

# THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Extraordinary Jurisdiction)

DATED : 30<sup>th</sup> AUGUST, 2018

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**SINGLE BENCH : THE HON'BLE ACTING CHIEF JUSTICE MRS. JUSTICE MEENAKSHI MADAN RAI**

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WP(C) No.43 of 2017

Sikkim-Manipal University (SMU) and Another ... **Petitioner (s)**

*versus*

Union of India and Others ... **Respondent (s)**

*with*

WP(C) No.42 of 2017

WP(C) No.44 of 2017

WP(C) No.51 of 2017

Writ Petitions under Article 226 of the Constitution of India

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**Appearance**

Mr. Nikhil Nayar, Mr. Aman Ahluwalia, Mr. T. R. Barfungpa and Mr. Ugang Lepcha, Advocates for the Petitioner.

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

Mr. Thupden Youngda, Advocate for the Respondent No.2.

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

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## J U D G M E N T

Meenakshi Madan Rai, ACJ

**1.** The Petitioners herein are before this Court with a slew of Petitions seeking recognition for the MD qualification awarded by the Petitioner No.2 to students in the streams of Paediatrics, General Medicine and ENT on or after 2014 and for

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Psychiatry on or after 2015, in terms of the Gazette Notification dated 25-04-2017, since withdrawn vide Corrigendum dated 06-06-2017. Except for MD (Psychiatry) which has three seats, the other streams have two seats each.

**2.** The Writ Petitions for each of the streams mentioned hereinabove are being disposed of by this common Judgment, the reliefs sought for therein being similar which *inter alia* are as under;

- (a) Pass an order in the nature of certiorari quashing and setting aside the impugned Corrigendum dated 06-06-2017 and impugned communication dated 22-06-2017 and to restore the Gazette Notification dated 25-04-2017 which accords recognition to MD (Paediatrics), MD (General Medicine) and MS (ENT) qualification offered by the Petitioner-College in respect of degrees granted on or after 2014 and for MD (Psychiatry) on or after 2015; or
- (b) In the alternative, pass an order in the nature of certiorari quashing and setting aside the impugned communication dated 22-06-2017 and further issuing a writ in the nature of mandamus directing the Respondent No.1, Union of India, to grant recognition to the degree of MD (Paediatrics), MD (General Medicine) and MS (ENT) offered by the Petitioner-College for all degrees granted on or after 2014 and for MD (Psychiatry) on or after 2015; and
- (c) Pass such other further orders as this Hon'ble Court, in the facts and circumstances, may consider necessary.

**3.** We may briefly refer to the factual aspects and background for clarity and convenience. The Petitioner No.1 was established by an Act of the Legislature of the State of Sikkim, while the Petitioner No.2 is a Medical College of the Petitioner No.1 established in 1999, offering MBBS Degrees since 2001 and MS/MD Degrees since 2011 in various streams. The Courses in MD (Paediatrics), MD (General Medicine) and MS (ENT)

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commenced in the year 2011, while MD (Psychiatry) commenced a year later, emanating from a Letter of Permission (LoP) issued by the Respondent No.2 dated 21-03-2011 for the three Courses and the LoP dated 20-04-2012 for the Psychiatry Course. The LoP provided that the permission for starting/increase of seats in the said Courses and admission of students would be "*..... till such time the first batch of students admitted against the above course appears for the final examination in the subject*".

**4.** The STNM Hospital (STNM) is a Government Hospital whose facilities, faculty and clinical materials are permitted to be considered along with the Petitioner-College pursuant to a Memorandum of Understanding (MoU) entered into with the State of Sikkim. This circumstance was reiterated by the Judgments of this Court in WP(C) No.37 of 2011, WP(C) No.24 of 2015 and affirmed by the Hon'ble Supreme Court, for the purposes of assessment at the time of inspection.

**5.** The Petitioners aver that the MD and MS Courses being for a duration of three years each and the first batch having been admitted in 2011, the Petitioner-College applied for recognition of Degrees awarded in such Courses in terms of Section 11 of the Indian Medical Council Act, 1956 (hereinafter "MCI Act, 1956"), read with Regulation 6(2) of the Postgraduate Medical Education Regulations, 2000 (hereinafter "PG Regulation, 2000") well before April, 2014, when the first batch was due to appear for its final examination. Although inspections were carried out as required and the alleged deficiencies pointed out by

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Respondent No.2 remedied, the Respondent No.2 refused to recommend granting of recognition to the Postgraduate Courses being dealt with in these Petitions, insisting that deficiencies persisted.

**6.** Consequently, the Petitioners filed WP(C) No.24 of 2015 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.”

**7.** This Court vide its Judgment dated 25-05-2016 in the said Writ Petition, granted the following reliefs and issued directions as hereinbelow;

“54. In such a situation, although the impugned communications do deserve to be set aside, nevertheless this Court has to refrain from venturing into the arena of the experts. Since it is

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undisputed that the Respondent No.3 has to discharge the duty of maintaining the highest standards of medical education and to regulate their observance and supervise minimum standards of medical education, being an expert body, the following directions are being issued;

- (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

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- (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.”

