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

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

+ **W.P.(C) 9662/2023 & CM APPL 37024/2023**

Between: -

**SRI SATYA SAI UNIVERSITY OF TECHNOLOGY AND
MEDICAL SCIENCES SEHORE, RUN AND
MANAGED BY AYUSHMATI
EDUCATION AND SOCIAL
SOCIETY, ADDRESS; OPP.OILFED
PLANT, BHOPAL-INDORE
ROAD, SEHORE (M.P), PIN – 466001.**

....PETITIONER

*(Through: Mr. Samar Bansal, Mr. Harsh Parashar, Mr.
Rajat Kumar and Mr. Chanakya Sharma, Advocates.)*

AND

**UNION OF INDIA
THROUGH JOINT DIRECTOR
MEDICAL EDUCATION-I
MINISTRY OF HEALTH
& FAMILY WELFARE, DEPARTMENT
OF HEALTH AND FAMILY WELFARE,
NIRMAN BHAWAN, NEW DELHI**

.....RESPONDENT NO. 1

**THE PRESIDENT
MEDICAL ASSESSMENT &**

RATING BOARD, (M.A.R.B.)
NATIONAL MEDICAL COMMISSION
ADDRESS: POCKET- 14, SECTOR – 8,
DWARKA PHASE -1 NEW DELHI –
110077, INDIA

.....RESPONDENT NO. 2

(Through: Ms. Arunima Dwivedi, CGSC with Ms. Pinky Pawar and Mr. Aakash Pathak, Advocates for R-1.

Mr. T. Singhdev, Mr. Bhanu Gulati and Mr. Abhijit Chakravarty, Advocates for R-2.)

% Pronounced on: 14.08.2023

J U D G M E N T

1. The petitioner in the instant petition filed under Article 226 of the Constitution of India seeks to challenge the impugned order dated 14.07.2023 passed by respondent no.1/Union of India (hereinafter 'UoI') dismissing the second appeal of the petitioner, confirming the order dated 23.06.2023 passed by the first appellate authority, thereby affirming the order in original dated 08.05.2023 passed by respondent no.2/Medical Assessment & Rating Board (hereinafter 'MARB') of the National Medical Commission (hereinafter 'NMC').

2. The facts of the case would show that the petitioner is a private University established by the Madhya Pradesh Niji Vishwavidyalaya (Sthapana Avam Sanchalan) Dwitiya Sanshodhan Adhiniyam, 2014; by way of an amendment to the Madhya Pradesh Niji Vishwavidyalaya (Sthapana Avam Sanchalan) Adhiniyam, 2007. The university is managed and run by the Ayushmati Education and Social Society.

3. The petitioner, with an object to establish a new medical college from the academic year 2023-24, is stated to have attempted to apply

online for the grant of recognition pursuant to the public notice dated 18.07.2022 issued by MARB.

4. The petitioner deposited the prescribed fee. The status of the said application was shown as “in-progress”. Initially, the last date for submission of application was 10.08.2022. Since the petitioner did not get any update about the status of the application through online portal, therefore, on the last date of submission of applications i.e. 10.08.2022, the petitioner submitted the hardcopy of the same application in the office of MARB against acknowledgment. The petitioner did not receive any acknowledgment with regard to the acceptance of its online application, therefore, the petitioner sent various mails to MARB on 24.02.2023, 13.03.2023, 01.04.2023 and 03.04.2023 with the request to update the status of the petitioner’s application.

5. On 08.05.2023, MARB replied to the petitioner stating therein that though MARB had received a sum of Rs.8,26,000/-, however, no application of the new college along with necessary documents was received on the NMC portal. Therefore, in the absence of any application for establishment of the new college for the academic year 2023-24, no permission can be granted.

6. On 20.05.2023, the petitioner filed its first appeal under section 28(5) of the **National Medical Commission Act, 2019** (hereinafter '**NMC Act, 2019**') before the NMC. *Vide* order dated 23.06.2023, NMC dismissed the first appeal reiterating the same reason that was stated in the order in original, it being that the petitioner did not submit any application online and in the absence of such an application, the decision of the MARB cannot be interfered with.

7. The petitioner, thereafter, on 24.06.2023 filed its second appeal before UoI under Section 28(6) of the NMC Act, 2019 which also

came to be rejected by the impugned order dated 14.07.2023. The petitioner has, therefore, filed the instant petition.

8. Learned counsel appearing for the petitioner vehemently argues that the impugned communication dated 08.05.2023 and the orders passed in the appeals are illegal and improper. He submits that the approach of the respondents is erroneous in as much as they did not consider the fact that the filing of the application in hardcopy was well within time i.e., 10.08.2022.

9. He, therefore, submits that once the application fee was accepted and the hardcopy was acknowledged, there was no reason for not considering the same. In any case, if the same was not acceptable, immediate communication could have been made by the respondents to the petitioner rejecting the hardcopy so that the petitioner could have taken appropriate recourse or could have filed a fresh application within a prescribed time frame.

10. He then submits that the intention of the petitioner to set up a new medical college is evident. Merely on the basis of certain technical reasons, the application ought not to have been rejected. He claims parity with the order dated 03.01.2022 relating to the academic year 2021-2022 passed by UoI in a second appeal in the case of Soban Singh Jeena Government Institute of Medical Science and Research, Almora (hereinafter '*Soban Singh Institute*') wherein under similar circumstances, the matter was remitted back to the original authority for *de novo* consideration and directions were given for taking appropriate action after inspection.

11. He then submits that had the petitioner failed to fulfil the criteria during the inspection, the same would have been a different position but in no case can the right for fair consideration for the

establishment of a medical college be denied arbitrarily, without being given a chance to undergo inspection.

12. The learned counsel for the petitioner has pointed out from different sets of regulations namely, **the Medical Council of India (Establishment of Medical College) Regulations, 1999** (hereinafter '**Regulations, 1999**') and the **Establishment of New Medical Institutions, Starting of New Medical Courses, Increase of Seats for Existing Courses & Assessment and Rating Regulations, 2023** (hereinafter '**Regulations, 2023**') that there is no mandatory provision for inviting applications only through online mode.

13. He emphasizes that inviting applications through a web portal is one of the modes and applications can also be submitted or accepted in physical mode. According to him, acceptance of application in physical mode is not completely dispensed with.

14. He also places reliance on the decision of the Hon'ble Supreme Court in the case of *Royal Medical Trust v. Union of India & Anr.*¹. While placing reliance on paragraph no. 33 of the aforementioned case, he submits that the respondents are fully empowered to extend or modify the time limits in the Schedule to the Regulations including for accepting the applications. According to him, the timeline for accepting the applications is not so sacrosanct that it cannot be modified.

15. He also places reliance on a decision of this court in the case of *Rambha College of Education v. National Council for Teacher Education*² to further strengthen his submission that some of the documents required to be submitted along with the application can also be considered at a later stage. While relying on the case of *Rambha College of Education* (supra) he submits that in that case,

¹ (2015) 10 SCC 19

² 2017 SCC OnLine Del 7171

this court allowed the submission of NOC from the affiliating body after the cut-off date.

16. He further places reliance on a decision of this court in the case of *Amrit Kunwar Mahavidyalaya v. National Council for Teacher Education*³ and he highlights that this court considered the aspect of not uploading the documents before the cut-off date on account of a technical glitch and in terms of paragraph nos. 6 to 14 of the said decision, it has been held that when attempts were made to make the payments and on account of some technical glitch, the same did not get through, that alone cannot be the reason for rejecting the application.

17. Learned counsel appearing for MARB strongly opposes the submissions advanced by learned counsel for the petitioner. While placing reliance on his counter affidavit, he submits that at this stage, no interference is called for in the instant writ petition.

18. According to him, MARB *vide* notice dated 18.07.2022, invited the applications for UG MBBS courses for starting of new medical college, increase of seats and renewal of courses for the academic year 2023-24. The notice specified that the applications were to be submitted through the online portal with a prescribed fee along with GST between 21.07.2022 to 10.08.2022. *Vide* another public notice dated 10.08.2022, the date of receipt of applications was extended up to 31.08.2022 (06:00 PM). MARB further decided to re-open the online portal from 15.12.2022 to 23.12.2022, *vide* another public notice dated 15.12.2022.

19. He then submits that within the permissible window, no online application was admittedly filed. On 14.10.2022, when the fees of the petitioner was debited from its account and credited to the NMC

³ 2020 SCC OnLine Del 455

account, the applicants were advised to track the progress of their applications through the NMC online portal quoting the application tracking number.

20. He further submits that in the instant case, when there was no tracking number, the petitioner ought to have taken immediate steps either to re-submit the online application or to take appropriate legal recourse in the month of October 2022 itself.

21. He submits that the decision of MARB dated 08.05.2023 is strictly in accordance with law and there is no mandate to accept any application in hardcopy. He submits that MARB receives thousands of documents every day in its office. All those papers cannot be processed. The applications were consciously invited through the online portal to avoid any human intervention.

22. He then submits that once the mode has been prescribed to accept the applications through the online portal alone, the same will have to be accepted only by that mode and by no stretch of imagination, can an application being submitted by any other mode be entertained.

23. He also submits that the NEET UG schedule for 2023 envisages the first round of counselling against All India Quota to be conducted between 20.07.2023 to 28.07.2023 and State counselling for the first round between 25.07.2023 to 04.08.2023. The last date of joining is 08.08.2023. The second round of counselling commences on 09.08.2023 and would come to an end on 28.08.2023. According to him, at this belated stage, any direction for consideration of the application of the petitioner for establishing medical college would entail serious consequences such as depriving the NMC from having the advantage of a surprise inspection, the proper assessment of the facility/infrastructure of the petitioner institution, reverse

discrimination against other institutions those who applied well within time, tinkering with the standard of medical education, diluting the schedule prescribed in various public notices and creating anomalies in the admission process and uncertainties in the minds of the students aspiring for taking admission in MBBS course. He has placed reliance on various decisions of the Hon'ble Supreme Court in the cases of *Royal Medical Trust* (supra), *D.Y. Patil Medical College v. Medical Council of India*⁴, *Poonaiyah Ramajayam Institute of Science and Technology Trust v. Medical Council of India*⁵, *Medical Council of India v. Akash Education and Development Trust*⁶ and *Medical Council of India v. V.N. Public Health & Educational Trust*⁷, and decisions of this court in the cases of *KPC Medical College and Hospital v. Union of India & Anr.*⁸, *U.P. Rural Institute of Medical Science & Research v. Union of India*⁹, *Travancore Medical College v. Union of India & Anr.*¹⁰, *Medical Council of India v. Amma Chandravati Educational and Charitable Trust*¹¹, *Medical Council of India v. Muzaffarnagar Medical College*¹² and *Medical Council of India v. Chettinad Hospital & Research Institute*¹³.

24. I have considered the submissions made by the learned counsel appearing for the parties and perused the record.

Importance of the cut-off date for Establishment of colleges/Commencement of Professional Courses/Admissions therein.

⁴ (2015) 10 SCC 51

⁵ (2015) 10 SCC 83

⁶ (2015) 10 SCC 78

⁷ (2016) 11 SCC 216

⁸ 2018 SCC OnLine Del 9117

⁹ 2015 SCC OnLine Del 10296

¹⁰ 2019 SCC OnLine Del 6471

¹¹ 2015 SCC OnLine Del 9245

¹² 2014 SCC OnLine Del 7256

¹³ 2018 SCC OnLine Del 9895

25. At the outset, it is pertinent to take into consideration that an institution aiming to impart education in professional courses specifically, medical courses, compulsorily must possess a certain scale of infrastructure to cope with the requirement of giving proper education to the students. Depending upon the infrastructure, equipment and staff available in the institutions, the NMC decides to grant recognition to the institutions.

26. The establishment of an educational institution with respect to professional courses and the admissions therein are governed by different statutory provisions including regulations framed under the respective Acts.

27. To maintain excellence in academic courses, it is not only the timeline fixed for commencement of the course that is important but all the necessary stages for setting up of an educational institution itself attain significance. In view of the present competitive scenario, if the internal time schedule for setting up an educational institution is applied differently to a particular case, the same would not only prejudice the cases of other similarly situated applicants but create disparity in the admission process as well.

28. The recognition of the medical colleges was earlier being dealt with in accordance with the provisions of the **Indian Medical Council Act, 1956** (hereinafter '*Act of 1956*').

29. Section 10A of the Act of 1956 dealt with the permission for establishment of a new medical college and a new course of study. The previous permission of the Central Government was necessary to open a new or higher course of study (including a postgraduate 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 to increase its admission capacity in any course of study or training.

30. As per sub-Section 2(a) of Section 10A of the Act of 1956, for the purpose of obtaining permission under sub-Section 1 of Section 10A, the applications were to be submitted to the Central Government. Those applications were to be referred to the Medical Council of India (hereinafter '*Council*') for its recommendation. The Council was constituted as per Section 3 of the Act of 1956.

31. There had been various amendments under the Act of 1956 and the Council was also superseded by a new mechanism. However, after the repeal of the Act of 1956, the entire regime is now governed by the provisions of the NMC Act, 2019.

32. The preamble of the NMC Act, 2019 reads as under:-

"An Act to provide for a medical education system that improves access to quality and affordable medical education, ensures availability of adequate and high quality medical professionals in all parts of the country; that promotes equitable and universal healthcare that encourages community health perspective and makes services of medical professionals accessible to all the citizens; that promotes national health goals; that encourages medical professionals to adopt latest medical research in their work and to contribute to research; that has an objective periodic and transparent assessment of medical institutions and facilitates maintenance of a medical register for India and enforces high ethical standards in all aspects of medical services; that is flexible to adapt to changing needs and has an effective grievance redressal mechanism and for matters connected therewith or incidental thereto."

33. It is discernable that besides others, the NMC Act, 2019 provides for a medical education system that improves access to quality and affordable medical education and ensures availability of adequate and high quality medical professionals in all parts of the country. It promotes equitable and universal healthcare that encourages community health perspective and makes services of medical professionals accessible to all the citizens. Amongst others, it

also provides for an objective periodic and transparent assessment of medical institutions, facilitates maintenance of a medical register for India and enforces high ethical standards in all aspects of medical services. An effective grievance redressal mechanism has also been intended to be established.

34. As per Section 3 of the NMC Act, 2019, the NMC was constituted to exercise the powers conferred upon, and to perform the functions assigned to it, under the NMC Act, 2019. The NMC shall be a body corporate having perpetual succession and common seal with power, subject to the provisions of the NMC Act, 2019. The NMC consists of persons that are to be appointed by the Central Government and the Chairman shall be a medical professional of outstanding ability, proven administrative capacity and integrity, possessing a postgraduate degree in any discipline of medical science and not less than twenty years of experience in the field of medical sciences etc.

