Dr. B.R. Ambedkar Medical College and Another Vs Union of India (UOI) and Others

Court: Karnataka High Court

Date of Decision: Aug. 13, 2004

Acts Referred: Establishment of Medical Colleges Regulations, 1999 â€" Regulation 8
Indian Medical Council Act, 1956 â€" Section 10 A, 10 A (1), 11, 19

Citation: (2005) ILR (Kar) 783 : (2005) 1 KarLJ 576 : (2005) 3 KCCR 183 SN

Hon'ble Judges: S.R. Nayak, J; D.V. Shylendra Kumar, J

Bench: Division Bench

Advocate: B.S. Patil and C. Manjunath, for the Appellant; P.S. Dinesh Kumar, Central Government Standing Counsel for Respondent-1, Maninder Singh for N. Khetty, for Respondent-2, V.Y. Kumar, Government Advocate for Respondent-3 and R. Sridhar Hiremath, for Respondent-4, for the Respondent

Final Decision: Dismissed

Judgement

S.R. Nayak, J.
The writ petitioners being aggrieved by the order of a learned Single Judge of this Court dated 30th April, 2004 passed in

Writ Petition Nos. 16923, 17396 and 17397 of 2004 have preferred these writ appeals questioning the validity of the order of the learned Single

Judge. Appellant 1 is Dr. B.R. Ambedkar Medical College represented by the Chairman of Ad hoc Committee appointed by this Court and

appellant 2 is Dr. B.R. Ambedkar Medical College, represented by its Principal. The 1st respondent is the Union of India; the 2nd respondent is

the Medical Council of India; the 3rd respondent is the State of Karnataka and the 4th respondent is Rajiv Gandhi University of Health Sciences.

2. In these writ proceedings two important questions, among other incidental questions, arise for decision making. They are:

(i) Whether the Medical Council of India (for short, the "MCI") has the authority under the Indian Medical Council Act, 1956 (for short, "the

Act") to stop admissions in the second appellant-college?

(ii) Whether the said action of the MCI stopping admissions to undergraduate and post-graduate courses in the second appellant-college is vitiated

by vice of procedural impropriety, violation of principles of natural justice and fairness in action?

3. The factual matrix of the case may be noted first:

Ananda Social and Educational Trust is a public charitable trust established by people belonging to Scheduled Castes and it is running three

educational institutions, namely, (1) Dr. B.R. Ambedkar Medical College, (2) Mathrushri Ramabai Ambedkar Dental College and (3) Mathrushri

Bhimbai Ambedkar Institute of Nursing. Appellant 1 is a Committee constituted by this Court vide order dated 29-10-2003 modified later on 31-

3-2004 and the said Committee is entrusted with the responsibility of running the management of the aforementioned three Institutions. The

Committee is headed by a retired Judge of the High Court, namely, Mr. Justice S.R. Venkatesha Murthy. Dr. Mrs. Selvidas, former Vice-

Chancellor of Mysore University is appointed as a second member of the Committee. As it now stands, the affairs of the colleges including the 2nd

appellant-college, whose grievance is the subject-matter of the present writ proceedings are looked after by the said Committee constituted by this

Court. The appointment of the Committee for the 2nd respondent-college was made by the Division Bench of this Court in the pending Writ

Petition Nos. 29684 of 2003 and 29721 and 29722 of 2003 connected with Writ Petition No. 33408 of 2003.

4. The appellants being aggrieved by the communications issued by the MCI as per Annexures-N, P and S, dated 8-3-2004, 9-3-2004 and 8-4-

2004 respectively, preferred Writ Petition Nos. 16923 of 2004 and 17396 and 17397 of 2004 contending inter alia that the action of the MCI in

stopping the admissions in the 2nd appellant-college for both undergraduate and post-graduate courses was illegal, arbitrary and without authority

of law. The MCI, on service of notice in the writ petitions, put in appearance through its Counsel and filed objections contending that in view of the

gross deficiencies found in the 2nd appellant-college, the action of stoppage of admission was resorted to so as to safeguard the interests of the

innocent students and that the exercise of jurisdiction in issuing the impugned orders, communications was towards discharging its statutory

responsibilities under the provisions of the Act and the Regulations framed thereunder. However, it was stated by the MCI that no sooner it is

reported by the 2nd appellant-college that all the deficiencies in relation to minimum infrastructure in teaching faculties were removed, the MCI

shall take immediate steps for taking further action in accordance with law.

5. The learned Single Judge, without finding any flaw in the impugned actions of the MCI upheld the validity of stoppage of admission and

dismissed the writ petitions at the admission stage itself. However, the learned Single Judge, while doing so, directed thus:

. . . . However, admissions for undergraduate has still time. Therefore, though I have accepted the endorsement, I deem it proper to provide one

more opportunity to the petitioners by way of a direction to place additional material in the light of the order of this Court dated 31-3-2004 with

regard to their finance and with regard to their readiness in removing the deficiencies with a time frame by way of representation and such

representation is to be made within four weeks from today. Liberty is reserved to the Medical Council to have an additional inspection, if

necessary, in the light of the representation/compliance. If any such representation is made with additional facts with additional details, MCI is

directed to place the same along with the inspection report, if any, before the Ad hoc Committee and the Executive Committee for its consideration

and for passing of appropriate orders in accordance with law notwithstanding the order dated 8-4-2004 and notwithstanding the confirmation of

that order in this order. This I think would meet the interest of all parties. Time for passing order is four weeks from the date of ,, receipt of

representation with report, if any, from MCI"".

6. The appellants contend that the 2nd appellant-Medical College and the Hospital are established way back in the year 1980. The MCI has fixed

the intake of the undergraduate course at 100 way back in 1991. The postgraduate courses are sanctioned and recognised by the Medical Council

itself after being duly satisfied of the infrastructure of the college. That the college being desirous of increasing its intake in undergraduate courses

from 100 to 120 approached the authorities. That as late as on 16-5-2003 communications are issued by the MCI recognising the college for

award of post-graduate Diploma and Degrees in several subjects and those communications and decisions were preceded by inspections carried

out by the Inspectors who reported that all those departments had sufficient infrastructure for training the students. The said communications are

produced at Annexure-F to K.

7. That on an earlier occasion by way of communications dated 25-8-2003 and 29-10-2003 as per Annexure-L and M, the MCI, based on the

report submitted by the Inspectors, directed that inasmuch as the Inspector''s report revealed gross deficiencies in terms of teaching staff and

clinical materials etc., in 3 colleges for which the inspection was conducted and the Ad hoc Committee and the Executive Committee were of the

view that the admissions for the Academic year 2003-04 in the 2nd appellant-college for the first year M.B.B.S. course and also the Post-

graduate Degree and Diploma courses shall be stopped, directed stoppage of admissions forthwith. The basis for these communications, as can be

seen from the references made is the Report of the Inspectors dated 9-8-2003 and the outcome of the deliberations at meeting held on 23rd

August, 2003 by the Executive Committee and the members of the Ad hoc Committee wherein the said report was stated to have been considered

and the decision taken for stoppage of the admissions. These two communications pertaining to stoppage of admissions in the M.B.B.S. and post-

graduate courses respectively have been challenged by the appellants by filing separate writ petitions bearing W.P. Nos. 41624 of 2003 and

47470 of 2003. These writ petitions are pending wherein interim order of stay of those communications was granted pursuant to which the college

has proceeded to make admissions for the academic year 2003-04. It is also pointed out that Rajiv Gandhi University of Health Sciences has

reported to the MCI that stoppage of admissions for the 2nd appellant-college for the academic year 2003-04 would result in hardship and

prejudice the interests of the students as the process of admission had already commenced for the said academic year. Despite this and regardless

of the pendency of those writ petitions and the interim orders passed therein, the impugned communications have been issued directing the college

not to make admissions for both undergraduate and post-graduate courses for the academic year 2004-05. It is contended that the college is

pushed into deep crisis in view of the sudden decision taken by the MCI at the time when the Management of the college was entrusted to an

independent impartial body headed by a retired Judge of this Court and at the time when efforts were being made to introduce higher standards of

efficiency in the matter of administration and in maintaining high standard of imparting medical education.

8. It is further contended by the appellants that the college had applied for increase of intake from 100 to 120 in the undergraduate course.

Representations were made by the college on 20th January, 2003 by complying with certain requirements with regard to the increase in the

infrastructure and urging immediate action for fixing the increased intake at 120 instead of 100. Pursuant to the same, the MCI got conducted the

inspection of the college and the hospital to verify the compliance report submitted with reference to the request for increase of the intake. The said

inspection having been conducted on 11th and 12th March, 2003, the Inspectors submitted their report. On the basis of the report of the

Inspectors the Executive Committee of the MCI in its Meeting held on 13th March, 2003 recorded that the request of the college for intake of 120

seats for the academic year 2002-03 was not to be granted. However, the affiliation was continued for 100 seats only. The college was

communicated with the deficiencies that were noticed on account of which the increase in the intake sought for was not accepted. A copy of this

communication dated 26th March, 2003 is produced at Annexure-R. At no stage the college was informed that the available infrastructure was in

any manner deficient for training the already existing intake capacity fixed at 100. At no point of time in the past, there was any such objection by

the MCI nor was there any complaint for training and educating the 100 students. Except for the communication at Annexure-R, the college was

not intimated or informed of any proposal for further inspection for finding out the infrastructure facilities available for imparting training even to 100

students.

