

SUPREME COURT OF INDIA

Medical Council of India

Vs.

Kalinga Institute of Medical Sciences (KIMS) & Ors.

C.A.No.4914 of 2016

(Madan B.Lokur and N.V. Ramana,JJ.,)

06.05.2016

JUDGMENT

Madan B.Lokur,J.,

S.L.P.(C) No.9997 of 2016

1. Leave granted.

2. This appeal is yet another chapter in the sordid saga of admissions to medical colleges. Undoubtedly, there is something rotten in the state of medical colleges. Unless the concerned Ministries in the Government of India take a far more proactive role in ensuring that medical colleges have all the necessary facilities, clinical materials, teaching faculty, staff, accommodation etc. the health of the people of our country will take a hit in the coming years due to inadequately educated doctors. Quality in medical education is equally important, if not more, than quantity.

3. The respondent Kalinga Institute of Medical Sciences (for short KIMS) is a recognized medical college. It is entitled to admit 100 students every year to the MBBS course.

4. For the academic year 2014-15, it was granted permission to admit an additional 50 students over and above the 100 students that was already its entitlement.

5. KIMS was desirous of granting admission to 100 plus 50 students for the academic year 2015-16. With a view to ensure that adequate facilities were available for the increased number of students, an inspection was required to be carried out by the Medical Council of India (for short 'the MCI') in accordance with the Medical Council of India Establishment of Medical College Regulations, 1999.

6. Consequently, an inspection was carried out on 27th and 28th January, 2015 by an Inspection Team of the MCI which revealed quite a sorry state of affairs. A large number of serious deficiencies were pointed out by the Inspection Team and communicated to the MCI.

Thereafter, in a communication sent by the MCI to the Dean Principal of KIMS on 31st January, 2015 the deficiencies were indicated and KIMS was informed that a show cause notice was proposed to be issued for withdrawal of recognition of the courses run by it. Be that as it may, the MCI took a decision recommending to the Central Government through the Ministry of Health and Family Welfare (Department of Health and Family Welfare) to deny permission to KIMS to add 50 additional seats for the MBBS for the academic year 2015-16.

7. We enquired from learned counsel for the MCI the procedure for carrying out an inspection. Our attention was drawn by learned counsel to Page 'J' of the appeal paper- book wherein it is stated (and not denied) that an inspection is conducted by a team of three neutral Professors. Of these, one is a coordinator and the other two are taken from an approved list of eminent medical Professors from reputed Government institutions only. Some of the institutions mentioned are the All India Institute of Medical Sciences, Post Graduate Institute, Chandigarh, Maulana Azad Medical College (Delhi), Safdarjung College (Delhi), Medical College (Kolkata), Madras Medical College (Chennai), Osmania Medical College (Hyderabad), Grant Medical College (Mumbai), G.S. Medical College (Mumbai), Bangalore Medical College (Bengaluru) etc. There is therefore no doubt that not only are the medical colleges highly reputed but it is also stated that the Professors from these colleges are eminent medical Professors randomly selected by computer software from a list of coordinators and inspectors.

8. Our attention was also drawn to the decision of this Court in *Manohar Lal Sharma v. Medical Council of India*¹ wherein it was held that since the inspection is taken by “doctors of unquestionable integrity and reputation, who are experts in the field, there is no reason to discard the report of such an inspection.” In the present appeal, there is no allegation made by KIMS of any mala fides of the Inspection Team or any perversity in the inspection report and hence there is no question of challenging the conclusions of a neutral, randomly selected Inspection Team in its assessment.

9. As mentioned above, the inspection report and the decision of the MCI were communicated to the Central Government. On a consideration of the material made available, the Central Government sent a communication dated 15th June, 2015 to the Dean Principal of KIMS directing the institute NOT to admit any students in the second batch of MBBS course against the increased intake from 100 to 150 seats for the academic year 2015-16. The text of the letter sent by the Central Government to the Dean Principal of KIMS on 15th June, 2015 reads as follows:

“I am directed to refer to MCI letter (s) dated 01.04.2015 thereby recommending to the Central Government not to renew the permission for admission of 2nd batch of MBBS course against increased intake i.e. from 100-150 seats Kalinga Institute of Medical Sciences, Bhubaneswar for the academic year 2015-16 and to say that the Central Government has decided to accept the recommendations of MCI.