35. As per Section 5 of the NMC Act, 2019, a Search Committee chaired by the Cabinet Secretary and experts is constituted to appoint the Chairperson and members of the NMC.

36. As per Section 16 of the NMC Act, 2019, the Central Government is empowered to notify/constitute various Autonomous Boards, under the overall supervision of the NMC, to perform the functions assigned to such Boards under the NMC Act, 2019.

37. The powers under the NMC Act, 2019 have seemingly been decentralised. The powers no longer vest in a single entity and are now being performed by respective Autonomous Boards, specifically set up for different spheres. The composition of Autonomous Boards is also enunciated in Section 17 of the NMC Act, 2019. The

provisions of the said Act clearly demarcate the powers and functions of the NMC, Autonomous Boards and other Authorities under the NMC Act, 2019. Similar to the provisions of Section 10A of the Act of 1956, provisions under Section 28 of the NMC Act, 2019 have been made, prohibiting establishment of a new medical college or starting any new postgraduate course or increasing the number of seats without obtaining prior permission of the MARB.

38. Under the Scheme of the new Act i.e. the NMC Act, 2019, the applications henceforth, are not to be submitted to the Central Government but are meant to be submitted to the MARB as and when the same are invited. The powers and functions of the MARB are defined under Section 26 of the NMC Act, 2019.

39. The criteria for approving or disapproving scheme under Section 28 are provided under Section 29 of the Act of 2019. Sections 28 and 29 of the NMC Act, 2019 read as under:-

"28. (1) No person shall establish a new medical college or start any postgraduate course or increase number of seats without obtaining prior permission of the Medical Assessment and Rating Board.

(2) For the purposes of obtaining permission under sub-section (1), a person may submit a scheme to the Medical Assessment and Rating Board in such form, containing such particulars, accompanied by such fee, and in such manner, as may be specified by the regulations.

(3) The Medical Assessment and Rating Board shall, having due regard to the criteria specified in section 29, consider the scheme received under sub-section (2) and either approve or disapprove such scheme within a period of six months from the date of such receipt:

Provided that before disapproving such scheme, an opportunity to rectify the defects, if any, shall be given to the person concerned.

(4) Where a scheme is approved under sub-section (3), such approval shall be the permission under sub-section (1) to establish new medical college.

(5) Where a scheme is disapproved under sub-section (3), or where no decision is taken within six months of submitting a scheme under sub-section (1), the person concerned may prefer an appeal to the Commission for approval of the scheme within fifteen days of such disapproval or, as the case may be, lapse of six months, in such manner as may be specified by the regulations.

(6) *The Commission shall decide the appeal received under sub-section (5) within a period of forty-five days from the date of receipt of the appeal and in case the Commission approves the scheme, such approval shall be the permission under sub-section (1) to establish a new medical college and in case the Commission disapproves the scheme, or fails to give its decision within the specified period, the person concerned may prefer a second appeal to the Central Government within thirty days of communication of such disapproval or, as the case may be, lapse of specified period.*

(7) *The Medical Assessment and Rating Board may conduct evaluation and assessment of any medical institution at any time, either directly or through any other expert having integrity and experience of medical profession and without any prior notice and assess and evaluate the performance, standards and benchmarks of such medical institution.*

Explanation:

For the purposes of this section, the term "person" includes a University, trust or any other association of persons or body of individuals, but does not include the Central Government.

29. *While approving or disapproving a scheme under section 28, the Medical Assessment and Rating Board, or the Commission, as the case may be, shall take into consideration the following criteria, namely:—*

(a) adequacy of financial resources;

(b) whether adequate academic faculty and other necessary facilities have been provided to ensure proper functioning of medical college or would be provided within the time-limit specified in the scheme;

(c) whether adequate hospital facilities have been provided or would be provided within the time-limit specified in the scheme;

(d) such other factors as may be prescribed:

Provided that, subject to the previous approval of the Central Government, the criteria may be relaxed for the medical colleges which are set up in such areas as may be specified by the regulations."

40. A bare perusal of Sections 28 and 29 of the NMC Act, 2019 reveals that MARB is mandated to take into consideration various aspects including adequacy of financial resources, academic faculty, other necessary facilities, hospital facilities and other factors as may be prescribed. It also entails that the assessment of eligibility will have to be on the basis of objective criteria. The MARB under its discretion may require certain additional information or clarification including documents from the concerned applicant in order to properly assess the application/scheme.

41. The task of setting up of a medical college requires rigorous, multi-faceted preparations. It is not restricted to just the construction of a building with infrastructural facilities. A qualified teaching staff with qualified doctors under the respective departments and ample equipment are some of the necessities that a medical college must possess.

42. If the required facilities are not available in a medical college, it may not be able to cater to patients and the students admitted in such medical colleges may not be able to have the advantage of undergoing practical training, which is an absolute must for medical education. Medicine is not a profession that can be practiced in vacuum.

43. Medical colleges have an enormous responsibility of making sure that when the students leave the doors of those colleges, they are ready to handle the responsibility that comes with the profession. All those aspects cannot be perfected overnight. It is developed stage by stage and therefore, at all stages, there is a check and balance system under the NMC Act, 2019.

44. Against this background, the first issue that needs to be examined by this court is the scope of interference in the time schedule laid down for the admission process in educational institutions, taking into consideration the various pronouncements of the Apex Court that have authoritatively laid down the law in this regard.

45. The Hon'ble Supreme Court in the case of *State of Uttar Pradesh and others v. Dr. Anupam Gupta and others*¹⁴, one of the earliest cases relating to the importance of medial course admission, shows that midstream admissions were deprecated. It was held that it

¹⁴ 1993 Supp (1) SCC 594

would disturb the progress of the courses and also work as a handicap to the candidates themselves to achieve excellence. Even if the seats are vacant, the same cannot be a ground to give admissions belatedly and directions by the High Court to admit the candidates into the vacant seats, once the course has commenced, were found to be unwarranted.

46. No doubt, the facts of this case are distinguishable, however, the principle of law being that no interference in admission schedule is warranted without cogent reasons, was very much recognised.

47. In the case of *State of Punjab and others v. Renuka Singla and others*¹⁵, the Hon'ble Supreme Court considered the admission provided to students belatedly in dental courses (*pari materia* to medical courses). It held that any direction for admission of a student on "compassionate grounds" to the effect of creating an additional seat, amounted to a violation of Section 10-A and Section 10-B(3) of the Dentists Act, 1948 and accordingly, such a direction passed by the High Court was set aside. In this case also, the Hon'ble Supreme Court emphasized the importance of the schedule for medical course.

48. In the case of *Medical Council of India v. State of Karnataka and others*¹⁶, it has been held by the Hon'ble Supreme Court that a medical student requires grueling study and that can be only done if proper facilities are available in a medical college and the hospital attached to it has to be well equipped. The teaching faculty and doctors have to be competent enough that when a medical student comes out, he/she is perfect in the science of treatment of human beings and is not found wanting in any way. It has also been held that the country does not want half-baked medical professionals coming out of medical colleges when they did not have full facilities of

¹⁵ (1994) 1 SCC 175

¹⁶ (1998) 6 SCC 131

teaching and were not exposed to the patients and their ailments during the course of their study.

49. The case of *State of Karnataka* (supra) was with respect to the action of the State Government in increasing the number of seats which was held to be illegal. It was therefore, directed that any medical college or institution which wishes to increase the admission capacity in MBBS/higher courses (including diploma/degree/higher specialties), has to apply to the Central Government for permission along with the permission of the State Government and that of the University with which it is affiliated and in conformity with the regulations framed by the Medical Council.

50. The Hon'ble Supreme Court in the case of *Medical Council of India v. Madhu Singh and others*¹⁷ has expressed the necessity of specifically providing the time schedule for the course and the admissions. It was also made clear that no admission can be granted after the scheduled date, which essentially should be the date of the commencement of the course. Paragraph 23 of the said decision reads as under:-

“23. There is, however, a necessity for specifically providing the time schedule for the course and fixing the period during which admissions can take place, making it clear that no admission can be granted after the scheduled date, which essentially should be the date for commencement of the course.

In conclusion

(i) there is no scope for admitting students midstream as that would be against the very spirit of statutes governing medical education;

(ii) even if seats are unfilled that cannot be a ground for making mid-session admissions;

(iii) there cannot be telescoping of unfilled seats of one year with permitted seats of the subsequent year;

(iv) MCI shall ensure that the examining bodies fix a time schedule specifying the duration of this course, the date of commencement of the course and the last date for admission;

¹⁷ (2002) 7 SCC 258

(v) *different modalities for admission can be worked out and necessary steps like holding of examination if prescribed, counselling and the like have to be completed within the specified time;*

(vi) *no variation of the schedule so far as admissions are concerned shall be allowed;*

(vii) *in case of any deviation by the institution concerned, action as prescribed shall be taken by MCI.”*

51. The Hon'ble Supreme Court in the case of ***Medical Council of India v. Rajiv Gandhi University of Health Sciences and others***¹⁸ has considered the provisions of Section 10-A of the Act of 1956 and it has been held that terms and conditions have to be fulfilled before starting or establishing a medical college or starting higher courses in terms of Section 10-A of the Act of 1956. It has also been held that there are various steps envisaged under the scheme, which have to be necessarily followed. Paragraph no.13 of the said decision reads as under:-

“13. Law is well settled that Section 10-A of the Medical Council Act which provides for terms and conditions which have to be fulfilled before starting or establishing a medical college or starting higher courses making it clear that what is postulated thereunder is evaluation of application made by the institution concerned by the Central Government in the first instance and then forwarding the same to the Medical Council of India for its further examination. There are various steps envisaged under the scheme, such as:

(a) issuance of letter of intent by the Central Government on the recommendation of the Council;

(b) issuance of letter of permission by the Central Government on the recommendation of the Council for starting admissions;

(c) issuance of annual renewal to be granted by the Central Government on the recommendation of the Council;

(d) at the stage first batch of students admitted in MBBS course go for final-year examination, grant of formal recognition by the Central Government on the recommendation of the Council; and

(e) if at any stage after the grant of initial permission entitling permission of first batch of students any college fails to fulfil the minimum norms in any successive year, as per the statutory

¹⁸ (2004) 6 SCC 76

regulations, further admissions are liable to be stopped at any stage.”

52. The Hon’ble Supreme Court in the case of *Mridul Dhar (Minor) and Another v. Union of India and others*¹⁹ has unequivocally held that the time schedule for establishment of a new college or to increase intake capacity in an existing college shall be adhered to strictly by all concerned. Paragraph 35 of the said decision reads as under:-

“35. Having regard to the aforesaid, we issue the following directions:

1. All participating States and Union Territories' Boards of Secondary Education shall declare 10+2 result by 10th June of every year and make available the marksheets to the students by 15th June.

The aforesaid condition would not apply to West Bengal for the year 2005. As already noticed, West Bengal would make available to the students concerned the marksheets by 15-6-2005. Heads of Boards would be personally liable to ensure compliance.

2. The timetable mentioned in notification dated 25-2-2004 shall be strictly adhered to by all concerned including States and Union Territories and results of State medical/dental entrance examination shall be declared before 15th of June.

3. The States/Union Territories shall complete the admission process of first round of State-level medical/dental college admission by 25th July i.e. a week before start of second round counselling or allotment of seats under all-India quota. The correct vacancy position shall be intimated by the Chief Secretary of the State/Union Territory to the DGHS by 26th July. It shall be verified by the Head of the institution/or Head of the medical institution/Health Department of the State.

4. It shall be the responsibility of all concerned including Chief Secretaries of each State/Union Territory and/or Health Secretaries to ensure compliance with the directions of this Court and requisite time schedule as laid down in the Regulations and non-compliance would make them liable for requisite penal consequences.

5. All seats in all-India quota must be fully disclosed giving details of the date of recognition/renewal to DGHS before a date to be notified by DGHS and the same shall be duly published.

¹⁹ (2005) 2 SCC 65

6. *By 31st October, the States, through the Chief Secretaries/Health Secretaries shall file a report in regard to admissions, with the DGHS giving details about the adherence to a time schedule and admission granted as per the prescribed quota. The recalcitrant States, particularly officers personally will have to face the consequences for violation.*
7. *The DGHS shall file by 31-1-2005 report in regard to feasibility of conducting counselling through the process of video-conferencing.*
8. *The DGHS shall file report within three months on the aspect of Section 10-A seats being subjected to 15 per cent all-India quota and about the increase of the quota from 15 per cent to 20 per cent.*
9. *The DGHS shall also file a report within three months on the aspect of constitution of High-Powered Committee/ombudsman.*
10. *The seats allotted up to 15th July, shall also be subjected to the respective State quotas.*
11. *If any private medical college in a given academic year for any reason grants admission in its management quota in excess of its prescribed quota, the management quota for the next academic year shall stand reduced so as to set off the effect of excess admission in the management quota in the previous academic year.*
12. *The time schedule for grant of admission to postgraduate courses shall also be adhered to.*
13. *For granting admission, the merit determined by competitive examination shall not be tinkered with by making a provision like grant of marks by mode of interview or any other mode.*
14. ***Time schedule for establishment of new college or to increase intake in existing college, shall be adhered to strictly by all concerned.***
15. ***Time schedule provided in the Regulations shall be strictly adhered to by all concerned failing which the defaulting party would be liable to be personally proceeded with.***
16. *Copy of the judgment shall be sent to the Chief Secretaries of all the States/Union Territories for compliance.”*

[Emphasis supplied]

53. It is thus seen that it is not only the time schedule for admissions of the students and commencement of the course that is to be adhered to but in view of the unequivocal pronouncement of the Hon'ble Supreme Court in the case of *Mridul Dhar* (supra), the time schedule envisaged for establishment of a new college or to increase

the intake capacity in existing college also needs to be strictly adhered to by all concerned.

54. Even in the instances of permission for establishing new private schools, in the decision of the Hon'ble Supreme Court in the case of ***Superstar Education Society v. State of Maharashtra and others***²⁰, the object of regulating permissions was found to have great significance. Paragraph no.8 of the said decision reads as under:-

“8. The objects of regulating permissions for new private schools are:

(i) to ensure that they have the requisite infrastructure,

(ii) to avoid unhealthy competition among educational institutions;

(iii) to subject the private institutions seeking entry in the field of education to such restrictions and regulatory requirements, so as to maintain standards of education;

(iv) to promote and safeguard the interests of students, teachers and education; and

(v) to provide access to basic education to all sections of society, in particular the poorer and weaker sections; and (vi) to avoid concentration of schools only in certain areas and to ensure that they are evenly spread so as to cater to the requirements of different areas and regions and to all sections of society.”

