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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment Reserved on: 26.11.2020

% Judgment Pronounced on: 09.12.2020

\+ W.P.(C) 7918/2019 & CM APPL. 4246/2020

CHINTPURNI MEDICAL COLLEGE
AND HOSPITAL AND ANR. ..... Petitioners

Through Mr. Sandeep Sethi, Sr. Adv. with Ms. Bina Madhavan, Adv.

Versus

UNION OF INDIA AND ANR. ..... Respondents

Through Mr. R.V.Sinha, Sr.CGC with Mr.Amit Sinha, Mr.Sharanya Sinha and Mr.Vaibhav Pratap Singh Advocates for R-1.

Mr. T.Singhdev, Mr. Tarun Verma, Ms. Puja Sarkar, Ms. Abhijit Chakravarty and Ms.Sumangla Swami, Advocates for R-2-National Medical Commission.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. This writ petition is filed by the petitioners seeking quashing of the communication dated 21.05.2019 issued by respondent No.2, the then Medical Council of India, by which communication respondent No.2 held that the

request of the petitioner College to admit students in the MBBS course for the academic year 2019-20 cannot be granted.

2. It is stated by the petitioners that the petitioners own a hospital to which is attached the petitioner College. The clinical facilities of the hospital are available to the College for the purpose of teaching. The State of Punjab issued an Essentiality Certificate on 07.12.2010 in favour of the petitioner College keeping into account the available infrastructure facilities, equipment, faculty strength, etc. The petitioner is said to have applied to respondent No.1 for grant of recognition/approval of the petitioner College for awarding of MBBS Degrees (150 seats) to be granted by Baba Farid University of Health Sciences, Faridkot under Section 11(2) of the Indian Medical Council Act, 1956 (hereinafter referred to as 'IMC Act'). It is stated that respondent No.1 vide gazette notification dated 26.09.2016 granted recognition to the petitioner College for award of MBBS Degree for 150 intake on the basis of approval communicated by the Supreme Court Mandated Oversight Committee. It is stated that thereafter, an assessment to verify the deficiencies pointed out in various previous assessment reports was carried out by the Council of Assessors of respondent No.2 on 07.03.2017. The Executive Committee of MCI recommended to respondent No.1 to debar the petitioner College from admitting students for two academic years i.e. 2017-18 and 2018-19 and to encash the bank guarantee of Rs.2 crores that was furnished by the petitioner at the time of grant of recognition dated 26.09.2016. Respondent No.1 thereafter sent a letter dated 31.05.2017 to the petitioner debarring the petitioner from admitting students for two academic years 2017-2018 and 2018-19 and a direction was

issued to MCI to encash the bank guarantee of Rs.2 crores. The aforesaid communication dated 31.05.2017 was challenged by the petitioners before the Supreme Court in W.P.(C)423/2017. The Supreme Court vide order dated 01.08.2017 directed the Central Government to hear the petitioners and take assistance of the newly constituted Committee as per the earlier orders of the Supreme Court and pass a reasoned order. The Central Government/respondent No.1 on 29.08.2017 reiterated its earlier decision dated 31.05.2017. It is further stated that in the meanwhile, the students studying in the petitioner College for the academic year 2013-14 filed a writ petition before the High Court of Punjab & Haryana seeking a direction to shift the students to some other recognised medical college in the State of Punjab. The above writ petition was allowed by the Single Judge of the said High Court and by the Division Bench. The petitioners filed an SLP No.33321/2017. However, in the meantime the State of Punjab shifted all the students of the petitioner College to other medical colleges. Hence, it is stated that SLP 33321/2017 became infructuous.

3. On 10.05.2018, the Supreme Court dismissed the writ petition being W.P.(C) No.423/2017 challenging the orders of the Central Government/Respondent No.1 dated 29.08.2017 stating that the petitioner College would be entitled to pursue the permission for the academic years 2019-20 and 2020-21 after the period of ban, in accordance with law. It is stated that in compliance of the orders of the Supreme Court no students have been admitted for the two academic years 2017-18 and 2018-19. On 13.04.2019 the petitioners addressed a communication to respondent No.2 bringing to its notice that in view of the procedure established by law, respondent No.2 cannot stop

admission in the petitioner Institution for MBBS course for the academic year 2019-20. It was claimed that petitioner College has all the infrastructural and clinical facilities and has the required faculties and medical equipment as required for admitting students. However, respondent No.2 vide impugned letter dated 21.05.2019 rejected the request of the petitioner stating that the petitioner College must submit an application under Section 10A of The IMC Act for grant of permission to admit students for the academic year 2020-21.

