

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Extraordinary Jurisdiction)

DATED : 12th APRIL, 2017

S.B. : HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

WP(C) No.25 of 2016

Petitioner : Dr. Milind Jha,
S/o Dr. Chandra Mohan Jha,
Ashirwad Apartment,
Flat No.40, Plot No.11,
Sector 12,
Dwarka,
New Delhi – 110 075.

versus

- Respondents** :
1. Union of India
through the Secretary,
Ministry of Health & Family Welfare,
Nirman Bhavan,
New Delhi – 110 001.
 2. Medical Council of India
through the Secretary,
Sector 8, Pocket 14,
Phase 1, Dwarka,
New Delhi – 110 075.
 3. The State of Sikkim
through the Secretary,
Department of Health & Family Welfare Services,
Government of Sikkim,
Gangtok,
East Sikkim.
 4. Sikkim Manipal Institute of Medical Sciences
through its Registrar,
5th Mile,
Tadong,
Gangtok,
East Sikkim.
 5. Sikkim Manipal University
through its Dean,
5th Mile,
Tadong,
Gangtok,
East Sikkim.

Writ Petition under Article 226 of the Constitution of India

Appearance

Mr. K. T. Bhutia, Senior Advocate with Mr. Jorgay Namka, Ms Panila Theengh and Ms. Tashi Doma Sherpa, Advocates for the Petitioner.

Mr. Karma Thinlay Namgyal, Central Government Counsel for the Respondent No. 1.

Mr. S. P. Bhutia, Advocate for the Respondent No.2.

Mr. S. K. Chettri and Mrs. Pollin Rai, Assistant Government Advocates for the Respondent No.3.

Mr. Nikhil Nayyar, Mr. Aman Ahluwalia, Mr. T. R. Barfungpa, Mr. Sai Vinod N., Mr. Ugang Lepcha, Ms. Dorjee Uden Nadik and Ms. Mingma Lhamu, Advocates for the Respondents No. 4 and 5.

and

WP(C) No.27 of 2016

- Petitioners** :
1. Sikkim Manipal University through its Registrar, 5th Mile, Tadong, Gangtok, East Sikkim.
 2. Sikkim Manipal Institute of Medical Sciences through its Dean, 5th Mile, Tadong, Gangtok, East Sikkim.

versus

- Respondents** :
1. Union of India through the Secretary to the Government, Ministry of Health & Family Welfare, Nirman Bhavan, New Delhi – 110 001.
 2. Medical Council of India (MCI) through the Secretary, Sector 8, Pocket 14, Phase 1, Dwarka, New Delhi – 110 075.

3. The State of Sikkim
through the Secretary to the Government,
Department of Health & Family Welfare Services,
Government of Sikkim,
Tashiling Secretariat,
Gangtok,
East Sikkim.

Writ Petition under Article 226 of the Constitution of India

Appearance

Mr. Nikhil Nayyar, Mr. Aman Ahluwalia, Mr. T. R. Barfungpa,
Mr. Sai Vinod N., Mr. Ugang Lepcha, Ms. Dorjee Uden Nadik
and Ms. Mingma Lhamu, Advocates for the Petitioners.

Mr. Karma Thinlay Namgyal, Central Government Counsel for
the Respondent No.1.

Mr. S. P. Bhutia, Advocate for the Respondent No.2.

Mr. S. K. Chettri and Mrs. Pollin Rai, Assistant Government
Advocates for the State-Respondent No.3.

J U D G M E N T

Meenakshi Madan Rai, J.

1. The Petitioner in WP(C) No.25 of 2016 seeks an appropriate Writ or direction in the nature of *Mandamus* directing the Respondents No.1 and 2 to recognize the MD (General Medicine) Degree, awarded to him by Respondent No.4, SMIMS, having been admitted to the said Course in the academic year 2012-13 and graduated in the year 2015, in a manner consistent with the directions in Paragraph 54(iv) of the Judgment of this Court, in WP(C) No.24 of 2015 dated 25-05-2016.