55. The Hon'ble Supreme Court in the case of ***Priyadarshini Dental College & Hospital v. Union of India***²¹ has cautioned all concerned that the schedule specified in ***Mridul Dhar*** (supra) should be maintained and the regulations should be strictly followed. The Hon'ble Supreme Court has suggested that the process of inspection of the colleges, grant of permission, renewal of permission should also be done well in advance to allow time for setting right the deficiencies pointed out.

²⁰ (2008) 3 SCC 315

²¹ (2011) 4 SCC 623

56. The aforesaid position has been reiterated in various other pronouncements clearly stating that regulations framed by NMC (the then MCI) are binding and the standards cannot be deviated from.

57. A further reference can be made to the decisions of the Hon'ble Supreme Court in the cases of *State of M.P. and others v. Gopal D. Tirthani and others*²², *Bharati Vidyapeeth (deemed university) and others v. State of Maharashtra and another*²³, *Chowdhury Navin Hemabhai and others v. State of Gujarat and others*²⁴ and *Harish Verma and others v. Ajay Srivastava and another*²⁵.

58. The Hon'ble Supreme Court in the case of *Priya Gupta v. State of Chhattisgarh and Others*²⁶ besides other issues, has also considered the adverse consequences of non adherence to the prescribed schedules. In paragraph nos. 40 and 41 of the said decision, it has been held as under:-

“40. The schedules prescribed have the force of law, inasmuch as they form part of the judgments of this Court, which are the declared law of the land in terms of Article 141 of the Constitution of India and form part of the Regulations of the Medical Council of India, which also have the force of law and are binding on all concerned. It is difficult to comprehend that any authority can have the discretion to alter these schedules to suit a given situation, whether such authority is the Medical Council of India, the Government of India, State Government, university or the selection bodies constituted at the college level for allotment of seats by way of counselling. We have no hesitation in clearly declaring that none of these authorities are vested with the power of relaxing, varying or disturbing the time schedule, or the procedures of admission, as provided in the judgments of this Court and the Medical Council of India Regulations.

41. Inter alia, the disadvantages are:

(1) Delay and unauthorised extension of schedules defeat the principle of admission on merit, especially in relation to preferential choice of colleges and courses. Magnanimity in this respect, by condoning delayed admission, need not be

²² (2003) 7 SCC 83

²³ (2004) 11 SCC 755

²⁴ (2011) 3 SCC 617

²⁵ (2003) 8 SCC 69

²⁶ (2012) 7 SCC 433

shown by the courts as it would clearly be at the cost of more meritorious students. The principle of merit cannot be so blatantly compromised. This was also affirmed by this Court in Muskan Dogra v. State of Punjab [(2005) 9 SCC 186].

(2) Midstream admissions are being permitted under the garb of extended counselling or by extension of periods for admission which again is impermissible.

(3) The delay in adherence to the schedule, delay in the commencement of courses, etc. encourage lowering of the standards of education in the medical/dental colleges by shortening the duration of the academic courses and promoting the chances of arbitrary and less meritorious admissions.

(4) Inequities are created which are prejudicial to the interests of the students and the colleges and more importantly, affect the maintenance of prescribed standard of education. These inequities arise because the candidates secure admission, with or without active connivance, by the manipulation and arbitrary handling of the prescribed schedules, at the cost of more meritorious candidates. When admissions are challenged, these students would run the risk of losing their seats though they may have completed their course while litigation was pending in the court of competent jurisdiction.

(5) The highly competitive standards for admission to such colleges stand frustrated because of non-adherence to the prescribed time schedules. The admissions are stretched to the last date and then admissions are arbitrarily given by adopting impermissible practices.

(6) Timely non-inclusion of the recognised/approved colleges and seats deprives the students of their right of fair choice of college/course, on the strength of their merit.

(7) Preference should be to fill up all vacant seats, but under the garb that seats should not go waste, it would be impermissible to give admissions in an arbitrary manner and without recourse to the prescribed rule of merit.”

[Emphasis supplied]

59. In the case of **Priya Gupta** (supra), the Hon’ble Supreme Court also noted that it is the need of the hour that binding dicta be prescribed and statutory regulations be enforced, so that all concerned are mandatorily required to implement the time schedule in its true spirit and substance. It has been directed that it is difficult and not even advisable to keep some windows open to meet a particular situation of exception, as it may pose impediments to the smooth

implementation of laws and defeat the very object of the scheme. The schedules have been prescribed upon serious consideration by all concerned. They are to be applied *stricto sensu* and cannot be moulded to suit the convenience of some economic or other interests of any institution, especially, in a manner that is bound to result in compromise of the principles laid down in various decisions.

60. The Hon'ble Supreme Court while keeping in mind the contemptuous contempt of the relevant stakeholders, their cannonade on the rule of merit issued various directions *in rem* for their strict compliance without demur and default by all concerned. Paragraph no.46 of the said decision reads as under:-

“46. Keeping in view the contemptuous conduct of the relevant stakeholders, their cannonade on the rule of merit compels us to state, with precision and esemplastically, the action that is necessary to ameliorate the process of selection. Thus, we issue the following directions in rem for their strict compliance, without demur and default, by all concerned:

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

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

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

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

46.5. *The admission to the medical or dental colleges shall be granted only through the respective entrance tests conducted by the competitive authority in the State or the body of the private colleges. These two are the methods of selection and grant of admission to these courses. However, where there is a single Board conducting the State examination and there is a single medical college, then in terms of Clause 5.1 of the Medical Council of India Eligibility Certificate Regulations, 2002 the admission can be given on the basis of 10+2 exam marks, strictly in order of merit.*

46.6. *All admissions through any of the stated selection processes have to be effected only after due publicity and in consonance with the directions issued by this Court. We vehemently deprecate the practice of giving admissions on 30th September of the academic year. In fact, that is the date by which, in exceptional circumstances, a candidate duly selected as per the prescribed selection process is to join the academic course of MBBS/BDS. Under the directions of this Court, second counselling should be the final counselling, as this Court has already held in *Neelu Arora v. Union of India* [(2003) 3 SCC 366] and third counselling is not contemplated or permitted under the entire process of selection/grant of admission to these professional courses.*

46.7. *If any seats remain vacant or are surrendered from all-India quota, they should positively be allotted and admission granted strictly as per the merit by 15th September of the relevant year and not by holding an extended counselling. The remaining time will be limited to the filling up of the vacant seats resulting from exceptional circumstances or surrender of seats. All candidates should join the academic courses by 30th September of the academic year.*

46.8. *No college may grant admissions without duly advertising the vacancies available and by publicising the same through the internet, newspaper, on the notice board of the respective feeder schools and colleges, etc. Every effort has to be made by all concerned to ensure that the admissions are given on merit and after due publicity and not in a manner which is *ex facie* arbitrary and casts the shadow of favouritism.*

46.9. *The admissions to all government colleges have to be on merit obtained in the entrance examination conducted by the nominated authority, while in the case of private colleges, the colleges should choose their option by 30th April of the relevant year, as to whether they wish to grant admission on the basis of the merit obtained in the test conducted by the nominated State authority or they wish to follow the merit list/rank obtained by the candidates in the competitive examination collectively held by the nominated agency for the private colleges. The option exercised by 30th April shall not be subject to change. This choice should also be given by the*

colleges which are anticipating grant of recognition, in compliance with the date specified in these directions.”

61. The Hon’ble Supreme Court in paragraph no.47 of the said decision in the case of **Priya Gupta** (supra) has specifically directed that all the directions shall be complied with by all concerned including the Union of India, Medical Council of India, Dental Council of India, State Governments, Universities and medical and dental colleges and the management of the respective universities or dental and medical colleges. Failure to conform with the conditions, shall invite some consequences and penal actions. Paragraph nos. 47 and 48 of the said decision read as under:-

“47. All these directions shall be complied with by all concerned, including the Union of India, Medical Council of India, Dental Council of India, State Governments, universities and medical and dental colleges and the management of the respective universities or dental and medical colleges. Any default in compliance with these conditions or attempt to overreach these directions shall, without fail, invite the following consequences and penal actions:

47.1. Every body, officer or authority who disobeys or avoids or fails to strictly comply with these directions stricto sensu shall be liable for action under the provisions of the Contempt of Courts Act. Liberty is granted to any interested party to take out the contempt proceedings before the High Court having jurisdiction over such institution/State, etc.

47.2. The person, member or authority found responsible for any violation shall be departmentally proceeded against and punished in accordance with the Rules. We make it clear that violation of these directions or overreaching them by any process shall tantamount to indiscipline, insubordination, misconduct and being unworthy of becoming a public servant.

47.3. Such defaulting authority, member or body shall also be liable for action by and personal liability to third parties who might have suffered losses as a result of such default.

47.4. There shall be due channelisation of selection and admission process with full cooperation and coordination between the Government of India, State Government, universities, Medical Council of India or Dental Council of India and the colleges concerned. They shall act in tandem and strictly as per the prescribed schedule. In other words,

there should be complete harmonisation with a view to form a uniform pattern for concerted action, according to the framed scheme, schedule for admission and regulations framed in this behalf.

47.5. The college which grants admission for the current academic year, where its recognition/approval is granted subsequent to 15th July of the current academic year, shall be liable for withdrawal of recognition/approval on this ground, in addition to being liable to indemnify such students who are denied admission or who are wrongfully given admission in the college.

47.6. Upon the expiry of one week after holding of the second counselling, the unfilled seats from all quotas shall be deemed to have been surrendered in favour of the respective States and shall be filled thereafter strictly on the basis of merit obtained in the competitive entrance test.

47.7. It shall be mandatory on the part of each college and university to inform the State and the Central Government/competent authority of the seats which are lying vacant after each counselling and they shall furnish the complete details, list of seats filled and vacant in the respective States, immediately after each counselling.

47.8. No college shall fill up its seats in any other manner.

48. Having dealt with, in general, the directions that this Court would issue to prevent the evils of arbitrariness and discrimination from creeping into these selection/admission processes, which are required to be transparent, fair and non-exploitative, we shall now proceed to deal with the facts of the present case.

62. In the case of *Educare Charitable Trust v. Union of India and another*²⁷ although the Hon'ble Supreme Court was considering the case with respect to admission of the students after the stipulated last date, however, it has been unequivocally held that mandamus was rightly not issued by the High Court to the Central Government to exercise its discretionary powers in a particular manner to modify the time schedule. The sanctity to the time schedule has to be attached. Under the facts of that case, the decision of the High Court was affirmed.

²⁷ (2013) 16 SCC 474

63. Paragraph no.17 of the decision in the case of ***Educare Charitable Trust*** (supra) reads as under:-

17. Having regard to the above, it is not possible to accede to the request of the petitioner to change the time schedule when the last date for admitting the students, which was 15-7-2013, expired long ago. If the Central Government forwards the application to DCI at this juncture, DCI shall hardly have any time to look into the feasibility of the scheme as per the requirements contained in Regulation 21. We have to keep in mind that in the Schedule annexed to the Regulations 2006, six to eight months' time is given to DCI for this purpose. We are, thus, of the view that the High Court did not commit any error in holding that in the given circumstances mandamus could not be issued to the Central Government to exercise its discretionary powers in a particular manner to modify the time schedule. Sanctity to the time schedule has to be attached. It is too late in the day, insofar as the present academic session is concerned, to give any direction. This Court has highlighted the importance of cut-off date for starting the professional courses, particularly medical courses, and repeatedly impressed upon that such deadline should be tinkered with. (See Priya Gupta v. State of Chhattisgarh and Maa Vaishno Devi Mahila Mahavidyalaya v. State of U.P.)

[Emphasis supplied]

64. Even for instances relating to teacher training courses governed under the National Council for Teacher Education Act, 1993, the Hon'ble Supreme Court in the case of ***Maa Vaishno Devi Mahila Mahavidyalaya v. State of Uttar Pradesh and others***²⁸ has held that the process for grant of recognition/ affiliation and thereby sanctioning of commencement of the course in terms of the extant regulations has an outer limit. It was found necessary that for the entire process to be within the framework, it must be completed within the said period including various steps such as comments of the State, inspection of the institution and compliance with various conditions. The Hon'ble Supreme Court, therefore, in order to ensure that there exists no ambiguity, uncertainty and confusion, prescribed the schedule upon a cumulative reading of the regulations and judgments of the Hon'ble Supreme Court in relation recognition and affiliation. A perusal of the

²⁸ (2013) 2 SCC 617

schedule would indicate that there are various internal stages before issuance of formal order of recognition.

65. In the case of *Royal Medical Trust* (supra), the Hon'ble Supreme Court in the context of the Act of 1956 has considered that the schedule laying down various stages and time limits must accommodate every possible eventuality and at the same time, must comply with the requirement of observance of natural justice at various levels. Highlighting various aspects, the Hon'ble Supreme Court has also taken into consideration the necessity of having an element of surprise in the inspections to be conducted.

66. The element of surprise inspection is only possible if a clear window of a reasonable period of time is available for the inspectors of the regulators. The stages such as, initial assessment, inspection, intimation of the result of the outcome of the inspection, compliance report and result of verification etc. are necessary to be adhered to while passing through the process of setting up an educational institution. One cannot be expected to overturn all stages and to claim its inclusion in the process on the ground that the outer limit is maintained. It is not only the outer limit till which the last admissions are to be granted or the course is to be commenced, but the internal time limits and discipline also that has great significance in view of the scheme of the Act itself and under the various pronouncements, as has been noted in the preceding paragraphs.

67. In the case of *Royal Medical Trust* (supra), the Hon'ble Supreme Court in paragraph no.31 has highlighted certain stages to emphasize that the time schedule must necessarily take care of those activities. The extract of paragraph no.31 of the said decision reads as under:-

31. MCI and the Central Government have been vested with monitoring powers under Section 10-A and the Regulations. It is expected of these authorities to discharge their functions well within the statutory confines as well as in conformity with the Schedule to the Regulations. If there is inaction on their part or non-observance of the time schedule, it is bound to have adverse effect on all concerned. The affidavit filed on behalf of the Union of India shows that though the number of seats had risen, obviously because of permissions granted for establishment of new colleges, because of disapproval of renewal cases the resultant effect was net loss in terms of number of seats available for the academic year. It thus not only caused loss of opportunity to the students community but at the same time caused loss to the society in terms of less number of doctors being available. MCI and the Central Government must therefore show due diligence right from the day when the applications are received. The Schedule giving various stages and time-limits must accommodate every possible eventuality and at the same time must comply with the requirements of observance of natural justice at various levels. In our view the Schedule must ideally take care of:

(A) **Initial assessment** of the application at the first level should comprise of checking necessary requirements such as essentiality certificate, consent for affiliation and physical features like land and hospital requirement. If an applicant fails to fulfill these requirements, the application on the face of it, would be incomplete and be rejected. Those who fulfil the basic requirements would be considered at the next stage.