4. The petitioners challenged the aforesaid communication dated 21.05.2019 issued by respondent No.2 in the Supreme Court by filing a writ petition being W.P.(C)856/2019. The writ petition was, however, withdrawn with liberty to approach this court on 15.07.2019. Hence, the present writ petition.

5. Respondents have vehemently opposed the present writ petition. Respondent No.2 has filed a detailed and voluminous reply opposing the present writ petition. In the reply various pleas have been taken. It has been urged that the petitioner College is guilty of concealment of material facts and circumstances under which the petitioner Medical College was denied renewal of permission to admit fresh batch of MBBS students for the academic year 2015-16. It has been stressed that alongwith the decision not to renew the permission to admit fresh batch of MBBS Students for the academic year 2015-16, the decision was taken to encash the bank guarantee of Rs.10 crores. Subsequently also, a decision was taken to debar the petitioner from admitting fresh batch of students for the academic years 2017-18 and 2018-19 with further encashment of a bank guarantee of Rs.2 crores The petitioner Medical College has been clandestinely able to prevent encashment of the bank guarantees even

after various reminders to the concerned banks and the orders of the Supreme Court dated 11.09.2017 passed in SLP No.16676/2015 alongwith W.P.(C)431/2015 permitting the said respondent to encash the bank guarantee of Rs.10 crores as the College was found in violation of the orders dated 18.09.2014 and 25.09.2014 passed by the Supreme Court in W.P.(C)469/2014 titled as "***Hind Charitable Trust Shekhar Hospital Private Limited vs. Union of India & Ors.***".

6. It has also been pointed out that the petitioner College has concealed material facts that no students are being taught/trained in the Medical College as all the batches of students admitted during the academic years 2011-12, 2014-15 and 2016-17 have already been shifted to other medical colleges by the State Government and that the petitioner Medical College is not functional.

7. The factual history of the petitioner College has also been pointed out. The petitioners were granted a letter of permission for establishment of the College with an annual intake of 150 MBBS students for the academic year 2011-12. The petitioner College was not granted renewal of permission to admit fresh batches of MBBS students for the academic years 2012-13 and 2013-14 on account of gross deficiencies of the faculty, residents, clinical material and infrastructure. In view of the orders of the Supreme Court dated 18.09.2014 and 25.09.2014 passed by the Supreme Court in W.P.(C) 469/2014 titled as "*Hind Charitable Trust Shekhar Hospital Private Limited vs. UOI & Ors.*", the petitioner Medical College was able to admit students for the academic year 2014-15. As per the orders of the Supreme Court dated 18.09.2014 and 25.09.2014, all the private medical colleges were permitted to admit students

subject to an undertaking by its President/Chairman and Secretary that there was no deficiency existing in the medical college and in the event of the undertaking being found to be incorrect, the bank guarantee of Rs.10 crores furnished by the medical colleges would be forfeited by MCI. It is stated that subsequently, the undertakings dated 27.09.2014 submitted by the President and Secretary of the petitioner College were found to be incorrect and deficiencies were pointed out. It was decided to forfeit the bank guarantee of Rs.10 crores. A fresh bank guarantee was sought for processing the case for the academic year 2015-2016. The legal proceedings initiated by the petitioners in this regard being SLP No. 16676/2015 was dismissed as infructuous on 11.09.2017. Subsequently, it was decided by the Central Government not to permit the petitioner College to admit batches of students for the year 2015-2016. A challenge to this decision was also made by way of a writ petition being WP(C) 431/2015 which was also dismissed on 24.04.2018. It is stated that the answering respondent conducted series of inspections on 16.12.2015, 25/26.02.2016 and 16.03.2016 and recommended to the Central Government not to grant recognition to the petitioner Medical College on 10.06.2016 for the year 2016-17. In W.P.(C) No. 273/2016, the Supreme Court on 29.08.2016 directed the Union of India/respondent No. 1 to forward the representation of the petitioners to the Oversight Committee which was to consider the same. The Central Government had vide notification constituted the said Oversight Committee on the directions of the Supreme Court dated 02.05.2016. The Oversight Committee vide its communication dated 25.09.2016 on the basis of the data made available on the website of the college approved the case of the petitioners for grant of conditional recognition to the

MBBS degree awarded to the students admitted in the petitioner College against the annual intake of 150 seats. On 26.09.2016, the Government of India vide notification granted conditional recognition to the petitioners subject to stipulations. Hence, the petitioner College was able to admit students for the academic year 2016-17. Subsequently, as per the directions of the Oversight Committee, a verification assessment was carried out on 07.03.2017. Based on the said report, the Central Government on 31.05.2017 debarred the petitioner Medical College from admitting students for the year 2017-18 and 2018-19. The said decision was challenged before the Supreme Court vide W.P.(C) No. 423/2017. The Supreme Court passed the order dated 10.05.2018 where it was noted that the petitioner Medical college was not functional and did not have any faculty. The petition was dismissed. It is stated that the petitioner Medical College after the order dated 10.05.2018 had time till 07.07.2018 in terms of the time schedule laid down by the Supreme Court in the case of ***Ashish Ranjan & Ors. vs. UOI & Ors., (2016) 11 SCC 225*** to submit an application for grant of permission for the academic year 2019-2020. The petitioners have chosen not to do so.

