

(2016) 07 BOM CK 0108
In the Bombay High Court
Case No : Writ Petition No. 11482 of 2014

Dr. Ujwal Narayanrao Chirde

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 28-07-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Indian Medical Council Act, 1956 — Section 10A, 11

Citation : (2016) 5 AIRBomR 615

Hon'ble Judges : S.C. Dharmadhikari and Dr. Shalini Phansalkar-Joshi, JJ.

Bench : Division Bench

Advocate : Mr. Vijaysinh A. Thorat - Senior Advocate with Mr. Prabhanjan Gujar and Mr. Dhruvi M. Kapadia, Advocates, for the Petitioners; Mr. Y.R. Mishra with Mr. D.A. Dube, Advocates, for Union of India in WP/7391 of 2015 and WP/8295/2015 and Civil Application Nos.

Final Decision : Disposed Off

Judgement

S.C. Dharmadhikari, J. (Oral)—By these petitions under Article 226 of the Constitution of India, the petitioners are seeking following reliefs :-

"(a) That this Hon"ble Court may kindly, be pleased issue the Rule.

(b) That this Hon"ble Court may kindly, issue Writ of Mandamus or Writ of Certiorari or any other Writ or direction for Minutes of the post Graduate Medical education committee meeting held on 13th May, 2014, No. MCI-4(3)/2014-MED/item No-17 about shifting of Post Graduate Course from ESI PGI MSR. MGM Parel Mumbai to ESI PGI-MSR Andheri (E) Mumbai.

(c) That this Hon"ble Court may kindly be transfer to any other recognised Institute including transfer to ESI-PGI, MSR, Andheri (E) Mumbai.

.....

(h) That this Hon"ble Court issue Writ of Mandamus or Writ in the nature of

mandamus or any other appropriate writ directing the Respondent No. 2 and 5 to apply for recognition of the ESI-PGI MSR, Mahatma Gandhi Memorial Hospital, Parel, Mumbai or to take necessary steps so as to get the ESI-PGI MSR, Mahatma Gandhi Memorial Hospital, Parel, Mumbai recognise as per rules of Medical Council Act, 1956.

(i) That this Hon''ble Court in the alternative issue Writ of mandamus or Writ in the nature of mandamus or any other appropriate Writ directing the Respondent No. 4 and Respondent No. 6 to take over responsibility of the admitted students pursuing post graduate medical courses at ESI-PGI MSR, Mahatma Gandhi Memorial Hospital, Parel, Mumbai as per the essentiality certificate dated 15/07/2010 issued by Government of Maharashtra to the Director General ESI Corporation and further take necessary steps so as to get them recognised status.

(j) That this Hon''ble Court in the further alternative be pleased to issue Writ of mandamus or Writ in the nature of mandamus or any other appropriate Writ directing the Respondent No. 4 i.e. Maharashtra University of Health Science at Nashik and Respondent No. 6 i.e. Medical Education and Drug Department, Mantralaya to take necessary steps to transfer the Petitioner to the State Government run Medical College or any other recognised Institute having Post Graduation Course."

2. The petitioner in the first petition (WP/11482/2014) has approached the court stating that after completing his under graduate studies (MBBS course), he appeared for Common Entrance Test (CET). That test was conducted to admit students to post-graduate medical courses (PGM-CET). Being ranked in order of merit, he was, by the order of the Directorate In-charge of Medical Education, allotted the college and which is respondent no. 2 before us, namely, ESI-PGI MSR, MGM Hospital, Parel, Mumbai. It is stated that this hospital is managed and administered by the Employee State Insurance Corporation (for short "the ESIC") a statutory corporation functional under the employee State Insurance Corporation Act, 1948 (for short "the ESIC Act"). The petitioner states that in the year 2012, in the first semester, the operation theatre complex was completely shut down. The petitioner states that due to this, the surgical branch post graduate students as well as anaesthesia, general surgery and orthopaedics suffered irreparable loss and injury. The dean of the second respondent college asked the students to fill up the feedback form regarding functioning and facilities of the hospital and hostel. Most of the questions were pertaining to the laboratory facilities, radiological facilities and about the patient care, ward facilities etc. In the feedback form, the petitioner students stated that these facilities are poor. The patient load is decreasing. That was on account of non-functioning of lift and Intensive Care Unit (ICU) etc. Even the operation facilities were also not in order. Therefore, it is hardly expected that the students would get quality education.