(B) **Inspection** should then be conducted by the Inspectors of MCI. By very nature such inspection must have an element of surprise. Therefore sufficient time of about three to four months ought to be given to MCI to cause inspection at any time and such inspection should normally be undertaken latest by January. Surprise inspection would ensure that the required facilities and infrastructure are always in place and not borrowed or put in temporarily.

(C) Intimation of the result or outcome of the inspection would then be communicated. If the infrastructure and facilities are in order, the medical college concerned should be given requisite permission/renewal, However, if there are any deficiencies or shortcomings, MCI must, after pointing out the deficiencies, grant to the college concerned sufficient time to report compliance.

(D) If compliance is reported and the applicant states that the deficiencies stand removed, MCI must cause compliance verification. It is possible that such compliance could be accepted even without actual physical verification but that assessment be left entirely to the discretion of MCI and the Central Government. In cases where actual physical verification is required, MCI and the Central Government must cause such verification before the deadline.

(E) The result of such verification if positive in favour of the medical college concerned, the applicant ought to be given requisite permission/renewal. But if the deficiencies still persist or had not been removed, the applicant will stand disentitled so far as that academic year is concerned.

68. No doubt, the Hon'ble Supreme Court in paragraph no.33 of the said decision, as has been pointed out by the learned counsel for the petitioner, has held that the Central Government is empowered under the Note appended in the schedule to modify the stages and time-limits in the Schedule to the concerned Regulations. It has been held that the directions in the case of *Priya Gupta* (supra) must be understood in the light of such statutory empowerment and it was further held that it is open to the Central Government, in terms of the Note, to extend or modify the time-limits in the Schedule to the Regulations, however, the deadline, namely, 30th of September for making admissions to the first MBBS course must always be observed.

69. Paragraph no.33 of the said decision in the case of *Royal Medical Trust* (supra) reads as under:-

33. The cases in hand show that the Central Government did not choose to extend the time-limits in the Schedule despite being empowered by Note below the Schedule. Though the Central Government apparently felt constrained by the directions in Priya Gupta it did exercise that power in favour of government medical colleges. The decision of this Court in Priya Gupta undoubtedly directed that the Schedule to the Regulations must be strictly and scrupulously observed. However, subsequent to that decision, the Regulations stood amended, incorporating a Note empowering the Central Government to modify the stages and time-limits in the Schedule to the Regulations. The effect of similar such empowerment and consequential exercise of power as expected from the Central Government has been considered by this Court in Priyadarshini. The Central Government is thus statutorily empowered to modify the Schedule in respect of class or category of applicants, for reasons to be recorded in writing. Because of subsequent amendment and incorporation of the Note as aforesaid, the matter is now required to be seen in the light of and in accord with Privadarshini² where similar Note in pari materia Regulations was considered by this Court. We a therefore hold that the directions in Priya Gupta³ must now be understood in the light of such statutory empowerment and we declare that it is open to the Central Government, in terms of the Note, to extend or modify the time-limits in the Schedule to the Regulations. However the deadline, namely, 30th of September for making admissions to the first MBBS course as laid down by this

Court in Madhu Singh' and Mridul Dhar (5)I must be always be observed.

70. It is thus understood that the Hon'ble Supreme Court, while taking into consideration the incorporation of a Note specially empowering the Central Government to modify the stages, has held that the same would be permissible at the end of the Central Government.

71. However, what needs to be noted is that the Hon'ble Supreme Court has not diluted the strict adherence of the Schedule by all concerned as has been directed in the case of *Priya Gupta* (supra) unless the time schedule is modified by the Central Government. In the absence of any exercise of power of modifying the time schedule by the Central Government/NMC, it is not open for any authority to claim dilution of the time schedule.

72. In the case of *D.Y. Patil Medical College* (supra), it has been held that the time schedule is a statutory one and any direction to inspect the institution for the concerned academic year would not be appropriate as the same would be in breach of the law laid down in various decisions of the Hon'ble Supreme Court. The Hon'ble Supreme Court has taken into consideration the fact that the application, at the first instance, is required to be completed and incomplete applications are liable to be rejected. If the application is complete, in that case only, the same will have to be processed for inspection and would reach to other stages of decision making process.

73. In paragraph no.16 of the said decision, it has been emphasized that the MCI is required to undertake inspection and thereafter is required to point out the deficiencies to institutions, invite comments and send its recommendations to the Central Government. It has also

been noted that there are various stages which are time-consuming and the schedule has a purpose of bringing uniformity of commencement of academic year at the same time.

74. In the case of *Poonaiyah Ramajayam Institute of Science and Technology Trust* (supra) on account of lapse of the time schedule, it was noted that no direction can be issued for a particular academic year.

75. A similar view has been taken in the case of *Akash Education and Development Trust* (supra) and a decision of the High Court was set aside directing for inspection of the respondent-institution therein as the same was found to be at a belated stage and against the provisions of the Regulations, 1999. The directions were also found to be in violation of the law laid down by the Hon'ble Supreme Court in the case of *Priya Gupta* (supra) and *Royal Medical Trust* (supra).

76. In the case of *V.N. Public Health and Educational Trust* (supra), the Hon'ble Supreme Court has held that the schedule prescribed by the MCI approved by the Hon'ble Supreme Court, is binding on all the concerned parties. It was also held that the High Court could not have gone beyond the same and issued any direction for conducting an inspection for the academic year 2016-17.

Paragraph no.16 of the said decision reads as under:-

16. The impugned order passed by the High Court is to be tested and adjudged on the anvil of the aforesaid authorities. The application for grant of approval was filed with the essentiality certificate which was a conditional one and, therefore, a defective one. It was not an essentiality certificate in law. In such a situation, the High Court could not have directed for consideration of the application for the purpose of the inspection. Such a direction, we are disposed to think, runs counter to the law laid down in Educare Charitable Trust⁶ and Royal Medical Trust. We may further proceed to state that on the date of the application, the essentiality certificate was not in order. The schedule prescribed by MCI, which had been approved by this Court, is binding on all concerned. MCI cannot transgress it. The High Court could not have gone beyond the same and issued any direction for conducting an inspection for the academic year 2016-2017.

Therefore, the directions issued by the learned Single Judge and the affirmation thereof by the Division Bench are wholly unsustainable.

77. In the case of ***Ashish Ranjan and others v. Union of India and others***²⁹ also, the Hon'ble Supreme Court has taken note of stages of processing for establishment of new medical colleges/ renewal of permission and processing of the applications by the Central Government and the MCI and various other schedules. *Vide* paragraph nos.3 and 4 of the said decision, the Hon'ble Supreme Court has held as under:-

“3. Regard being had to the prayer in the writ petition, nothing remains to be adjudicated. The order passed today be sent to the Chief Secretaries of all the States so that they shall see to it that all the stakeholders follow the schedule in letter and spirit and not make any deviation whatsoever. Needless to say Alms and PGI (for the examination held in July) shall also follow the schedule in letter and spirit.

4. An application has been filed by the National Board of Examination for extension of time in respect of declaration of result of the Post-Graduation Medical Education Examination. It is submitted by Mr Gaurav Sharma, learned counsel for the Medical Council of India that the result can be declared by 10th February by the said Board but counselling must be held by the time stipulated in the schedule as the date of counselling is not changed and there was a natural calamity in the State of Tamil Nadu. Accordingly, we extend the time.”

78. In the case of ***KPC Medical College and Hospital*** (supra) also, the Hon'ble Supreme Court has noted that when the counselling for the academic year 2017-18 was in process, the case for grant of permission for the said academic year cannot be considered.

79. Similarly in the case of ***Education Promotion Society for India and another v. Union of India and others***³⁰, while considering the earlier pronouncement of the Hon'ble Supreme Court in the case of ***Himank Goyal and others v. Union of India and others***³¹, ***Ashish Ranjan*** (supra), ***Priya Gupta*** (supra) and ***Mridul Dhar*** (supra), it has

²⁹ (2016) 11 SCC 225

³⁰ (2019) 7 SCC 38

³¹ (2019) 7 SCC 41

been held that merely because the seats are lying vacant, is not a ground to grant extension of time and further opportunity to fill up the vacancies. The schedule must be followed. If any permission is granted, the same would violate the Schedule and would open a pandora's box and the whole purpose of fixing a time schedule and laying down a regime which strictly adheres to time schedule, will be defeated.

80. Paragraph no.6 of the decision in the case of ***Education Promotion Society for India*** (supra) reads as under:-

6. In this case the petitioners want a general extension of time not on account of any particular difficulty faced by any individual college or university but generally on the ground that a large number of seats for the PG courses are lying vacant. It is stated that more than 1000 seats are lying vacant. In the affidavit filed by the UoI it is mentioned that as far as deemed universities are concerned there are 603 seats lying vacant. However, it is important to note that out of 603 seats lying vacant only 31 are in clinical subjects and the vast majority (572) that is almost 95% of the seats are lying vacant in non-clinical subjects. There is no material on record to show as to what is the situation with regard to the remaining 400-500 seats. This Court however can take judicial notice of the fact that every year large number of non-clinical seats remain vacant because many graduate doctors do not want to do postgraduation in non-clinical subjects. Merely because the seats are lying vacant, in our view, is not a ground to grant extension of time and grant further opportunity to fill up vacant seats. The schedule must be followed. If we permit violation of schedule and grant extension, we shall be opening a pandora's box and the whole purpose of fixing a time schedule and laying down a regime which strictly adheres to time schedule will be defeated.

81. This court in ***Amma Chandravati Educational and Charitable Trust*** (supra), has noted that the deficient documents were subsequently filed by the petitioner therein, and therefore, they were directed to be considered by the learned Single Judge and such recourse was found to be impermissible. The Division Bench of this court in the said case has held that despite the fact that there were no competing claims, the consideration of incomplete applications beyond the cut-off date for filing of the applications would result in

granting the benefit to a particular person, while similarly situated persons are denied of the same. Such an observation was made keeping in mind that after the cut-off date, if any consideration is allowed, the same can be claimed by many others on one pretext or the other. The directions for consideration of the documents submitted beyond the cut-off date were set aside by the Division Bench of this court.

82. Paragraph nos. 30, 37, 38, 40, 41 and 42 of the said decision read as under:-

"30. It is no doubt true that in the present cases, no competing claims are involved, however, if it were known that it is permissible to submit the documents even after the cut-off date fixed for filing the applications, other similarly placed persons could also have applied without enclosing the mandatory documents. Therefore, we find substance in the submission of the learned senior counsel appearing for the MCI that consideration of the applications which were incomplete by the cut-off date (31.08.2014) fixed for filing the applications under Section 10A of the MCI Act would result in granting the benefit to some while similarly situated others are denied of the same.

37. The provisions of the MCI Act as well as the Regulations made thereunder mandate the reference of the scheme/application for the recommendations of the Council only where the scheme/application is complete in all respects. Further, the Regulations themselves provide that the documents in question i.e. the Essentiality Certificate and the Certificate of Affiliation shall be submitted along with the application seeking permission under Section 10A of the MCI Act. Therefore, admittedly the applications of the petitioners were incomplete by the date of their submission and even by 31.08.2014, i.e., the cut-off date prescribed under the Schedule for receipt of applications by the Central Government.

38. In the light of the mandatory provisions of the MCI Act and the Regulations made thereunder, it cannot be held that the Central Government is bound to give an opportunity to the applicants to submit the deficient documents and for the said purpose the consideration of the applications under Section 10A(2) shall be kept pending till the cut-off date, i.e.30.09.2014. Such interpretation would undoubtedly render the time schedule unworkable and impracticable.

40. As noticed above, the learned Single Judge in the order under appeal directed that the Central Government shall now forward the applications of the petitioners to MCI and that the MCI shall consider the same and make its recommendations within a period of four weeks thereafter. It may be pointed out that though the writ

petitions were filed in November, 2014, the same could be disposed of only now and the order under appeal came to be passed on 08.04.2015, at the fag end of the statutory schedule. Only two steps, i.e. recommendation of the MCI for Letter of Permission which has to be done on or before 15.06.2015 and the issuance of Letter of Permission by the Central Government before 15.07.2015 remain under the schedule as of today. The time prescribed for recommendations of the Medical Council of India after making due inspections for examining the sufficiency of the facilities proposed in the scheme, expired long back on 31.12.2014.

*41. The learned senior counsel appearing for the MCI, while placing reliance upon **State of Kerala v. T.P. Roshana**, (1979) SCC 580, **MCI v. State of Karnataka**, (1998) 6 SCC 131 and **Dr. Preeti Srivastava v. State of M.P.**, (1999) 7 SCC 120 and emphasising the importance of the maintenance of highest standards of medical education and the responsibility of the MCI to ensure that the standards are satisfied in all respects by the proposed institutions, submitted that making the recommendations to Central Government for issue of Letter of Intent is a time consuming process. The learned counsel points out that even under the statutory schedule, three months time is given to the MCI to make its recommendations.*

42. It may be true that there is need for additional medical assistance in our country and that the infrastructure created and the investment made by the petitioners for training a significant number of doctors would remain unutilized for one year if their applications for the Academic Session 201516 are not considered. However, in our considered view, the same cannot be a ground to issue directions at this stage to consider their applications at the fag end of the Schedule fixed for the Academic Year 2015-16. As a matter of fact, the schedule for the Academic Year 2016-17 is also about to commence from 01.08.2015. That being so, the implementation of the directions issued by the learned Single Judge far behind the statutory time schedule is impracticable and also does not serve any public purpose."

83. In another decision, in the case of **Muzaffarnagar Medical College** (supra), the Division Bench of this court has noted that the delay on the part of the respondent-institution in applying for grant of permission therein was not explained. The institute was found at fault, therefore, the Division Bench of this court had held that the MCI should not be put to inconvenience due to the default of the institution.