8. It has been stressed that all the three batches of MBBS students admitted to the petitioner College in 2011-12, 2014-15 and 2016-17 have already been shifted by the State Government to other medical colleges of the State. There are no students presently studying in the petitioner Medical College. The petitioner Medical College is defunct and non-functional. It has failed to fulfill the conditions imposed towards grant of the conditional recognition dated 26.09.2016. Hence, it is stated that the conditional recognition dated 26.09.2016

had become invalid. In any case, it is stated that the process for withdrawal of the recognition for MBBS course has already been commenced by a show cause notice dated 24.03.2017 and the formal process is under way. It has been stated that by the impugned order, the request of the petitioners to admit students for the year 2019-20 has been rejected. The answering respondent has also informed the petitioner Medical College to submit applications/scheme under Section 10A of the IMC Act for grant of permission to admit students for the next academic year 2020-21. The petitioners have to also submit fresh bank guarantees towards processing of grant of permission to admit students for the academic year 2020-21. It has been reiterated that the timelines provided by the Supreme Court for granting permission to the petitioners to commence admission is already over. The plea of the petitioners is infructuous.

9. Respondent No. 1 has also filed a short affidavit where broadly the aforesaid submissions have been repeated.

10. I may note that when this writ petition was filed, the petitioners had filed an interim application seeking interim orders. The said application was dismissed on 23.08.2019 by this court. This court noted that the impugned communication dated 21.05.2019 is suggestive of the fact that the necessary facilities and faculty are not available in the medical college run by the petitioners. Against the aforesaid order dated 23.08.2019 the petitioners filed a SLP before the Supreme Court being SLP No. 20871/2019 that was dismissed by the Supreme Court on 06.09.2019.

11. I have heard learned senior counsel for the petitioners and learned counsel appearing for respondent No. 1 and respondent No. 2 respectively. I may note

that the matter was heard on 24.11.2020. The matter reached for hearing only at 4.00 P.M. when I was informed about the order of the Supreme Court dated 05.11.2020. Learned counsel for the parties were heard on the said date. The matter was subsequently also taken up on 25th & 26th November 2020 when learned counsel for the parties were heard and arguments were completed. Judgment was thereafter reserved.

12. Learned senior counsel for the petitioners has stressed that on 26.09.2016 under Section 11(2) of the IMC Act, the Medical College of the petitioner was recognized. As it is a recognized medical college, the plea of the respondents that the petitioner College should, for admitting students for the years 2019-20 and 2020-21 take fresh steps under Section 10A of the IMC Act is misconceived. It has been stressed that the respondents by the communication dated 31.05.2017 had debarred the petitioner College from admitting students for the academic years 2017-2018 and 2018-19. This debarment was in terms of the recognition granted dated 26.09.2016. The petitioner College in compliance of the said order has not admitted students for the said academic years 2017-2018 and 2018-19. The petitioner College is now entitled to admit students for the academic years 2019-20 and year 2020-21 which the impugned order dated 21.05.2019 is wrongly denying to the petitioner. It is reiterated that the plea of the respondents that the petitioners should apply under Section 10A of the IMC Act is misplaced. Once the petitioners have received recognition under Section 11 of the IMC Act, the recognition can be taken away only in exercise of powers under Section 19 of the IMC Act. Further, the respondent cannot in this manner

stop the petitioner from admitting students. Reliance is placed on the order of the Supreme Court dated 10.05.2018 in WP(C) 423/2017.

13. Learned counsel for respondent No. 2 has made the following submissions:-

(i) He has relied on the order dated 10.05.2018 of the Supreme Court in WP(C) No. 423/2017 which was filed challenging the order dated 31.05.2017 passed by the respondent whereby the petitioner was debarred from admitting students for the years 2017-18 and 2018-2019. The Supreme Court in the said order had noted, it is urged, that the petitioner College is devoid of students as they have already been shifted to other medical colleges. The plea of the petitioners that they had teaching staff was also rejected. The writ petition of the petitioners was dismissed with the observations that the petitioner College would be entitled to pursue the permission for the academic years 2019-20 and 2020-21 after the period of ban in accordance with law. It is stated that no steps have been taken by the petitioners to take permission for admitting students for the years 2019-2020 and 2020-21. Their argument that on the lapse of the academic years 2017-2018 and 2018-19, the ban imposed disappears and the petitioners can in view of the recognition dated 26.09.2016 commence admission is a misplaced argument.