2. By filing WP(C) No.27 of 2016, the Petitioner-Institute seeks an appropriate Writ, Order or direction to the Respondent

No. 1, to grant recognition to the Degrees awarded to students admitted in the academic years 2012-13 and 2013-14 and who completed their Courses in the year 2015 and 2016 respectively, in the disciplines of MD (General Medicine), MD (Paediatrics), MS (ENT) and students admitted in the academic year 2012-13, 2013-14 and 2014-15 in MD (Psychiatry) in a manner consistent with the direction of this Court in Paragraph 54(iv) of the Judgment of this Court in WP(C) No.24 of 2015 which reads as follows;

"54.

- (iv) For students who were admitted in the four Post-Graduate Courses in 2011 and have completed their Courses in 2014, qualifying them for the award to recognised medical qualification, the Respondent No.1 shall grant recognition to their Degrees within three months from today;"

3. Thus, the issue involved in both the Writ Petitions being similar they are disposed of by this common Judgment.

4. Before proceeding with the instant matters for convenience, it may briefly be recapitulated here that the Sikkim Manipal University and the Sikkim Manipal Institute of Medical Sciences, Petitioners No.1 and 2 in WP(C) No.24 of 2015 [Petitioners now in WP(C) No.27 of 2016] had approached this Court seeking the following reliefs;

“[A] Direct and hold that the deficiencies specified in communications dated 09-07-2015, 14-07-2015, 26-08-2015, 27-08-2015 and 11-09-2015 (as specified in paragraph 35I) are either non-existent or stand complied with, and direct that recognition be accorded in terms of Section 11 of the Indian Medical Council Act, to the following courses: MD (General Medicine), MD (Paediatric), MS (ENT) and MD (Psychiatry);

[B] In the alternative to [A] above, direct that a fresh time bound inspection be conducted either by an

independent expert committee, or by the MCI designated assessors along with eminent independent observers, and such inspection be limited to the deficiencies already pointed out and enlisted and in respect of which compliance has been forwarded by the Petitioner vide letters dated 06-08-2015 (in respect of MS – ENT), 05-10-2015 (in respect of MD – Paediatrics) [sic], 05-10-2015 (in respect of MD – Paediatrics), 05-10-2015 (in respect of MD – Psychiatry) and that pursuant to such inspection a final decision be taken by the Respondent No.2 in a time bound manner;

[C] Confirm the admissions made in the above-said courses in the academic year 2015-16; and

[D] Pass any order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case as well as in the interest of justice."

After the Respondents were afforded the opportunities of filing the Counter-Affidavits, Rejoinder was filed and later two Intervenors were also impleaded as party to the proceedings on their plea. This Court after considering the entire gamut of submissions of the parties, *inter alia*, issued the following directions in Paragraph 54;

- "(i) As the Petitioner has asserted that no deficiency exists after compliance has been made by them, post the impugned communications in all the Post-Graduate Courses, this circumstance has to be gauged by a Compliance Verification. The Respondent No.2 shall carry out fresh inspection of the Petitioner's Institution within two months from today. The Inspection team of the Respondent No.2 shall comprise of two eminent independent observers, apart from the Assessors of Respondent No.2. Needless to add that the inspection shall be carried out in terms of Paragraph 65(v) and (vi) of the Judgment of this Court in WP(C) No.37 of 2011 dated 27-04-2012;
- (ii) Pending such verification, the Petitioners shall deposit a sum of Rs.25,00,000/- (Rupees twenty five lakhs) only, with the MCI, Respondent No.2. The Petitioner shall file an undertaking through its Registrar, within two weeks from today, to the effect that no deficiencies exist in the Petitioner's Institution for the purposes of the Post-Graduate Courses, for which permission had been granted. Copy of undertaking be furnished to Respondent No.1 also. If at the time of inspection the undertaking is found to be incorrect, the deposit shall stand forfeited;