2. You are therefore directed NOT to admit any student in 2nd batch of MBBS course against increased intake i.e. from 100-150 seats for the academic year 2015-16. Admission in next batch of students against increased intake for the year 2016-17 will be made only after obtaining the Central Government Permission.

3. Any admission made in this regard will be treated as irregular and action will be initiated as per the provisions of IMC, Act, 1956 and Regulations made thereunder.

4. Further, the MCI has also informed to apply Clause 8(3)(1) (c) & (d) of Establishment of Medical College Regulation (amendment), 2010.”

10. Feeling aggrieved by the adverse decision, KIMS preferred a writ petition in the High Court of Orissa being W.P. (C) No.15685 of 2015. The writ petition was taken up for consideration on 14 th September, 2015 when the direction dated 15th June, 2015 passed by the Central Government was set aside on the ground that no hearing was given to KIMS before that order was passed. The High Court then directed KIMS to appear before the Secretary to the Government of India in the Department of Health and Family Welfare or any other authorized officer on 18 th September, 2015 with all documentary evidence. The said officer was directed to hear KIMS, consider the compliance reports of KIMS and the views of the MCI and then pass necessary orders.

11. In obedience to the order passed by the High Court a hearing was given to KIMS by a Hearing Committee. Thereafter, the Central Government passed an order on 24th September, 2015 which observed as follows:

“The college was earlier given hearing on 12.03.2015. The compliance submitted by the college is same as the last time. Though the college claims to have rectified the deficiencies, it can only be verified through physical assessment by MCI. The deficiencies are non-cond.onable. The documents alone submitted by the college do not sufficiently inspire confidence as to rectification of the deficiencies. Therefore, this Committee has considered the assessment report of the MCI assessors dated 27th and 28th January, 2015 and the compliance report submitted by the representatives of the college and decided that the Ministry may accept recommendation of MCI.”

12. On a consideration of the order passed by the High Court and the recommendations of the MCI, the Central Government decided not to renew the permission for admitting the second batch of MBBS students against the increased intake that is from 100 to 150 for the academic year 2015-16 at KIMS.

13. The writ petition was then taken up for consideration by the High Court on 25th September, 2015. The High Court considered the facts of the case and placed reliance on *Rajiv Memorial Academic Welfare Society v. Union of India*² (which appeal was decided in the circumstances of the case and was not a general direction) and a decision of the Kerala High Court and directed, inter alia, that the Central Government shall grant provisional permission to KIMS to conduct the course for the additional 50 students in the academic year

2015-16. While giving this direction, the High Court noted that admission to the MBBS course was required to be completed by 30th September, 2015. The High Court made it clear that this interim order would be subject to further orders passed in the writ petition and it was also made clear that neither KIMS nor any of the students would claim any equity on the basis of the approval permission granted by virtue of the orders of the High Court.

14. Pursuant to the mandatory direction given by the High Court, the Ministry of Health and Family Welfare passed an order on 28th September, 2015 granting provisional permission to KIMS to conduct the MBBS course for the second batch against the increased intake from 100 to 150 MBBS seats for the academic year 2015-16 subject to certain conditions. One of the conditions was to the effect that KIMS would make it clear to the students who are admitted that their admission is subject to the result of the writ petition. Consequent upon this decision, KIMS admitted 50 students to the MBBS course for the academic year 2015-16. These students are represented before us in this appeal and have been heard.

15. At this stage, it may be mentioned that against the interim order dated 25th September, 2015 passed by the High Court, the MCI preferred a petition in this Court which came up for consideration on 13th October, 2015. In that petition being SLP (C) No. 28312 of 2015, special leave to appeal was granted and the order passed by the High Court on 25th September, 2015 was stayed and status quo as on the date on which the impugned order was passed (25 th September, 2015) was directed to be maintained.

16. Be that as it may, when the appeal filed by MCI came up for consideration on 4th November, 2015 it was directed that the High Court should endeavour to hear the pending writ petition expeditiously. It was also directed that the interim order earlier passed on 13th October, 2015 would continue till the High Court decided the writ petition.

17. When the writ petition was again taken up by the High Court, an amendment application was filed by KIMS and the amendment allowed. It is not necessary to go into the details of the amendment since that has no bearing in this appeal.