(ii) It has been stressed that the recognition dated 26.09.2016 granted to the petitioners was subject to fulfillment of certain conditions. As per the said recognition, the Dean/principal had to affirm fulfillment of all deficiencies and the statements made in the respective compliance reports submitted to Ministry of Health and Family Welfare (MHFW). A bank guarantee of Rs. 2 crores was

to be given which would be valid for one year. It is stated that subsequent inspections revealed that the petitioners had failed to remove all deficiencies. Further, the petitioners have also obstructed the respondent form encashing the bank guarantee of Rs. 2 crores which so far remains unpaid to the respondent. The recognition being provisional has lapsed.

(iii) It has further been repeated that the Supreme Court by its order dated 10.05.2018 had directed the petitioners to take steps to pursue the permission for the academic years 2019-20 and 2020-21 in accordance with law. The petitioners have failed to do the same and hence, are entitled to no relief. The petitioners had to apply for the recognition which they have failed to do.

(iv) It has strongly been stressed that the entire effort on the part of the petitioners is to prevent an appropriate inspection being carried out of the premises of the petitioners. The petitioner College is a defunct college. It has no students, no faculty and no infrastructure. Only three batches of students were admitted, and all the three batches have been migrated to other colleges.

14. Learned counsel for respondent No. 1 has reiterated the contentions of learned counsel for respondent No. 2.

15. The controversy is narrow, namely, interpretation of the terms of the recognition dated 26.09.2016 granted to the petitioners under Section 11(2) of the IMC Act. The recognition granted for the under graduate course of MBBS Degree was subject to directives and stipulations made by the Oversight Committee in the stated communication and subject to a maximum period of five years upon which it shall have to be renewed.

The submission of the petitioners is that as per the aforenoted recognition dated 26.09.2016, in case the petitioners are unable to fulfil the conditions stipulated therein and if the compliances are found incomplete in the inspections that are to be conducted, the petitioner College shall be debarred from taking fresh intake of students for two years. It is pleaded that pursuant to the bar imposed by the respondent dated 21.03.2017, the petitioners have not admitted students for the academic years 2017-18 and 2018-19. The conditions stated in the notification granting recognition dated 26.09.2016 stand satisfied and the petitioner College is now entitled to admit students for the academic years 2019-20 and 2020-21.

16. The respondents deny the above contentions of the petitioners as stated in the impugned communication dated 21.05.2019. It is the stand of the respondents that the recognition granted to the petitioner Medical College by the notification dated 26.09.2016 was a conditional recognition subject to fulfilment of the conditions mentioned therein. The said conditional recognition does not become final unless the conditions therein are fulfilled. The petitioners have failed to fulfil the conditions. Reliance is placed on the judgment of the Punjab & Haryana High Court and the judgment of the Supreme Court where it has been observed that there are gross deficiencies in the petitioner Medical College. Hence, it is stated that the conditional recognition granted to the petitioners by the notification dated 26.09.2016 has become invalid as the petitioners have failed to comply with the conditions imposed thereunder. It is further stated that even otherwise, the petitioner College is completely defunct and without students, teachers and other facilities. No students are studying in the petitioner

Medical College as they have all been transferred to other medical colleges. There is gross deficiency of teaching faculty, clinical material and other physical facilities in the Medical College. Hence, it is important that an inspection be carried out to assess the status of the teaching faculty, clinical material and other physical facilities in the petitioner medical college before any permission can be granted to the petitioners. The petitioners have to also apply afresh under Section 10A of the IMC At.

17. The controversy is narrow. However, the facts of the case reveal a long history starting from the year 2011-12. It would be necessary to look at the relevant facts in this regard. Some of the said facts are that the petitioner College was established in 2011-12 with an annual intake of 150 MBBS students.

For the academic year 2012-13, the application of the petitioner College for renewal of permission was rejected. The petitioners challenged the said step taken by the respondent. Subsequently, this act was upheld by the Supreme Court in the case of ***Manohar Lal Sharma vs. MCI & Ors., (2013) 10 SCC 60***.