- (iii) Deficiencies, if any, reported by the Assessment Team shall be brought to the notice of the Petitioner extending the opportunity to the Petitioner to rectify it within a time frame deemed fit, of course, for which the amount deposited as already stated, would stand forfeited to the MCI;
- (iv) For students who were admitted in the four Post-Graduate Courses in 2011 and have completed their Courses in 2014, qualifying them for the award to recognised medical qualification, the Respondent No.1 shall grant recognition to their Degrees within three months from today;
- (v) Students pursuing their Post-Graduate Courses in the Academic year 2015-16, vide Orders of this Court dated 29-05-2015 and 07-04-2016, be allowed to continue their education without hindrance; and
- (vi) I have also considered I.A. No.01 of 2016 wherein the Petitioners have sought for an Order of this Court permitting admission to be made to two seats each in **MD (General Medicine), MD (Paediatrics), MS (ENT) and MD (Psychiatry)** for the Academic Year 2016-17. Keeping in mind the welfare of the students and with the concern that they should not be kept at sea as in the instant matter, it is hereby ordered that admissions shall take place for the said Academic Year 2016-17 only after all requisites are found in place by the Respondent No.2, irrespective of the fact that during such exercise the seats may go vacant this Academic Year."

5. That, having been said, now the Petitioner in WP(C) No.25 of 2016 is aggrieved by the fact that his Post-Graduate Degree in MD (General Medicine) has not been recognised, having been admitted to the Course in 2012-13, thereby being the second batch of Post-Graduate students who were validly admitted in MD (General Medicine) Course pursuant to Letter of Permission issued by the Respondent No.2. That, after graduating in May, 2015, he had applied for the post of Senior Resident at various Government Hospitals in Delhi and was offered an appointment to the post of Senior Resident at the G. B. Pant Institute of Cardiology Department on 25-06-2015. However, on the day of appointment, he was informed that as a

consequence of the non-recognition of his Degree and, therefore, non-registration by the Delhi Medical Council, he would be paid the salary of a Junior Resident till such time his Degree is granted recognition. He is also currently seeking admissions to various Super Speciality Courses, but entrance examination to such Courses require a recognised Post-Graduate Degree and non-recognition of his Degree will either be a hurdle in the continuance of the Super Speciality Courses in the rare event that he is allowed admission or will become a major hurdle at the time of award of DM Degree, which will be grossly unjust to the Petitioner. The Petitioner has reiterated the facts which have already been canvassed in WP(C) No.24 of 2015, which for brevity are not being reproduced here. He has also referred briefly to the facts regarding the setting up of the Respondent No.4 Institute and how the first batch of MBBS students were admitted in 2001-02 and, thereafter the commencement of the Post-Graduate Courses in 2011-12 including MD (General Medicine), which is the subject-matter of his Writ Petition. Reference was made to the various Judgments of this Court being WP(C) No.37 of 2011 decided on 27-04-2012, wherein it was observed that the Medical Council of India (hereinafter "MCI"), could not and ought not to have excluded the STNM Hospital for the purpose of arriving at any rational consideration or for reckoning deficiencies. Similarly, in WP(C) No.30 of 2015 vide Judgment dated 07-10-2015 where while setting aside the Assessment Report dated 30-03-2015 and the correspondence dated 14-05-2015, it was ordered that the inspection team would

inspect the entire facilities of the STNM Hospital. The inspection was to be limited to the deficiencies with respect to shortage of residents and bed occupancy based on an overall average assessment and not on the observation of a single day. The assessment was to be made considering the MCI Guidelines, *inter alia*, for the North Eastern States which stipulates 60% bed occupancy. That, against both the Judgments (*supra*), SLPs have been filed before the Hon'ble Apex Court. That, thereafter the Respondent No.2 has adopted a practice of submitting a list of deficiencies and at the time of compliance verification new deficiencies are unearthed, thereby acting arbitrarily and unreasonably. That, although his Degree is recognised by the Sikkim Medical Council, but due to non-recognition by the Respondent No.2 his Degree holds no weight in other States. Hence, the prayers in the Petition.