**8.** By filing an SLP (Civil) No.19119 of 2016, on 25-07-2016 before the Hon’ble Supreme Court, the Respondent No.2 assailed this Judgment. The Supreme Court while disposing of the SLP substantially affirmed the Judgment of this Court and the directions passed therein with some minor modifications specifying that independent Assessors must be from All India Institute of Medical Sciences (AIIMS) and P.G.I., Chandigarh and extending the period for carrying out the inspection. Pursuant thereto, an inspection was conducted on 29-08-2016.

**9.** Prior in time to the Order of the Hon’ble Supreme Court (*supra*), I.A. No.03 of 2016 came to be filed before this Court in WP(C) No.24 of 2015 on 27-05-2016 seeking modification of the Judgment and Order of this Court as follows;

- “(i) Direct that the two independent eminent persons to be part of the inspection team for compliance verification be nominated by the Justice Lodha Committee, appointed by the Hon’ble Supreme Court vide its judgment dated 2.5.2016 in *Modern Dental College & Research Centre & Ors. Vs. State of Madhya Pradesh & Ors.* in C.A. No.4060/2009;
- (ii) Direct that paragraph 54 (iv) of this Hon’ble Court’s judgment in this case will also be applicable to the students who were granted

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admission in the years 2012 and 2013 in MD (General Medicine), MD (Paediatric), MS (ENT) and MD (Psychiatry) and who have graduated in 2015 and 2016 respectively;

- (iii) Direct that the Petitioners be permitted to admit students to MD (General Medicine), MD (Paediatric), MS (ENT) and MD (Psychiatry) provisionally for 2016-17 pending the final inspection and assessment report to be filed by the Respondent No.2;
- (iv) Pass such other order/s as may be deemed fit and proper in the facts and circumstances of the case."

**10.** After hearing the parties, this Court found no compelling circumstances to allow the interim application and disposed of the application with the following observations;

**"7.** (a) With regard to prayer (i), in my considered opinion the Order requires no interference.

(b) On Prayer (ii) of the I.A., it is admitted that no pleadings on the basis of the submissions made today existed nor were amendments incorporated in the Writ Petition. It goes without saying that new pleas cannot be brought before the Court in the garb of a prayer for modification of the Judgment, when averments in this regard find no place in the Writ Petition. This prayer thus requires no consideration.

(c) So far as prayer (iii) is concerned, in Paragraph 54(vi) of the Judgment, it has clearly been ordered as follows;

"(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."

This is a speaking Order and no modification can be made to suit the stance of the Petitioners."

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**11.** This was followed by WP(C) No.25 of 2016 filed by one Dr. Miland Jha who was admitted to the MD (General Medicine) in the year 2012-13, while the Petitioner-Institute filed WP(C) No.27 of 2016. In WP(C) No.25 of 2016 the Petitioner sought a direction to the Respondent No.1 (UOI) and Respondent No.2 (MCI) to recognise the Degree awarded to him by the Respondent No.4 (SMIMS) and Respondent No.5 (SMU), in a manner consistent with the directions in Paragraph 54(iv) of the Judgment *supra*. The Petitioner-Institute in its Petition sought a direction to the Respondent No.1 (UOI), to grant recognition to the Degrees awarded to the students admitted in the Academic years 2012-13, 2013-14 and those who completed their Courses in the year 2015-16 respectively in the disciplines of MD (General Medicine), MD (Paediatrics) and MS (ENT) and for students in MD (Psychiatry) admitted in the Academic Year 2012-13, 2013-14 and 2014-15 in terms of the Judgment of this Court in WP(C) No.24 of 2015.

**12.** This Court disposed of the two Writ Petitions by a common Judgment dated 12-04-2017 *inter alia* 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

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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.”

Against this Judgment a Special Leave Petition has reportedly been preferred by the Respondent No.2-MCI on 08-07-2017, vide Diary No.20203/2017, which, according to the Petitioner, is lying under defects with the Registry of the Hon'ble Supreme Court.

**13.** The Petitioner University in the said I.A. No.04 of 2016 (subsequently re-numbered as I.A. No.09 of 2016 in the new Court Information System and hereinafter referred to as "I.A. No.09 of 2016), in WP(C) No.24 of 2015 submitted an application on 09-12-2016 (taken up on 12-12-2016) seeking directions to the Respondent No.2-MCI to process the case for recognition of the aforementioned four Courses awarded by the Petitioner, based on the Assessors Reports on inspection conducted on 29-08-2016, strictly from the stand point of compliance verification and deficiencies alleged earlier in communications dated 09-03-2016, 11-05-2016 and 30-03-2016, in terms of the Judgment in WP(C) No.24 *supra*.

**14.** It may be mentioned here that the reliefs sought for by the Petitioner in WP(C) No.24 of 2015 have been reflected at Paragraph 6 hereinabove.