18. In any event, when the writ petition was taken up for expedited consideration by the High Court on 3rd December, 2015 it was noted that 50 students had already been admitted by KIMS pursuant to the directions given by High Court on 25th September, 2015 and the provisional permission granted by the Central Government on 28th September, 2015. The admission was of course subject to the outcome of the writ petition. The High Court then directed that necessary affidavits be filed and in the meanwhile MCI was directed to constitute a fresh Inspection Team to inspect KIMS and to check up the purported compliance claimed by KIMS of the deficiencies pointed out in the earlier inspection. It was further directed that the Directorate of Medical Education and Training, Government of Odisha would also participate in the inspection and the report be submitted on or before 23rd December, 2015.

19. Feeling aggrieved by the order passed by the High Court on 3rd December, 2015 requiring the Directorate of Medical Education and Training, Odisha to be a part of the

Inspection Team, the MCI preferred a petition in this Court being SLP (C) No.34856 of 2015. Special leave was granted and by an order dated 16th December, 2015 it was made clear by this Court that the Directorate of Medical Education and Training, Odisha shall not participate in the inspection.

20. There appears to have been some dispute in this Court (which was not resolved) with regard to the academic year for which the fresh inspection was required to be carried out. According to learned counsel for the MCI the inspection was to be carried out for 2016-17 while this was opposed by learned counsel appearing for KIMS. This Court however did not record anything in this regard one way or the other.

21. A fresh inspection was in fact carried out by MCI on 7th and 8th January, 2016 and the Inspection Team once again found a very large number of deficiencies in the facilities available at KIMS. The report of the Inspection Team and the consequent resolution of the MCI were communicated to the Central Government to the effect that the Central Government should not renew permission for admission of the 3rd batch of MBBS students against the increased intake from 100 to 150 seats for the academic year 2016-17.

22. Thereafter, the pending writ petition was taken up for hearing by the High Court on 17th February, 2016 and the impugned judgment and order delivered on 4th March, 2016.

23. A perusal of the decision of the High Court clearly indicates that it considered the latest report of the Inspection Team as if it was hearing an appeal against the report. In doing so, the High Court went into great details on issues relating to the number of teaching beds in the hospital, the limitations in the OPD Department, the number of units available in the subjects of General Medicine, Pediatrics etc., bed occupancy, number of Caesarean sections, discrepancy in data of major and minor operations, computerization in the institution, number of patients in the ICU, number of static X-ray machines, deficiency of examination halls, lecture theatres, library, students hostel, interns hostel, playground etc. etc. Surely, this was not within the domain of the High Court in exercise of its jurisdiction under Article 226 of the Constitution.

24. The High Court did not appreciate that the inspection was carried out by eminent Professors from reputed medical institutions who were experts in the field and the best persons to give an unbiased report on the facilities in KIMS. The High Court under Article 226 of the Constitution was certainly not tasked to minutely examine the contents of the inspection report and weigh them against the objections of KIMS in respect of each of its 18 items. In our opinion, the High Court plainly exceeded its jurisdiction in this regard in venturing into seriously disputed factual issues.

25. Learned counsels for KIMS and the students submitted that the High Court was left with no option but to critically examine the report of the Inspection Team since it was factually erroneous and did not deserve to be relied on either for the increase in intake of seats for the academic year 2015-16 or the academic year 2016-17. We see no reason to accept the submission of learned counsels.

26. Medical education must be taken very seriously and when an expert body certifies that the facilities in a medical college are inadequate, the Courts are not equipped to take a different view in the matter except for very cogent jurisdictional reasons such as mala fides of the Inspection Team, ex facie perversity in the inspection report, jurisdictional error on the part of the MCI etc. Under no circumstance should the High Court examine the report as an appellate body - this is simply not the function of the High Court. In the present case there was no ground made out at law for setting aside the report of the Inspection Team.

27. The High Court was of opinion that the Inspection Team was required to conduct the inspection with reference to the academic year 2015-16 but the report pertains to the academic year 2016-2017. If that was so, the High Court could have passed an appropriate order in this regard rather than examine and scrutinize the inspection report prepared for the academic year 2016-17 which academic year was not at all the subject matter of consideration or discussion before it. Moreover, invalidation of the inspection report for the academic year 2016-17 would not automatically invalidate the inspection report for the academic year 2015-16. Unfortunately, the High Court spent its energy on adjudicating a non-issue.

28. It appears to us that both the MCI and the Central Government each having twice considered the inspection report submitted by neutral medical Professors, with the Central Government having given a personal hearing to KIMS on the second occasion (and perhaps on the first occasion as well) the matter ought to have been given a quietus by the High Court at least for the academic year 2015-16.