6. In WP(C) No.27 of 2016 the Petitioners while stating the facts leading to its establishment have given a brief history of the admission of the first batch of students to the MBBS Course in the academic year 2001-02. Following this, in the year 2011 permission was granted to start Post-Graduate MS/MD Courses in various Streams. The Letters of Permission dated 21-03-2011 for MD (General Medicine), MD (Paediatrics), MS (ENT) and Letter of Permission dated 20-04-2012 for MD (Psychiatry) are relied upon. That, a perusal of these letters would indicate that the permission granted enabled the Petitioner to start admitting students in the aforesaid Courses till such time as the first batch appeared in its

final examination, in the concerned subject. On the strength of the Letters of Permission, the Petitioner-Institute admitted the first batch of Post-Graduate students in the academic year 2011-12 for three Courses except MD (Psychiatry), the permission having been granted to the said Course in the academic year 2012-13 they continued to take admissions for the academic years 2013-14 and 2014-15. That, unlike Undergraduate Courses, where permission for admissions under Section 10A of the Indian Medical Council Act, 1956 (hereinafter "Act of 1956"), is required to be taken every year, the Scheme of the Act and Regulations for Post-Graduate Courses is that permission is to be taken only at the commencement of the Course and then the Petitioner-Institute is required to apply for recognition of its Degree at the time the first batch appears for its final examination. Thus, in keeping with the statutory scheme, the Petitioner duly applied for recognition of the Degrees prior to the first batch appearing for its final examination. In the four Courses that are the subject-matter of the present Petition, inspection was conducted on various dates and as there was no impediment in continuing to make admissions, nor any indication to the contrary from the MCI. Having applied for recognition and in the genuine *bona fide* belief that recognition would be granted, admissions were made in the academic year 2014-15.

7. Now, by filing the present Writ Petition, it is prayed that protection granted to Degrees awarded to the Post-Graduates of 2014 vide Judgment dated 25-05-2016 also be extended to the

Post-Graduates of 2015 and 2016 on the principle of parity as there is no basis to differentiate them, having been admitted pursuant to the same Letter of Permission by which students were admitted in 2011.

8. The Respondent No.2, MCI filed its Counter-Affidavit to both the Writ Petitions submitting in sum and substance that by repeatedly filing various Petitions before this Court praying for grant of recognition of various Post-Graduate as well as Undergraduate Medical Courses by the Petitioner- Institute, it has become evident that the Petitioner- Institute is unwilling to fulfil the requirements of infrastructure, clinical material, teaching faculty and other physical facilities as required under the Act of 1956 and the Regulations made thereunder. That, for the Post-Graduate Courses in MD (OBG), MD (Pharmacology), MD (Community Medicine) as the Petitioner-Institute met the minimum requirements for the said Courses, the MCI Assessors recommended recognition of these Courses to the Central Government. However, with regard to the Post-Graduate Courses in issue in these Writ Petitions, despite repeated opportunities extended to the Petitioner-Institute to rectify deficiencies, it has failed to do so when it ought to be ready with complete infrastructure, clinical material, teaching faculty and other physical facilities in their Medical College. That, against the Judgment in WP(C) No.24 of 2015 which was disposed of by this Court, an SLP was preferred by the MCI which came to be disposed of on 25-07-2016 by the Hon'ble Apex Court, modifying

the Order of this Court, to the extent that one Professor from All India Institute of Medical Sciences and another Professor from P.G.I., Chandigarh, would comprise of the Assessors Team and the time for inspection was extended by six weeks. Pursuant to the Order of the Hon'ble Apex Court, an assessment has been carried out in the Petitioner-Institute on 29-08-2016 by the MCI Assessment Team, the Reports of which have been received and the Post-Graduate Medical Education Committee of the Council (for short "PGMEC") is seized of the matter, which will be considered in the ensuing meeting of the said Committee.