**15.** On 16-02-2017, on appearance being put in by MCI, it was submitted by their Learned Counsel that the Respondent No.2

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had decided to recommend to the Central Government recognition to the Degrees in the four streams awarded by the Petitioner University to the students admitted in the Postgraduate Courses in the specialities of MD (General Medicine), MD (Paediatrics) and MS (ENT) for the Academic Year 2011-12 and for MD (Psychiatry) for the Academic Year 2012-13. That the issue of recognition of subsequent batches thereafter is under consideration as the Postgraduate Medical Education Committee (PGMEC) has decided to place the decision before the General Body of the Council for information. Counsel sought three months' time to take necessary steps. On consideration of the submissions made by both the parties, this Court on the same date ordered *inter alia* as follows;

“On consideration of the submissions, I find that the Assessors have already submitted their Inspection Report conducted on 29-08-2016 and on this basis the MCI/Respondent No.2 has granted recognition to MD (General Medicine), MD (Paediatrics) and MS (ENT) against the sanctioned intake capacity for the academic year 2011-12 and for MD (Psychiatry) against the sanctioned intake capacity for the academic year 2012-13. Consequently, there ought to be no impediment for granting recognition to the subsequent batches based on the same Assessment Report which finds no deficiencies in the Petitioner-University. In view of the submission that admissions for the Academic Year 2017-18 can be taken up as the NEET has already been held in the month of November, 2016, it would be in the interest of justice if the matter for recognition of the qualifications for the subsequent years are expedited.

In the aforesaid circumstances, Learned Counsel for the MCI/Respondent No.2 is granted a week's time to seek instructions in this regard.”

**16.** The matter was listed on 23-02-2017. On the said date the MCI reiterated its earlier position that the issue of

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recognition of students admitted in the subsequent batches is still under consideration. The Court ordered *inter alia* as hereunder;

**“6.** Having considered submissions and in view of the fact that the compliance verification was completed in August 2016, it is expected that the MCI/Respondent No.2, would reach a decision with regard to the issue of recognition of subsequent batches at least a week prior to 4th April 2017, by which date counselling for Postgraduate courses are likely to commence as submitted by the Petitioners.” [emphasis supplied]

**17.** Assailing the said direction *supra* the MCI filed SLP (C) No.11943 of 2017 before the Hon’ble Supreme Court on 20-03-2017. This matter came up before the Hon’ble Supreme Court on 04-05-2017 wherein the following directions issued;

“Let the matter be listed on 9th May, 2017, to enable the Medical Council of India to file the report before this Court. Be it stated, the report that is required to be filed is with regard to the recommendation made by the Assessors’ team, as has been mentioned in the order dated 25th July, 2016.”

On 09-05-2017 the Hon’ble Supreme Court would further order as follows;

“Let the matter be listed on Monday, 17th July, 2017.

The pendency of this special leave petition will not be an obstruction or impediment for the High Court to proceed with the writ petition(s) if the same has not yet been dealt with.”

**18.** Consequently I.A. No.9 of 2016 in WP(C) No.24 of 2015 came to be taken up on 22-05-2017 wherein the Counsel for the Petitioners informed this Court that the MCI website showed on 12-05-2017 that the Degrees in MD (General Medicine), MD (Paediatrics), MS (ENT) and MD (Psychiatry) had been granted recognition from the dates mentioned in WP(C)

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No.24 of 2015 (Annexure 10). Counsel for the MCI sought sometime to clarify the matter.

**19.** The matter was listed on 05-06-2017 on which date Counsel for the Petitioner submitted that they had received a copy of the Notification dated 25-04-2017 on 24-05-2017 issued by the Ministry of Health and Family Welfare (Department of Health and Family Welfare), Government of India, under Section 11(2) of the Indian Medical Council Act after consulting the Medical Council of India. By the Notification further amendments were made in the First Schedule of the Act recognizing the Degrees for the three Courses, i.e., MD (General Medicine), MD (Paediatrics) and MS (ENT) from 2014, while for MD (Psychiatry), recognition was from 2015. In consideration of the said Notification, I.A. No.9 of 2016 was disposed of.

**20.** It may be recapitulated here that in view of the Order of this Court in WP(C) No.24 of 2015 no admissions were made to any of the Courses in the academic year 2016-17.

**21.** For the year 2017 the second counselling for admissions to the Postgraduate seats commenced on 11-05-2017. On 12-05-2017 during counselling, the Petitioner noticed the Gazette Notification of 24-04-2017 granting recognition to the Courses as detailed *supra*. The Petitioners thus assumed that the Respondent No.2 having considered the Assessors Reports dated 29-08-2016 was satisfied that the earlier identified deficiencies had been remedied, hence the Notification. The Petitioner

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thereby wrote to the Respondent No.2 vide letter dated 15-05-2017 informing that admissions of students for the year 2017 would be proceeded with and accordingly admitted students to the said Courses on 20-05-2017. However, on 06-06-2017 a Corrigendum was issued to the Notification dated 25-04-2017 *supra*, wherein further amendments were made to the First Schedule to the Act granting recognition only for the first batch of students admitted to the said Courses.

**22.** Aggrieved by the action of the Respondent No.2 and asserting that no deficiencies as alleged in their communication dated 22-06-2017 exist, the Petitioners are once again before this Court seeking the aforementioned reliefs.