For the academic year 2014-15 on account of the various gross deficiencies of infrastructure, faculty, residents and clinical material etc., the MCI recommended to the Central Government not to grant renewal to the petitioners for the said academic year. The Central Govt conveyed its decision not to grant renewal of permission for the said academic year 2014-15 on 15.07.2014. However, the Supreme Court vide orders dated 18.09.2014 and 29.05.2014 passed in W.P.(C) 469/2014 in the case ***Hind Charitable Trust Shekhar Hospital Private Limited vs. Union of India & Ors.*** allowed all such private medical colleges whose application for renewal of permission was

disapproved by the Central Government on the ground of various deficiencies existing in the medical colleges to make admissions subject to stipulated undertakings by the President/Chairman and Secretary of the medical college. It was also stated that in case the statement made in the undertakings was found to be incorrect at the time of next physical inspection of the college, the bank guarantee of Rs.10 crores furnished by the medical college was liable to be forfeited. Hence, the petitioner admitted students for the year 2014-15.

For the academic year 2015-16, on 13.01.2015 respondent No.2 recommended to the Central Government not to renew the permission of the petitioners. Respondent No.2 also decided to invoke/forfeit the bank guarantee furnished by the petitioners for a sum of Rs.10 crores. The Central Government on 15.06.2015 refused the renewal of permission to the petitioners for the academic year 2015-16. It is also pointed out by respondent No.2 that despite invocation of the bank guarantee of Rs.10 crores, till date the respondent has not been able to encash the bank guarantee on account of dilatory and illegal tactics on the part of the petitioners in misguiding and misinforming the bankers in question.

18. For the year 2016-17, respondent No. 2 on 15.05.2016 again recommended to respondent No. 1 not to grant renewal of permission. Thereafter pursuant to various litigations, in W.P.(C) No.273/2016 the Supreme Court directed the Central Govt. to forward the representation of the petitioners to the Oversight Committee which was to consider the same. The Oversight Committee vide its letter dated 25.09.2016, on the basis of data available allegedly on the website of the College approved the case of the petitioner

College for grant of conditional recognition of MBBS degree with an intake of 150 MBBS seats. Hence, respondent No.1 by the notification dated 26.09.2016 granted conditional recognition for the MBBS degrees awarded to the students admitted in the petitioner College with an annual intake of 150 MBBS seats. It is stated that pursuant to the conditional recognition on the directives of the Oversight Committee, a verification assessment was conducted by the Joint Assessment Team on 07.03.2017. Pursuant to the inspection, the respondent concluded that the petitioner College has breached the undertaking given by them and hence, the Committee decided to recommend to the Central Government to debar the petitioner Medical College for the two academic sessions i.e. 2017-18 and 2018-19 and to also encash the bank guarantee of the Medical College of Rs.2 crores.

19. Based on the above, respondent No.1 on 31.05.2017 debarred the petitioner Medical College in question from admitting students for the academic years 2017-18 and 2018-19 and also permitted respondent No.2 to encash the bank guarantee. It is on the expiry of the aforesaid period of ban that the impugned communication dated 21.05.2019 has been sent.

20. I may note that in the aforenoted factual narration as it was not necessary to decide the present controversy, I have not referred to all the judgments passed by the Punjab and Haryana High Court, this Court and by the Supreme Court at various stages of the litigations initiated by the petitioners/respondents relating to grant of recognition/denying permission to the petitioners to continue admitting students in the College/transfer of existing students, etc..

21. I may now look at the notification dated 26.09.2016 by which notification the petitioners were admittedly granted provisional recognition for a maximum period of five years. This is the document in question. The relevant portion of the aforesaid notification reads as follows:-

> "1. This notification is issued complying with the direction of the Supreme Court Mandated Oversight Committee on MCI as communicated vide letter No. OC/Approval for 2016-17/116 dated 25th September, 2016. The Medical College shall, provide the following:-
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> (i) An affidavit from the Dean/Principal and Chairman of the Trust/University/Society/Company etc concerned, affirming fulfillment of all deficiencies and statements made in the respective compliance report submitted to MHFW (by 27.09.2016)
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> (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 (by 27.09.2016).
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> 2. The Supreme Court Mandated Oversight Committee while granting approval has also stipulated as follows:-
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> (a) OC may direct inspection to verify the compliance submitted by the college and considered by OC, any time after 30 September 2016.
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> (b) In default of the conditions (i) and (ii) in 1 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.

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4. The recognition so granted to undergraduate courses for award of MBBS degree shall be subject to directives and stipulations made by the Oversight Committee indicated herein above and further subject to a maximum period of 5 years, upon which it shall have to be renewed. The procedure for 'Renewal' of recognition shall be same as applicable for the award for recognition.

5. Failure to seek timely renewal of recognition as required shall invariably result in stoppage of admissions to the concerned undergraduate Course."