9. Enumerating the powers of the MCI, attention of this Court was drawn to the decisions in ***State of Kerala vs. Kumari T. P. Roshana and Another***¹, ***Medical Council of India vs. State of Karnataka and Others***² and ***Dr. Preeti Srivastava and Another vs. State of M.P. and Others***³ wherein it was held that the Medical Council of India Act, 1956, has constituted the Medical Council of India which as an Expert Body has implicit powers to prescribe minimum standards of medical education, to supervise the qualifications or eligibility standards for admission to Medical Institutions and to prevent sub-standard entrance qualification for Medical Courses. That, these observations would apply to Post-Graduate Medical Courses also.

10. Reference was also made to Section 33 of the Act of 1956 which empowers the MCI with the prior approval of the Central Government to frame Regulations for laying down the

1. (1979) 1 SCC 572
2. (1998) 6 SCC 131
3. (1999) 7 SCC 120

minimum standard of infrastructure, teaching and other requirements for conduct of Medicine Courses and the regulations so framed being statutory in character are therefore, binding and mandatory in all concerned Universities and Colleges conducting Medicine Courses. Attention was also drawn to Section 10 and Section 11(2) of the Act of 1956 thereby re-agitating facts already dealt with in WP(C) No.24 of 2015, such as, those pertaining to deficiencies in the Medical College which for brevity, are not being reproduced herein. It was averred that merely calling upon the College to submit Compliance Report does not confer upon the Petitioners any cause of action to approach this Court and, therefore, the Petitions be dismissed.

11. Rejoinders were filed by the Petitioners in both the Writ Petitions under consideration, *inter alia*, pointing out that the Reply filed by the MCI is prolix but has failed to address the limited issue which arises in the present Petition, i.e., whether the reliefs granted by this Court in WP(C) No.24 of 2015, in respect to Degrees awarded to students admitted in the academic year 2011-12, ought to be extended to the students admitted in the academic years 2012-13 and 2013-14 to MS (ENT), MD (General Medicine), MD (Paediatrics) and MD (Psychiatry) Courses and additionally to the students admitted in the academic year 2014-15 to MD (Psychiatry) Course on grounds of parity. The Petitioner in WP(C) No.27 of 2016 avers that in the instant case three batches took admission on the strength of the same permission and, therefore, all such students ought to be treated

alike in terms of the Judgment of this Court in WP(C) No.24 of 2015.

12. Opposing submissions made by Learned Counsel for the parties were heard at length and given anxious consideration. I have also perused the pleadings and examined the documents relied on.

13. In the instant matters we are not concerned with the admissions of the students into the Post-Graduate Courses or the qualifications for such admission or for that matter the lack of qualifications. Admissions have admittedly been allowed in terms of the Letters of Permission and no further discussion need ensue on this point. We are presently concerned with the recognition of the Post-Graduate Degrees already reflected above, after the students admitted on the strength of the letters of admission granted by the concerned authorities completed their Courses.

14. The question that thus arises for consideration of this Court is whether the relief granted to the students admitted in MD (General Medicine), MD (Paediatrics), MS (ENT) Courses in the academic year 2011-12 and completed their Courses in 2014 and MD (Psychiatry) Course in the academic year 2012-13, by the Judgment of this Court dated 25-05-2016 in WP(C) No.24 of 2016 ought to be extended to the students admitted in the same Courses in the academic years 2012-13 and 2013-14 to the three Courses and additionally to the students admitted in 2014-15 to the MD (Psychiatry) Course. For clarity, we may briefly first refer

to Paragraph 6 of the Judgment in WP(C) No.24 of 2015, wherein it was observed as follows;