9. It is relevant to note at this stage itself that during the academic year 2003-04 the Government of Karnataka appointed an Administrator to the

Ananda Social and Educational Society and the said Administrator took control of the Institutions run by the Trust and a dispute arose between the

Trustees and the Administrator as regards the control and management of the affairs of the college and to make admissions. The Trustees asserted

that the Trust being an independent body, the Administrator appointed for the society had no power to take control of the administration of the

colleges which are run by the Trust. The Administrator and some other members of the society asserted that the Trust and the colleges run by the

Trust are part of the society and their affairs are required to be controlled by the Administrator. It is in this background that a dispute arose which

lead to the filing of writ petition before this Court eventually leading to appointment of the Managing Committee headed by a retired Judge of this

High Court. It was during this time that the Inspectors of the MCI conducted a surprise inspection on a holiday and claim to have found some

deficiencies in the infrastructure and facilities provided in the college. On the strength of the report submitted by the Inspectors, the MCI has taken

the decision to stop admissions in the appellant-institution both for undergraduate and post-graduate courses for the academic year 2003-04 and

until the deficiencies are removed. This decision of stoppage of admission is taken unilaterally without notice to the appellants and without affording

them an opportunity of being heard. The report of the Inspectors is not communicated to them and their say in the matter was not sought. The

impugned communications do not disclose as to under what provisions of the Act or the regulations the power is exercised. The nature of

deficiencies on account of which such extreme step is taken are not communicated to the college.

10. That after the receipt of the communications dated 8-3-2004 and 9-3-2004 the Chairman of the Ad hoc Committee of the college addressed

a letter dated 5-3-2004 to the Secretary, MCI, bringing to his notice the fact that the college had sought increase of the seats to 120 and that in

that background the inspections were conducted on 10th and 11th March, 2003 pointing out certain deficiencies and the circumstances leading to

the appointment of the Managing Committee by this Court to manage the affairs of the colleges. It was also pointed out in the said representation

that the compliance with the deficiencies pointed out with regard to the increased number of 120 would involve considerable expenditure and that

the financial condition of the institution being not very good the full and total compliance of the requirement would require some time and honest

efforts would be made in that direction. The representation, nevertheless states that some of the deficiencies regarding teaching staff etc., were

complied with. Compliance report was annexed to the said representation.

11. It is contended that despite submitting a detailed representation pointing out that the deficiencies pointed out with reference to increase of

intake from 100 to 120 would be complied with and that the college did not intend to presently go for the increased intake of 120 and, despite the

assurance given stating that the standards of education will not in any manner be compromised, the MCI has, without considering the said

representation and compliance report, refused to revoke its order stopping admissions to the college. The MCI was apprised of the fact that the

institution was being run by people belonging to Scheduled Castes and the same having been now entrusted to an independent High Power

Committee constituted by the Hon''ble High Court under the Chairmanship of a retired Judge of this Court and that the future prospects and

livelihood of large number of students and employees are at stake, the MCI proceeded to reject the representation without considering any of the

factors brought to their notice. Thus, it is contended that the entire process of stoppage of admissions and refusal to reconsider the same disclosed

a total lack of application of mind and absence of any opportunity to the affected college. The action proved to be so disastrous that the college is

now denied of admissions to the Post-graduate courses and so far as the Undergraduate courses are concerned for which also that last date is fast

approaching, irretrievable damage is looming large. If this happens, the college will be forced to close down resulting in serious damage to the

survival of the students who are prosecuting their studies in the M.B.B.S. and Post-graduate courses and also the staff employed.

12. We have heard Sri B.S. Patil, learned Counsel for the appellants, Sri P.S. Dinesh Kumar, learned Central Government Standing Counsel for

Union of India, Sri Maninder Singh, Senior Advocate for Sri N. Khetty, learned Standing Counsel for MCI, Sri V.Y. Kumar, learned Government

Advocate for the State and Sri R. Shridhar Hiremath, learned Counsel for Sri Rajiv Gandhi University of Health Sciences.

13. Sri B.S. Patil would contend that the MCI has acted without authority of law and jurisdiction in directing stoppage of admissions. According to

the learned Counsel, neither the provisions of the Act nor the Regulations framed thereunder clothe the MCI with such an authority. Sri B.S. Patil

contends that Section 10-A deals with permission for establishment of new medical colleges, new courses of study and increase in the admission

capacity and therefore, the procedure and powers provided therein were inapplicable to the recognised colleges where the intake is already fixed.

Sri B.S. Patil would contend that it is the Central Government which is vested with the power to take appropriate action on the recommendation

made by the MCI regarding the deficiency in the infrastructure, that too, after following the procedure contemplated under sub-sections (2) and (3)

of Section 19 of the Act and that the power to either stop the admissions or to issue directions envisaged in sub-section (4) of Section 19 vests

only in the Central Government and not in the MCI. Sri B.S. Patil would contend that the decision taken by the MCI to stop admissions to the

institution is not preceded by any notice or opportunity of being heard and thus there is no fair-play in the action and there is blatant violation of

principles of natural justice. Sri B.S. Patil would contend that inspection conducted through the Inspectors of the MCI on 10th and 11th March,

2003 was for the purpose of verification of the compliance report submitted by the college in support of its claim for increase of the intake from

100 to 120 and the deficiencies pointed out by the MCI as per Annexure-R were in the wake of such demand for increase of the intake and those

deficiencies had nothing to do With the infrastructure available in the college for training the existing capacity of 100 permitted as back as in 1991.

Therefore, Sri B.S. Patil would contend that admission to the existing intake of 100 students could not have been stopped based on the

deficiencies noted in Annexure-R particularly when the recommendations made by the MCI vide Annexure-R restricted itself to refusal of

permission for the increased intake and did not speak anything about the existing intake of 100. Sri B.S. Patil would also highlight that the

inspection dated 9th August, 2003 was conducted without notice to the appellants and that too on a second Saturday which was a holiday and that

the report of the said inspection and the deficiencies noted therein were not communicated to the appellants at any point of time. Sri B.S. Patil

would further contend that Annexure-G and K produced by the appellants would constitute ample testimony to prove that the college had required

infrastructure at least for intake of 100. That being so, and in the absence of any material to show that the appellants lack infrastructure facilities

even for intake of 100, the MCI committed a grave illegality in directing stoppage of admissions.

14. On behalf of the MCI, it was contended by Mr. Maninder Singh that the Executive Committee and the Ad hoc Committee have acted on the

basis of the report of the inspection conducted on 9-8-2003 as gross deficiencies were pointed out and it was sincerely felt that it was not feasible

to permit admissions in the 2nd appellant-college which would put the career of students to prejudice and peril, and in order to avoid such

situation, a lesser action of stopping admissions had been taken keeping in mind the interest of the innocent students instead of recommending the

initiation of withdrawal of recognition. According to Mr. Maninder Singh, the MCI has a statutory duty rather than power to stop admissions

where it finds that the concerned college does not possess the required infrastructure facilities and this duty can be culled out from the judgment of

the Supreme Court in the case of Medical Council of India Vs. State of Karnataka and Others, . Sri Maninder Singh would contend that

Explanation 2 to Section 10-A(1) of the Act clothes the MCI with the power to fix admission capacity from time to time and the power to stop

admission is part of that power. Sri Maninder Singh would contend that the provisions contained in Section 19 of the Act read with the overall

powers and functions of the MCI recognises the power of the MCI to stop admissions and that power is incidental to the main power. Sri

Maninder Singh would highlight that it is the duty and responsibility of the MCI to maintain the minimum standards of medical education in the

country as spelt out in various judgments of the Apex Court. Sri Maninder Singh would conclude by stating that if the MCI is satisfied that the

management has made good the deficiencies by providing required infrastructure facilities, the MCI will be quite willing to restore the position back

to what existed anterior to the issuance of the impugned directives.

15. Having heard the learned Counsels for the parties, the following points arise for consideration:

(I) Whether the impugned directions issued by the MCI are without authority of law?

(II) Whether the impugned actions of the MCI are unsustainable for infraction of principles of natural justice, procedural fairness and fairness in

action?

Point No. I:

According to the learned Senior Advocate for MCI, the power to issue impugned directions to stop admissions is traceable to Section 10-A and

Section 19 apart from Regulations framed in exercise of the powers conferred u/s 10-A read with Section 33 of the Act. Section 10-A deals with

(i) permission for establishment of new college, (ii) new course of study and (iii) increase in admission capacity in any course of study. Section 10-

A was inserted by Amendment Act No. 31 of 1993 with effect from 27th August, 1992. Explanation 2 to Section 10-A(1) reads:

Explanation 2.-For the purposes of this section, ""admission capacity"" in relation to any course of study or training (including post-graduate course

of study or training) in a medical college, means the maximum number of students that may be fixed by the Council from time to time for being

admitted to such course or training"".

The Explanation 2 starts with the expression ""For the purposes of this Section"". Section 10-A makes provision for establishment of new medical

college, for establishment or opening of new or higher course of study and/or increase in the admission capacity from time to time.