**23.** Respondent No.1 did not file any written response.

**24.** Respondent No.2 in its "reply affidavit" averred that in view of the Judgment dated 25-05-2016 of this Court in WP(C) No.24 of 2015 and Order dated 25-07-2016 of the Hon'ble Supreme Court in SLP(C) No.19119 of 2016, recommendation was made to the Central Government, Respondent No.1 vide its letters dated 14-02-2017 [Annexure R-31 in WP(C) Nos.42, 43 and 51 of 2017 for MD (General Medicine), MD (Paediatrics) and MS (ENT) respectively and Annexure R-29 in WP(C) No.44 of 2017 for MD (Psychiatry)], to grant recognition to the Degrees awarded by the Petitioner-University to the first batch in the four Postgraduate specialities. However, the Government of India vide its Notification, dated 25-04-2017, erroneously granted

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recognition to three Postgraduate Degrees on or after 2014 and for MD (Psychiatry) on or after 2015, instead of restricting the same to the first batch. After the Respondent No.2 pointed out the error, the Government of India vide the impugned Corrigendum dated 06-06-2017 granted recognition in respect of the first batch of students admitted in the said specialities. That, neither the IMC Act, 1956, nor the Regulations made thereunder debar the Respondent No.2 from pointing out new deficiencies during the subsequent round of physical inspection which were not found in the previous round. That, the Petitioner-College despite fifteen years of its establishment has failed to create the requisite infrastructure, employ requisite teaching faculty or have the required clinical material as provided under the IMC Act, 1956 and as per the MCI norms. The relaxation granted once for establishment of a new Medical College in view of the backward/hilly area cannot be continued in perpetuity.

**25.** Referring to its role, Respondent No.2 emphasised that it is a body constituted under the provisions of the Indian Medical Council Act, 1956 and has been given the responsibility of discharging the duty of maintenance of the highest standards of medical education throughout the country for which it has been empowered with the prior approval of the Central Government to frame Regulations for laying down minimum standards of infrastructure, teaching and other requirement for conducting Medicine Courses. The Regulations so framed are statutory in character and therefore binding and mandatory on all concerned

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Universities, Colleges conducting Medicine Courses. Merely because the College has been called upon to submit a compliance report does not confer upon the Petitioner any cause of action to approach this Court. Thus, the Writ Petition is not maintainable being pre-mature as no final decision has been arrived at by the Central Government with regard to the subsequent batches in the aforementioned Postgraduate Courses and the Respondent No.2 vide its communication has requested the Petitioner-College to furnish their compliance for deficiencies pointed out during physical inspection of 29-08-2017 within one month vide communication dated 22-06-2017 for further processing of their case. Hence, the Petition be dismissed.

**26.** In Rejoinder, the Petitioner-College *inter alia* contended that the Respondent No.2 has failed to place any communication made with the Respondent No.1 intimating it of the alleged error in the Notification. That, the action on the part of the Respondent No.2 jeopardises and prejudices the students who have taken admissions to the Courses. That, the Respondent No.2 did not intimate or communicate the recommendation of the Committee to the Petitioner nor did it apprise either this Court or the Hon'ble Supreme Court about the status as regards the recommendation. In any event, the Central Government could always in the exercise of its powers disagree with the recommendation of the Respondent No.2 either on considering the facts itself or upon placing the matter before the Oversight Committee constituted under Orders of the Hon'ble Supreme

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Court, but records do not reflect whether such recommendation was ever placed before the Oversight Committee. That the report of the assessors after conducting inspection on 29-08-2016 is largely favourable and the Respondent ought to have recommended recognition in favour of the said Courses, hence the prayers in the Writ Petitions be granted.

**27.** In an effort to establish that no deficiencies exist in the Petitioner-College and Hospital, Learned Counsel for the Petitioners would contend that that presently there are three Units for General Medicine at the Central Referral Hospital (CRH) owned and managed by the Petitioner-College itself while one General Medicine Unit functions at the STNM. That, one Paediatrics Unit exists at the CRH and another Unit at the STNM. For the ENT and Psychiatry there is one Unit each at the CRH.

**28.** While advancing his arguments on **MD (Paediatrics)** Course, Learned Counsel emphasized that vide the previous communication dated 09-03-2016 two deficiencies were identified which stood fully remedied as evident from the Assessors Report dated 29-08-2016. Even the earlier Inspection Reports contained very few deficiencies all of which now stand complied while deficiencies now alleged in the communication dated 22-06-2017 was never put to the Petitioner-College in September, 2016, when the Dean appeared before the MCI for a personal hearing. The requirement as per the MCI norms to start a Postgraduate MD (Paediatrics) Course is one Unit, thereby making the CRH fully compliant with the stipulated requirement, and assuming that

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there are 100 students in the Undergraduate MBBS Course the College has two Units, one at the CRH and the other at STNM. This Court in WP(C) No.37 of 2011 delivered on 27-04-2012 has directed that for the purposes of inspection facilities at the STNM and the CRH be considered together as detailed in Paragraph 65 therein.

**29.** To further substantiate the Petitioners' stance that no deficiencies existed it was contended that objections raised with regard to the MRI workload at CRH, on the date of assessment are frivolous and *mala fide* as the MRI facility is available and functional as apparent from Assessors' figures and no deficiencies on this count exist in the STNM Hospital. Relying on the ratio of ***Royal Medical Trust (Registered) & Another vs. Union of India and Another***<sup>1</sup> it was contended that even this deficiency is liable to be rejected. Further, Parenteral Nutrition Services are provided and equipment in the Hospital are being upgraded, thus the device for laminar flow shall also be made available. The Postgraduate Medical Education Committee (PGMEC) has recorded non-availability of Departmental Library contrary to the Assessors Report. Facilities such as Blood Component Separation Facility, Speciality Clinic and other equipment said to be lacking at the STNM are all available at the CRH and are not required to be duplicated at the STNM. PICU and NICU are available at the CRH while NICU also exists in the STNM, as also Dialysis and there is no shortfall in bed occupancy. Admittedly publications from the faculty at STNM are lacking however the report of the Assessors is

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<sup>1</sup> (2015) 10 SCC 19

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that in addition to the workload in the Hospital the faculty are able to engage in Journal Clubs and Group Discussions, etc. Besides there is an absence of norms for minimum number of journals. The Assessors have correctly recorded that there are ten Speciality Clinics of which three are run at the STNM and the other seven have been deleted because these are conducted at the CRH.