22. Hence, the aforesaid recognition was clearly conditional upon the affidavit being filed from the Dean/Principal of the petitioner affirming fulfilment of all deficiencies and statements made in the respective compliance reports submitted to MHFW and on submitting a bank guarantee of Rs. 2 crores in favour of respondent No.2 valid for one year until the first renewal assessment. Condition 2(b) stipulates that in case of default of the aforesaid two conditions and if the compliances are found incomplete in the inspection conducted after 30.09.2016, the college would be debarred from fresh intake of students for two years commencing 2017-18. It is clear that a meaningful interpretation of the aforesaid conditions would show that in case the affidavit submitted by the Dean/Principal and Chairman of the Trust/University/Society/ Company affirming fulfilment of all deficiencies and statements made are found to be incorrect or wrong in the inspection to be conducted after 30.09.2016, such colleges would be debarred from fresh intake for two years. These clauses cannot be interpreted to mean that on the expiry of the debarment of two years irrespective of the fact that the

deficiencies were found existing, the petitioner would *ipso facto* be entitled to admit students on the expiry of the said bar of two years. It could not have been the intention of the aforesaid notification/approval dated 26.09.2016 that the petitioners on completion of debarment of two years without any verification of its facilities can start admitting students. The petitioners had to necessarily demonstrate that the deficiencies which were noticed earlier have been rectified. It is only in case the respondents are satisfied that the deficiencies have been removed, the question of granting permission to the petitioners to admit students for the academic year 2019-20 onwards would arise.

23. I may note that the petitioners have on completion of the debarment of two years taken no steps to seek inspection of the existing facilities to demonstrate that there are no infirmities or inadequacies in the infrastructure. Even in this writ petition there is no relief sought seeking a direction to respondent No.2 to re-inspect the College of the petitioners to verify the availability of the relevant infrastructure. The only prayer in the writ petition is to set aside the impugned communication dated 21.05.2019. No other reliefs are sought.

24. In my opinion in the absence of an inspection and verification of the available infrastructure of the petitioners, in the facts and circumstances of the case, it is not possible to direct the respondents to permit the petitioners to admit students for the year 2020-21, the relief for the year 2019-20 being infructuous.

25. In this context, I may have a look at the case relating to the College of the petitioner itself, namely, the judgment of the Supreme Court in the case of ***Manohar Lal Sharma vs. MCI & Ors., (supra).*** This case related to the

admission of students by the petitioner for the academic year 2013-2014. After the Medical Council of India had granted approval to the petitioner, the said Council conducted routine inspections to verify whether the medical college was maintaining infrastructure facilities, faculty and clinical material, etc. Certain deficiencies were noticed. The College submitted its compliance report. A surprise inspection was then carried out at the petitioner College which detected various deficiencies. The Supreme Court held as follows:-

> "16. MCI is a body constituted under the provisions of the Indian Medical Council Act, 1956 and has been given the responsibility of discharging the duty of maintenance of the standards of medical education in the country. It has the power to supervise the qualifications or eligibility standards for admission into the medical institutions.
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> 17. This Court in *State of Kerala* v. *T.P. Roshana* [(1979) 1 SCC 572 : AIR 1979 SC 765] , observed as follows: (SCC p. 580, para 16)
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> "16. The Indian Medical Council Act, 1956 has constituted the Medical Council of India as an expert body to control the minimum standards of medical education and to regulate their observance. Obviously, this High-powered Council has power to prescribe the minimum standards of medical education. It has implicit power to supervise the qualifications or eligibility standards for admission into medical institutions. Thus there is an overall invigilation by the Medical Council to prevent substandard entrance qualifications for medical courses."
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> 18. The necessity of proper facilities, including teaching faculty, clinical materials, has been highlighted by this Court in *Medical Council of India* v. *State of Karnataka* [(1998) 6 SCC 131] which reads as follows: (SCC p. 157, para 29)

"29. A medical student requires gruelling study and that can be done only if proper facilities are available in a medical college and the hospital attached to it has to be well equipped and the teaching faculty and doctors have to be competent enough that when a medical student comes out, he is perfect in the science of treatment of human beings and is not found wanting in any way. The country does not want half-baked medical professionals coming out of medical colleges when they did not have full facilities of teaching and were not exposed to the patients and their ailments during the course of their study."

19**.** MCI on the basis of the reports, regular and compliance, is legally obliged to form an opinion with regard to the capacity of the college to provide necessary facilities in respect of staff, equipments, accommodation, training and other facilities to ensure proper functioning of the medical college or for increase of admission capacity. Section 10-A of the Indian Medical Council Act, 1956 deals with the permission for establishment of new medical college, new course of study, etc. Sub-section (7) of Section 10-A is extracted hereunder for easy reference:
…."