16. In the instant case, 100 intake was fixed for the 2nd appellant-college in the year 1991 and it is an admitted fact that increase sought by the

2nd appellant-college from 100-120 was disallowed. The ''admission capacity'' which is referred to in Explanation 2 to Section 10-A of the Act, in

the scheme of things, it appears, is with reference and for the purpose of establishing a new medical college, or a new or higher course of study or

increasing the admission capacity. The entire scheme provided u/s 10-A, as could be seen from several provisions, is in connection with and in aid

of establishment of a new medical college or new course of study and increase in the admission capacity. The provisions of Section 10-A regulates

how the scheme has to be submitted, how the MCI has to make recommendation and how the Central Government is required to pass orders

either approving or disapproving the scheme under the said Section. It needs to be noticed that the provisions contained in Section 10-A that no

scheme should be disapproved by the Central Government, except after giving the person concerned or the college concerned reasonable

opportunity of being heard and that both, the MCI while making its recommendations and the Central Government while passing an order either

approving or disapproving the scheme, shall have regard to several relevant factors mentioned in sub-section (7) of Section 10-A of the Act. Thus,

the entire gamut, ambit and scope of Section 10-A rests confined to the permission for new colleges, courses to be established and the increase in

admission capacity to be permitted. What is now sought to be done in the instant case is not approving or disapproving the scheme for starting any

new college or course, but stopping the existing intake approved and fixed by the Competent Authority well-before Section 10-A was inserted

into the Act. Such a power is not traceable from any of the provisions of Section 10-A much less Explanation 2. It is well-recognized rule that an

explanation cannot be read in isolation and cannot be construed to clothe the MCI with power which the very section does not confer and that the

scope of very section does not extend to cover or alter or affect the position as it stood prior to the insertion of the main Section 10-A and the

Explanation 2. The provisions of Section 10-A are plain, clear and intelligible and they do not give more than one meaning. There is no ambiguity in

the language employed in Section 10-A proper or in Explanation 2 appended to Section 10-A. The Supreme Court in the case of Bihta Co-

operative Development Cane Marketing Union Ltd., and Another Vs. The Bank of Bihar and Others, held:

The Explanation must be read so as to harmonise with and clear up any ambiguity in the main section. It should not be so construed as to widen

ambit of the section"".

Further, the Supreme Court in Dattatraya Govind Mahajan and Others Vs. State of Maharashtra and Another, with regard to the role of an

Explanation, in paragraph 9, observed thus:

It is true that the orthodox function of an explanation is to explain the meaning and effect of the main provision to which it is an explanation and to

clear up any doubt or ambiguity in it. Ultimately it is the intention of the Legislature which is paramount and a mere use of a label cannot control or

deflect such intention, it must be remembered that the Legislature has different ways of expressing itself and in the last analysis the words used by

the Legislature alone are the true repository of the intent of the Legislature and they must be construed having regard to the context and setting in

which they occur, therefore even though the provision in question has been called an explanation, we must construe it according to its plain

language and not on any prior consideration"".

17. In the premise of the aforementioned principles stated by the Apex Court, if the provisions contained in Section 10-A(1) of the Act are

examined, it becomes very clear that there is no ambiguity or uncertainty as to the application of the provisions of Section 10-A. The provisions of

Section 10-A are applicable only where the increase in the admission capacity of the college is sought. The fixation of admission capacity as

contemplated in Explanation 2 from time to time, is for the purpose of Section 10-A and not for all other or any other purpose. In the absence of

any such indication even remotely found in the provisions of Section 10-A and on the face of the statutory intendment made explicit by the

Parliament in Section 10-A making the provisions applicable to the three classes of cases, there is absolutely no scope for applying the provisions

contained in Explanation 2 to cover cases other than those covered u/s 10-A. It is however the contention of Sri Maninder Singh that Explanation

2 to Section 10-A clothes the MCI with the power even to reduce the intake fixed prior to insertion of Section 10-A into the Act.

18. It is true that contravention of the provisions of Section 10-A leads to the consequences of non-recognition of medical qualification as provided

u/s 10B. Sections 10-A and 10B of the Act are intended to achieve the result of prohibiting establishment of new medical colleges, new courses of

study and increase in the admission capacity, except with the previous permission of the Central Government obtained in accordance with the

procedure prescribed under sub-sections (2) to (8) of Section 10-A. Fixation of admission capacity by the MCI "from time to time" means the

fixation made in accordance with and by following the provisions contained in Section 10-A by submitting a scheme to the Central Government

and which scheme once submitted to the Central Government, be it for increase of admission capacity or opening of a new or higher course of

study has to be referred to the MCI for its consideration and recommendation. The MCI in turn may obtain such other particulars as it considers

necessary from the college and is required to give reasonable opportunity to the college concerned to rectify the defects, if any, specified by the

MCI and thereafter keeping in mind the factors mentioned in sub-section (7) of Section 10-A, it has to submit the scheme together with its

recommendation to the Central Government. This is what the MCI is required to do under sub-section (3) of Section 10-A. It is for the Central

Government to consider the scheme and recommendations of the MCI and after obtaining necessary particulars from the college concerned, either

to approve or disapprove the same. It is this exercise of power by which the process of fixation of intake from time to time is provided for. In the

absence of any other power conferred on the MCI to unilaterally fix the intake by reducing or increasing it without referring it to the Central

Government, it cannot be said that Explanation 2 to Section 10-A authorises the MCI to fix the intake in a medical college from time to time de

hors or independent of Section 10-A. If the interpretation placed by Mr. Maninder Singh is to be accepted, it would mean that for the purpose of

increasing the intake, the MCI is required to examine several aspects, give opportunity, and send recommendation to the Central Government,

which, in turn, will provide further opportunity as may be necessary, and thereafter either approve or disapprove the increase, whereas in the cases

where the intake of the college is already fixed even prior to the insertion of Section 10-A with effect from 27-8-1992, the MCI can reduce such

intake and fix it even at zero level and then call upon them to comply with Section 10-A.

19. I am afraid, such an interpretation is in consonance with the legislative intendment. If that interpretation is accepted, it would introduce total

discordance in the scheme of the provisions, particularly with reference to the roles assigned to the MCI and the Central Government. Explanation

2 to Section 10-A does not clothe the MCI with the power to reduce the intake fixed prior to insertion of Section 10-A and this position is quite

clear from the purpose for which Section 10C is introduced. Section 10-C reads thus:

10-C(1) If, after, the 1st day of June, 1992 and on and before the commencement of the Indian Medical Council (Amendment) Act, 1993 any

person has established a medical college or any medical college has opened a new or higher course of study or training or increased the admission

capacity, such person or medical college, as the case may be, shall seek, within a period of one year from the commencement of the Indian

Medical Council (Amendment) Act, 1993 the permission of the Central Government in accordance with the provisions of Section 10-A.

(2) If any person or medical college, as the case may be fails to seek the permission under sub-section (1) the provisions of Section 10B shall

apply, so far as may be as if, permission of the Central Government u/s 10-A has been refused"".

A careful reading of Section 10C makes it clear that if any medical college seeks to increase in the admission capacity after 1st June, 1992 and on

or before the commencement of the Amendment Act, 1993, such college shall seek permission of the Central Government in accordance with the

provisions of Section 10-A. Therefore, on and after 1st June, 1992, what is to be done for intake increase in the interregnum is provided for u/s

10-A. There is no power conferred on the MCI to as tune to itself the power to reduce the intake fixed for the college or withdraw the recognition

or to stop admission on its own without referring to and approval of the Central Government.

20. u/s 33(fa) and (fb) of the Act, the MCI is armed with rule-making power with the previous sanction of the Central Government, among other

things, in respect of matters covered under Sections 10-A and 10-B of the Act. In exercise of that power u/s 10-A and Section 33(fa) and (fb) of

the Act, the Regulations known as ""The Establishment of New Medical Colleges, opening of Higher Courses of Study and Increase of Admission

Capacity in Medical Colleges Regulations, 1993"" and ""The Establishment of Medical Colleges Regulations, 1999"" are framed. The 1993

Regulations provide for detailed procedure for regulating the (i) establishment of new medical colleges, (ii) starting new or higher courses in a

medical college and (iii) to increase the admission capacity in the existing medical colleges. The format of applications to be submitted, the nature of

scheme, grant of permission are all provided in respect of all the three categories. As regards the establishment of new medical colleges, the

Regulations specifically provide as under:

The above permission to establish a new medical college and admit students will be granted initially for a period of one year and will be renewed

on yearly basis subject to verification of the achievements of annual targets and revalidation of the performance Bank guarantees. This process of

renewal of permission will continue till such time the establishment of the medical college and expansion of the hospital facilities is completed and a

formal recognition of the medical college by the Medical Council of India is granted. Further, admissions are liable to be stopped at any stage

unless the requirements for various steps of development are to the satisfaction of Medical Council of India. However, as regards grant of

permission for opening of Higher course of study and increase of admission capacity the relevant regulation only provide as under:

The Central Government on the recommendations of the Medical Council of India may issue a letter of intent to increase the admission of the

above said courses with such conditions or modifications in the original proposal as may be considered necessary.

The formal permission will be granted after the above conditions and modifications are accepted and the performance bank guarantees for the

required sums are furnished by the applicant. The Central Government on the recommendations of the Medical Council of India may issue the

formal permission"".