3. The petitioner states that the next batch got admitted for the post-graduate medical education in the four respective subjects of surgery, orthopaedics,

Anaesthesia and chest medicine. The petitioner, in para 5, has set out the number of students undergoing that course. The petitioner further states that during the year 2013 and particularly in the monsoon, the whole hospital including all the wards, ICU and operation theatre were shut down. There was a lot of problem, inasmuch as there was a short circuit and hence, the electricity supply also came to be shut down. This was the plight of students and taking education in this college. This is buttressed and supported by photographs, copies of which are annexed as Annexure "B". Yet, the students like the petitioner completed their studies by joining the K.E.M. Hospital, Parel, Mumbai. This joining was official on the basis of tie-up between ESI-PG MSR, MGM Hospital with Seth G.S. Medical College and K.E.M. Hospital, Parel, Mumbai. Due to that shelter, the petitioner anyhow completed the course till today, but on account of lack of facilities, it became difficult for him to continue in the same institute. The petitioner, therefore, on 1st January, 2014, addressed a communication to the Commissioner of ESIC, New Delhi and requested for shifting all post graduate courses from this second respondent institute to some other institute of the same management. The petitioner states that the Medical Council of India's Post Graduate Medical Education Committee, in the meeting held on 13th May, 2014, took up the issue and it is observed that in view of this representation received by the Commissioner, ESIC, New Delhi, the Medical Council would assess the facilities at the Andheri institution of the ESIC and particularly whether it possesses the necessary infrastructure, faculty etc. It is stated that the bona fide view of the Commissioner of the ESIC was in order to protect the interest of the students and the larger public interest. The authorities were aware that the petitioners would have to be transferred from Parel Institute to Andheri institute. Annexure "C" is relied upon. Then, it is stated that the transfer was in the interest of all concerned. The petitioner then relies upon the chart Annexure "D" and to submit that there is a drastic fall in the admission rate of patients. It is in these circumstances that the petitioner submits that there was a report from the Medical Council directing not to admit post graduate students for the future batches. When the petition was filed in that year, there were no admissions in the concerned institute. Even if the parent department was to be shifted from Parel to Andheri, it is stated that the same has to comply with the Medical Council of India (MCI) Regulations and requirements. Then, what is relied upon in the petition is the outcome of several meetings, which were held by the MCI in order to find out as to whether the future of the students can be protected. The petitioner submits that the issue and of shifting of this post graduate students from Parel institute to Andheri institute is very vital inasmuch as the petitioner has been pursuing post-graduate medical course of three years at the Parel institute. The admission was not granted to the petitioner by that institution, but it is the outcome of the CET and the ranking of the petitioner in order of merit, which enabled the competent authority to allot that college. The petitioner has stated on oath that he completed his MBBS degree undergraduate course in the year 2011 from the Indira Gandhi Government Medical College, Nagpur. He was awarded MBBS degree by the

Maharashtra University of Health Sciences. After completing MBBS, he appeared for entrance test and in the selection process, the petitioner was allotted the subject college. The petitioner opted for this institute because that was offered by the Medical Counselling Committee and the Directorate of Medical Education and Research. The admission letter was issued to him on 27th June, 2012. The petitioner, then contends that the second respondent college is granting such admissions and to post-graduate medical courses from the year 2011 after obtaining necessary permissions from the MCI as also Maharashtra University of Health Sciences. The petitioner states that after obtaining necessary permission on 14th July, 2010 and that being produced before the competent authorities, the post graduate students were allotted to this college. The courses and the details thereof are to be found and the Essentiality Certificate and copy of that Essentiality Certificate is also annexed to the writ petition.

4. Mr. Thorat, learned senior counsel appearing for the petitioner has heavily relied upon this document to urge that this certifies that the Government of Maharashtra, Department of Medical Education and Drugs is satisfied that the second respondent institute is a autonomous body. It can admit students and that the concerned subject, namely, Anaesthesia can be taught for there are facilities available and in case the infrastructure is not created as per the MCI norms and fresh admissions are stopped by the Central Government, the State Government shall think over to take the responsibility of the students with the permission of the Central Government.

5. It is in these circumstances that reliance is placed on the amended petition and particularly paras 20(E) to 20(L) of the petition. They have been incorporated by an amendment allowed on 27th January, 2015.

6. Mr. Thorat would, therefore, submit that in this case, for no fault of the students, they have suffered and their plight is brought to the notice of this court for it to then take an appropriate decision. It is further submitted that in the affidavit in reply filed in this writ petition, on behalf of respondent No. 7 and other respondents, some of the relevant and material facts have been admitted. However, as far as the MCI is concerned, it is maintaining that the infrastructure is lacking.

7. Mr. Thorat submits that the petitioners have either completed three years or two years of the post graduate courses. They were to appear for examinations and that is how on these writ petitions, an interim order was passed by this court. By the interim order passed by this court on 29th April, 2015, while disposing of these writ petitions, this court directed as under :-

"12. The petitions are hereby disposed of by observing that the medical qualifications that the petitioners will be granted when they successfully clear their examination conducted by respondent No. 3/4 shall be a recognised medical qualification for the purposes of the Indian Medical Council Act, 1956. The respondents to recognise the post graduate degree that may be awarded to

the petitioners on completion of post graduation examination scheduled to be held in May-2015 or May-2016, as the case may be, for all purposes."