Paragraph nos.25 and 27 of the said decision read as under:-

25. We tend to agree with the appellant MCI, particularly in view of the fact that the respondent No.1 MMC is found to have not acted with promptitude. The respondent No.1 MMC on 11th April, 2014 itself knew of the appellant MCI having recommended rejection of its

application / Scheme for the academic session 2014-15. The respondent No.1 MMC therefrom could have reasonably been sure that the Central Government will also accept the said recommendation. The respondent No.1 MMC however though filed writ petitions in the Supreme Court challenging the said recommendation of the appellant MCI but did not by way of abundant caution apply within the prescribed time of 30th April, 2014 for the academic sessions 2015-16. Not only so, when the said writ petitions were dismissed on 2nd May, 2014, then also no permission was taken from the Supreme Court for filing the application / Scheme for the year 2015-16 which till then was delayed by a few days only. Not only so, even after the Central Government on 15th May, 2014 accepted the recommendation of the appellant MCI qua the respondent No.1 MMC, the respondent No.1 MMC accepted the same and did not challenge the same. It thereafter filed successive writ petitions in the Supreme Court for acceptance of its application / Scheme for the academic session 2015-16. The respondent No.1 MMC thereby dragged the matter for a further six months before approaching this Court. The said delay on the part of the respondent No. 1MMC is not explained at all. The respondent No.1 MMC being at fault, we see no reason to put the appellant MCI at inconvenience for the defaults of the respondent No.1 MMC.

27. The time schedule having been fixed by Regulations, has sanctity and cannot be disturbed at the mere asking of the respondent no.1 MMC particularly when the respondent no.1 MMC is itself to blame for missing the cut off date and is found to have attempted to obtain an order, extending the date, from this Court, behind the back of the appellant MCI.”

[Emphasis supplied]

84. In the said case also, the directions passed by the learned Single Judge allowing the writ petition were set aside, rejecting the scheme for starting PG courses and increase in the seats on the ground of having been submitted after the cut-off date was passed.

85. A similar view has been taken by the Division Bench of this court in the case of **Chettinad Hospital & Research Institute** (supra). It was found therein that the facts in that case, of not accepting the application on account of deficiencies were closely corresponding to the case of **Poonaiyah Ramajayam Institute of Science and Technology Trust** (supra), and accordingly, the decision of the learned Single Judge was set aside. Paragraph no.35 of the said decision reads as under:-

35. *The Central Government produced the official file, during the hearing. It discloses that considerable **inter se** correspondence between it and the MCI, whereby the latter was told that a defective CoA or Essentiality Certificate cannot be rejected and that in principle, such cases should not be considered as defective or incomplete, having regard to the decision in **Royal Medical Trust**. This court is of opinion that the circumstances of this case, such logic cannot be accepted. The application for the earlier year (2017-18) was not accepted as **there were deficiencies noticed during the inspection, consequent to the application for increase of intake**. The subsequent reviews (compliance verifications) did not relieve Chettinad from the defects noticed. In these circumstances, MCI was justified in saying that the application made on 11.09.2017 was considerably delayed and therefore had to be rejected. The facts of this case, in the opinion of this court, closely correspond to the judgment in **Poonaiyah Ramajayam Institute o f Science And Technology Trust v. Medical Council of India [(2015) 10 SCC 83** where the Essentiality Certificate and COA were not submitted along with the scheme and were furnished 10 days after the cut-off date. The court had directed the MCI to conduct the inspection under the Act. Several deficiencies were reported by the MCI. The MCI then decided to invoke clause 8(3)(1)(d) of the Establishment of Medical College Regulations (Amendment), 2000 and return the concerned college's application recommending disapproval. The Supreme Court did not grant the relief claimed. The learned Single Judge, in this court's opinion erred in holding that **"in the present case, the stage for inspection has not arrived due to the Respondent No. 2's repeated defiance of the Respondent No. 1's directions. Therefore, this case also does not apply to the facts of the present case."** Likewise, the decision in **Priya Gupta v State of Chattisgarh (2012) 7 SCC 433** was again wrongly distinguished.*

86. A Co-ordinate Bench of this court in the case of **U.P. Rural Institute of Medical Science & Research** (supra) has also considered the case of rejection of the application for approving the scheme of increase in seats in respect of PG courses including for the reason of submitting the same after cut-off date. This court in terms of paragraph nos.1, 2.7 and 10 of the said decision read as under:-

1. *The petitioner has filed the present petition, **inter alia**, impugning a letter of the Central Government dated 15.10.2014 (hereafter the 'impugned order'). By the impugned order, the application of petitioner no. 1 - U.P. Rural Institute of Medical Science & Research (hereafter 'petitioner institute'), for approving the scheme of increase in seats in respect of six post graduate courses and for starting three post graduate courses from the academic year 2015-16, was rejected, principally for the reasons that the application was made on 29.05.2014 i.e.*

after the cut-off date of 30.04.2014 and secondly, the Consent of Affiliation (hereafter 'CoA') filed along with the application, was not valid for the academic year 2015-16 as the said CoA was for academic session 2014-15.

2.7 By the impugned order, the central government rejected the application of the petitioner institute on the ground that first of all, the application was made on 29.05.2014 i.e. after the cut-off date of 30.04.2014 and secondly, there was no valid CoA, as the CoA, issued by the University and filed along with the application, was valid for the academic year 2014-15 and not for the academic year 2015-16.

10. In view of the aforesaid decisions, it is not necessary to examine all the rival contentions as, undeniably, the time schedule fixed for considering the applications was over prior to the petition being heard. As of now, the cut-off date for the next academic session i.e. 2016-17 is also over. Accordingly, the present petition and pending application are dismissed. No order as to costs."

87. In the case of **Travancore Medical College** (supra), the Co-ordinate Bench of this court was considering a case where a similar controversy was involved where the application of the petitioner for PG course was rejected for want of grant of consent for affiliation by the concerned authority. In terms of paragraph nos. 40 and 41, the court held that the time schedule contemplated in the regulations, for submission of complete applications, and the processing thereof, stage by stage, till the final consent by the Central Government for the establishment of new college or the starting of a new course, is sacrosanct and binding. It has been held that neither was it open to the MCI to depart, therefore, nor would it be open to this court to issue any direction, which would amount to, or even necessitate such a departure. Paragraph nos.40 and 41 of the said judgment read as under:

"40. The clarion call of the law, as surrounded by the Supreme Court in the above authorities, is loud and clear. The time-schedule, contemplated in the Regulation, for submission of the complete application, and the processing thereof, stage by stage, till the grant of financial consent by the Central Government for the establishment of a new college or the starting of a new

course, is sacrosanct and binding. Neither was it open to the MCI to depart therefrom, nor would it be open to this Court to issue any direction, which would amount to, or even necessitate, such a departure. The attempt, of Mr. Sandeep Sethi, learned Senior Counsel for the petitioner, to distinguish some of the said authorities on the ground that, in those cases, the last date stipulated in the time schedule had itself passed by, completely fails to impress. It may be that, in those cases, the Supreme Court also noted the said fact as inhibiting the possibility of grant of any relief to the petitioner(s); that, however, is entirely irrelevant, insofar as the declaration of the law, in the above authorities, is concerned.

41. Clearly, the time schedule prescribed in the 2000 Regulations binds. The application submitted by the petitioner was unaccompanied by the requisite Consent of Affiliation by the KUHS, and that position remained unchanged till the last date for submission of the application. The matter ends there. It was not possible, in the circumstances, for the respondent to accept the application, merely because the Consent of Affiliation was provided, by the petitioner, on a later date, or even because the inability, of the petitioner, to provide the Consent of Affiliation originally was owing to no fault of the petitioner. There is also merit in the submission, of Mr. Vikas Singh, learned Senior Counsel appearing for the MCI, in this regard, that, as per the stipulated time schedule, it is required to furnish its final recommendations by 31st January, 2019, after conducting a lengthy and time consuming exercise involving multiple inspections, which is, even practically, impossible.”

88. It is well settled law that in academic matters, the powers of this court under writ jurisdiction have to be sparingly exercised. The courts must, normally defer to the wisdom of the expert bodies unless the actions taken by them are shown to be arbitrary or *ultra vires* to the governing statute, or borne out of *malafide*. There is no absolute bar. It is a rule of prudence that the courts should hesitate to dislodge decisions of academic bodies.

89. A reference can be made to the decisions of the Hon'ble Supreme Court in the cases of *University of Mysore and Anr. v. C.D. Govinda Rao and another*³², *Maharashtra State Board of Secondary and Higher Secondary Education and another v. Paritosh*

³² AIR 1965 SC 491

*Bhupeshkumar Sheth and others*³³, *Y.C. Shivakumar and others v. B.M. Vijaya Shankar and others*³⁴, *State of Maharashtra v. Vikas Sahebrao Roundale and others*³⁵, *Guru Nanak Dev University v. Parminder Kr. Bansal and others*³⁶, *Union of India and others v. Anand Kumar Pandey and others*³⁷, *C.B.S.E. and another v. P. Sunil Kumar and others*³⁸, *Madhyamic Shiksha Mandal, M.P. v. Abhilash Shiksha Prasar Samiti and others*³⁹, *Chairman, J&K State Board of Education v. Feyaz Ahmed Malik and others*⁴⁰, *B.Ramanijini and others v. State of A.P. and others*⁴¹, *Naseem v. State of Haryana and others*⁴², *Rajbir Singh Dalal (Dr.) v. Chaudhari Devi Lal University*⁴³, *B.C. Mylarappa v. Dr. R. Venkatasubbaiah*⁴⁴, *All India Council for Technical Education v. Surinder Kumar Dhawn*⁴⁵, *Maharshi Dayanand University v. Surjeet Kaur*⁴⁶, *University Grants Commission and Another v. Neha Anil Bobde (Gadekar)*⁴⁷ and *Indian Institute of Technology, Kharagpur and Others v. Soutrik Sarangi and Others*⁴⁸.

90. Education is the backbone of every democracy and any deterioration in the standard of teaching especially, in the field of professional education such as MBBS, BDS, MD, M.Tech, B.Tech, B.Arch BAMS, LL.B, LL.M, PhD, BHMS, B.Pharm, BDS, etc., would ultimately produce sub-standard professionals. The same would

³³ (1984) 4 SCC 27

³⁴ (1992) 2 SCC 206

³⁵ (1992) 4 SCC 435

³⁶ (1993) 4 SCC 401

³⁷ (1994) 5 SCC 663

³⁸ (1998) 5 SCC 377

³⁹ (1998) 9 SCC 236

⁴⁰ (2000) 3 SCC 59

⁴¹ (2002) 5 SCC 533

⁴² (2003) 9 SCC 357

⁴³ (2008) 9 SCC 284 17

⁴⁴ (2008) 14 SCC 306

⁴⁵ (2009) 11 SCC 726

⁴⁶ (2010) 11 SCC 159

⁴⁷ (2013) 10 SCC 519

⁴⁸ 2021 SCC Online SC 826

not only be detrimental to the individuals but also to the public at large.

91. The statutory bodies such as NCM, Dental Council of India (DCI), Veterinary Council of India (VCI), The National Commission for Indian System of Medicine (NCISM), National Council for Teacher Education (NCTE), All India Council for Technical Education (AICTE), Bar Council of India (BCI), Rehabilitation Council of India (RCI), Pharmacy Council of India (PCI), Indian Nursing Council (INC), National Commission for Homoeopathy (NCH), Council of Architecture (COA) etc. are clothed with powers to evolve their own pragmatic, flexible and viable procedure of transacting their business, subject, of course, to the basics of fair play in action, reasonableness, avoidance of arbitrariness and extraneous consideration.

92. The courts are not experts to visualize the pros and cons of policy decisions and their impact, if such a decision is interfered with. The conclusion of an expert body should not be lightly tinkered with by court of law without giving due weightage to the conclusions arrived at by such an expert body. It would normally be prudent and safe for the courts to leave the decisions to the academicians and experts. As a matter of principle, the court should normally not make an endeavour to sit in appeal over the decisions of the experts. The court must realize and appreciate its constraints and limitations in academic matters. (See: *Basavaiah (Dr.) v. Dr. H.L. Ramesh*⁴⁹)

93. The Hon'ble Supreme Court in the case of *K. Shekar v. Indiramma and Ors.*⁵⁰ in paragraph No. 21 has held as under:-

“21. We can take judicial notice of the fact that NIMHANS is an institution of repute. It has already been so recognised by this

⁴⁹ (2010) 8 SCC 372

⁵⁰ (2002) 3 SCC 586

Court in B.R. Kapoor v. Union of India [(1989) 3 SCC 387] . It is also true that generally speaking courts have been reluctant to interfere with the running of educational institutions. But there can be “no islands of insubordination to the rule of law” [J.P. Kulshrestha (Dr) v. Chancellor, Allahabad University, (1980) 3 SCC 418 : 1980 SCC (L&S) 436] . The actions of educational institutions, however highly reputed, are not immune from judicial scrutiny. Indeed, to preserve the high reputation, there is a greater need to avoid even the semblance of arbitrariness or extraneous considerations colouring the institution's actions”.

94. As per the provisions of the NMC Act, 2019, the activity of establishment of a new medical college is fully governed by the said provisions. MARB consists of experts. To effectively empower the regulator under NMC Act, 2019, it is necessary to empower the said authority to regulate the process, right from the invitation of the applications till the permission is granted and even thereafter. Any leeway may result in arbitrariness and unfairness. The regulatory regime is expected to fully regulate and control activities in all spheres for which such regime is introduced.

95. In the case of ***Dental Council of India v. Subharti K.K.B. Charitable Trust and Anr.***⁵¹, the Hon'ble Supreme Court, while recognizing the requirement of proper educational facilities and opening of new colleges, emphasized that private institutions cannot be permitted to have educational “shops” in the country. The importance of having statutory prohibition for establishment administering educational institution has been highlighted.

Paragraph nos. 11 and 12 of the said decision reads as under:-

“11. Hence, it is to be reiterated that law as it stands, the court's jurisdiction to interfere with the discretion exercised by such expert body is limited even though the right to education is concomitant to the fundamental rights enshrined in Part III of the Constitution. It is equally true that unless there are proper educational facilities in the society, it would be difficult to meet with the requirements of the younger generation who have a keen desire to acquire knowledge and education to compete in the global market. It is required to be accepted that for establishing

⁵¹ (2001) 5 SCC 486

educational institutions, government machinery or funds are neither sufficient nor adequate and the necessity of private institutions cannot be denied. However, since ages our culture and civilization have recognized that education is one of the pious obligations of the society to be discharged by the “learned” and/or the State. It is for us to preserve that rich heritage of our culture of transcending (sic) the education continuously unpolluted. In the recent past, a notion has developed that it is a religious and charitable object to establish and administer an educational institution. This Court in Unni Krishnan, J.P. v. State of A.P. [(1993) 1 SCC 645] (SCC at p. 751, para 197) observed as under:

“Education has never been commerce in this country. Making it one is opposed to the ethos, tradition and sensibilities of this nation. The argument to the contrary has an unholy ring to it. Imparting of education has never been treated as a trade or business in this country since time immemorial. It has been treated as a religious duty. It has been treated as a charitable activity. But never as trade or business.”