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"26. We have already dealt with, in extenso, the deficiencies pointed out by the MCI team in its report dated 6-7-2013. In our view, the deficiencies pointed out are fundamental and very crucial, which cannot be ignored in the interest of medical education and in the interest of the student community. MCI and the College authorities have to bear in mind, what is prescribed is the minimum, if MCI dilutes the minimum standards, they will be doing violence to the statutory requirements. MCI is duty-bound to cancel the request if fundamental and minimum requirements are not satisfied or else the College will be producing half-baked and poor quality doctors and they would

do more harm to the society than service. In our view, the infirmities pointed out by the inspection team are serious deficiencies and the Board of Governors of MCI rightly not granted approval for renewal of permission for the third batch of 150 MBBS students for the academic year 2013-2014."

26. In this context reference may also be had to the judgment of the Division Bench of this court dated 19.07.2018 in the case of ***Jagat Narayan Subharti Charitable Trust and Anr. Vs. Union of India & Anr., MANU/DE/2845/2018*** being LPA No. 340/2018. The Division Bench held as follows:-

> "11. Supreme Court in Madha Medical College and Research Institution Though its Managing Director versus Union of India and Another, (2017) 15 SCC 791, with reference to the importance of inspection has held:-
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> > "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 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 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."

Thus Medical Council of India as a statutory body and being a custodian of public interest is empowered to carry out inspections even if it comes close to the heels of an earlier inspection. Court(s) cannot sit in judgment over the wisdom of an expert body as to when and what time they should conduct inspection. In fact, failure to conduct inspection and undertake assessment would be unacceptable.

12. Supreme Court in Royal Medical Trust versus Union of India, (2015) 10 SCC 19 had referred to Regulation 8 and right, duty and obligation of Medical Council of India to carry out inspections. Inspection, by its very nature must have an element of surprise as this ensures that the required facility and infrastructure are always in place and not borrowed or put up temporarily. This judgment

also highlights that time lines fixed for compliance should be adhered to and followed."

27. Hence, MCI is obliged to form an opinion about the capacity of the college to provide necessary facilities. The purpose of an inspection is to verify whether the medical college has the requisite infrastructure and facilities including faculty, residents as well as clinical and non-clinical material.

28. In this case, the facts undisputedly show that presently, the petitioner College has no students. It had admitted students for three academic years, namely, 2011-12, 2014-15 and 2016-17. All the students had been transferred out to other colleges by the State of Punjab.

29. That apart, the Supreme Court in its order dated 10.05.2018 in W.P.(C) 423/2017 which was a challenge to the ban imposed on the petitioners for admitting students for the academic year 2017-18 and 2018-19 had made observations stating that the petitioner College is completely devoid of students. The Court found it difficult to accept the plea of the petitioners that they had teaching staff. Reference may be had to the said judgment of the Supreme court dated 10.05.2018 that reads as follows:-

"We find that the petitioner-college is admittedly and completely devoid of students. The students have already been shifted to some other medical colleges by the State Government. We find it difficult to accept the contention of learned counsel appearing on behalf of the petitioners that they have teaching staff.

Having regard to that, no purpose would be served even if any relief granted to the petitioners in respect of two years i.e. 2017-18 and 2018-19 for which they have been banned since there are no students in their college.

> In the circumstances, we consider it appropriate to dismiss the instant writ petition with the observation that the petitioners-college would be entitled to pursue the permission for the academic years i.e. 2019-20 and 2020-21, after the period of ban, in accordance with law.
>
> With the aforesaid observations, the instant writ petition is dismissed."

30. Further, repeated inspections carried out by respondent No.2 have observed deficiencies in the infrastructure of the petitioner College. In this factual background, in the absence of an appropriate inspection to be carried out by respondent No. 2, respondent No. 2 has rightly declined to grant permission to the petitioners to admit students for the years 2019-20 and even, for the year 2020-21. The contention of the petitioner that without an inspection, it should have been allowed to admit students in 2019-20 and 2020-21 is rejected.

31. The next question comes as to whether a direction can now be passed to the respondent to carry out the necessary inspection at this stage. In my opinion, the same cannot be done for reasons hereinafter stated. Firstly, I may note that there is no such prayer in the present writ petition seeking any direction to the said effect to the respondent. That apart, in the course of submissions no such plea was sought to be raised. What was stressed by the petitioners was that given the recognition granted by respondent No.1 dated 26.09.2016, once the ban for not admitting students for academic year 2017-18 and 2018-19 has been complied with by the petitioners, automatically the ban gets lifted and for the academic years 2019-20 and 2020-21 and the petitioners are entitled to admit students.