8. Mr. Thorat was fair enough to state that aggrieved and dissatisfied by this order, the MCI carried the matter to the Hon''ble Supreme Court of India. However, though the Hon''ble Supreme Court of India noticed the college and the State of Maharashtra and heard them while passing the final orders, but none of the petitioner students were before the Hon''ble Supreme Court of India. The Hon''ble Supreme Court of India has held in an order passed by it on 11th December, 2015 that the High Court order ought to be kept in abeyance ; for the college does not have the facility to teach post graduate students. Several aspects were noticed and the Hon''ble Supreme Court of India observed that it would not be proper to award post graduate degree to the students, who had studied in the respondent college, upon passing the examination, because the said students were not given proper practical training. It is in these circumstances that the Hon''ble Supreme Court held this court's order in abeyance and directed that the MCI shall submit an application before the High Court giving complete details of the facts of the case so that the High Court, after issuing notice to the concerned parties, may hear and decide the same. Till the application is decided, the High Court order shall remain in abeyance.

9. Mr. Thorat would submit that though this order has been passed by the Hon''ble Supreme Court of India and an application has been filed by the Medical Council, it is apparent that this factual position as highlighted by the petitioners is uncontroverted. It is not the case of any of these respondents that the petitioners are at fault for having been admitted in this college. The manner in which the admissions were granted and the course was conducted, the studies were imparted are not under the control of the students who are petitioners before us. Except six students, all other petitioners have passed their post graduate examinations. Now they are desirous of pursuing studies in super-speciality courses or degrees. The petitioners have also qualified as teachers. The petitioners are thus fully eligible and qualified. Mr. Thorat submits that neither the MCI or the Central Government has directed the ESIC to stop imparting medical education. It is in these circumstances, the students, who have undertaken studies when the college was permitted or the MCI not taking any action, are not liable to be blamed.

10. Mr. Thorat has invited our attention to the scheme of the Indian Medical Council Act, 1956 more particularly sections 10A and 10B thereof. He would submit that once the college was permitted and to award degrees and to impart education for the post graduate degree courses, then, the recognition thereof is a matter which should be decided expeditiously. The MCI now cannot raise the issue and rely upon its inaction to urge that these students should not be protected. It is in larger public interest that these students, who have undergone studies at none other than a statutory corporation's post graduate medical institute, therefore, should be protected. Mr. Thorat would submit that the

observations in the Hon''ble Supreme Court order will not bind the students or the petitioners before us for the students were not before the Hon''ble Supreme Court of India and secondly, in any event they are tentative and prima facie observations. They do not conclude the several legal and factual issues raised in the present petition.

11. In support of his contentions, Mr. Thorat has relied upon the Judgement of the Hon''ble Supreme Court of India in the case of Apollo College of Veterinary Medicine v. Rajasthan State Veterinary Council (2015) 2 SCC 291.

12. He has also relied upon the orders of the High Court of Madras in the case of D. Deeyaneswar v. The State of Tamil Nadu WP No. 16812 of 2015 and Dr. Manoj and Ors. v. The Medical Council of India and Ors WP No. 1493 of 2016.

13. On the other hand, the contesting respondent is the MCI. Mr. Gole appearing for the said council submits that the civil application has been filed in each of these petitions by the council. That is pursuant to the liberty granted by the Hon''ble Supreme Court of India. Mr. Gole submits that any degree in medicine cannot be recognised in the absence of compliance with the statutory provisions. It is the responsibility of the council to ensure that the students undergo studies in medicine at a institution, which has proper teaching and training facilities. The scrutiny by the MCI is mandated in larger public interest. The whole purpose of the Act is that the statutory body constituted thereunder discharges its functions and responsibilities of maintaining high standard of medical education. In the civil application, reliance is placed on several orders of the Hon''ble Supreme Court of India highlighting the role of MCI in medical education, particularly in post-graduate education. Reliance is also placed on section 33 of the Act, which enables making of regulations. These regulations being statutory in character, are binding and mandatory, according to Mr. Gole. He would submit that sections 10A and 10B of the Indian Medical Council Act, 1956 cannot be construed to mean that the process contemplated thereunder is a formality. It is the mandate of the Act that grant of permission by the Central Government on the recommendations of the council is thereafter subject to the scrutiny by the council of the working and functioning of the institutes, in which the courses can be imparted. Therefore, the institutions which are permitted, the courses which are conducted or which are upgraded or the intake capacity which is increased are all subject to compliance with the factors enumerated under sub-sections of section 10A. There cannot be any compromise with academic standards. The recognition of the medical qualification is an aspect covered by section 11. A reading of all these provisions would make it clear that for non compliance with the conditions the prior permission or recognition cannot be regularised. The Medical Council, according to Mr. Gole, has pointed out the plight of the institution and how the institution was alerted from time to time. The persistent deficiencies pointed out in the inspection carried out in different courses, namely, MS (Orthopaedics) on 3rd June, 2014, MD (Pulmonary Medicine) on 22nd May, 2014, MD (Anesthesia) on 27th December, 2013 and MS (General Surgery) on

27th December, 2013 were so grave in nature that the same could not be brushed aside in the larger public interest and also in the interest of the students. The deficiencies in minimum infrastructure, teaching faculty, clinical material and other physical facilities as pointed in inspection reports were gross in nature. The compliance reports submitted by the subject college have not been found satisfactory and the college has been requested to send compliance report after rectifying the deficiencies found during the inspections. In view of persisting and gross deficiencies that the MCI has been compelled to recommend to the Central Government not to grant recognition to the post graduation qualification granted by the university to the students trained in the respondent medical college. That decision was communicated to the college way back on 31st July, 2014. The MCI requested the college to stop admissions and rectify the deficiencies and place the compliance report. The compliance report was received sometime in August, and October, 2014. That was considered in the meeting held on 19th March, 2015. The college was still not recognised and the Post Graduate Committee, which is duly authorised by the larger committees and the council itself, took the decision and which is also placed before this court as annexure to the writ petition. Mr. Gole, therefore, submits that going by the mandate of law, this court should not grant any relief in the writ petitions, but proceed to dismiss them.