"6. The present Writ Petition is confined to four disciplines in terms of the prayer of the Petitioner, viz., (i) **MD (General Medicine)**, (ii) **MD (Paediatrics)**, (iii) **MS (ENT)** and (iv) **MD (Psychiatry)** for which an inspection took place in the month of April, 2014, for grant of regular recognition in terms of Section 11(2) of the Act of 1956. These reports were reviewed by the Post-Graduate Medical Education Committee (for short "PGMEC") and separate communications were sent to the Petitioner for each of the MD/MS degree specialisation, in some cases pointing out deficiencies, in others seeking further clarification." [emphasis supplied]

15. From the above, it is evident that an inspection took place in the month of April, 2014, for grant of regular recognition in terms of Section 11(2) of the Act of 1956, for students who were admitted in the disciplines of Post-Graduate Courses enumerated above and completed their Course in the year 2014. Following this inspection a series of communication was exchanged between the parties pertaining to deficiencies, rectification of deficiencies and compliance verification on which further deficiencies were unearthed which had not been pointed out in the previous Reports. The aforesaid Judgment of this Court in WP(C) No.24 of 2015 has delved in detail into the various communications, the inspections, the findings at the inspections and what had transpired between the parties and thereafter the opinion of this Court. In the end result, the reliefs as enumerated, *inter alia*, in Paragraph 54(iv) of the Judgment in WP(C) No.24 of 2015 were granted.

16. Subsequent to the Judgment of this Court in WP(C) No.24 of 2015, an I.A. was filed by the Petitioner-Institute being I.A. No.03 of 2016 seeking a similar relief for the subsequent

batches as has been sought in the instant Petition. The I.A. was rejected the prayers not having been included in the Writ Petition.

17. Meanwhile, an SLP was filed by the MCI before the Hon'ble Apex Court against the aforesaid Judgment of this Court in WP(C) No.24 of 2015 dated 25-05-2016, the Apex Court vide its Order dated 25-07-2016 in SLP(C) No.19119 of 2016, modified the Judgment of this Court to the following extent;

"

After some arguments were advanced at the Bar, the dispute melted into one singular point which finds mention in direction No.1 issued by the High Court.

If we allow ourselves to say so, the melting procedure further continued and it ultimately rested on "two eminent independent observers". Submission of Mr. Vikash Singh, learned senior counsel is that there should not be any observer, but there can be eminent Professors who should be the part of the "Assessors Team". Mr. Gopal Subramonium, learned senior counsel left it to the discretion of the Court.

Having heard learned counsel for the parties, we direct the Medical Council of India to include one Professor from All India Institute of Medical Sciences (AIIMS) and another Professor from P.G.I, Chandigarh, as a part of its "Assessors Team". This direction, needless to say, annihilates the concept of "independent observer". We have said so as the Professors, who would belong to A.I.I.M.S. or P.G.I. are supposed to be eminent people and they are expected to be independent.

....."

Pursuant to such Order, an inspection was conducted on 29-08-2016 in respect of each of the four Courses and the Assessors Reports have been made available to the Petitioner-Institute, who allege that the Reports reveal that the earlier deficiencies do not exist and it also does not disclose any basis on which recognition may be denied to these Courses.

18. The MCI for its part, post such Order and inspection subsequent thereto, has given a subject-wise position regarding

the assessment for recognition of the various Degrees. For MS (ENT), it is submitted that inspection was carried out on 29-08-2016 by the Team of MCI Assessors and the PGMEC is presently seized of the matter and no final decision has been taken by the MCI or Government of India in regard to grant or denial of recognition to the Petitioner-Institute in regard to the award of Post-Graduate qualification for the said Course. That, similarly for MD (Psychiatry) the inspection was carried out on 29-08-2016 pursuant to which certain clarification has been sought by the PGMEC and given by the Dean of the SMIMS which are now under consideration of the PGMEC. For MD (General Medicine) an inspection was carried out on 29-08-2016 pursuant to which the MCI vide letter dated 16-09-2016 sought certain clarification and the PGMEC vide its letter dated 19-09-2016 also sought clarification, which has been made by the Dean and is now under the consideration of the PGMEC. For MD (Paediatrics) the inspection was carried out on 29-08-2016, clarification was sought by the MCI and the PGMEC vide letters dated 16-09-2016 and 19-09-2016 respectively, which was made by the Dean of SMIMS and is now under consideration. That, the recognition in respect of Post-Graduate Degrees can only be granted once the Medical College fulfils the requirements.