**30.** Moving on to **MD (General Medicine)** it was contended that from the minutes of the meeting dated 16-09-2016 of the Respondent No.2, it is apparent that no deficiencies were identified in the Course and recommendation for recognition ought to have been promptly made. The Respondent No.2 however in order to delay the matter resorted to the untenable act of taking a decision to refer the correctness of the Judgment of this Court for legal opinion from the Learned Solicitor General/Additional Solicitor General when the SLP filed against the Judgment has been dismissed. That, deficiencies communicated vide correspondence dated 22-06-2017, pertained to promotion of two Doctors as Professors in the Department. Their promotion was objected to on grounds that the publication requirements were not met which alleged deficiency was earlier not pointed out. Infact the Regulations existing at that particular period required only two publications which were fully met and they were validly promoted on 01-02-2014. The other deficiencies pertained to the teaching experience of another Doctor who infact has more than fifteen years of teaching

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experience. The MRI at the STNM is operationalised and functional. The number of patients at the CRH during the comparable period have increased and even if there is a marginal drop in number of OPD patient load this by itself does not constitute a deficiency. That infact facilities such as Blood Component Separation Facility, Speciality Clinics, MICU, Equipment like Holter, investigative facility, Central Library, Central Research Laboratory, Medical ICU are all available at the CRH. The other deficiencies pertaining to faculty in Unit –I and publications are non-existent. Hence, the Petitioners are now compliant and deficiencies pointed out are only for harassment.

**31.** Dealing with the five deficiencies pointed out in the **MD (Psychiatry)** vide communication dated 11-05-2016, it was put forth that although Chronic Psychiatric Care does not exist at CRH and STNM, however the Assessors Report dated 29-08-2016 would indicate that such facility exists with the Sikkim Rehabilitation Centre, Nimtar, East Sikkim, with which the Petitioner-College has entered into a MoU. This permits the students of the Petitioner-College use of clinical material, and provides that for teaching purposes the patients occupying the beds would be under the administrative control of the Dean of the Petitioner-College. Moreover, no such deficiency had been communicated in the earlier inspections and communications made. The inexperience of the Senior Resident is non-existent as he is infact a Consultant Psychiatrist at the STNM for ten years. That the requirement for starting MD (Psychiatry) is of one Unit

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comprising of thirty beds which is available at the CRH, while OPD attendance is adequate. That MRI is functional at the STNM and sufficient faculty exists who engage in Journal Clubs and Group Discussions. Hence, no deficiencies exist and those pointed out are *mala fide*.

**32.** It was next canvassed that the report of the Assessors on the deficiencies vide letter dated 30-03-2016 are largely favourable pursuant to the inspection on 29-08-2016 for the **MS (ENT)** Course. However vide minutes of meeting dated 16-09-2016 a new set of deficiencies were identified and communicated vide letter dated 22-06-2017 which had not been put to the Petitioner-College in September, 2016, when the Dean appeared before the MCI for a personal hearing. While urging that MS (ENT) ought to be granted recognition, each of the deficiencies pointed out by the Respondent No.2 were discussed at length. It was then contended that faculty are adequate inclusive of those from the STNM Hospital since the year 2003. Bed occupancy being 70% was adequate sufficient as per norms for North Eastern and hilly States as also major operations carried out and investigations pertaining to BERA and speech therapies. That both CRH and STNM have sufficient number of OPD, IPD operations and students are engaged in Journal Clubs. From the Assessors Report dated 29-08-2016 it is clear, as per the Petitioner, that even the earlier inspection reports which contained few deficiencies now stand remedied and the allegation of deficiencies are wholly baseless.

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**33.** That the impugned Corrigendum dated 06-06-2017 is illegal and void as it seeks to waive recognition granted to the qualifications in Postgraduate studies and the communication dated 22-06-2017 is wholly illegal, arbitrary, tainted by *mala fide* intent and liable to be quashed and set aside.

**34.** Learned Counsel for the Respondent No.1 submitted that he would adopt the submissions of Learned Counsel for the Respondent No.2, who for his part canvassed that he reiterates the averments made in his pleadings with emphasis on the point that the Petition is premature as no final decision has been taken by the Central Government with regard to the recognition or otherwise of the Courses for the years specified.

**35.** Submissions made by Learned Counsel for the Petitioner *in extenso* were given careful consideration as also the contention of Learned Counsel for the Respondent No.2 who made a brief submission as reflected hereinabove. The pleadings and documents on record have been perused by me and afforded anxious consideration.

**36.** This Court is now to determine as to whether the impugned Corrigendum dated 06-06-2017 is to be set aside and the Gazette Notification dated 25-04-2017 restored thereby granting recognition to the Degrees awarded by the Petitioner-University from 2014 onwards for the Courses in MD (Paediatrics), MD (General Medicine) and MS (ENT) and for MD (Psychiatry) Course from 2015 onwards.