14. We have perused the entire record with the assistance of the counsel appearing for the parties. We have also perused the order passed by the Hon'ble Supreme Court of India. We have also perused the relevant provisions of the Indian Medical Council Act, 1956. We have also perused the decisions brought to our notice by the parties.

15. It is common ground that the Indian Medical Council Act, 1956 was enacted in order to provide for reconstitution of the Medical Council of India and the maintenance of a medical register for India and for matters connected therewith. The definitions in section 2 are material for our purpose. The first definition in section 2(a) is of the term "approved institution". The term "council" is defined in section 2(b) to mean the Medical Council of India constituted under this Act. The term "medical institution" is defined in section 2(e) to mean any institution, within or without India, which grants degrees, diplomas or licences in medicine. The term "medicine" is defined in section 2(f). As per section 2(g) "prescribed" means prescribed by regulations. The term "recognised medical qualification" is defined in section 2(h) to mean any of the medical qualifications included in the Schedules. "Regulation" means a regulation made under section 33. The constitution and composition of the council is in terms of section 3. There is a power in the Central Government to supersede the council and to constitute a Board of Governors. The power of election and restrictions on nomination and membership is to be found in sections 4 and 5. The council is incorporated as body corporate having a perpetual succession and a common seal with power to acquire and hold property, both movable and immovable and to contract and shall by the said name sue and be sued. The term of office of President, Vice-

President and members is set out by section 7. Section 8 deals with the meetings of the council. Sections 9, 10, 10A and 10B are important for our purpose and we would reproduce them as under :-

"9. Officers, Committees and servants of the Council. - The Council shall -

(1) constitute from amongst its members and Executive Committee and such other Committees for general or special purposes as the council deems necessary to carry out the purposes of this Act ;

(2) appoint a Registrar who shall act as Secretary and who may also, if deemed expedient, act as Treasurer ;

(3) employ such other persons, as the Council deems necessary to carry out the purposes of this Act ;

(4) require and take from the Registrar, or from any other employee, such security for the due performance of his duties as the Council deems necessary and

(5) with the previous sanction of the Central Government fix the remuneration and allowances to be paid to the President, Vice-President and members of the Council and determine the conditions of service of the employees of the Council.

10. The Executive Committee. - (1) The Executive Committee, hereinafter referred to as the Committee, shall consist of the President and Vice-President, who shall be members ex-officio, and not less than seven and not more than ten other members who shall be elected by the Council from amongst its members.

(2) The President and Vice-President shall be the President and Vice-President respectively of the Committee.

(3) In addition to the powers and duties conferred and imposed upon it by this Act, the Committee shall exercise and discharge such powers and duties as the Council may confer or impose upon it by any regulations which may be made in this behalf.

10-A. Permission for establishment of new medical college, new course of study, etc. - (1) Notwithstanding anything contained in this Act or any other law for the time being in force, -

(a) no person shall establish a medical college ; or

(b) no medical college shall -

(i) open a new or higher course of study or training (including a post-graduate course of study or training) which would enable a student of such course or training to qualify himself for the award of any recognised medical qualification ;
or

(ii) increase its admission capacity in any course of study or training (including a

post-graduate course of study or training), except with the previous permission of the Central Government obtained in accordance with the provisions of this section.

Explanation 1. - For the purposes of this section "person" includes any University or a trust but does not include the Central Government.

Explanation 2. - for the purposes of this section "admission capacity" in relation to any course of study or training (including the postgraduate 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.

(2) (a) Every person or medical college shall, for the purpose of obtaining permission under sub-section (1), submit to the Central Government a scheme in accordance with the provisions of clause (b) and the Central Government shall refer the scheme to the Council for its recommendations.

(b) The scheme referred to in clause (a) shall be in such form and contain such particulars and be preferred in such manner and be accompanied with such fee as may be prescribed.

(3) On receipt of a scheme by the Council under subsection (2), the Council may obtain such other particulars as may be considered necessary by it from the person or the medical college concerned, and thereafter, it may, -

(a) if the scheme is defective and does not contain any necessary particulars, give a reasonable opportunity to the person or college concerned for making a written representation and it shall be open to such person or medical college to rectify the defects, if any, specified by the Council ;

(b) consider the scheme, having regard to the factors referred to in sub-section (7), and submit the scheme together with its recommendations thereon to the Central Government.