12. *At present, there is tremendous change in social values and environment. Some persons consider nothing wrong in commercialising education. Still however, private institutions cannot be permitted to have educational “shops” in the country. Therefore, there are statutory prohibitions for establishing and administering educational institution without prior permission or approval by the authority concerned. On occasions, the authorities concerned, for various reasons, fail to discharge their function in accordance with the statutory provisions, rules and regulations. In some cases, because of the zeal to establish such educational institution by persons having means to do so, approach the authorities, but because of red tapism or for extraneous reasons, such permissions are not granted or are delayed. As against this, it has been pointed out that instead of charitable institutions, persons having means, considering the demands of the market rush for establishing technical educational institutions including medical college or dental college as a commercial venture with the sole object of earning profits and/or for some other purpose. Such institutions fail to observe the norms prescribed under the Act or the Regulations and exploit the situation because of the ever-increasing demand for such institutions. In such cases, permission is refused by the authorities without there being any bias or extraneous considerations. It is, therefore, submitted that courts normally should not interfere with a decision taken by the expert body such as the Medical Council or the Dental Council by straight away issuing mandamus directing the authority to grant approval or permission to establish such institution. Where the authority has refused approval, the institution may not be well equipped to impart education and may not have qualified teachers, staff or other infrastructure necessary for running the institution. If*

permission is straight away granted by the court, society, education and ultimately the students suffer.”

96. In the case of ***Christian Medical College v. Union of India***⁵², the Hon’ble Supreme Court has emphasized the need for strict supervision over the educational system. Such a need was observed keeping in mind the fact that to have doctors well versed in the subject of medicine and having proficiency in their field, the society needs suitable and deserving students who should be imparted good medical education. Three stages were highlighted to have the effective regulations. First is the admission stage, second is with respect to the determination of syllabus and the manner of imparting education and third is the examination.

97. The stage of admission is interlinked with the stage of establishment of the educational institution. In a changing scenario, at every stage, there are competing interests of stakeholders, that only the expert bodies, in their wisdom, can balance equitably. Paragraph nos. 187 and 188 of the said decision read as under:-

“187. Let me first of all consider the scope of the aforesaid sections and the provisions of the Act in relation to the regulation of the standards of education to be imparted in medical colleges. It is a matter of sound common sense that to have doctors well versed in the subject of medicine and having proficiency in their field, we should have suitable and deserving students who should be imparted good medical education and there should be strict supervision over the education system so as to see that the students who are not up to the mark or are not having the highest standards of education are not declared successful at the examinations.

188. To achieve the aforesaid ideal, the system should be such that it should have effective regulations at three different stages:

188.1. (i) The first stage is the admission of the students to medical colleges. The students who are admitted to the medical course should be suitable and should have the right aptitude so that they can be shaped well into the medical profession after being imparted proper education.

⁵² (2014) 2 SCC 305

188.2. (ii) *The second stage is with regard to determination of syllabus and the manner of imparting education and for the said purpose, the regulating authorities should see that proper medical training is given to the students and for the said purpose sufficiently equipped hospitals should be there as teaching institutes. It should also be seen that sufficient number of patients are treated at the hospitals so that the students can get adequate practical training where the patients are being treated.*

188.3. (iii) *Finally, the examinations, which the students have to pass to prove their worth as successful students should also be strictly regulated.*

188.4. *If there is any lacuna or shortcoming at any of the above three stages, it would adversely affect the professional standards of the students passing out from the educational institutions as physicians, who are trusted by the citizens of India at critical moments, when someone's life is at stake. I need not state anything more with regard to the importance of the medical field or the physicians as it is a matter of common knowledge that to maintain good health and to cure the diseases and to avoid or reduce trauma of a patient, existence of a trained and well-groomed doctor is a sine qua non. All these facts equally apply to dentists and therefore, I am not specially referring to them every time”.*

98. In view of the aforesaid authoritative pronouncements of the Hon'ble Supreme Court and of this court, the following conclusions can be summarized:-

- (i) The time schedule prescribed by the NMC is sacrosanct and unimpeachable; and no violation thereto is permissible;
- (ii) The time schedule needs to be strictly and religiously followed by all concerned including internal stages from the date of invitation of the application till the last activity in the concerned college;
- (iii) Internal stages cannot be allowed to spillover onto the next stage and no overlapping of the stages is permissible;
- (iv) No authority including NMC can dilute or tinker with the time schedule, once it is prescribed by the said authority;

- (v) A strict time schedule, especially in the professional courses, ensures transparency and fairness and obliterates arbitrariness;
- (vi) It also applies similarly to all prospective applicants. Any dilution or modification thereto will create avoidable confusion and arbitrariness which may result in causing indifferent treatment with prospective applicants;
- (vii) No mandamus can be issued to breach the time schedule once prescribed by NMC, for a particular applicant.
- (viii) The decisions of central regulating authorities, normally should not be interfered with unless the same are found to be arbitrary, against the statute or shocking to the conscience of the court.

Analysis of the petitioner's case

99. The petitioner submits that before the expiry of the last date, the application was submitted in a hard copy. It is, therefore, argued that it is not a case of non-submission of the application within the prescribed time. However, the case of the petitioner will have to be considered differently and when the technical glitch resulted in non generation of the tracking number, no fault can be attributed to the petitioner. The petitioner places reliance on submission of a hard copy of an application dated 10.08.2022.

100. It is an admitted fact that the public notice dated 18.07.2022 was issued inviting applications for the under graduate MBBS course for starting of a new medical college/ increase of seats and renewal of courses pending for consideration for the academic year 2023-24. The public notice dated 18.07.2022 unequivocally states that the applications are acceptable only through online portal with prescribed

fee along with GST. The said public notice dated 18.07.2022 is reproduced as under:-

PUBLIC NOTICE

APPLICATIONS ARE INVITED FOR THE UNDER GRADUATE MBBS COURSES: FOR STARTING OF NEW MEDICAL COLLEGES, INCREASE OF SEATS AND RENEWAL OF COURSES PENDING FOR RECOGNITIONS FOR ACADEMIC YEAR 2023-24

From 21.07.2022 to 10.08.2022

The Medical Assessment and Rating Board of National Medical Commission, New Delhi is inviting applications for the Undergraduate MBBS courses and starting of new medical colleges/increase of seats and renewal of courses pending for recognitions for the academic year 2023-24 along with following documents:-

- (i) Essentiality Certificate in the prescribed proforma.*
- (ii) Consent of Affiliation (CoA) in the prescribed proforma.*
- (iii) Details of the Hospital.*

We request you to follow the current Undergraduate regulations gazette as on date.

Please apply through online portal with prescribed fees with GST.

For any queries, please contact email. ID:ugmarb@nmc.org.in

[Emphasis Supplied]"

101. The date was extended upto 31.08.2022 (till 6:00 PM) vide public notice dated 10.08.2022. However, the condition for submission of the application through online portal remained intact. In the larger public interest, the MARB decided to re-open the online portal from 15.12.2022 to 23.12.2022. The condition for submission of the online application further remained intact.

102. It is thus seen that firstly, the online portal was available between 21.07.2022 to 31.08.2022 and thereafter between 15.12.2022 to 23.12.2022. Admittedly, no online application has been successfully made by the petitioner. The petitioner's justification is that it tried to submit the application, somehow the process was not completed. Therefore, as abundant caution, the application in a hard copy was

submitted on 10.08.2022. Admittedly no acknowledgment was generated.

103. It is to be noted that once the petitioner realized on 10.08.2022 itself that its online application was not completed in all respects and no acknowledgment was generated, there was ample opportunity for the petitioner to complete the online application before 31.08.2022 upto 06:00 PM. No steps are stated to have been taken by the petitioner to ensure that the online application gets through. Even no correspondence, in between appears to have been made by the petitioner to MARB or to any other authority to point out any practical difficulty in submission of the online application. Instead, the petitioner has resorted to offline mode, which was not envisaged under the public notice. The first mail from the petitioners appears to have been sent on 24.02.2023, followed by other mails.

104. More surprisingly, the petitioner did not take any steps of submission of the online application between 15.12.2022 to 23.12.2022. It is thus seen that the *bonafides* of the petitioner are doubtful. The petitioner has not been able to justify its inaction in that respect. Nothing prevented it from approaching this court immediately with the prayer for direction to accept the hardcopy of its online application. Any party that has set up a medical college and has invested crores of rupees in the same, cannot be expected to take such an important aspect so lightly so as to come for relief at such a belated stage.

105. It is not the case of the petitioner that it did not realize the so called technical glitch was the difficulty in submission of the online application. The petitioner that intends to run educational institution in the professional course cannot be expected to lose sight of public notices and relevant regulations. According to the petitioner's own

showing, it is not a new player in the field of education. The petitioner is a University with a total of 12 colleges providing 20 undergraduate courses and 20 post-graduate courses along with various other PG diploma courses with a total intake of over 3000 students.

106. As per the averments made by the petitioner in paragraph nos. 7 and 8 of the instant writ petition, it is discernable that no acknowledgment was received till 09.08.2022, therefore, the petitioner preferred to submit a hard copy of the application on 10.08.2022.

Paragraph nos. 7 and 8 of the instant writ petition read as under:-

“7. This fact constitutes a vital aspect of the present matter as it is readily discernable from the that as at 14:47 Hrs on 06.08.2022 had already submitted the application and the same was punched in the online database and only thereafter the status was reflected as “In Progress”.

8. That, the Petitioner herein kept monitoring the status of is Online Application Form submitted on 06.08.2022 till 09.08.2022 and waited for an acknowledgement of the same. However, having failed to receive any acknowledgment and faced with the deadline of 10.08.2022 i.e. the date of closure of application process, the Petitioner-University submitted a hard-copy of the same Application form already submitted online on 06.08.2022. The fact of Respondent having received this hard-copy within time can also not be disputed as the same bears a receiving of the Respondent.”

107. The documents filed by NMC with respect to functioning of the online portal and website would indicate that there is a separate column for submission of online application for the academic year 2023-24 on the official portal. The information sheet for online application not only clearly shows that the applications are invited only through online mode but it unequivocally states that no offline (hard copy) application will be accepted by the NMC. Note no.13 specifically states that the application will be considered as submitted only if the applicant receives an application number against its online application and acknowledgment email with PDF of its application form as an attachment. Admittedly, the petitioner did not receive any

acknowledgment, and therefore, merely the fact that the petitioner paid the fee would not lead to any consideration of its application.

108. The information sheet for online application for establishing a new college for the academic year 2023-24 reads as under:-

"INFORMATION SHEET FOR ONLINE APPLICATION FOR ESTABLISHING A NEW MEDICAL COLLEGE FOR THE AY 2023-24"

All Applicants are requested to read the Information and Instructions contained in this sheet carefully before submitting their applications.

Important

1. For the AY 2023-24 ONLY ONLINE Applications will be received - including enclosures and Fees NO OFFLINE (Hard Copy) will be accepted by the commission.

2. All applications for the AY 2023-24 will be in accordance with the Amendments to the Establishment of Medical Colleges Regulations, 1999 of the erstwhile Medical Council of India by the National Medical Commission and the Minimum Requirements for Annual M.B.B.S. Admissions Regulations, 2020 of the MC (All applicants are requested to read these regulations available on the NC website under Rules & Regulations, NMC prior to submitting their application)

3 All applicants are to ensure that they fulfill the Eligibility and Qualifying criteria mentioned in these amended regulations.

ONLINE Application process

- 1. All applicants must first register themselves by visiting the registration page by clicking on the below icon click here to proceed to registration page"*
- 2. After filling up the registration form, you will receive your login credentials with one-time password on your registered email ID while signing in you will be prompted to change your password .*
- 3. To Start online application process, sign in with your new password to your account and click on "Start Application - Establishment of new Medical Colleges icon.*
- 4. Online Application FORM opens. Please click below to check the application form format (Application Form format & information required)<https://www.nmc.org.in/wp-content/uploads/2021/UG/LOP/AP 2022-23 docx>)*

5. PARTICULARS OF APPLICANT

Fill the required information for Items 1 to 6

a. For item 4- Constitution- also need to Upload Certified copy of Bye Laws/Memorandum and Articles of Association/ Trust deed.

b. For Item 5- Registration/Incorporation- also need to Upload Certified copy of Certificate of registration/incorporation.

c. For Item 6- Name of Affiliating University- also need to Upload Certified copy of the Consent of affiliation issued by the affiliating University.

Please click here for format of consent of Affiliation https://www.nms.org.in/w/content/uploads/2021/1/G/10P/CA_2022-23.docx

6. PART I

a Fill the required information for item 7

b. For item 8-10 Upload required information separately as required

C. For Item 10- Financial Capability - also need to Upload (i) Certified copy of Annual reports and Audited Balance sheets for the last three years and (a) Authorization letter addressed to the banker of the applicant authorising the MC to make independent enquiries regarding the financial track record of the applicant

7. PART II

a. Fill the required information for item 11

b. For items 12-25 Upload the required information separately as required

c. for Item 11- Name & Address of Proposed Medical College - also need to Upload (i) Essentiality certificate issued by the respective State Government Union territory Administration and (i) Certificate issued by Competent authority of State regarding the land use.

Click here for format of Essentiality Certificate https://www.amc.org.in/wp.content/uploads/2021/UG/_OP/EC_2023-24_new_26082021.pdn (Click here for Certificate regarding Land use https://www.ame.org.in/Ayp-content/uploads/2021/UG/.OP/LU2022.23_new_26082021..dh

d For Item 13-Site Characteristics- also need to Upload (i) Certified copy of the title deeds of the total available land as proof of ownership and (ii) Certified copy of zoning plans of the available sites indicating their land use.

Part-III

a. Fill the required information for Item 26. Here also need to Upload Proof of ownership of existing hospital.

b for item 26-41 Upload the required information separately as required.

Self-Verification of correctness of submitted Correctness of Information/Documents submitted

by Applicant (to Upload the said certificate)

10 . fees: The required nonrefundable for application is as below.

a. Rs. 4,13,000 (including GST) for the Government Colleges (under Central Government and State Governments)

b. Rs.8,26,000 (including GST) for private sector medical colleges/institutions

Mode of payment

(i) PayU: you can make an online payment by selecting the option 'PayU, from the dropdown menu. It will redirect you to the payment gateway window wherein you can make payment using your credit card/ debit card or via Net Banking. You can also make payment using UPI.