21. It is clear from the Regulations extracted above that they provide for an express power for stoppage of admission at any stage unless the

requirements for various steps for developments are to the satisfaction of MCI so far as it relates to first category of cases, namely, where the

matter pertains to ''the establishment of new medical colleges''. But, however, insofar as the increase in the admission capacity is concerned, the

power of stoppage of admissions at any stage is not provided for and this position is clear from the Regulations extracted above. Had it been that

the rule-making authority intended to confer such power on the MCI even with regard to increase in the admission capacity, there was no difficulty

for the rule-making authority to indicate a specific provision in that regard. The absence of the same is suggestive of the clear intendment of the

rule-making authority to the contrary. It is clear from Regulation 8 of the Establishment of Medical Colleges Regulations, 1999 that the Central

Government, on the recommendation of the MCI, may issue a letter of intent to set up a new medical college. It is further provided that admissions

shall not be made at any stage unless the requirements of the MCI are fulfilled and the Central Government is clothed with the power of notifying

the deficiencies and providing opportunity and time to the management of the college concerned to rectify the deficiencies in the infrastructural

facilities. In fact, this Regulation is referred to and relied upon by the MCI in the reply affidavit filed by them. It is thus clear that the Regulations of

1999 also deal with the cases of newly established colleges and not the existing ones which are already recognised. Thus, it is clear that

Regulations 1993 and Regulations 1999 empower the MCI to stop admissions only in respect of establishments of new medical college and such

power is not available to the MCI with regard to the existing medical colleges which are already recognised.

22. There is also no merit in the contention of learned Senior Counsel for MCI that Section 19 of the Act empowers the MCI to Stop admission.

It was contended on behalf of the MCI that it has got the power to recommend to the Central Government to initiate action against the college in

case the staff, equipments, accommodation, training etc., in the institution concerned do not conform to the standards prescribed by it and the

Central Government, thereupon, is empowered to issue notifications in the Official Gazette directing that an entry shall be made in the appropriate

Schedule against the medical qualification concerned declaring that it shall be recognised medical qualification only when granted before a specified

date or that such medical qualification, if granted to students of a specified college or institution affiliated to any University shall be a recognised

medical qualification only when granted before a specified date or, as the case may be, that such medical qualification shall be a recognised medical

qualification in relation to a specified college or institution affiliated to any University only when granted after a specified date. Placing reliance on

the said provision, it is contended by Sri Maninder Singh that when it has got the power to make such a representation on the strength of which the

Central Government can go to the extent of withdrawing recognition, in the interest of maintaining the standards in the college, the lesser power of

stoppage of admission in the college is always envisaged and should be regarded as inherent in the MCI.

23. It needs to be noticed that Section 19 provides for making a representation by the MCI to the Central Government stating inter alia that the

infrastructures available in the institution or the college do not conform to the standards prescribed by the MCI. In the instant case, admittedly,

such representation is not made and the steps envisaged are not taken u/s 19 of the Act. At any rate, the provisions of Section 19 clothe the MCI

only with the power to make representation to the Central Government about the lack of infrastructure in the institution or the college and no

power to withdraw recognition or to direct stoppage of admissions.

24. Section 19 of the Act deals with the power and procedure for withdrawal of recognition already granted to medical colleges. Section 19 reads

thus:

19(1) When upon resort by the Committee or the visitor it appear to the Council.-

(a) that the courses of study and examination to be undergone in, or the proficiency required from candidates at any examination held by any

University or medical institution;

(b) that the staff, equipment, accommodation, training and other facilities for instruction and training provided in such University or medical

institution or in any college or other institution affiliated to that University, do not conform to the standards prescribed by the Council, the Council

shall make a representation to that effect to the Central Government.

(2) After considering such representation, the Central Government may send it to the State Government of the State in which the University or

Medical Institution is situated and the State Government shall forward it along with such remarks as it may choose to make to the University or

Medical Institution, with an intimation of the period within which the University or Medical Institution may submit its explanation to the State

Government.

(3) On the receipt of the explanation or, where no explanation is submitted within the period fixed, then on expiry of that period, the State

Government shall make its recommendations to the Central Government.

(4) The Central Government, after making such further inquiry, if any, as it may think fit, may by notification in the Official Gazette, direct that an

entry shall be made in the appropriate Schedule against the said medical qualification declaring that it shall be a recognised medical qualification,

only when granted before a specified date or that the said medical qualification if granted to students of a specified college or institution affiliated to

any University shall be a recognised medical qualification only when granted before a specified date or, as the case may be, that the said medical

qualification shall be a recognised medical qualification in relation to a specified college or institution affiliated to any University only when granted

after specified date"".

As could be seen from the provisions of Section 19, it is the Central Government which is clothed with the power to examine the representation to

be made by the MCI. Sub-section (2) of Section 19 provides for the enquiry to be conducted and the procedure to be adopted. There is nothing

in Section 19 to indicate that the Central Government is precluded from examining the say of the college or consider the representation that it may

make through the State Government. The action to be taken by the Central Government is also circumscribed by procedural safeguards as can be

seen from sub-sections (2), (3) and (4) of Section 19. In that view of the matter, the submission of Sri Maninder Singh that in aid of the ultimate

exercise of power u/s 19 for withdrawal of recognition, a lesser action of stoppage of admission should be conceded to MCI, by way of an interim

measure in contemplation or pendency of the proceedings envisaged u/s 19, is not acceptable to us. Be that as it may, in the instant case,

admittedly, the MCI has not chosen to make any representation to the Central Government u/s 19 of the Act. Even assuming that the power to

stop admission as an incidental power is available to the MCI u/s 19 of the Act, the MCI would acquire such right only in the event of initiating the

proceedings u/s 19 of the Act and not before that. The MCI, under no circumstance, could claim the power to stop admission even without

initiating action for de-recognition of the college envisaged u/s 19 of the Act, and, if such power is conceded to the MCI, it would hit Article 14

postulates badly. Be that as it may, it is not even the case of the MCI that it is contemplating an action u/s 19 of the Act. The principles of

procedural fairness and reasonableness mandate that any action of the MCI shall conform to the dictates of Article 14 postulates and is traceable

to an authority granted by the Act. It needs to be highlighted that stoppage of admissions to undergraduate and post-graduate courses when

preceded by several measures required to be taken by adhering to the framework of the calendar of events published by the University and the

MCI itself, will have disastrous and irreversible consequences thereby affecting the very existence of the institution.

25. Looking from another angle also, I do not find merit in the contention of the learned Senior Counsel that the power to stop admission is

traceable to Section 19 of the Act. It needs to be noticed that when the Act does not confer the power to stop admissions in explicit terms on the

MCI, but invests such power only in the Central Government, that too, only after going through the prescribed procedure, it will be totally

unreasonable to concede such power in favour of MCI by referring to the overall objectives and purposes of the Act and on the specious plea that

entrustment of such power should be conceded to the MCI in the interest of maintaining high standards of medical education. In that regard, we

can usefully refer to the judgment of the Supreme Court in Marathwada University Vs. Seshrao Balwant Rao Chavan, . In that case, in paragraph

19 of the judgment, the Supreme Court held:

Counsel for the applicant argued that the express power of the Vice-Chancellor to regulate the work and conduct of officers of the University

implies as well the power to take disciplinary action against officers. We are unable to agree with this contention. Firstly, the power to regulate the

work and conduct of the officers cannot include the power to take disciplinary action for their removal. Secondly, the Act confers power to

appoint officers on the Executive Council and it generally includes the power to remove.

This power is located u/s 24(1)(xxix) of the Act. It is therefore futile to contend that the Vice-Chancellor can exercise that power which is

conferred on the Executive Council. It is a settled principle that when the Act prescribes a particular body to exercise a power, it must be

exercised only by that body. It cannot be exercised by others unless it is delegated. The law must also provide for such delegation. Halsbury''s

Laws of England (Volume 1, 4th Edition, para 32) summarises these principles as follows:

''32. Sub-delegation of powers: In accordance with the maxim delegatus non potest delegare, a statutory power must be exercised only by the

body or officer in whom it has been confided, unless the sub-delegation of the power is authorised by express words or necessary implication.

There is a strong presumption against construing a grant of legislative, judicial or disciplinary power as impliedly authorising sub-delegation; and the

same may be said of any power to the exercise of which the designated body should address its own mind'' "".

The above observations of the Supreme Court would show that it is the Central Government alone which is clothed with the power to take penal

action, either as a final measure or as an interim measure in exercise of the power conferred u/s 19 of the Act and therefore, that power cannot be

conceded to the MCI in breach of statutory intendment. The only power available to the MCI u/s 19 of the Act is to make representation to the

Central Government bringing to its notice a fall in the infrastructure facilities in the college.

26. It is quite clear from the provisions of Section 19 of the Act that the Central Government is the Competent Authority to withdraw the

recognition. It is true that it is the duty of the MCI to initiate the proceedings u/s 19(1)(b) by submitting a representation to the Central Government

for withdrawal of recognition if it is of the opinion that the staff, equipment, accommodation, training and other facilities for instruction and training

provided in an University or medical college do not conform to the standards prescribed by it.