19. Now, turning to address the issue of the Letters of Permission relied on by the Petitioners they pertain to the four Courses in which recognition of the Degrees is being sought by the Petitioner-Institute. Firstly, we may deal with the Letter

bearing No.MCI-292(22)/2010-Med.77958 dated 21-03-2011
pertaining to MS (ENT), it is, *inter alia*, stated therein as follows;

"In continuation to this office Letter of Intent dated 24th February 2011 and with reference to your letter dated 24th February, 2011, I am directed to convey the permission of the Board of Governors for Starting of MS(ENT) course with annual intake of 2(Two) student per year with prospective effect i.e. from the academic year 2011-2012 at your institute u/s 10A of the IMC Act, 1956, as amended.

This permission for starting of the above course and admission of students will be till such time the first batch of students admitted against the above course appears for the final examination in the subject. The college authorities may take up the matter for recognition of the qualification under section 11(2) of the IMC Act at the time of first batch admitted against the course appears for final year examination.

Please acknowledge receipt of this letter."

The letter is self-explanatory and requires no further elucidation.

20. The Letters of Permission pertaining to MD (Paediatrics) Course and MD (General Medicine) are identical, save for the fact that in the Letter of Permission with regard to MD (General Medicine) reference is made to letter dated 11-03-2011 of the Petitioner-Institute.

21. So far as MD (Psychiatry) is concerned, the permission of the Board of Governors was granted wherein reference was made to the Letter of Conditional Permission of the Board of Governors dated 31-03-2012 and the response of the Petitioner vide letter dated 09-04-2012. Accordingly, the Board of Governors granted permission for an annual intake of three students per year from the academic year 2012-13 and this permission was for such time as the first batch of students admitted against the above Course appears for final examination

in the subject. That, having been said it is pertinent to point out that the MCI in its response made no reference to these Letters of Permission relied on by the Petitioner-Institute neither was an effort made to interpret or clarify the contents of the Letter of Permission. In such a case, it is evident that the letters are self-explanatory inasmuch as it is evident that permission for starting various Courses and admission of students would continue till such time as the batch of students admitted against the above Courses appear for the final examination of the subject.

22. On the basis of these Letters of Permission, admissions have been made validly and students have faced the stress of undergoing examinations year after year till they completed their Course of three years. It is indeed legitimate for them to expect recognition of the Degree obtained by them. In the Judgment of this Court in WP(C) No.24 of 2015, it has been opined that;

"48. In this backdrop, it is pertinent to notice that it is an admitted position that permission to commence the Post-Graduate Courses was granted in terms of the above provisions of Law, such permission having been preceded by an inspection, issuance of letters of permission and permission thereof to commence the Courses. It can safely be assumed that all conditions were fulfilled by the Petitioner and the Respondents were satisfied thereof. This being so, it is unfathomable now as to why the Respondent No.2 would deny granting of recognition to the four Courses for which students who had been admitted therein in the year 2011, completed their studies in 2014, scant regard being paid to their welfare and thereby jeopardising their future. When permission was granted to commence the Courses by the Respondents No.1 and 2, and students admitted thereafter, the logical culmination would be completion of their studies and rightful expectation of award of appropriate recognised medical qualification, on successful conclusion of the Course. Would it, therefore, now be fair on the students who have completed their Courses to find themselves stranded with no recognised Degree, for no fault of their own, having been admitted

on the basis of the permission of the concerned Authorities in the year 2011.”