(II)NEFT/RTGS: In case of NEFT/RTGS transactions, please add the below bank details as beneficiary at the time of registration for net banking.

1. NAME OF DEMANDING AUTHORITY : SECRETARY,
NATIONAL MEDICAL COMMISSION

2. NAME OF OFFICE AND ADDRESS : NATIONAL
MEDICAL COMMISSION,

POCKET-14, SECTOR-8,
DWARKA,

NEW DELHI-110 077

3.BANK ACCOUNT NUMBER :90682160000025

4. BANK ACCOUNT TYPE :SAVING BANK
ACCOUNT.

5. BANK NAME : CANARA BANK

6. BANK BRANCH NAME & ADDRESS : SECTOR-12A, DWARKA
BRANCH

NEW DELHI-110078.

7. MICR NUMBER : 11025152

8. IFSC CODE :CNRB0019109

9. EMAIL OF CANARA BANK :cb19109 a
canarabank.dot.com

mailto:co19109@canarabank.com)

10. EMAIL OF ACCOUNTS SECTION

:accountsatnmc.org.inmailto

:accounts@nmc.org.in)

11. The data can be Saved and completed at another time.

12. To Submit, click on the **SUBMIT APPLICATION** icon. In case all fields have not been filled or required document not uploaded, the system will not allow submission the application.

13. Please Note:- Your application will be considered as submitted only if you have received an application number against your online application and acknowledgement email with pdf of your application form as an attachment.

NOTE: A complete application with registration certificates and deed copy of the society, Trust or Company. Also should contain Essentiality Certificate (EG) Consent of Affiliation (COA), existing hospital with 330 beds and land. Existing hospitals functioning under the ownership with building plans and legal documents of the land and or MOU with the hospitals management for 33 years. Financial capabilities shall be indicated through the last 03 years Financial reports IITReland, declaration.

Prescribed fees with GST shall be paid online, if the fee is not paid in full, the application will not be processed and liable for rejection. The fee paid for one particular course can't be carried forward/transferred to another course and can't be refunded.

The Colleges applied for starting of new colleges in the previous years and having court cases pending shall inform the NMC. They shall produce final judgement copy along with the application.”

[Emphasis Supplied]

109. An activity log on the portal of the NMC in respect of the login ID created by the petitioner further indicates that on 06.08.2022, the petitioner started its activity at around 14.47 hours and it continued to carry out the activity on 06.08.2022 upto 15.09 hours. It is seen that thereafter there is no activity in the login portal created by the petitioner. The petitioner thereafter logged in only on 18.02.2023 and thereafter on 08.06.2023. It is thus seen that there were no efforts made by the petitioner during extended time for submission of its online application.

110. The petitioner tries to take support of Regulation nos.4 and 5 of the Regulations, 1999. Learned counsel for the petitioner then, submits that in terms of Section 28(2) of the NMC Act, 2019, the only regulations which are applicable, are the Regulations, 1999 and if the regulations provide for submission of the application through hard

copy, the very act of the respondent in not accepting the application submitted in a hard copy is illegal and improper.

111. Section 28(1) and (2) of the NMC Act, 2019 read as under:-

28. (1) No person shall establish a new medical college or start any postgraduate course or increase number of seats without obtaining prior permission of the Medical Assessment and Rating Board.

(2) For the purposes of obtaining permission under sub-section (1), a person may submit a scheme to the Medical Assessment and Rating Board in such form, containing such particulars, accompanied by such fee, and in such manner, as may be specified by the regulations.

112. Regulations in exercise of power conferred under the provisions of the NMC Act, 2019 were framed only on 02.06.2023 i.e. Regulations, 2023 and the date of application in the instant case is prior to coming into force of the Regulations, 2023.

113. The procedure under the Regulations, 1999 would suggest that the applications were to be submitted by registered post only to the Secretary (Health Ministry of Health and Family Welfare, Government of India, Nirman Bhawan, New Delhi). Regulations 4 and 5 of the Regulations, 1999 read as under:-

4. APPLICATION FEE: The application shall be submitted by registered post only to the Secretary (Department of Health and Family Welfare, Government of India, Nirman Bhawan, New Delhi 110011 along with a non-refundable application fee of Rs. 3.5 lakhs for the Department Colleges (under Central Government and State Governments) and Rs. 7.00 lakhs for private sector medical colleges/institutions" in the form of demand draft pay order in favour of Medical Council of India' payable at New Delhi. The Fee is for registration, technical scrutiny, contingent expenditure and for five inspections. Beyond five inspections, the normal inspection fee prescribed by the Council will apply. The Schedule for receipt of application for establishment of new medical colleges and processing of the applications by the Central Government is given in the Schedule annexed with these regulations.

**As per the terms of Notification published on 29.07.2008 in the Gazette of India.*

5. REGISTRATION:

Applications referred by the Ministry of Health & Family Welfare to the Council will be registered in the Council for evaluation and recommendations. Registration of the application will only signify the acceptance of the application for evaluation.

Incomplete applications will not be registered and will be returned to the Ministry of Health & Family Welfare along with enclosures and processing fee stating the deficiencies in such applications. The Council shall register such incomplete applications, if so directed by the Central Government for evaluation but shall submit only a factual report in respect of them and shall not make any recommendations.

114. The entire mode of submission of the application came to be replaced by the NMC Act, 2019. Section 28 of the NMC Act, 2019 supersedes the provisions of the Regulations, 1999. Section 28 of the NMC Act, 2019 states that no person shall establish a new medical college or start any postgraduate course or increase number of seats without obtaining prior permission of the MARB.

115. The very authority to whom the applications are to be made has undergone a sea change. Earlier the applications were to be made to the concerned Ministry, and thereafter, they were to be sent to the MCI. Under the new regime, the applications are invited directly by MARB. The Regulations, 2023 (though not applicable in the present case) do envisage that applications are to be invited through a web portal made available on the website of the NMC or by such means as may be duly notified.

116. It is a matter of record that even before coming into effect of the Regulations, 2023, in the last three academic years, no applications were being accepted either by the Ministry or by MARB in offline mode. There has been consistency in accepting the applications only through online mode.

117. In view of the enactment of the provisions of the NMC Act, 2019, the Regulations 4 and 5 of Regulations, 1999 become infeasible and cannot be relied upon. They cannot be given precedence over the

statutory Act i.e. the NMC Act, 2019, therefore, the petitioner cannot take any advantage of Regulations 4 and 5 of Regulations, 1999.

118. The Hon'ble Supreme Court in the case of *Union of India v. Mahendra Singh*⁵³, wherein the Hon'ble Supreme Court was considering the effect of violation of the conditions provided in the advertisement, has held that once a particular procedure in filling up of the application form is prescribed, the application forms should be filled up following that procedure alone. Paragraph nos.14 to 17 of the said decision read as under:-

“14. The argument of Mr. Bhushan that use of different language is not followed by any consequence and, therefore, cannot be said to be mandatory is not tenable. The language chosen is relevant to ensure that the candidate who has filled up the application form alone appears in the written examination to maintain probity. The answer sheets have to be in the language chosen by the candidate in the application form. It is well settled that if a particular procedure in filling up the application form is prescribed, the application form should be filled up following that procedure alone. This was enunciated by Privy Council in the Nazir Ahmad v. King-Emperor⁹, wherein it was held that “that where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.”

15. A three Judge Bench of this Court in a judgment reported as Chandra Kishore Jha v. Mahavir Prasad, held as under:

“17.....It is a well-settled salutary principle that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner. (See with advantage : Nazir Ahmad v. King Emperor [(1935-36) 63 IA 372 : AIR 1936 PC 253 (2)], Rao Shiv Bahadur Singh v. State of V.P. [AIR 1954 SC 322 : 1954 SCR 1098], State of U.P. v. Singhara Singh [AIR 1964 SC 358 : (1964) 1 SCWR 57].) An election petition under the rules could only have been presented in the open court up to 16-5-1995 till 4.15 p.m. (working hours of the Court) in the manner prescribed by

⁵³ 2022 SCC OnLine SC 909

Rule 6 (supra) either to the Judge or the Bench as the case may be to save the period of limitation. That, however, was not done.....”

16. The said principle has been followed by this Court in Cherukuri Mani v. Chief Secretary, Government of Andhra Pradesh wherein this Court held as under:

“14. Where the law prescribes a thing to be done in a particular manner following a particular procedure, it shall be done in the same manner following the provisions of law, without deviating from the prescribed procedure.....”

17. Similarly, this Court in Municipal Corporation of Greater Mumbai (MCGM) v. Abhilash Lal and OPTO Circuit India Limited v. Axis Bank has followed the said principle. Since the advertisement contemplated the manner of filling up of the application form and also the attempting of the answer sheets, it has to be done in the manner so prescribed. Therefore, the reasoning given by the Division Bench of the High Court that on account of lapse of time, the writ petitioner might have attempted the answer sheet in a different language is not justified as the use of different language itself disentitles the writ petitioner from any indulgence in exercise of the power of judicial review.”

119. In the instant case, the petitioner has not assailed or challenged the public notice inviting online applications. The petitioner did try to submit the application through online mode. The same admittedly did not get through. It remained “in progress” and the submission of the application was unsuccessful.

120. An argument is made that if in addition to the online application, the hard copy is submitted, the same should have been accepted. Such an argument is completely misconceived and bereft of any merit. The same cannot, in any way, be countenanced. In all the notices and documents released by the respondents with regard to the admissions, it was made abundantly clear that the applications will only be accepted through online mode. When the stand of the respondents has never changed, it cannot be expected that an exception be created to cater to the petitioner. To allow any application in a hard copy would create serious anomalies which

would compromise the very sanctity of the public notice and the procedure laid down therein.

121. As per the information provided by learned counsel for MARB, 80 applications were received through the online portal. Out of the 80 applications, 54 applications came to be allowed. No other applications submitted offline were accepted.

122. Learned counsel for the respondents have tried to indicate that the fact that the petitioner did not make any effort to submit the online application once its status was consistently shown to be “in progress” could have been a deliberate move on the part of the petitioner. It could have been for the reason that the petitioner was aware that the documents were not complete or the infrastructure was not ready and hence it wanted to avoid immediate inspection. In any case, the reasons behind the inaction by the petitioner, need not to be gone into or dugged out, at this stage, in the instant proceedings. The fact so remains that there was no right vested in the petitioner to submit offline applications and a hence, there was no corresponding obligation to consider the same.

123. As per MARB, the last inspection which was carried out for establishment of a new institution was on 22.05.2023. The rectifications were allowed upto 22.06.2023. No letter of permission for establishment of the college has been granted after 10.07.2023.

124. If, at this stage, any inspection is allowed, the very element of surprise will be completely lost. There may have been various prospective applicants that would have submitted the application, had they been aware that in the month of August, 2023 also, the applications are acceptable. All those issues need not be gone into in detail. Suffice to say that any direction, at this stage, to inspect the

petitioner-institution would breach the time schedule decided by MARB.

125. It is also to be noted that the first round of counselling has already been completed on 04.08.2023. The last date for joining as per the first round of counselling was 08.08.2023. The second round of counselling would be completed on 28.08.2023. The last date for joining as per the second round of counselling would be 04.09.2023.

126. It would be complete disparity to allow the inspection at this belated stage. All essential activities which were required to be carried out much before the first round of counselling are over. Introduction of any new medical college during the counselling process, under the facts of the instant case, is completely unwarranted.

127. It is also to be noted that there can be a large number of prospective applicants which were not eligible as per the requirement of the MARB during the period of invitation of the applications since they did not possess the eligibility on the last date of submission of the application form. Granting any benefit to the petitioner would be a violative of the doctrine of equality, a backbone of the fundamental rights under our Constitution.

128. Many prospective applicants may not have applied considering themselves to be not adhering to the norms under the advertisement and the extant regulations. The petitioner, that smartly kept its application under suspended animation, would be benefitted unjustifiably.

129. The petitioner has also tried to seek parity with the order dated 03.01.2022, wherein, in second appeal, the Government of India allowed Soban Singh Institute for *de novo* consideration and to take appropriate action after inspection and to pass a speaking order under similar circumstances for the concerned academic year.

130. Firstly, the case of Soban Singh Institute relates to a Government Medical College. As stated in the order dated 03.01.2022 itself, the relaxation was allowed considering various factors such as the fact that the institute was operating in a hilly area. There can be different parameters for consideration of the case of a Government College and Private University under the peculiar facts. Secondly, under the present case, submission of offline application is found to be not permissible and in the absence of finding any fault with the act of MARB, no positive directions can be issued. The parity, so claimed, must flow from legal rights.

131. If the respondent in that case had taken erroneous action or decision, the same cannot be the reason to perpetuate non-acceptable approach. Once the last date for submission of the application is over, the first round of counselling is already over and the new academic year is likely to commence, this court cannot lose sight of all those aspects. Therefore, on the basis of the decision of the Central Government relating to the case of Soban Singh Institute, no benefit can be granted to the petitioner. The academic year 2021-2022 was otherwise also hit by the Covid-19 pandemic. This year, admittedly no inspection has been carried out after 22.05.2023, with no rectifications being allowed after 22.06.2023.

132. The decision in the instant case, passed by MARB dated 08.05.2023 states that in the absence any application, the request for establishment of a new medical college for the academic year 2023-24 cannot be acceded to. The decision of MARB dated 08.05.2023 reads as under:-

Kindly refer to your letter No. SSSUTMS/Estd/23/125 dated the 4 April, 2023 addressed to President/Member. Medical Assessment and Rating Board, National Medical Commission on the subject cited above and to say that though the NMC has received a sum of Rs. 8.26.000/- as intimated by you vide letter referred to above, however,

no application of the College along the necessary documents has been received on the NMC portal. In the absence of any application your requested for Establishment of New Medical College for the Academic Year 2023-24 cannot be acceded to This Issues with the approval of Competent Authority.

133. The order of the First Appellate Authority dated 23.06.2023 takes into consideration the submissions made by the petitioner and it records that the petitioner itself admitted before the First Appellate Authority that it did not receive any acknowledgment while submitting its application.

134. The order passed by the First Appellate Authority dated 23.06.2023 reads as under:-

FIRST APPEAL ORDER

Sub: Appeal of Sri Satya Sai University of Technology & Medical Sciences (SSSUT and MS), Pachama, Sehore (M.P.) u/s 28(5) of NMC Act against the disapproval of MARB for establishment of a new medical college with 150 MBBS Seats for the acaderni c year 2023-24 conveyed vide letter dated 08.05.2023 - regarding.