27. It is the contention of Sri Maninder Singh that since it is held by the Apex Court in the case of Medical Council of India, that the

recommendation of the MCI is binding on the Central Government, though the Central Government is the statutory authority u/s 19 to withdraw

the recognition, the power to stop admissions pending final order of the Central Government u/s 19 should be conceded to the MCI which is

charged with duty and responsibility to maintain the required standards in imparting medical education in the Country. We will consider the effect of

the above decision of the Apex Court in Medical Council of India''s case, little later.

28. At this stage, suffice to state that even assuming that the recommendation made by the MCI u/s 19(1)(b) by way of representation to the

Central Government is binding on the Central Government, nevertheless, the power to stop admissions pending final decision by the Central

Government cannot be conceded to the MCI for the simple reason that it is not a donee of the power granted u/s 19 of the Act to withdraw

recognition. Undeniably, it is the Central Government and the Central Government alone is the Competent Authority to withdraw recognition

already granted. Even assuming that power or duty to stop admissions pending withdrawal of recognition is an incidental power, to the main

power, law requires that the incidental power should be exercised by the donee of the power and none else, unless the statute directs otherwise.

29. I have carefully perused the provision of Section 19 of the Act and we do not find provision by virtue of which we can possibly concede the

power to the MCI to stop admissions pending final order by the Central Government after going through the procedure prescribed u/s 19 of the

Act. Be that as it may, it is not the case of the MCI that proceedings are initiated by the MCI u/s 19 of the Act for withdrawal of recognition

granted to the 2nd appellant-college. Simply because there are certain observations of the Apex Court which suggest that the recommendation and

opinion of the MCI are binding on the Central Government, it cannot be said that the MCI by-passing the Central Government can either withdraw

recognition or stop admissions as an aid-in-step, pending final order. Such power cannot be conceded to the MCI on the basis of provisions of

Section 19 of the Act. I may derive sustenance and support for our view from the case-law handed down by the Apex Court under Article 235 of

the Constitution of India. It is well-settled that the recommendation of the High Court under Article 235 of the Constitution with regard to

disciplinary proceedings initiated against the erring judicial officers are binding on the Governor, but, it is held by the Apex Court that though the

recommendations are binding on the Governor, the High Court itself cannot dismiss or terminate the services of a judicial officer who is guilty of

misconduct and, if it is done, such order of the High Court would be condemned as nullity in the eye of law.

30. Perhaps realising untenability of his contention, Sri Maninder Singh would contend that if the same law handed down by Courts under Article

235 of the Constitution is applied here also, it would turn out to be impracticable because such an exercise will be time-consuming affair and in the

meanwhile the damage done would become irreversible. According to him, if the MCI which is primarily charged with duties and responsibilities to

regulate admissions in medical colleges and to oversee whether the colleges possess the prescribed infrastructure facilities, finds that there are

grave deficiencies in the infrastructure facilities, it should be armed with necessary power to step in without any loss of time and stop admissions

and that such course of action on the part of the MCI would sub-serve the public interest in general and the welfare and interest of the students

who seek admission into such colleges in particular. But, on the other hand, if the MCI is required to move the Central Government by

representation and the Central Government alone is required to stop admissions pending final order u/s 19 of the Act, it is likely that the

management would admit students and the students so admitted to the course would later land in difficult situation totally prejudicial to their interest.

This submission of the learned Senior Counsel is devoid of any merit and not acceptable to me. I say this because I do not find any impediment in

moving the Central Government even in such fact situation and seek appropriate direction to stop admissions pending final order of the Central

Government. It is quite possible that on the basis of the recommendation/representation that may be submitted by the MCI as envisaged u/s 19(1)

(b) of the Act, the Government of India, which has undoubted power to withdraw recognition, can issue direction in appropriate cases to stop

admissions pending final decision after going through the procedure prescribed u/s 19 of the Act. It is not the contention of Sri Maninder Singh that

lot of time would be consumed even to move the Central Government for such direction in urgent, cases. I am of the considered opinion that the

Central Government being a Competent Authority to withdraw recognition u/s 19 of the Act, it can, in appropriate cases, issue direction to the

erring medical colleges to stop admissions pending final order by it. In conclusion, I hold that Section 19 of the Act does not confer power on the

MCI to issue impugned directives stopping admissions even in a case where the proceedings for withdrawal of recognition are initiated by it u/s 19

of the Act much less without initiating the proceedings u/s 19 of the Act. The MCI being a statutory authority, whatever it does affecting the rights

of others who are governed by the statute concerned, then, it should trace its power to an authority granted by such statute, otherwise, its action

would be condemned as ultra vires such statute.

31. Sri Maninder Singh would alternatively contend that though the power to stop admission cannot be traced explicitly to any of the provisions of

the Act, the judgment of the Apex Court in Medical Council of India''s case, is a binding authority to state that the MCI is under a legal obligation

to stop admissions at any point of time if it finds that a medical college does not possess the prescribed infrastructure facilities or does not adhere

to the mandatory academic curricula. The question that arose for determination in the above case was that after the Central Act No. 31 of 1993,

whether the Central Act prevailed over the State Act Nos. 28 of 1976 and 37 of 1984 dealing with the State Government''s powers to

increase/regulate the admissions to medical colleges. The Supreme Court held that the Central Act will prevail over the aforementioned State Acts.

The Supreme Court having noticed that with regard to the colleges, in the State of Karnataka, the MCI had prescribed the number of admissions

that the colleges could make annually in terms of the Regulations, held that without permission of the MCI, the number of admissions could not be

increased by the Universities or the State Government and that increase in the intake so allowed by them could not be more than that prescribed at

the time of granting recognition to the college. It was held that if any increase in the admission intake was allowed by the Universities and the State

Government, the medical colleges could not admit the students over and above what was fixed by the MCI as they had no such authority to allow

the increase. In fact, as could be seen from the facts stated in paragraph 26 of the judgment, in that case, the colleges had resorted to making

admissions far in excess of the intake fixed by the MCI on the basis of the increase allowed in terms of local laws. The MCI had issued directions

to the State Government and to the Director of Medical Education inviting their attention to the provisions of Sections 10A, 10-B and 10-C of the

Act. It was directed by the MCI that the State Government, in case there is any proposal to increase the admission capacity in medical colleges,

shall submit the proposal to the Central Government. When that direction was violated by the colleges, the MCI requested the Central

Government for taking penal action envisaged u/s 19 of the Act. In paragraph 28 of the said judgment, the Supreme Court observed thus:

Without permission of the Medical Council, the number of admissions could not be more than that prescribed at the time of granting recognition to

the college. However, it appears that in violation of the provisions of the Medical Council Act, the Universities and the State Government have

been allowing increase in admission intake in the medical colleges in the State in total disregard of the regulations and rather, in violation thereof.

Furthermore, in paragraph 30 of the judgment, the Apex Court observed that the number of students as permitted by the State Government and/or

the University before 1-6-1992 cannot be continued as it will amount to allowing an illegality to perpetuate. Therefore, the judgment of the Apex

Court in MCI"s case, could be distinguished on facts from the present case. In this case, the intake at 100 was fixed by the MCI prior to the

Amendment Act and not by the University or State Government but by the MCI itself and, after 100 intake was fixed by the MCI, no increase

was made. The power of the MCI to stop admissions in an institution duly recognised, for which the MCI and the Central Government had fixed

the intake in accordance with the then existing Regulations prior to the Amendment Act came into force, did not fall for consideration in the case

decided by the Supreme Court. Therefore, strictly speaking, the above judgment of the Supreme Court would not support the contention of Sri

Maninder Singh.

32. Even the judgment of this Court in A Citizen of India Vs. State of Karnataka and Others, would not support the hypothesis placed by Sri

Maninder Singh before the Court. Paragraphs 63, 75 and 76 of the judgment of this Court make this position quite clear. This Court, in that case,

held that even after the Central Government increases the admission capacity as envisaged u/s 10-A(1), if subsequently the MCI, pursuant to

inspection or otherwise, feels that the infrastructure of the college has fallen short, the college cannot be permitted to admit students beyond that

level. In paragraph 64 of the judgment, it is stated thus:

The last question which had cropped up in this context of Explanation 2 to Section 10-A is as to whether the Council can fix the admission

capacity as the benchmark for activating the provisions of Section 10-A(1)(b)(ii) of the Central Act on the basis of the inspections conducted prior

to 1-6-1992. In my opinion, ''yes''. The reasons are various"".

33. The above observation of this Court would clarify the position that the admission capacity fixed by the MCI prior to 1-6-1992 shall act as a

benchmark for seeking increase in the intake by adopting the scheme provided u/s 10-A. It needs to be emphasised that what has been observed

by the Supreme Court in MCI''s case, cannot be literally applied to the facts of this case without examining and distinguishing the facts and

attendant circumstances of the two cases. Be that as it may, from the above judgment of the Apex Court, it cannot be held that the MCI is clothed

with the power to stop the admissions or withdraw recognition unilaterally, that too, without following the procedure contemplated u/s 19 of the

Act. In that regard, I could usefully refer to what is observed by the Apex Court in the case of R.L. Jain (D) by Lrs. Vs. DDA and Others, ; In

paragraph 14 of the judgment, the Apex Court held:

A decision is an Authority only for what it actually decides - It is the ratio and not every observations found therein nor what logically follows from

the various observations made therein that is relevant"".