(4) The Central Government may, after considering the scheme and the recommendations of the Council under sub-section (3) and after obtaining, where necessary, such other particulars as may be considered necessary by it from the person or college concerned, and having regard to the factors referred to in sub-section (7), either approve (with such conditions, if any, as it may consider necessary) or disapprove the scheme, and any such approval shall be a permission under sub-section (1): Provided that no scheme shall be disapproved by the Central Government except after giving the person or college concerned a reasonable opportunity of being heard: Provided further that nothing in this sub-section shall prevent any person or medical college whose scheme has not been approved by the Central Government to submit a fresh scheme and the provisions of this section shall apply to such scheme, as if such scheme has been submitted for the first time under sub-section (2).

(5) Where, within a period of one year from the date of submission of the scheme to the Central Government under sub-section (2) no order passed by the Central Government has been communicated to the person or college submitting the scheme, such scheme shall be deemed to have been approved by the Central Government in the form in which it had been submitted, and accordingly, the permission of the Central Government required under sub-section (1) shall also be deemed to have been granted.

(6) In computing the time-limit specified in sub-section (5), the time taken by the person or college concerned submitting the scheme, in furnishing any particulars called for by the Council, or by the Central Government, shall be excluded.

(7) The Council, while making its recommendations under clause (b) of sub-section (3) and the Central Government, while passing an order, either approving or disapproving the scheme under sub-section (4), shall have due regard to the following factors, namely :-

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

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

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

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

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

(f) the requirement of manpower in the field of practise of medicine and

(g) any other factors as may be prescribed.

(8) Where the Central Government passes an order either approving or disapproving a scheme under this section, a copy of the order shall be communicated to the person or college concerned.

10-B. Non-recognition of medical qualifications in certain cases. - (1) Where any medical college is established except with the previous permission of the Central Government in accordance with the provisions of section 10-A, no medical qualification granted to any student of such medical college shall be a recognised medical qualification for the purposes of this Act.

(2) Where any medical college opens a new or higher course of study or training (including a post-graduate course of study or training) except with the previous permission of the Central Government in accordance with the provisions of section 10-A, no medical qualification granted to any student of such medical college on the basis of such study or training shall be a recognised medical qualification for the purposes of this Act.

(3) Where any medical college increases its admission capacity in any course of study or training except with the previous permission of the Central Government in accordance with the provisions of section 10-A, no medical qualification granted to any student of such medical college on the basis of the increase in its admission capacity shall be a recognised medical qualification for the purposes of this Act.

Explanation. - for the purposes of this section, the criteria for identifying a student who has been granted a medical qualification on the basis of such increase in the admission capacity shall be such as may be prescribed."

16. Then comes section 10-C, which speaks of time for seeking permission for certain existing medical colleges so that they seek permission in terms of section 10-A. Section 11 speaks of recognition of medical qualifications granted by universities or medical institutions in India. That section reads as under :-

"11. Recognition of medical qualifications granted by Universities or medical institutions in India. - (1) The medical qualifications granted by any University or medical institution in India which are included in the first Schedule shall be recognised medical qualifications for the purposes of this Act.

(2) Any University or medical institution in India which grants a medical qualification not included in the First Schedule may apply to the Central Government, to have such qualification recognised, and the Central Government, after consulting the Council, may, by notification in the Official Gazette, amend the First Schedule so as to include such qualification therein, and any such notification may also direct that an entry shall be made in the last column of the First Schedule against such medical qualification declaring that it shall be a recognised medical qualification only when granted after a specified date."

17. On a bare perusal of these provisions, it is apparent that it is for the council to permit establishment of a new medical college or open a new or higher course of study or training including a post-graduate course of study or training which would enable a student of such course or training to qualify himself for the award of any recognised medical qualification or increase its admission capacity in any

course of study or training including a postgraduate course of study or training. However, it is with previous permission of the Central Government that this can be done. Importantly, every person or medical college shall, for the purpose of obtaining permission under sub-section (1), submit to the Central Government a scheme in accordance with the provisions of clause (b) and the Central Government shall refer the scheme to the Council for its recommendations. On such scheme being referred, the council may obtain such other particulars as may be considered necessary by it from the person or the medical college concerned and thereafter, it may, if the scheme is defective and does not contain any necessary particulars, give a reasonable opportunity to the person or college concerned for making a written representation and it shall be open to such person or medical college to rectify the defects, if any, specified by the council. The council, having regard to the factors referred to in sub-section (7), consider the scheme and together with its recommendations thereon, submit it to the Central Government. Sub-section (7) is most important as it guides the council while making recommendations under clause (b) of sub-section (3) of section 10-A and the Central Government, while passing order under sub-section (4), would also have regard to these factors. These factors, inter-alia, pertain to necessary facilities in respect of staff, equipment, accommodation, training and other facilities to ensure proper functioning of the medical college or conducting the new course of study or training or accommodating the increased admission capacity.