- 1. The Appeal Committee, under the Chairmanship of Dr. Suresh Chandra Sharm4 Chairman NMC, met on 08.06.2023 at 12:00 Hrs. to consider the above Appeal of Sri Satya Sai University of 'technology & Medical Sciences (SSSUT and MS), Pachama, Sehore (M.P.), President, UGMEB, Member, UGMEB. Member-I, EMRB and Member-II, EMRB were present in the meeting. Besides, President, MARB and Member, MARB represented MARB during the Meeting.*
- 2. The appeal dt. 20.5.2023 from Sri Satya Sri University of Technology & Medical Sciences, Pachama, Sehore, (M.P.) u/s 28(5) of NMC Act, 2019 was heard which has been made against the disapproval letter of MARB dt. 08.05.2023 (Annexure -I). Prof. (Dr.) Mukesh Tiwari, VC & Dean of SSSUT'&MS attended the meeting online from the Appellant side.*
- 3. MARB vide their letter dated 08 May, 2023 has intimated the University that although the NMC had received a sum of Rs. 8,26,000/- however, no application of the college along the necessary documents was received on the NMC portal. In the absence of any application, your request for Establishment of New Medical College for the A .Y .2023-24 cannot be acceded to.*
- 4. Chairman, NMC initiating the hearing observed that the application of the college has not been received by the last date on NMC portal*

on-line and hence neither the application nor this appeal can be considered. The college can apply afresh for next year. The amount of money deposited by the college can be refunded if sought otherwise the same can be considered for their fresh application for next year. The VC & Dean of SSSUT&MS submitted that they have submitted their application in NMC on 6. August, 2022 within the last date. Chairman, NMC clarified that only on-line applications received on NMC's portal are considered. President, MARB desired to know from the VC & Dean of SSSUT&MS whether they have received any online acknowledgement while submitting their application. The VC & Dean of SSSUT&MS confirmed that they have not received any acknowledgement. Chairman, NMC clarified that in-case of submission of application on-line by the college, a computer generated acknowledgment is automatically issued and since no application has been submitted on-line by the college no computer generated acknowledgement has been received by them and hence their request cannot be acceded.

5. The matter was discussed by the 1st Appeal Committee. The Committee observed that the confirmation of the VC & Dean of SSSUT&MS that they have not received an acknowledgment amplifies the position that the college has not submitted their application on-line on NMC portal and hence their appeal for accord of approval for establishing medical college with 150 MBBS seats cannot be acceded for AY 2023 -24 and college may apply next year after fulfilling all the requirements. The VC & Dean of SSSUT&MS accepted the decision of the 1st Appeal committee. Accordingly, the 1st Appeal stands disposed of.

5. The meeting ended with a vote of thanks to the Chair.”

135. The Second Appellate Authority in its order dated 14.07.2023 again considered the case of the petitioner and it has been recorded *vide* the said order that no application ID was generated in the system and during the same time, 80 applications were received by MARB. It is thus found by the Second Appellate Authority that no interference is called for.

136. The order dated 14.07.2023 passed by the Second Appellate Authority reads as under:-

"Subject: 2nd appeal being preferred by Sri Satya Sai University of Technology & Medical Sciences, Sehore, Madhya Pradesh u/s 28(6) of NMC Act 2019 for Establishment of New Medical College-regarding.

1. This is regarding 2nd appeal being preferred by Sri Satya Sai University of technology

& Medical Sciences, Sehore, Madhya Pradesh u/s 2B(6) of NMC Act, 2019 Establishment of New Medical college vide their letter dated 24/06/2023 (received on 28/06/2023) against the decision of NMC letter dated 08.05.2023 of NMC.

2. The Section 28 [6] of the National Medical Commission Act, 2019, provide for the following:-

"28 (6) The commission shall decide the appeal received under sub-section (5) within a period of forty five days from the date of receipt of the appeal and in case the commission approves the scheme, such approval shall be the permission under sub-section (1) to establish a new medical college and in case the commission disapproves the scheme, or fails to give its decision within the specified period, the person concerned may prefer a second appeal to the central Government within thirty days of communication of such disapproval or, as the case may be, lapse of specified period. "

3. In pursuance to provisions of the NMC Act, 2019 revised guidelines to deal with the 2nd Appeals preferred to this Ministry, have been issued. The time line for disposing off the appeals preferred under section 28(6) of the NMC Act, 2019 is 45 days from the date of receipt.

4. Non Submission of application for Establishment of New Medical College: The College intimated that an application was submitted for establishment of new medical college at Sehore, MP for the academic session 2023-24 to the National Medical Commission along with required processing fee under NMC Portal (Online) before the last date of submission of application. Also, the hard copy of the application along with requisite documents has been submitted to NMC office on 1,0-08-2022, but due to some technical error the application ID cannot be generated on the Portal.

5. Communication by MARB: In response to the representation dated 04.04.2023 from the institute MARB had issued letter dated 08.05.2023 denying the application of Establishment of New Medical College with 150 MBBS seats citing the following:-

" .. . NMC has received a sum of Rs 8,26,000/- as intimated by you vide letter referred to above, however, no application of the college along the necessary documents has been received on the NMC portal. In the absence of any applicatory your requested for Establishment of New Medical College for the Academic year 202-24 cannot be acceded to....

6. First Appeal order by NMC: Whereas aggrieved of the decision of the MARB, the College vide their letter dated 20.05.2023 preferred first appeal to the NMC u/s 28(5) of the NMC Act, 2019 and same was disapproved vide letter 23.06.2023. The observation the Appeal Committee of the NMC citing the following:-

"Chairman. NMC initiating the hearing observed that the application of the college has not been received by the last date on NMC portal on-line and hence neither the application nor this appeal can be considered. The college can apply afresh for next year. The amount of money deposited by the college can be refunded if sought otherwise the same can be considered for their fresh application for next year. The VC & Dean of SSSUT and MS submitted that they have submitted their application in NMC on 6 August, 2022 within the last date. Chairman, NMC clarified that only online applications received on NMC's portal are considered. President, MARB desired to know from the VC & Dean of SSSUT&MS whether they have received any on-line acknowledgement while submitting their application. The VC & Dean of SSSUT&MS confirmed that they have not received any acknowledgement. Chairman, NMC clarified that in-case of submission of application online by the college, a computer generated acknowledgement is automatically issued and since no application has been submitted on-line by the college no computer generated acknowledgement has been received by them and hence their request cannot be acceded ... The matter was discussed by the 1- Appeal Committee' The Committee observed that the confirmation of the VC & Dean of SSSUT&MS that they have not received an acknowledgement amplifies the position that the college has not submitted their application on-line on NMC Portal and hence their appeal for accord of approval for establishing medical college with 150 I4BBS seats cannot be acceded for AY 2023-24 and college may apply next year after fulfilling all the requirements' The VC & Dean of SSSUT&MS accepted the decision of the 1- Appeal Committee Accordingly, the 1 Appeal stands disposed of..."

7. Facts and observation of the committee during in-person hearing. The matter was deliberated in detail in the combined meeting of C00 and TEG & after examination of the documents observed the following:-

- During the hearing the college representatives showed screen shots of the application form and informed that the application was submitted on 06.08.2022 and fee was paid on 05.08.2022. The college informed that a hard copy of the application was also submitted on 10.08.2022. The college also informed that they had not received any acknowledgement of the application being submitted. They only got to know the application was not submitted after the MARB's response dated 08.05.2023 to the status request sent by the Institute on 04.04.2023.
- The Committee asked the representative from NMC to clarify the status of application of the college. He informed the committee that the status of application was verified from the DMMP portal and accordingly no application was ever received from the college and no application ID was generated in the system. It was also informed that during the window for applications more than 80 applications have been received for approval of new medical colleges and for them ID was generated and acknowledgement sent.

- *The Committee observed that though there is no provision for the submission of a hard copy of the application but that the college had submitted one, probably with the knowledge that there was an error with their online submission. The Committee also noted that the NMC in the first appeal order has indicated that the college could take a refund or have the same adjusted for the application in the next year.*
8. *The documents and submission made by the appellant have been considered by the central Government. The central Government after due examination of the documents produced by the appellant did not find any merit in the 2nd Appeal and decide to reject the appeal of Sri Satya Sai University of Technology and Medical Sciences.*
9. *Accordingly, the 2nd Appeal dated 24.06.2023 of Sri Satya Sai University of Technology & Medical Sciences, Sehore, Madhya Pradesh stands disposed of."*

137. It is thus seen that the decision taken by MARB, confirmed by the First Appellate Authority and the Second Appellate Authority are strictly in accordance with law and the same do not call for any interference.

138. Much emphasis has been laid down by the petitioner on a decision passed by this court in the case of **Rambha College of Education** (supra). In the case of **Rambha College of Education** (supra), in paragraph no.7, this court has considered that the process for accepting applications was extended and the case of the petitioner in that case was rejected on account of delayed submission of the NOC. The facts are, therefore, clearly distinguishable.

139. Paragraph no.7 of the decision in the case of **Rambha College of Education** (supra) reads as under:-

7. Having considered the submissions made by the learned counsel for the parties, the only issue, which arises for consideration is whether the ground for rejecting the appeal that the appellant neither submitted the NOC along with hard copy nor even obtained it from the affiliating body within the extended time limit of July 15, 2015 is justified. It is an admitted position that the NOC of the State School Education & Literacy Department was issued on October 26, 2015 and this fact has been noted by the Appellate Committee. No doubt, that the NOC was not filed by the petitioner along with its application either on May 30, 2015 or on June 26, 2015 or within the extended time limit of July 15, 2015. But I note, that the SRC has, vide its decision dated January 31, 2016 had reopened and processed those cases, which were rejected on the

ground of non submission or delayed submission of NOC. One such case being the Indra Ganesan College of Education, of which copy has been placed on record by Mr. Mayank Manish from where it is noted that even though the application of the institution was rejected by the SRC on December 22, 2015 but subsequently on the institution submitting the NOC of the affiliating institution to SRC on February 23, 2016 had granted the LOI.

140. It is thus seen that in the case of **Rambha College of Education** (supra), within the extended time, the NOC was submitted, however, in the instant case, time was extended for inviting applications through online mode and the petitioner has failed to submit online application within the extended period of time.

141. So far as the case of **Dravidian University** (supra) is concerned, it also relates to recognition of Open and Distance Learning programme. In paragraph no.14 of the said decision, it has been noted that the compliances, as were directed by the respondent in that case, were made by the petitioner therein. In paragraph no.22 of the said decision, it has been noted that much before the issuance of impugned letter, the petitioner had provided the respondent no.2 therein both the declaration certificates.

142. Paragraph nos.14 and 22 of the decision in the case of **Dravidian University** (supra) read as under:-

14. What, in fact, emerges is that the issue which needs to be determined in the present case is fairly narrow. The Petitioner, a recognized State University, had submitted its application for recognition on 18.04.2016, in response to which the Respondent No. 2 vide its letter dated 11.07.2016, while recommending the grant of approval to the Petitioner, had directed it to submit certain further compliances. While the Petitioner claims that it had duly submitted all compliances, it is the Respondent No. 2's case that the same were, despite repeated reminders, not submitted until much after the stipulated time to do so.

22. After culling out the facts above in detail, I find that the most relevant and undisputed fact necessary to resolve the issue arising in the present case is that, much before the issuance of the Impugned Letter, the Petitioner had provided the Respondent No. 2 with both the Declaration Certificate and the list of regular faculty members for the ODL programme, which two deficiencies are the only two grounds enumerated by the Respondent No. 2 while

rejecting the Petitioner's application dated 18.04.2016 for recognition"

143. It is thus seen that the case of ***Dravidian University*** (supra) also would not be of any assistance to the petitioner.

144. So far as the decision in the case of ***Amrit Kunwar Mahavidyalaya*** (supra) is concerned, it is clearly distinguishable in view of the observations made in paragraph no.13.1 that the petitioner therein made the payment before the cut-off date but the same was not successful purely on account of a technical glitch.

145. In the case in hand, sufficient time was available for the petitioner to complete the process of online submission of application which has admittedly been not done and no explanation has been offered as to why such a recourse was not taken. Instead, hard copy was submitted which is held to be not acceptable.

146. It is thus seen that the present case is not a case of technical glitch, had it been so, the petitioner would have made appropriate complaint immediately on 06.08.2022 or soon thereafter. Nothing of that sort has been done. It is thus seen that the case of ***Amrit Kunwar Mahavidyalaya*** (supra) would also not help the petitioner.

147. Learned counsel for the petitioner has also relied on ***Royal Medical Trust*** (supra) and ***Royal Medical Trust v. Union of India***⁵⁴ to impress upon this court that the only outer time limit that is binding on the authorities is the last date of admission. He has stated that since, the last date of admission has not been reached in the present case, the respondents can still be directed to conduct inspection of the petitioner, if it is ensured that the rest of the process will be completed within the outer time-limit. This argument cannot be countenanced in view of the various pronouncements of the Hon'ble Supreme Court

⁵⁴ (2014) 14 SCC 675

that have effectively laid down that the internal stages set in a schedule have to be strictly adhered to.

148. The schedule that has been set by apex bodies in their fields, especially in professional course such as MBBS, has evidently been set in a manner so as to account for the time that is to be taken in undertaking the steps in those stages in a satisfactory manner. The stage of inspection, for a medical college, in particular, is perhaps the most important stage. Ascertaining that the applicant institution possesses the necessary facilities and infrastructure to impart medical education requires scrutinization of the most minute details. A surprise visit in an inspection, is also a necessary element of the same, in order to weed out the institutions that merely put on a display for the examiners.

149. To allow the internal timeline for inspection to be tampered with, leading to a hasty inspection, would have the undesired consequence of affecting the kind of education the medical professionals of this country receive. This court cannot allow that to be a reality. This court has a duty to use its discretionary powers sparingly, in only the choicest of cases.

150. Undoubtedly, medical education requires facilities and infrastructure of the highest standard as also the adherence to the time schedule for imparting premier education to candidates, thereby ensuring that the community receives the best possible medical practitioners.

151. The time schedule and its sanctity with respect to medical courses has unequivocally been held to be mandatory and binding on all concerned. No dilution thereto is permissible in the exercise of power under Article 226 of the Constitution of India, in the absence of any justifiable reason.

152. The instant petition is, therefore, bereft of any merit and the same is accordingly dismissed, alongwith the pending application.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

AUGUST 14, 2023

p/nc/rg

HIGH COURT OF DELHI



सत्यमेव जयते