Furthermore, the Apex Court in Ashwani Kumar Singh Vs. U.P. Public Service Commission and Others, held:

Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on

which reliance is placed. Observations of Courts are not to be read as Euclid''s Theorems nor as provisions of the Statute. These observations

must be read in the context in which they appear. Judgments of Courts are not to be construed as Statutes. To interpret words, phrases and

provisions of a Statute, it may become necessary for judges to embark into lengthy discussions, but the discussion is meant to explain and not to

define. Judges interpret Statutes, they do not interpret judgments. They interpret words of Statutes; their words are not to be interpreted as

Statutes"".

If the observations made by this Court in Citizen"s case, which are approved by the Apex Court in MCI"s case, are examined with reference to

the facts of that case, the contention of Sri Maninder Singh cannot be accepted because the controversy between the parties in the present case

has arisen out of different set of facts.

Points No. II:

34. It is the contention of Sri B.S. Patil that the impugned actions are vitiated on account of violation of principles of natural justice and doctrine of

procedural fairness. It was contended that the impugned action of the MCI directing stoppage of admission was not preceded by any notice to the

college nor observance of the rules of natural justice. It was contended that the inspection was conducted without notice and that the report of the

Inspectors was not communicated to the college. It was also contended that the college was not notified about the alleged deficiencies found by the

Inspectors during the inspection.

35. The records placed before us would clearly show that the MCI made use of the findings recorded by the Inspectors during the inspection

conducted in response to the request of the college to enhance the intake from 100 to 120, as the basis, to issue the impugned directives. It is trite,

the findings of the Inspectors that the college lacked required infrastructure facilities for intake of 120 cannot be a legitimate ground or justification

to deny the college its right to admit even 100 students. Furthermore, 100 intake was fixed by the MCI itself after satisfying about the then existing

infrastructure facilities for number of years. Unless there was concrete evidence resting with the MCI that subsequent to the fixing of intake at 100,

the earlier infrastructure facilities existing at the time of fixing intake at 100 disappeared or were withdrawn, the MCI would not be justified in

directing not to make admissions. There is also considerable force in the contention of Sri B.S. Patil that even assuming that in the inspection

conducted by the Inspectors of MCI in response to the request of the college for enhancing the intake from 100 to 120, it found that the college

lacked infrastructure facilities even for intake of 100, even then, the MCI, in fairness and in order to respect the principles of natural justice, ought

to have put the college on notice about the deficiencies and given an opportunity to it have its say in the matter. Such legitimate and required

procedure was not adopted by the MCI before issuing the impugned directives.

36. Annexure-R is a communication dated 26-3-2003 issued by the Secretary, MCI, and it discloses certain deficiencies in infrastructure. The

subject mentioned in the said communication reads thus:

Dr. B.R. Ambedkar Medical College-increase of M.B.B.S. seats from 100 to 120-Renewal of permission to admission of third batch"".

The first two paragraphs of the Notice/communication Annexure-R read:

Please refer to your letter No. U 12012/17/94-ME (P-ll), dated 20th January, 2003 forwarding therewith a compliance report submitted by the

college authorities on rectification of the deficiencies points out in the Council Inspectors report (Nov. 2002) on the subject noted.

This is to inform you that inspection to verify the compliance was carried out by the Council Inspectors on 10th and 11th March, 2003 and the

compliance verification inspection report was considered by the Executive Committee at its meeting held on 13-3-2003. The decision of the

Executive Committee arrived at is recorded as under for your information and necessary action:

The Executive Committee considered the compliance verification inspection report (10th and 11th March, 2003) carried out on receipt of the

compliance through the Central Government on the deficiencies pointed out in the inspection report (20th and 21st November, 2002) and noted

the following"".

Having noticed the deficiencies, the communication went on to state further as under:

In view of the above, the Executive Committee decided to recommend to the Central Government not to renew the permission for admission of

3rd batch of students against the increased intake that is 100 to 120 at Dr. B.R. Ambedkar Medical College, Bangalore. A copy of the

Compliance Verification Inspection report is enclosed"".

37. The above communication is addressed by the Secretary, MCI, to the Secretary to the Government of India, Ministry of Health and Family

Welfare. It is relevant to point out that the college had applied for increase of intake from 100 to 120 and inspections were conducted in that

regard to find out whether the intake of 120 could be sanctioned. The Inspectors who conducted the inspection, in their report, pointed out certain

deficiencies for intake of 120. This was communicated to the college. The college submitted a compliance report. This led to the Inspectors of

MCI again conducting an inspection described as "Compliance Verification Inspection" on 10th and 11th March, 2003 and the Inspector found

that there were still certain deficiencies to be complied with and, therefore, the intake of 120 could not be granted. It is in this background and on

the basis of the said inspection report, the MCI reported to the Central Government recommending that the permission for the admission of third

batch of students against the increased intake i.e., 100 to 120 should not be granted. The correspondence laid before the Court would clearly

show that whatever the deficiencies pointed out by the Inspectors are only with regard to the request of the college to enhance the intake from 100

to 120 and not with regard to the question whether the college has necessary/prescribed infrastructure facilities even for 100 intake. From the

correspondence laid before the Court, it will be totally unfair and unreasonable to infer that the deficiencies pointed out by the Inspectors and

stated by the MCI in its communications are with regard to 100 intake already fixed by the MCI. Such an inference is neither possible nor

permissible. Such an inference cannot be drawn from the communication - Annexure-R. A careful reading of the last paragraph of Annexure-R

would suggest that because of the deficiencies referred to in Annexure-R, the college could not be permitted to increase its admission capacity

from 100 to 120. There is no whisper in Annexure-R regarding the fact that the institution lacked any infrastructure even for imparting training to

the permitted intake of 100 students. In the light of what is noticed above, I am left with no option but to hold that the impugned directives came to

be issued by the MCI in utter breach of principles of natural justice and fairness in action and without application of mind.

38. Before I conclude, a development during the pendency of the writ appeals is required to be noticed. A communication dated 31-5-2004

addressed by the Joint Secretary, Ministry of Health and Family Welfare to the President, MCI, is produced before us as Annexure-T. In the said

communication, it is made clear that the power to withdraw recognition or stop admission in any medical college recognised u/s 11(2) of the Act

vests only with the Central Government and not with the MCI. The appellants have also produced a statement of status of medical colleges for

admission for the academic session 2004-05 as on 10-6-2004 marked as Annexure-U. In the said statement, the 2nd appellant-college is shown

at Sl. No. 6 and the permitted intake is shown as 100. On the basis of Annexure-T and U, Sri B.S. Patil would contend that the Government of

India which is the Competent Authority under the Act to fix the intake, has fixed the intake at 100 for the academic year 2004-05 and therefore, it

is impermissible as well as irrational for the MCI to contend that the 2nd appellant-college is not entitled to have the intake at 100 for the academic

year 2003-04.

39. Sri B.S. Patil would highlight before concluding his reply to the arguments of learned Senior Counsel for the MCI that the 2nd respondent-

college is established by the people belonging to Scheduled Castes; the college is providing free treatment to the indigent persons in the hospital;

there are hundreds of students studying and nearly 700 persons are employed in the college and all of them have been irreversibly affected as a

consequence of the impugned directions of the MCI; since the college could not make admissions during the academic year 2003-04 the college

management could not pay even salaries to the staff, intimately resulting in many employees and the teaching staff leaving the medical college and in

such a state of affairs, if an inspection as suggested by learned Senior Counsel for MCI is conducted by the Inspectors of the MCI to find out

whether the college does possess the prescribed infrastructural facilities as on date, the finding would be obvious and that would force the

appellants to close down the college once for all and such a situation should be avoided. Sri Patil would tell us that to revive the medical college,

the 1st appellant-Committee had sought loan of Rupees ten crores from a Nationalised Bank and in fact, when the Bank was about to sanction the

loan, the MCI issued the impugned directives stopping admissions and in that view of the matter, the Bank did not sanction the loan. In substance,

what Sri Patil would suggest is that the status quo ante obtaining as on the date of the impugned directions be restored and if it is done, the 1st

appellant-committee headed by a retired Judge of this Court, is quite confident that they would be in a position not only to provide all the required

infrastructure facilities but also improve the quality of working of the college.

40. The 2nd appellant-college was established as far back as in the year 1980. The intake of 100 was fixed as far back as in the year 1991. The

materials placed before the Court would show that the 2nd appellant-medical college has intake of 100 from years 1991-92 to 2002-03. For the

current year i.e., 2004-05 also, as per Annexure-U, the Central Government has fixed the intake at 100. Since it is said that due to financial crunch

brought about by the earlier trustees by alleged misuse and misappropriation of the funds and non-admitting of students to undergraduate and post-

graduate courses during the academic year 2003-04, many employees and teaching staff have left the college and the Banks are not coming

forward to advance any loan to the appellants due to the impugned directions issued by the MCI, no useful purpose would be served by directing

fresh inspection of the medical college by the Inspectors of the MCI, without restoring the status quo ante obtaining as on the date of the impugned

directions issued by the MCI. Therefore, keeping in mind the totality of the circumstances and the disastrous situation brought about by the

unauthorised and illegal actions of the MCI by issuing impugned directions stopping admissions and the background of the appellants-Institution

and also the fact that the present management of the 2nd appellant-college is headed by a responsible retired Judge of this Court, I am inclined to

give an opportunity to the appellants to make good the deficiencies, if any, in the infrastructure so that the institution established by the people

belonging to Scheduled Castes with avowed objects and laudable purposes does not die prematurely.