18. We have no hesitation in agreeing with Mr. Gole that having regard to these factors and which are paramount, it is for the competent authorities to grant or refuse the permission by approving or disapproving the scheme. Therefore, the MCI, while making recommendations, must have regard to these factors. However, what we find is that if there is a non-recognition of medical college in certain cases, then, that aspect is covered by section 10-B. Where any medical college is established except with the previous permission of the Central Government in accordance with the provisions of section 10-A, no medical qualification granted to any student of such medical college shall be a recognised medical qualification for the purposes of this Act. That is equally true with regard to opening a new or higher course of study or training or increasing admission capacity.

19. Mr. Thorat has invited our attention to the distinction between sections 10-A and 10-B to submit that there is a permission contemplated and in terms of section 10-A. If a college like second respondent in this case is permitted to impart education and training in the post-graduate courses, then, it cannot be said to be the one contemplated by section 10-B. Section 10-B deals with cases where the college is established except with the previous permission of the Central Government or an existing college opening new or higher course of study or training without such permission or increasing its admission capacity. In the instant case, according to Mr. Thorat, this is a permitted institution, therefore, it is for the MCI now to recognise the medical qualifications and that power is also

vested in the council by section 11. Sub-section (2) of section 11 is highlighted by Mr. Thorat to mean that if any qualification not included in the First Schedule is granted, then, that institution or university has to apply to the Central Government to have such qualification recognised and the Central Government, after consulting the council, may, by notification in the official gazette, amend the First Schedule so as to include such qualification therein. Mr. Thorat submits that appropriate directions be issued in terms of this provision to the respondents so that the entire effort of the students and who are completely innocent is not wasted. Even to subserve larger public interest, these directions be issued. Heavy reliance is placed by Mr. Thorat on the Judgement of the Hon"ble Supreme Court of India in the case of Apollo College of Veterinary Medicine (*supra*). In this case, the Hon"ble Supreme Court of India found that the Apollo college of Veterinary Medicine, Jaipur and Mahatma Gandhi College, Bharatpur were two private colleges in Rajasthan offering the course of Bachelor of Veterinary Science (BVSc) and Animal Husbandary (AH). A number of students of the said colleges have passed the BVSc and AH examination conducted by the Rajasthan Agricultural University recognised by Veterinary Council of India and Central Government. The students, who have passed such examination from the said two colleges and enrolled with Rajasthan State Veterinary Council were practicing doctors in the State and private sectors. The aforesaid two colleges were permitted to be opened by the State of Rajasthan subject to the grant of affiliation/recognition by the Veterinary Council of India. The BVSc and AH courses offered by the said colleges were affiliated to Rajasthan Agricultural University. After a number of inspections made from time to time, the veterinary Council of India recommended to the Central Government to recognise the aforesaid two colleges and the degrees granted to the students, who have passed out from these colleges. Later, by an order dated 20th February, 2010, the Government of India intimated that it has not been found possible to grant recognition to the degrees awarded by the Apollo College of Veterinary Medicine, Jaipur. The veterinary Council of India, by letter dated 22nd February, 2010 intimated the Registrar about the decision of the Central Government. The Rajasthan State Veterinary Council was also asked to delete the names of the doctors from their register. The orders refusing to grant recognition to the Apollo College and degrees granted to the students passed out from the said college were challenged by a number of alumni of the said college, namely, practicing doctors who passed out from the said college and also by the students pursuing their studies in Apollo College. Similar was the situation with regard to other institution as well.

20. After referring to the record, eventually, the Hon"ble Supreme Court found that the Central Government refused to grant recognition to degrees awarded by Apollo College, but there are certain developments which have taken place after issuance of impugned orders and notifications. It is in that backdrop the Hon"ble Supreme Court considered the issue as to whether the concerned council can still take a decision and in terms of the power on par with section 11 of the Indian

Medical Council Act, 1956. It is in these circumstances, the Hon"ble Supreme Court held in paras 43, 44 and 47 as under :-

"43. For deciding the second question, it is desirable to advert to the facts of the present case. Both Apollo College and Mahatma Gandhi College were permitted to be opened by the State of Rajasthan and were affiliated with the University recognised by the Veterinary Council of India. The Inspection Committee of Veterinary Council of India inspected the Apollo College from time to time and by Inspection Report, 2003, the committee recommended for admission of students subject to removal of certain deficiency of building, as the College was opened in a rented building. The Central Government by Letter dated 26-09-2003 informed the Agricultural University to request the Apollo College to fulfil the minimum requirements. Though the public notice was issued by Veterinary Council of India on 12-05-2005 and 20-05-2005 in newspapers informing that the BVSc & AH qualification of the students of the Apollo College was a recognised veterinary qualification, by letter dated 22-11-2005, the Veterinary Council of India granted no objection to admit students in the Apollo College. Subsequently, Apollo College was inspected by the Inspectors of the Veterinary Council of India on 22-1-2007 and 24-1-2007 who submitted report and informed that the Apollo College was following the norms and conditions required by the Veterinary council of India. Thereafter, pursuant to a meeting between the representatives of Agricultural University and Veterinary Council of India held on 2-2-2008 it was decided by Veterinary Council of India on 10-3-2008 to grant provisional recognition of BVSc and AH degree in respect of 1st batch of students of the Apollo College. With regard to 2nd batch of students the Veterinary Council of India on 27-2-2009 requested the Central Government to take necessary action to recognise the qualification of the 2nd batch of students of Apollo College admitted in the year 2004. Similar letter was issued in respect of 3rd batch of students who were admitted in the month of December, 2004. The Veterinary Council of India on 24-7-2009 also informed the Agricultural University that the Apollo College could admit the students for the academic session 2009-2010. In view of such recognition granted by the Veterinary Council of India and permission granted to admit students for the academic session 2009-2010 the students were admitted in the Apollo College.