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**37.** For convenience, it is reiterated here that Gazette Notification of 25-04-2017 had accorded recognition to MD (Paediatrics), MD (General Medicine), MD (ENT) offered by the Petitioner-College in respect of Degrees granted on or after 2014 and for MD (Psychiatry) on or after 2015. The Corrigendum dated 06-06-2017 takes away the recognition granted by the aforestated Notification and limits the recognition in each of the streams for the academic year 2011-12 only.

**38.** The impugned communication dated 22-06-2017 for each of the streams addressed to the Dean/Principal of the Petitioner-College by the PGMEC, has decided to recommend to the Central Government not to recognise MD (Paediatrics), MD (General Medicine), MD (ENT) and MD (Psychiatry) qualifications. The relevant extract of the communication is as under:

“.....

18. Accordingly, the Postgraduate Committee medical Education Committee decides as under:-

(i) To recommend to the Central Government not to recognise MD (Paediatrics) qualification granted by Sikkim Manipal University of Health, Medical & Tech. Sciences in respect of students being trained at Sikkim Manipal Institute of Medical Sciences, Gangtok admitted in the course from academic year 2012-13 onwards;

(ii) To communicate the deficiencies as found in the assessment report dated 29-08-2016 to the college authorities granting them one month's time to rectify the same and submit a compliance within one month from the date of communication; and

(iii) to debar the Sikkim Manipal Institute of Medical Sciences, Gangtok from making any fresh admissions in the **MD (Paediatrics)** course as the Institute has failed to rectify

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these deficiencies in terms of its undertaking tendered by it.

In view of above, you are requested to rectify the above deficiencies within 01 month from the date of dispatch of this letter and submit the compliance in hard copy as well as soft copy (in editable format preferably (sic) in MS Word) along with demand draft of Rs. 1.00 Lakh in favour of Secretary, Medical Council of India, payable at New Delhi within stipulated time for further consideration in the matter. In case, no compliance is received within this period or compliance is found unsatisfactory, it will result in stoppage of admission.

.....”

**Note** : The communication dated 22-06-2017 also pertained to the other streams under discussion herein.

**39.** Having perused the pleadings and documents meticulously, it emerges that so far as **MD (Paediatrics)** is concerned vide communication dated 09-03-2016, addressed to the Dean/Principal of the Petitioner-College by the Respondent No.2 [Annexure P-12 of Paper-Book of WP(C) No.43 of 2017], it was pointed out as follows;

“Compliance is not satisfactory.

1. No proper explanation has been given for low occupancy in PICU.
2. Shortage of Senior Resident in the Unit in own hospital remains as it is.
3. Other deficiencies as pointed out in the Assessment Report.”

On walking through the Assessors Report dated 29-08-2016 [Annexure P-15 of Paper-Book of WP(C) No.43 of 2017], the bed occupancy in PICU was recorded as 80% and that available equipment was adequate. That there were three Senior Residents. Nevertheless in the teeth of such a report the Respondent No.2 found nineteen deficiencies as communicated in the correspondence dated 22-06-2017, as against deficiencies

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which were not pointed out in the communication dated 09-03-2016.

**40.** For the **MD (General Medicine)**, the deficiencies pointed by the Respondent No.2, vide communication dated 09-03-2016 [Annexure P-13 of Paper-Book of WP(C) No.42 of 2017], were as follows;

“Compliance is not satisfactory.

1. Unit III has only 2 faculty & it cannot be considered as Pg Unit. Contention of institute that Unit III is complete cannot be accepted as PG Unit requires 3 faculty.
2. Other deficiencies as pointed out in the Assessment Report.”

The Assessors Report dated 29-08-2016 [Annexure P-16 of Paper-Book of WP(C) No.42 of 2017] indicates presence of three Full Time Faculty Members, hence the deficiency stand complied, contrary to which the Respondent No.2 vide letter dated 22-06-2017 has communicated twenty-one deficiencies.

**41.** For **MD (Psychiatry)**, the deficiencies communicated by the Respondent No.2 vide letter dated 11-05-016 [Annexure P-7 of Paper-Book of WP(C) No.44 of 2017] were as follows;

- “1. Dr. C. L. Pradhan, Asso. Prof. is an Honorary faculty & cannot be considered.
2. Out of 3 Senior Residents, 2 are Honorary & cannot be considered.
3. OPD attendance on day of assessment was 43 which is inadequate.
4. bed occupancy was only 26.67% on day of assessment.
5. Last ECT was given on 08/08/2015. There is no Pre ECT, Post ECT Resuscitation facility.
6. Other deficiencies as pointed out in the Assessment Report.”

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The observation made in the Assessors Report dated 29-08-2016 [Annexure P-11 of Paper-Book of WP(C) No.44 of 2017] indicates compliance of the shortfalls. However, the Respondent No.2 vide its letter dated 22-06-2017 (Annexure P-26) pointed out thirteen deficiencies.

**42.** For **MS (ENT)**, nine shortfalls were communicated by the MCI vide its letter dated 30-03-2016 [Annexure P-14 of Paper-Book of WP(C) No.51 of 2017]. The Assessors Report dated 29-08-2016 [Annexure P-18 of Paper-Book of WP(C) No.51 of 2017] reveals no adverse remarks neither has deficiency been indicated, despite which the Respondent No.2 vide its communication dated 22-06-2017 [Annexure P-35 of Paper-Book of WP(C) No.51 of 2017] would enumerate fourteen deficiencies.

