. On the basis of the said conclusion, the High Court found the recommendation for disapproval made by the Appellant on 20<sup>th</sup> April, 2018 and the order of Respondent No.2 accepting such recommendation by an order dated 31<sup>st</sup> May, 2018 to be illegal and arbitrary.

**9.** The contention of the Appellant is that there is no fetter on the power of the Medical Council of India to

conduct an inspection for the purpose of verifying compliance. It is the further case of the Appellant that it is not bound by the observations of the Union of India regarding the manner of compliance verification. In any event, the observation of Respondent No.2 was only a suggestion. The Appellant finally contends that the High Court could not have issued a direction in favour of the College after 31<sup>st</sup> May, 2018 which was the last date for issuance of letter of permission.

**10.** It was submitted on behalf of the College that the intake was enhanced from 100 to 150 seats on the basis of a recommendation made by the Appellant in the year 2016-17. Thereafter, another inspection was conducted for renewal of the enhanced intake for the year 2017-18. Permission was granted to the College to make admission to 150 seats for the year 2017-18. The Ld. Senior Counsel for the College relied upon the inspection conducted on 18<sup>th</sup>/19<sup>th</sup> September, 2017 for the year 2018-19 to submit that only two deficiencies were pointed out which, even according to Respondent No.2, have been rectified. It was further argued on



behalf of the College that the Appellant was bound by the direction issued by Respondent No.2 which is the final authority for grant of approval. According to the Ld. Senior Counsel for the College, another inspection could not have been conducted in March, 2018. The Ld. Senior Counsel for the College submitted that the endorsement made by the Principal of the College on the inspection report would clearly show that the inspection was not conducted in a proper manner. He contended that the findings of the assessors in the inspection conducted on 14.03.2018 were without any basis.

**11.** In ***Royal Medical Trust (Registered) & Anr. v. Union of India & Anr.***<sup>1</sup>, this Court set out the steps to be followed scrupulously by all the parties concerned in the following terms:

*“31. ... ..*

*(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,*

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<sup>1</sup> (2015) 10 SCC 19

*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.”

**12.** The power of the Appellant to conduct a second inspection was considered by this Court in **Madha Medical College and Research Institute v. Union of India & Anr.**<sup>2</sup> wherein it was held :

“17. While considering the above submissions, we must make it clear at the outset that we are not impressed with the argument that MCI is prohibited from conducting a second or subsequent inspection. The purpose of

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<sup>2</sup> (2017) 15 SCC 791

*inspection by an expert team of assessors is to verify whether a medical college has the requisite infrastructure and facilities including faculty, residents as well as clinical and non-clinical material. The basic purpose of inspection is to verify whether the college possesses the wherewithal and resources to provide quality legal education consistent with the statutory regulations which hold the field. The powers of MCI cannot be constricted by prohibiting it from carrying out another inspection, even if it were to come close on the heels of an earlier inspection. As an expert statutory body, MCI may have legitimate reasons for seeking a reverification of the observations contained in a prior inspection. There may be reasons to doubt the genuineness of the picture which has been made out by the College during the course of an inspection. MCI may have prima facie reasons to believe that the actual possession of resources and infrastructure is at variance with what was portrayed before its team of assessors. MCI has been conferred with statutory powers to protect the cause of medical education. MCI is a custodian of public interest and acts in trust for the welfare of society. Access to medical care requires the*

*presence of qualified health professionals. Verification of the conditions which prevail in medical colleges is central to the role discharged by MCI. Hence, it would be manifestly contrary to public interest to restrict the powers of MCI to carry out a fresh inspection even though in its considered decision, such an inspection is necessary. This Court cannot sit in judgment over the wisdom of an expert body and we find no basis to hold in law that there is a prohibition in carrying out a fresh inspection. In the absence of a statutory interdict, the court will not read such a restriction into the powers of MCI. In these circumstances, we find no merit in the submission.”*

**13.** There is no restriction in conducting a second inspection limiting it only in respect of the deficiencies pointed out earlier, as held by this Court in ***I.Q. City***

***Foundation & Anr. v. Union of India & Ors.***<sup>3</sup> :

*“31. On a reading of Section 10-A of the Act, Rules and the Regulations, as has been referred to in Manohar Lal Sharma [Manohar Lal Sharma v. Medical Council of India, (2013) 10 SCC 60 : 6 SCEC 578] , and the view expressed in Royal Medical Trust [Royal Medical Trust v. Union of India, (2015) 10 SCC 19 : 7*

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<sup>3</sup> (2017) 16 SCC 249

*SCEC 429], 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 [Royal Medical Trust v. Union of India, (2015) 10 SCC 19 : 7 SCEC 429] . 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 stability and objectivity would be perceptible if reasons are ascribed while expressing a view and absence*

*of reasons makes the decision sensitively susceptible.”*

**14.** The conclusion of the High Court that a second inspection ought not to have been conducted by the MCI is contrary to the law laid down by this Court in the judgments referred to *supra*. We are also not in agreement with the High Court that the MCI was bound to comply with the direction issued by Respondent No.2 and that a recommendation ought to have been made by the Appellant without verification. It is relevant to note that the Hearing Committee was *prima facie* convinced that the deficiencies pointed out in the inspection conducted on 18<sup>th</sup>/19<sup>th</sup> September, 2017 appeared to have been rectified on the basis of documentary evidence furnished by the College. Therefore, the Hearing Committee suggested that the Appellant may review and make a revised recommendation without any need for compliance verification. On the basis of such recommendation of the Hearing Committee, the matter was sent back to the Appellant by Respondent No.2. At best, the observation of the Hearing Committee, as affirmed by Respondent

No.2, is a suggestion. Remand of the matter to the Appellant -MCI for conducting a review is due to the fact that the physical verification for compliance can be done only by the Appellant - MCI. The manner of verification of the compliance has to be necessarily left to the Appellant -MCI. We are of the view that it is open to the Appellant to choose the manner of compliance verification. Remand by the Government of India to MCI for a review does not place any restriction of verification to only the deficiencies pointed out earlier. MCI is competent to conduct the inspection regarding the compliance of the minimum standards as prescribed by the Regulations as well.

**15.** We do not deem it necessary to deal with the submission made on behalf of the College regarding the inspection not being properly conducted. This Court has repeatedly said that a decision taken by the Union of India on the basis of a recommendation of an expert body regarding the inadequacy of facilities in medical colleges cannot be interfered with lightly. Interference is permissible only when the colleges demonstrate



jurisdictional errors, *ex facie* perversity or *mala fide*.

**[See:- *Manohar Lal Sharma v. Medical Council of India*<sup>4</sup> and *Medical Council of India v. Kalinga Institute of Medical Sciences (KIMS)*<sup>5</sup>].** As no case is made out by the College for interference with the inspection report, we decline the request of Mr. Sibal for remand of the matter to the High Court.

**16.** For the aforementioned reasons, the judgment of the High Court is set aside and the Appeal is allowed.

.....J.  
**[S.A. BOBDE]**

.....J.  
**[L. NAGESWARA RAO]**

**New Delhi,  
August 21, 2018.**

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4 (2013) 10 SCC 60 : 6 SCEC 578  
5 (2016) 11 SCC 530