44. It is not in dispute that the students were admitted in the Apollo College pursuant to open entrance test of Rajasthan pre-medical/Rajasthan pre-Veterinary (RPM/ RPV). They completed their course and have successfully cleared BVSc & AH examination. The students who have already passed out from the Apollo College are the holders of the basic degree of BVSc & AH granted by the Rajasthan Agricultural University, which is recognised qualification entered in the First Schedule of the Indian Veterinary Council Act, 1984. It is also not in dispute that many of such students who have already passed out are in Government service or in private service. The sole ground on which the students of the Apollo College who have passed out BVSc & AH degree examination are treated differently is that the Central Government has not notified the Apollo

College and, thereby the College is not included in the First Schedule to the Indian Veterinary Council Act, 1984. Swami Keshwanand Rajasthan Agricultural University, Bikaner is duly established university by statute and it is fully competent to conduct examinations and award BVSc & AH degree. The degree of BVSc & AH granted by the University is included in the First Schedule to the Indian Veterinary Council Act, 1984 as a degree fully recognised by the Veterinary Council of India which is the paramount professional body set up by statute with authority to recognise the medical veterinary qualifications granted by any university.

47. In the facts and circumstances of the case, we are of the view that the Division Bench of the High Court should have given a possible legal solution in respect to the students who have already passed out from the Apollo College and the Mahatma Gandhi College affiliated to Swami Keshwanand Rajasthan Agricultural University, Bikaner by directing the Central Government to make appropriate amendment in the First Schedule of the Indian Veterinary Council Act, 1984 so as to include the Apollo College and the Mahatma Gandhi College in the first Schedule for the purpose of recognition of BVSc & AH degree on or before 11-7-2011 insofar as it relates to Apollo College and 8-12-2011 in respect of Mahatma Gandhi College. We direct accordingly. So far as the other students who have been admitted in the Apollo College and the Mahatma Gandhi College and are pursuing their studies are concerned the Central Government is directed to call for a fresh report from the Veterinary Council of India and to pass appropriate order under Section 15(2) read with Section 21(4) of the Indian Veterinary Council Act, 1984. In case it is not possible to recognise the Apollo College and the Mahatma Gandhi College beyond such date as ordered above, the Veterinary Council of India is directed to take steps to transfer the students to some other recognised colleges against their corresponding year to Complete the BVSc & AH course."

21. The Hon'ble Supreme Court found that during the inspections by the concerned competent authority, it was informed that the Apollo College was following the norms and conditions required by the Veterinary Council of India. There was a meeting held between the representatives of Agricultural University and Veterinary Council of India, wherein, it was decided to grant provisional recognition of the degrees in respect of the first batch of students of the Apollo College. With regard to the second batch of students of Apollo College, the council requested the Central Government to take necessary action to recognise the qualification of the second batch. Similar letter was issued in respect of third batch of students. The Veterinary Council of India on 24-7-2009 also informed the Agricultural University that the Apollo College could admit the students for the academic session 2009-10. In view of such recognition granted by the Veterinary Council of India and permission granted to admit students for the academic session 2009-10, the students were admitted in the Apollo College pursuant to a open entrance test. The sole ground, on which the students of the Apollo College were treated differently as the Central Government has not

notified the Apollo College and thereby the college is not included in the First Schedule to the Indian Veterinary Council Act, 1984, was not fit to deny relief. The university's recognition and the degree being recognised so also the facts with regard to other college being similar that the Hon''ble Supreme Court issued the eventual direction in para 47. That could be a legal solution and to the problem faced by the students and the veterinary colleges, according to the Hon''ble Supreme Court of India.

22. Before us, the situation is not identical and on par with this factual position. The Medical Council of India has filed an application and affidavits before us. Apart from reliance on the observations and conclusions in the Hon''ble Supreme Court order, the MCI relies upon a letter dated 31st July, 2014 addressed to the dean of the second respondent college at Parel. It refers to the meeting of the Post Graduate Committee of the council held on 10th July, 2014 to consider an assessment report dated 31st May, 2014 on the standard of examination and other teaching facilities available at Parel college. It invited the attention of the dean to the following glaring deficiencies :-

"(i) There are only 20 beds ; hence full complement of 30 beds in the Unit is not available.

(ii) Operative workload is grossly inadequate. Total average daily operations are only 1-2. Total operations for the whole month of May, 2014 for the whole hospital are only 59.

(iii) Total number of Major operations has decreased from 459 in 2011 to 195 in 2013.

(iv) Total number of deliveries has decreased from 139 in 2011 to 95 in 2013.

(v) M.D. (Anaesthesia) students are not posted on regular basis in ICUs.