**43.** As per the Petitioners necessary clarifications were made to the Respondent No.2 and each of the deficiencies have been complied with for each of the streams. It was the specific argument of the Petitioners that the Respondent No.2 cannot bring out a new set of deficiencies after each inspection report.

**44.** We may now appropriately refer to the decision of the Hon'ble Supreme Court dated **02-05-2016** in ***Modern Dental College and Research Centre and Others vs. State of Madhya Pradesh and Others***<sup>2</sup>. Vide the said Order the Hon'ble Supreme Court directed constitution of an Oversight Committee to oversee the functioning of the MCI and all other matters considered by the Parliamentary

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<sup>2</sup> (2016) 7 SCC 353

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Committee till the Central Government acted upon the Expert Committee report. It was ordered *inter alia* as follows;

**"110.** ..... At the same time, we do feel that pending consideration at appropriate executive or legislature level, an Oversight Committee needs to be set in place in exercise of powers of this Court under Article 142 of the Constitution to oversee the functioning of MCI and all other matters considered by the Parliamentary Committee.

**111.** In view of the above, while we do not find any error in the view taken by the High Court and dismiss these appeals, we direct the constitution of an Oversight Committee consisting of the following members:

1. Justice R.M. Lodha (former Chief Justice of India)
2. Prof. (Dr) Shiv Sareen (Director, Institute of Liver and Biliary Sciences)
3. Shri Vinod Rai (former Comptroller and Auditor General of India)

**112.** A notification with respect to constitution of the said Committee be issued within two weeks from today. The Committee be given all facilities to function. The remuneration of the Members of the Committee may be fixed in consultation with them.

**113.** The said Committee will have the authority to oversee all statutory functions under the MCI Act. All policy decisions of MCI will require approval of the Oversight Committee. The Committee will be free to issue appropriate remedial directions. The Committee will function till the Central Government puts in place any other appropriate mechanism after due consideration of the Expert Committee Report. **Initially the Committee will function for a period of one year,** unless suitable mechanism is brought in place earlier which will substitute the said Committee. We do hope that within the said period the Central Government will come out with an appropriate mechanism.

**114.** List the matter after one year for such further directions as may become necessary."

[emphasis supplied]

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**45.** Later, on **18-07-2017** in ***Amma Chandravati Educational and Charitable Trust and Others vs. Union of India and Another***<sup>3</sup> the Hon'ble Supreme Court upon the expiry of the term of the erstwhile Oversight Committee re-constituted the said Committee, comprising of five Doctors as detailed in the Order. The directions which followed were as hereunder;

**"2.** ..... We would like to record the functions, which are assigned to the Oversight Committee, which included the following:

(a) The Oversight Committee will have the authority to oversee the functioning of the Medical Council of India.

(b) All decisions/recommendations of the MCI will require approval of the Oversight Committee before they are communicated to the Central Government.

(c) The Oversight Committee will be free to issue appropriate remedial directions for improvement in the functioning of MCI.

(d) The Oversight Committee will function till the Central Government puts in place any other appropriate mechanism, or until further orders."

**46.** In ***Glocal Medical College and Super Speciality Hospital and Research Centre vs. Union of India and Another***<sup>4</sup> decided on **01-08-2017**, the Hon'ble Supreme Court referring to the Oversight Committee held as follows;

**"24.** Having regard to the fact that the Oversight Committee has been constituted [*Modern Dental College and Research Centre v. State of M.P.*, (2016) 7 SCC 353 : 7 SCEC 1] by this Court and is also empowered to oversee all statutory functions under the Act, and further all policy decisions of MCI would require its approval, its recommendations, to

<sup>3</sup> (2017) 16 SCC 265

<sup>4</sup> (2017) 15 SCC 690

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state the least, on the issue of establishment of a medical college, as in this case, can by no means be disregarded or left out of consideration. Noticeably, this Court did also empower the Oversight Committee to issue appropriate remedial directions. In our view, in the overall perspective, the materials on record bearing on the claim of the petitioner institutions/colleges for confirmation of the conditional letters of permission granted to them require a fresh consideration to obviate the possibility of any injustice in the process.

**25.** In the above persuasive premise, the Central Government is hereby ordered to consider afresh the materials on record pertaining to the issue of confirmation or otherwise of the letter of permission granted to the petitioner Colleges/Institutions. We make it clear that in undertaking this exercise, the Central Government would re-evaluate the recommendations/views of MCI, Hearing Committee, DGHS and the Oversight Committee, as available on records. It would also afford an opportunity of hearing to the petitioner Colleges/Institutions to the extent necessary. The process of hearing and final reasoned decision thereon, as ordered, would be completed peremptorily within a period of 10 days from today. The parties would unfailingly cooperate in compliance with this direction to meet the time-frame fixed.”

[emphasis supplied]

**47.** This observation made in ***Glocal Medical College and Super Speciality Hospital and Research Centre (supra)*** was reiterated in ***Krishna Mohan Medical College and Hospital and Another vs. Union of India and Another***<sup>5</sup> decided on **01-09-2017**. In ***Shree Narayan Foundation Trust vs. Union of India and Another***<sup>6</sup> decided on **04-09-2017**, which pertained to issuance of LoP by the MCI, the Hon’ble Supreme Court *inter alia* ordered as follows;

“..... Before any final decision is taken the Central Government shall consider the Oversight Committee that has been constituted as per the Constitution Bench decision in W.P.(C) No.408 of 2017 titled as “*Amma Chandravati Educational and Charitable Trust & Ors. vs. Union of India & Anr.*” rendered on 18th July, 2017.”