29. That apart, we are of opinion that the High Court ought to have been more circumspect in directing the admission of students by its order dated 25th September, 2015. There was no need for the High Court to rush into an area that the MCI feared to tread. Granting admission to students in an educational institution when there is a serious doubt whether admission should at all be granted is not a matter to be taken lightly. First of all the career of a student is involved - what would a student do if his admission is found to be illegal or is quashed? Is it not a huge waste of time for him or her? Is it enough to say that the student will not claim any equity in his or her favour? Is it enough for student to be told that his or her admission is subject to the outcome of a pending litigation? These are all questions that arise and for which there is no easy answer. Generally speaking, it is better to err on the side of caution and deny admission to a student rather than have the sword of Damocles hanging over him or her. There would at least be some certainty.

30. Whichever way the matter is looked at, we find no justification for the orders passed by the High Court particularly the order dated 25th September, 2015 and the order dated 4th March, 2016.

31. It was submitted by the learned counsel for the KIMS that the Central Government has decided to accept the decision of the High Court and it has in fact issued an order dated 26th April, 2016 virtually to this effect. We have gone through the order dated 26th April, 2016

and find that the permission granted to continue with the studies of the students for the academic year 2015-16 is subject to the orders passed by this Court in this appeal. Since we are allowing the appeal and setting aside the order passed by the High Court, the order dated 26th April, 2016 passed by the Central Government is of no consequence and does not come to the aid of KIMS or the students.

32. Learned counsel for KIMS and the students contended that unless this appeal is dismissed it will result in the students suffering a loss of two years of their studies. This may be so - but if such a situation has come to pass, KIMS is entirely to be blamed. KIMS was specifically told not to admit students by the Central Government in its letter dated 15th June, 2015. Despite this KIMS persisted in litigation to somehow or the other accommodate 50 additional students. This was certainly not with a charitable motive. As an institution that should have some responsibility towards the welfare of the students, it would have been far more appropriate for KIMS to have refrained from giving admission to 50 additional students rather than being instrumental in jeopardizing their career.

33. However, for the fault of KIMS, the students should not suffer nor should KIMS get away scot free. KIMS must pay for its inability to introspect and venture into adventurist litigation. Accordingly, we direct as follows:

“1. The admission granted to the 50 students pursuant to the order of the High Court dated 25th September, 2015 and the provisional permission granted by the Central Government only on 28th September, 2015 shall not be disturbed. How the students will complete their course of studies without putting undue pressure on them is entirely for the MCI and KIMS and other concerned authorities to decide.

2. Costs of Rs. 5 crores are imposed on KIMS for playing with the future of its students and the mess that it has created for them. The amount will be deposited by KIMS in the Registry of this Court within six weeks from today. The amount of Rs. 5 crores so deposited towards costs shall not be recovered in any manner from any student or adjusted against the fees or provision of facilities for students of any present or subsequent batches.

3. KIMS is restrained from increasing the intake of students from 100 students to 150 students for the MBBS course for the academic year 2016-17 and 2017-2018. The MCI and the Central Government shall enforce strict compliance of this direction.

4. The MCI or the Central Government will proceed to take action against KIMS (if deemed advisable) under Clause 8(3) of the Medical Council of India Establishment of Medical College Regulations, 1999 (as amended) as mentioned in the communication of 15th June, 2015 of the Central Government.

5. During the hearing of the appeal, we were informed that there is no fixed, set or laid down procedure prepared by the MCI for conducting an inspection or assessment as postulated by the Medical Council of India Establishment of Medical College

Regulations, 1999. Rather than every Inspection Team following its own procedure for conducting an assessment, the MCI should in consultation with the Central Government prepare a Standard Operating Procedure for conducting an inspection as required by the Medical Council of India Establishment of Medical College Regulations, 1999. The Standard Operating Procedure should be finalized within a period of six weeks from today and should be accessible on the website of the MCI.

6. To introduce transparency and accountability in the medical colleges, the report or assessment of the Inspection Team should be put up on the website of the concerned medical college as also on the website of the MCI so that potential students are aware of what is likely to be in store for them. Similarly, the decision of the Central Government on the report should be put up on the website of the concerned medical college as also on the website of the MCI.

34. To ensure compliance of Directions 2 and 5 and for an update on Directions 4 and 6 list the appeal in the first week of July 2016.

35. The appeal is disposed of on the above terms.

Judgment Referred.

¹(2013) 11 SCALE 0294

²W.P.(Civil)No.7424/2015