(vi) Departmental library has only 28 books.

(vii) Teaching room with teaching aids is not available.

(viii) Other deficiencies pointed out in the assessment report.

The college authorities are directed to stop admissions since, the basic requirements laid down in Postgraduate Medical Education Regulations, 2000 are not fulfilled.

You are requested to stop admission in MD (Anaesthesiology) from the ensuing academic year.

You are also requested to rectify the above deficiencies at the earliest and submit the compliance for further consideration in the matter.

A copy of assessment report is enclosed herewith."

23. The assessment report was forwarded but the college was requested to stop

admissions. Then, what we have is the consideration of the assessment reports in relation to the courses namely, MD (Tuberculosis and Respiratory Diseases/ Pulmonary Medicine). We have also the assessment reports with regard to the MS (Orthopaedics). The deficiencies, which we have reproduced above are common to Anaesthesiology, Tuberculosis, Respiratory Diseases, Pulmonary and Orthopaedics. After these deficiencies were notified, the Post Graduate Education Committee of the council, held a meeting on 19th March, 2015 and considered further assessor's report of June, 2014 and compliance dated 1st October, 2014 submitted by the college on the standard of examination and other teaching facilities for recognition of MS(Orthopaedics) qualification for 2 seats and it decided that these deficiencies have to be rectified within six weeks from the date of dispatch of the letter and if no compliance is received within this period, it would result in stoppage of admission.

24. Mr. Thorat, however, has relied upon a document, which is styled as Essentiality Certificate, copy of which is to be found in the record of Writ Petition No. 7391 of 2015. A perusal of that document would reveal that though the ESIC through its headquarters has taken a decision in respect of medical education at its several meetings, what is important and for the future of the students is that the ESI Post Graduate Institute of Medical Science and Research being an autonomous body, there are other institutions in the State and which are offering several courses like Diploma in Anaesthesia. The Essentiality Certificate was issued for opening course and admitting students. The facilities were noted and it was found that in the event the applicant fails to create infrastructure for the course as per MCI norms and fresh admissions are stopped by the Central Government, the State Government shall think over to take over the responsibility of the students already admitted in the said college with the permission of the Central Government.

25. There is, therefore, a proposal to admit these students in the Andheri institution of the ESIC.

26. If that is how the matter is approached by the State Government, then, even the MCI would have to consider it in the same light. The MCI may proceed on the footing that the Parel institution lacks necessary facilities which are basic and fundamental in nature. However, if the students have undertaken the studies and are really not at fault, then, in the light of the Essentiality Certificate, the alternate request to transfer these students to the Andheri institution or otherwise recognise their study and degree on account of having undertaken a training in the said G.S. Medical College and K.E.M. Hospital, by virtue of a tie-up relied upon by the petitioners, can be considered by all competent authorities including the MCI. We would expect the MCI to consider this limited aspect and in the light of the law laid down by the Hon'ble Supreme Court of India in the case of Apollo College (*supra*) as also all the provisions of the Indian Medical Council Act, 1956 and the regulations framed thereunder. These directions can be issued because there is a acting dean who has filed an affidavit in the writ petitions,

which would indicate that there was an Essentiality Certificate issued, in relation to all courses and the institution has obtained bonds from the students to serve the ESIC. The ESIC may have decided to exit from the field of medical education, but on account of that the students should not suffer. If during the time when the students were admitted and the training was imparted, the college had the permission and it admitted the students pursuant to the results of the CET, then, we would all the more expect the MCI to take an informed decision. It should take that decision after considering the representations of the students, the State Government, the college/institute concerned and equally the ESIC. These being the stake holders, the MCI, in terms of the powers conferred in it by the Act, shall take the decision and we expect it to act expeditiously. If for some reason, it is not possible for the council to meet and take a decision, then, such of the committees which are duly authorised in terms of section 9 and regulation 45 of the Regulations shall act and take the concerned decision. We would expect the ESIC to render all assistance to the MCI by providing the necessary records in relation to both institutions. The State Government's Essentiality Certificate and its assurance to the students in that behalf as incorporated in it can also be brought to the notice of the MCI. If the responsibility can be taken by the State Government as it was the authority granting that certificate, then, even that aspect should be taken into account by the MCI. If necessary, the remarks from the university to which the courses were affiliated can also be called for. We do not direct that a particular decision should be taken, but a decision bearing in mind all the above materials and consistent with the object and purpose of the Act, the interest of the students and equally larger public interest is expected to be taken and reached within a period of six weeks from the date of receipt of a copy of this order.

27. In the facts and circumstances of this case and having found serious deficiencies presently in the working and functioning of the concerned hospital/college, we do not accede to the request of Mr. Thorat to permit one student to attend the counselling scheduled for tomorrow and allow him to participate so also the State to consider his candidature and admit/allot him a particular medical college subject to the decision of the MCI. That would only compound all the problems including that faced by the students till date. The request in that behalf is refused.

28. With the aforesaid directions, all the writ petitions are disposed of. In the light of the disposal of the writ petitions, the civil applications do not survive and stand disposed of as such.