[emphasis supplied]

<sup>5</sup> (2017) 15 SCC 719

<sup>6</sup> Writ Petition (Civil) No.695 of 2017

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In ***Chintpurni Medical College and Hospital & Another vs. Union of India & Another***<sup>7</sup> decided on **10-05-2018**, the Supreme Court ratio would underline the indispensability of the Oversight Committee.

**48.** Although the instant matter was heard on 28-06-2018 and 29-06-2018, on a clarification sought from both parties on 20-08-2018 pertaining to the Oversight Committee, it was submitted by Learned Counsel for the Petitioners that the order in ***Modern Dental College and Research Centre (supra)*** was dated 02-05-2016. The Committee was constituted effectively for a period of one year which completed on 01-05-2017. The impugned letter of the Respondent No.2 dated 22-06-2017 was issued in the interregnum when no Oversight Committee was in existence as the new Oversight Committee was reconstituted on 18-07-2017 in the ***Amma Chandravati Educational and Charitable Trust (supra)***. Hence, for the instant purposes, i.e., the impugned communication dated 22-06-2017 the said directions would not be applicable. However, it was also submitted that the Petitioners have no objection if the matter is referred to the newly constituted Oversight Committee. The Respondent No.1 in the absence of instructions would make no submissions, while the Respondent No.2 would submit that no final decision had been taken by the Respondent No.1 in regard to the impugned communication.

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<sup>7</sup> Writ Petition (Civil) No.423 of 2017

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**49.** The role of the Oversight Committee is indeed clear and can by no means be overlooked. The technical argument raised by Learned Counsel for the Petitioner that when the communication dated 22-06-2017 was issued the Oversight Committee was not existent is outweighed by the fact that the Committee was to function for a period of one year initially to be substituted by a suitable mechanism to be brought into place by the Central Government. The fact that the Committee had to be reconstituted is indicative of the fact that no such substitution took place. In such circumstances, the intention of the Hon'ble Supreme court while constituting the Committee is apparent and hence it cannot be said that the Committee was non-functional during the interregnum. Copies of the communication dated 22-06-2017 issued by the Respondent No.2 recommending not to recognise the qualifications in MD (Paediatrics), MD (General Medicine), MD (Psychiatry) and MS (ENT) granted by the Petitioner-College has already been furnished to the Respondent No.1. It is admitted by the Respondent No.2 that till date no steps have been taken with regard to the recommendations made in the communication dated 22-06-2017.

**50.** In *Krishna Mohan Medical College and Hospital (supra)* it was observed as follows;

"20. In the predominant factual setting, noted hereinabove, the approach of the respondents is markedly incompatible with the essence and import of the proviso to Section 10-A(4) mandating against disapproval by the Central Government of any scheme for establishment of a college except after giving the person or the college concerned a reasonable opportunity of being heard. Reasonable opportunity of hearing which is synonymous to "fair

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hearing", it is no longer res integra, is an important ingredient of audi alteram partem rule and embraces almost every facet of fair procedure. The rule of "fair hearing" requires that the affected party should be given an opportunity to meet the case against him effectively and the right to fair hearing takes within its fold a just decision supplemented by reasons and rationale. Reasonable opportunity of hearing or right to "fair hearing" casts a steadfast and sacrosanct obligation on the adjudicator to ensure fairness in procedure and action, so much so that any remiss or dereliction in connection therewith would be at the pain of invalidation of the decision eventually taken. Every executive authority empowered to take an administrative action having the potential of visiting any person with civil consequences must take care to ensure that justice is not only done but also manifestly appears to have been done."

**51.** On the anvil of the above ratio and of ***Glocal Medical College and Super Speciality Hospital and Research Centre (supra)*** and ***Amma Chandravati Educational and Charitable Trust (supra)*** the Central Government shall afford reasonable opportunity to the Petitioners to be heard with regard to the communication dated 22-06-2017. Thereafter, necessary steps shall be taken before the Oversight Committee in terms of the functions assigned to it in ***Amma Chandravati Educational and Charitable Trust (supra)***. All necessary steps before the concerned Authority(s) shall be completed within two months from today.

**52.** Meanwhile, in the ensuing tumult between the parties the students ought not to face the backlash. Hence so far as the admissions made on the basis of the Notification of 25-04-2017 is concerned, students so admitted on account of the alleged error of the Respondent No.1 should not be allowed to suffer and shall continue their Courses, if desired by them.

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**53.** In view of the aforesaid circumstances, no order need issue with regard to the stay of the impugned communication dated 22-06-2017 and the impugned corrigendum dated 06-06-2017 to the extent it modifies the Gazette Notification dated 25-04-2017, issued by this Court on 16-08-2017.

**54.** Under the facts and circumstances, the Writ Petitions stand disposed of with the above directions.

**55.** No order as to costs.

Sd/-  
**( Meenakshi Madan Rai )**  
**Acting Chief Justice**  
30-08-2018

Approved for reporting : **Yes**

Internet : **Yes**