41. In the result and for the foregoing reasons, I allow the writ appeals and set aside the order of the learned Single Judge and allow the writ

petitions and quash the communications at Annexure-N, dated 8-3-2004, Annexure-P, dated 9-3-2004 and Annexure-S, dated 8-4-2004 as

invalid and without authority of law. Since I have quashed communications at Annexures-N, P and S, now it is permissible for the appellants to

make admissions for the academic year 2004-05 in terms of the intake fixed by the Central Government for 2nd appellant-college vide Annexure-

U, in accordance with law.

42. In the facts and circumstances of the case, the parties are directed to bear their respective costs both in the writ appeals and writ petitions.

Per D. V. Shylendra Kumar, J.
I have had the benefit of going through the judgment proposed to be pronounced by us as prepared by my

learned and esteemed brother Mr. Justice S.R. Nayak. With utmost regret I have to express that I am unable to agree with the judgment as

proposed by my learned brother, particularly on the legal position as to the answer to the question regarding the power and competence of the

Medical Council of India to direct a medical college to stop admissions to the medical course if the Council is of the view that the infrastructural

facilities available at the college falls short of the statutory requirements envisaged under the Medical Council Regulations.

2. Admission to Graduate and post-graduate medical courses is regulated by the Medical Council of India Graduate Medical Education

Regulations and Medical Council of India Post-graduate Medical Education Regulations. I am in disagreement with the view taken by my learned

brother that the Medical Council of India lacks authority for issuing such direction. I am of the clear view that the Medical Council of India has

such power and authority to direct a medical college to stop admissions to the course if it finds as a matter of fact that the Institution in fact is ill-

equipped to impart commensurate medical education to the students admitted to the course. A perusal of the scheme and object of the Indian

Medical Council Act, 1956, the role envisaged for the Medical Council of India under the Act which is provided for under Sections 3, 6, 8, 9, 10,

10-A, 10-B, 10-C, 11, 16, 17, 18, 19 and 19A of the Act, the functions assigned to the Council under the Act, the Rules and Regulations framed

under the Act and more particularly the decisions of the Supreme Court interpreting the provisions of the Act and the Regulations will reveal the

legal position.

3. Even if one has any lingering doubts as to the scope of this power, the nature of function and the role of the Medical Council in the management

of the profession of medicine and the maintenance of standards in medical education, a look at para 27 of the decision of the Supreme Court in the

case of Medical Council of India, which reads as under.-

The State Acts, namely, the Karnataka Universities Act and the Karnataka Capitation Fee Act must give way to the Central Act, namely, the

Indian Medical Council Act, 1956. The Karnataka Capitation Fee Act was enacted for the sole purpose of regulation in collection of capitation fee

by colleges and for that, the State Government is empowered to fix the maximum number of students that can be admitted but that number cannot

be over and above that fixed by the Medical Council as per the Regulations. Chapter IX of the Karnataka Universities Act, which contains

provision for affiliation of colleges and recognition of institutions, applies to all types of colleges and not necessarily to professional colleges like

medical colleges. Sub-section (10) of Section 53, falling in Chapter IX of this Act, provides for maximum number of students to be admitted to

courses for studies in a college and that number shall not exceed the intake fixed by the University or the Government. But, this provision has again

to be read subject to the intake fixed by the Medical Council under its regulations. It is the Medical Council which is primarily responsible for fixing

standards of medical education and overseeing that these standards are maintained. It is the Medical Council which is the principal body to lay

down conditions for recognition of medical colleges which would include the fixing of intake for admission to a medical college. We have already

seen in the beginning of this judgment various provisions of the Medical Council Act. It is, therefore, the Medical Council which in effect grants

recognition and also withdraws the same. Regulations u/s 33 of the Medical Council Act, which were made in 1977, prescribe the accommodation

in the college and its associated teaching hospitals and teaching and technical staff and equipment in various departments in the college and in the

hospitals. These regulations are in considerable detail. Teacher-student ratio prescribed is 1 to 10, exclusive of the Professor of Head of the

Department. Regulations further prescribe, apart from other things, that the number of teaching beds in the attached hospitals will have to be in the

ratio of 7 beds per student admitted. Regulations of the Medical Council, which were approved by the Central Government in 1971, provide for

the qualification requirements for appointments of persons to the posts of teachers and visiting physicians/surgeons of medical colleges and

attached hospitals"".

should totally dispel such doubts.

4. With utmost respect to my learned brother, I am of the view that the question is not res integra and is squarely covered, if not by any other

earlier decision of the Supreme Court, by this decision of the Supreme Court. It is the law laid down by the Supreme Court in this decision which

is the ratio which matters and not that the decision was rendered in the context of the dispute/debate that arose subsequent to the introduction of

the Amending Act of the year 1993. Though the decision was rendered in the context of the disputes that arose subsequent to this amendment, it is

not logical to think or hold that the law applies differently in respect of an institution that had been permitted to function or had been recognised

prior to the amendment, vis-a-vis Institutions that have been permitted to function subsequent to the amending Act. The law as declared by the

Supreme Court applies uniformly to all medical institutions which were started or had been recognised prior to the amending Act or are started or

recognised subsequent to the amending Act. Though my learned brother has a variable and persuasive view and approach to come to the

conclusion that the Medical Council of India lacks the statutory backing for taking a decision of the nature which was in challenge in the writ

petition and in these appeals, I am of the clear view that it is not open to this Court to examine the scope and meaning of those statutory provisions

vis-a-vis the question as to whether such provisions does or does not vest the Medical Council of India with power in the light of the statutory

provisions having already come in for interpretation and decision by the Supreme Court. In the circumstance, I am of the clear view that the

decision of the Medical Council of India to direct the appellant-Education Society to stop admissions to the Graduate Medical Course and other

medical courses at its colleges, does not suffer from the lack of statutory support. If I have to elaborate, the reason for my disagreement, it is as

under.-

5. The question of whether the Medical Council of India has the power to issue directions to a Medical College to stop admissions for a particular

year on finding that the college in question is lacking in infrastructural facilities particularly if it is found that the facilities are not commensurate in

terms of the Minimum Standard Requirements for the Medical College for 100 Admissions Annually Regulations, 1999 read with Medical Council

of India Regulations on Graduate Medical Education, 1997, both Regulations framed u/s 33 of the MCI Act, 1956, as to whether direction of this

nature is backed by statutory provisions namely, the Indian Medical Council Act, 1956 (102 of 1956).

6. The answer to the question will be clear and simple if one bears in mind that the question is required to be examined in the context of the object

and purpose of the Act and the very provisions of this Act. It cannot be disputed that one of the objects of the Act is to maintain commensurate

standards in medical profession and imparting quality medical education to students who are admitted to medical courses is the first step in this

direction. A look at the provisions of Section 19-A of the Act makes this position clear. Section 19-A reads as under:

19-A. Minimum standards of Medical Education.-(1)

The Council may prescribe the minimum standards of medical education required for granting recognised medical qualifications (other than

postgraduate medical qualifications) by Universities or Medical institutions in India.

(2) Copies of the draft regulations and of all subsequent amendments thereof shall be furnished by the Council to all State Governments and the

Council shall before submitting the regulations or any amendment thereof, as the case may be, to the Central Government for sanction. Take into

consideration the comments of any State Government received within three months from the furnishing of the copies as aforesaid.

(3) The Committee shall from time to time report to the Council on the efficacy of the regulations any may recommend to the Council such

amendments thereof as it may think fit"".

7. Ultimately, what matters is that a medical qualification granted to a student who has undergone a course of study in the Medical College and as

granted by the University to which Medical College is affiliated is one that is recognised in terms of Section 11 of the Act. An institution or

University not already recognised and not included in the Schedule to the Act may seek for the same by applying to Central Government and the

Central Government after consulting the Medical Council may by notification in the Official Gazette amend the First Schedule so as to include the

name of such Institution or University also. The Medical Council of India is enabled and empowered to seek information as to the courses of study

and examination at such University or Medical Institutions in terms of provisions of Section 16 of the Act. The Committee of the Council has to

appoint Medical Inspectors to be present at the examination held by such University or Medical Institution for the purpose of evaluating the

standards therein and for recommending to the Central Government as to whether the qualification granted to students who have undergone a

course of study in such institution or Universities to be a recognised medical qualification. It is the Council who appoints the visitors at the

examination. Even when it comes to the question of withdrawal as u/s 19 of the Act, it is on the recommendation of the Medical Council that the

Central Government makes appropriate corrections to the Schedule to indicate that a medical qualification granted to students trained at

Institutions so recommended by the Medical Council will not be a recognised medical qualification on the date mentioned therein. It is no doubt

true that ultimately the withdrawal of the recognition as such is by the act of the Central Government. But, that in itself will not lead to the inference

that it is the Central Government alone which is the sole Authority for all the functions that are envisaged under the Act from Sections 11 to 19 of

the Act.