32. Secondly, as submitted by learned counsel for respondent No.2, the last date for issuing letter of permission for the present academic year was 31.08.2020. It has been pointed out that the last date for receipt of such applications by the answering respondent was 7th July of the previous year. In terms of the judgment of the Supreme Court in the case of ***Ashish Ranjan and Ors. Vs. Union of India,*** (***2016) 11 SCC 225***, the renewal of permission had to be given by the respondents by 31.05.2020 which was extended to 31.08.2020 for the present year. Hence, at this stage, no such direction can be given to the respondent to carry out an inspection of the college of the petitioners.

33. In this context, reference may be had to the judgment of a Coordinate Bench of this court titled as ***Travancore Medical College vs. Union of India & Anr, (2019) 257 DLT 4*** where this court relying upon judgments of the Supreme Court in the case of *Mridul Dhar (minor) vs. Union of India, (2005) 2 SCC 65* and *Priya Gupta Vs. State of Chattisgarh (2012) 7 SCC 433* noted as follows:-

> "23. *Priya Gupta (supra)*, like *Mridul Dhar (supra)*, dealt with the time schedule fixed in respect of admissions to medical and dental courses. However, while emphasising the sanctity of time schedules, a slew of directions were issued by the Supreme Court, which included, inter alia, directions regarding the time schedule fixed in respect of grant of approval for commencement of new courses by a medical or dental colleges. These directions, as contained in para 46, and its various sub-paras in the said judgment, read thus:
>
> > "46. Keeping in view the contemptuous conduct of the relevant stakeholders, their cannonade on the rule of merit compels us to state, with precision and esemplastically, the

action that is necessary to ameliorate the process of selection. Thus, we issue the following directions in rem for their strict compliance, without demur and default, by all concerned:

46.1. The commencement of new courses or increases in seats of existing courses of MBBS/BDS are to be approved/recognised by the Government of India by 15th July of each calendar year for the relevant academic sessions of that year.

46.2. The Medical Council of India shall, immediately thereafter, issue appropriate directions and ensure the implementation and commencement of admission process within one week thereafter.

46.3. After 15th July of each year, neither the Union of India nor the Medical or Dental Council of India shall issue any recognition or approval for the current academic year. If any such approval is granted after 15th July of any year, it shall only be operative for the next academic year and not in the current academic year. Once the sanction/approval is granted on or before 15th July of the relevant year, the name of that college and all seats shall be included in both the first and the second counselling, in accordance with the Rules.

46.4. Any medical or dental college, or seats thereof, to which the recognition/approval is issued subsequent to 15th July of the respective year shall not be included in the counselling to be conducted by the authority concerned and that college would have no right to make admissions in the current academic year against such seats.

...."

34. Clearly, in view of the legal position stated above, at this late stage, no directions can be passed to respondent No. 2 to carry out inspections of the College of the petitioner and thereafter, process the application of the petitioners for grant of permission to admit students for the academic year 2020-21.

35. There is another issue that survives, namely, the plea of the respondent No.2 in its impugned communication dated 21.05.2019 to the effect that the respondent No.2 by the impugned order had requested the petitioners to submit an application/scheme under Section 10A of the IMC Act for grant of permission to admit students for the academic year 2020-21. It has been strongly urged by the petitioners that the petitioner is a recognized college under Section 11 (2) of the MCI Act and that there is no requirement in terms of the IMC Act for the petitioners to apply afresh under Section 10A of the said Act. Such applications are made only by new colleges seeking recognition from the respondents. The petitioner is already a recognized college. It is further stated that if for some reason the respondent is of the view that there are deficiencies in the infrastructure of the college of the petitioner, it is for the respondent to take appropriate steps under Section 19 of the IMC Act to derecognize the petitioner institute.

36. In my opinion, the aforesaid controversy need not detain me any further. In terms of the recognition granted to the petitioners dated 26.09.2016, the recognition granted was in the peculiar facts and circumstances subject to a maximum period of five years upon which it had to be renewed. The procedure of renewal of recognition was to be the same as applicable for award of recognition i.e. under Section 10A of the IMC Act. Failure to seek timely

renewal of recognition as required was to result in stoppage of admissions for the concerned undergraduate course. It is clear that as the plea for taking admission for the academic year 2020-21 of the petitioner is infructuous, the petitioner would have to take steps in terms of the notification dated 20.09.2016 to renew its recognition.

37. There is clearly no merit in the present petition and the same is dismissed. Pending applications also stand dismissed.

JAYANT NATH, J

DECEMBER 09, 2020
n/rb/v/st