The same opinion holds good for the Writ Petitions in hand.

23. Admittedly necessary inspection was conducted after application for such recognition was made by the Petitioner-Institute. These inspections have stretched on for almost two years with no decision being taken as allegations by the MCI that deficiencies were not rectified or persisted to exist and counter-allegations to the contrary by the Petitioner- Institute have been flung at each other. The MCI in its Counter-Affidavit has pointed out that although the MCI was loathe to grant the permission to the Petitioner- Institute admissions in the Post-Graduate Courses but the Board of Governors nominated by the Government of India in supersession of the MCI had granted permission. While this may prompt one to mull over the statement, but given the fact that the permission for admissions suffered no illegality, is it fair to expect the students to wait indefinitely, on tenterhooks, for the Authorities who grant recognition, to reach the seemingly elusive decision? It is no one's case that the students were admitted illegally, Letters of Permission discussed hereinabove indicate that admissions were made on the basis of the permission spelled out therein and the students so admitted have either completed their Courses or are in the process of doing so.

24. This Court is conscious and aware that the MCI has been vested with powers to grant recognition only after the requisite criteria are fulfilled by the concerned Petitioner-Institute,

but at the same time a query arises, inasmuch as do such powers thus entitle the MCI or the Union of India to stretch decisions for months together with no specific reason while the students wait in suspended animation.

25. After the direction of this Court in WP(C) No.24 of 2015 dated 25-05-2016 and modification of the Judgment of this Court by the Hon'ble Apex Court on 25-07-2016 inspections were carried out in the month of August, 2016. Now it is the month of April, 2017, and the response of the MCI is that all concerned authorities are seized of the matter, but no decision has been arrived at. It would be worthwhile pointing out here that delay in such decisions, on pain of repetition, jeopardises the future of the students as they loose out on opportunities which they could otherwise have seized had a timely decision been arrived at by the concerned Authorities. It is obvious that only when inordinate delays occur and decisions are kept pending which violates the right of the individuals that the Courts are constrained to step in.

26. What appears to be anomalous is that on the one hand after initial inspection was duly carried out permission was granted for admissions to the Post-Graduate Courses and, thereafter when recognition is being sought for, the MCI suddenly decides to withhold recommending such recognition on grounds of deficiencies. There being no claim of contravention of any law when the students were admitted nor any infirmity or illegality in the admissions the withholding of the recognition which they have striven for appears wholly unreasonable and unjust.

27. Therefore, bearing in mind the decision of this Court in WP(C) No.24 of 2015 and considering that the MCI has failed to make its stand known with regard to the Letters of Permission granted to the Petitioner-Institute, I am of the considered view that parity ought to be maintained between students who were admitted on the strength of the Letters of Permission referred to hereinabove. Hence, it is ordered as follows;

- (a) For students who were admitted in the three Courses being, MD (General Medicine), MD (Paediatrics) and MS (ENT) vide Letters of Permission dated 21-03-2011 in the academic years 2012-13 and 2013-14, the same protection as granted vide the Judgment of this Court in WP(C) No.24 of 2015 in Paragraph 54(iv) is extended to them.
- (b) Considering the documents placed on record in I.A. No.04 of 2016 (pending disposal before this Court) arising out of WP(C) No.24 of 2015, for students who were admitted in MD (Psychiatry) Course in the academic years 2013-14 and 2014-15 in pursuance of the Letter of Permission dated 20-04-2012, the same protection as granted vide the Judgment of this Court in WP(C) No.24 of 2015 in Paragraph 54(iv) is extended to them.
- (c) The Respondents No.1 and 2 shall take steps accordingly within three months from today.

28. The Writ Petition consequently stands disposed of with the above directions.

29. No order as to costs.

Sd/-
(**Meenakshi Madan Rai**)
Judge
12-04-2017

Approved for reporting : **Yes**

Internet : **Yes**