8. In the scheme of the Act, while Medical Council of India is one statutory functionary with certain specified role assigned to it, the Central

Government is another statutory functionary for the rest of the purposes. When examined from this angle, it is obvious that it is the duty and

responsibility of the Medical Council alone to maintain the standards of medical education and medical profession in the country and it necessarily

follows that it has all such powers to achieve this object. When viewed from this angle, it can never be said that an act of the Council which is for

the purpose of achieving this object of maintaining standards is one without statutory backing. In fact, it is part of the statutory scheme. It should

also be borne in mind that an Act of the Medical Council directing a college to stop admissions on finding that its infrastructural facilities has fallen

below the minimum prescribed standards is an Act which helps in preventing erosion of standards in the quality of education imparted in that

institution and consequently erosion in the standard in the profession itself. A direction of this nature by itself will not result in de-recognition or

withdrawal of recognition to the institution. In a given situation, a direction for stopping further admission to an institution lacking commensurate

infrastructural facilities may also lead to a situation of withdrawal of recognition in the absence of the concerned institution not making good the

deficiencies and if not restoring the necessary facilities, but not always so. A Medical College which has come to know or has been notified by the

Medical Council that there are certain deficiencies can always make good the same so as to conform with the requirements of statutory regulations

such as "Minimum Standard Requirements for the Medical College for 100 Admissions Annually Regulations, 1999" and request the Medical

Council to withdraw the direction or to permit it to resume admissions. In fact, an order or direction issued by Medical Council to stop admissions

in an institution lacking facilities can only be construed as a direction providing an opportunity to such an institution by bringing to its notice that

there are certain deficiencies and enabling it to make good the same so that the situation does not escalate to the stage of withdrawal of recognition

u/s 19 of the Act. When viewed from the angle of the object and purpose of the Act, it is very obvious that the Medical Council has statutory

backing for such an act. However, it is only when the complaint of Medical Institution about action taken by the Medical Council is sought to be

examined from the angle of the right of the complainant that one starts entertaining doubts about the competence of the Medical Council to issue

directions to an ill-equipped Medical College to stop further admissions in the Institution. The examination is not from the angle of the rights of the

complainant-institution, but can only be from the angle of the object and purpose of the Act.

9. It is also not a proper understanding of the matter to say that a direction of this nature is in violation of the principles of natural justice. I am of

this view because the standards that are required to be maintained by a college with a permitted admission capacity and the facilities that it is

required to provide are all statutorily provided for. It is always known to the college or the Medical Institution that it is required to ad here to this

standard as the minimum required for running the institution with given admission capacity. It is no doubt true that Medical Council has to point out

as to what is lacking in terms of the requisite facilities and standards, but that in itself will not attract the principle of natural justice. In fact, the

principles of natural Justice is attracted to a situation where a person having a right is denied or deprived of the right without giving an opportunity.

If the examination for answering the question in issue is not in the context of any of the right of the appellant, it may be difficult to accept that it is a

situation where action on the part of the Medical Council is required to be invalidated on the ground of non-compliance of the principles of natural

justice. Here again the situation where an Administration Authority passes orders which has the effect of affecting rights of citizens and even without

giving an opportunity to the affected person attracting the principles of natural justice or rather the violation of it is not the same when a Professional

Body which has a duty to ensure maintenance of professional standards, directs an institution imparting medical education in its college to restore

the requisite standards in the institution and pending such restoration, directs the college not to admit students for the course. In the first instance,

there is no right of the college which is involved and secondly the direction is more in the nature of an opportunity apprising the institution to

measure upto the standards. I am of the clear view that direction of this nature cannot be invalidated in the exercise of writ jurisdiction either as not

one without the backing of statute or as one in violation of the principles of natural justice.

10. With regard to the second question, though I am in agreement with my learned brother that any affected party should be afforded an

opportunity to put forth its case/make good its case, and based on the principles of natural justice, it is always not necessary that an opportunity of

hearing before the communication of order is a must in all situations. In a given situation, having regard to the several circumstances prevailing, a

post decisional opportunity is also one in compliance of the principles of natural justice, particularly where the decision is not one which is not a

lasting one or a final one but one which is temporary in nature and affords time and opportunity to the affected persons to get over the same by

complying with certain requirements. A direction to stop admissions to a medical college for the year in question is not a final or ultimate decision,

but is only a temporary one. In fact a decision of this nature, apprises the institution under notice that there is something lacking and the deficiency

is required to be made good. It is always open to the institution which makes good the deficiency to seek for a review of the decision and the

Competent Authority in this case, the Medical Council of India, the professional body meant to over-see the standards of medical education in the

Country, on being satisfied, can modify or review its decision or lift the ban for admission. It is precisely for this reason that the learned Single

Judge has observed that it is open to the Institution to comply with the requirements and to seek for a re-inspection of the facilities by the Medical

Council of India within four weeks from the date of the order namely from 30-4-2004. Unfortunately, the appellant, instead of availing the

opportunity and making good the requirement, has preferred to come up with these appeals purporting to raise questions of law in these appeals.

Voiding of a decision or order of an authority which has passed the order on factual finding that the Institution is lacking in requisite infrastructure,

on the grounds of the order being in violation of the principles of natural justice, unfortunately does not make good the deficiencies in favour of the

Institution. It is only a positive act on the part of the institution which can take remedial steps to make up the deficiency that can bring about a

change and pave the way for the professional body to lift the ban. A Court order finding fault and even quashing a communication of this nature,

does not achieve this result and does not make good the deficiencies if in fact an institution lacks the requisite infrastructure as stipulated by the

statute. It is not the function of the Courts to direct the authorities to permit the Institution to make admissions notwithstanding. Hardship, difficulties

or even impracticalities pleaded by the appellants are not and cannot be considerations while interpreting the statutory provisions of an Act or in

describing/determining the legal effects of an order. Courts directing statutory authorities to overlook or disregard statutory provisions is the last

thing that is contemplated in the scheme of rule of law. The view expressed by the Supreme Court in the case of A.P. Christians Medical

Educational Society Vs. Government of Andhra Pradesh and Another, is very apposite in this regard and is as under.-

10. Shri K.K. Venugopal, learned Counsel for the students who have been admitted into the MBBS Course of this institution, pleaded that the

interests of the students should not be sacrificed because of the conduct or folly of the management and that they should be permitted to appear at

the University examination notwithstanding the circumstance that permission and affiliation had not been granted to the institution. He invited our

attention to the circumstances that students of the Medical College established by the Darusalam Educational Trust were permitted to appear at the

examination notwithstanding the fact that affiliation had not by then been granted by the University. Shri Venugopal suggested that we might issue

appropriate directions to the University to protect the interests of the students. We do not think that we can possibly accede to the request made

by Shri Venugopal on behalf of the students. Any direction of the nature sought by Shri Venugopal would be in clear transgression of the

provisions of the University Act and the regulations of the University. We cannot by our flat direct the University to disobey the statute to which it

owes its existence and the regulations made by the University itself. We cannot imagine anything more destructive of the rule of law than a direction

by the Court to disobey the laws. The case of the medical college started by the Darusalam Trust appears to stand on a different footing as we find

from the record placed before us that permission had been granted by the State Government to the Trust to start the medical college and on that

account, the University had granted provisional affiliation. We also find that the Medical Council of India took strong and serious exception to the

grant of provisional affiliation whereupon the University withdrew the affiliation granted to the college. We are unable to treat what the University

did in the case of the Darusalam Medical College as a precedent in the present case to direct the University to do something which it is forbidden

from doing by the University Act and the regulations of the University. We regret that the students who have been admitted into the college have

not only lost the money which they must have spent to gain admission into the college, but have also lost one or two years of precious time virtually

jeopardising their future careers. But, that is a situation in which they have brought upon themselves as they sought and obtained admission in the

college dispute the warnings issued by the University from time to time. We are happy to note that the University acted watchfully and wake fully,

issuing timely warnings to those seeking admission to the institution. We are sure many must have taken heed of the warnings issued by the

University and refrained from seeking admission to the institution. If some did not heed the warnings issued by the University, they are themselves

to blame. Even so if they can be compensated in some manner, there is no reason why that may not be done. We are told that the assets of the

institutions, which have sprung out of the funds collected from the students, have frozen. It is upto the State Government to devise suitable ways,

legislative and administrative, to compensate the students at least monetarily. The appeal filed by the society is dismissed with costs which we

quantify at Rs. 10,000/-. The writ petition filed by the students is dismissed but, in the circumstances, without costs"".

11. It is also a matter of considerable significance that is required to be considered at this stage which is that the appellant has not asserted that it

has the necessary infrastructural facilities for admitting one hundred number of students to its Graduate Medical Education course and as such has

requested the Council to verify that aspect and to render its decision on the same. On the other hand, the correspondence between the appellant-

Institution and the Medical Council is clearly suggestive of the fact that even as of now the appellant-Institution is lacking in the requisite facilities, it

wants time to make good and within a year or two, it will be in a position to do so and therefore the Institution should be permitted to make

admissions for the year in question. This is not a matter over which this Court can issue a writ of mandamus as though it is a matter of right for the

appellant-Institution. It is precisely for this reason that the learned Single Judge also has, while declining to interfere, directed the appellant-

Institution to make good the deficiencies and seek for a re-inspection and consequential order from the respondent-Medical Council of India. The

impugned order of the learned Single Judge calls for no interference at all in these appeals and as such I am of the view that the appeals are

required to be dismissed and accordingly I dismiss the appeals.