

# SUPREME COURT OF INDIA

Saraswati Educational Charitable Trust

Vs.

Union of India

WP(Civil)No.515 of 2017

(Dipak Misra,CJI., A.M. Khanwilkar and Dr.D.Y.Chandrachud,JJ.,)

01.09.2017

## JUDGMENT

**A.M. Khanwilkar,J.,**

1. The petitioner Saraswati Educational Charitable Trust, Lucknow, made an application to the Ministry of Health & Family Welfare, Government of India, for establishment of a new medical college at Unnao, Uttar Pradesh, in the name and style of “Saraswati Medical College, Unnao, Uttar Pradesh”, for the academic session 2016-17. That application was forwarded to the Medical Council of India for evaluation and making recommendations to the Ministry under Section 10A of the Indian Medical Council Act, 1956, for academic session 2016-17.

2. The petitioners have filed this writ petition under Article 32 of the Constitution of India assailing the order dated 31st May, 2017, passed by the Union of India, respondent No.1 herein, whereby the petitioner college has been debarred from admitting students in MBBS course for the academic sessions 2017-18 and 2018-19 and further permitting respondent No.2 Medical Council of India to encash Bank Guarantee of Rs.2 crores furnished by the petitioners. This Court pronounced its judgment on 1st August, 2017 in group of cases involving similar issues, in the following terms:

“24. Having regard to the fact that the Oversight Committee has been constituted by this Court and is also empowered to oversee all statutory functions under the Act, and further all policy decisions of the MCI would require its approval, its recommendations, to 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 the 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 of this direction to meet the time frame fixed. ”

3. Pursuant to the liberty granted to the petitioners by the aforementioned order, the petitioners submitted a fresh detailed representation to respondent No.1, pointing out that the petitioners have complied with all the conditions specified by the Oversight Committee (“OC” for short) constituted by this Court, as noted in the letter granting permission for academic session 2016-17. The petitioner college was given an opportunity of being heard by the Hearing Committee on 3rd August, 2017. During the hearing, the petitioners pointed out the observations made by the OC as noted in its letter dated 14.5.2017:

“The EC did not bring out any deficiency either from assessment reports dated 18th - 19th Nov. 2016 or 21st - 22nd Dec. 2016, though they had considered both the reports in their meeting on 13.01.2017. Even then the College had represented against the observations made by the assessors in their assessment report dated 18th -19th Nov. 2016. The deficiencies reported in the assessment report in respect of faculty is 1.5% and residents is 6.52% and are within acceptable limits. The other deficiencies are subjective. No MSR. LOP Confirmed.”

4. The petitioners had demonstrated before the Hearing Committee that the deficiencies noticed earlier were insignificant and within the permissible norms. With regard to the core matters, regarding infrastructure and academics, all facilities required as per norms were fulfilled by the petitioner college.

5. The Hearing Committee, after considering the records and oral and written submissions of the petitioner college, submitted its report to the Ministry for consideration. The Competent Authority of the Government of India accepted the recommendations of the Hearing Committee, not to permit admission of students in the MBBS course for the academic session 2017-18 and that the petitioner college should apply afresh for renewal of permission for academic session 2018-19 as per MCI Regulations. The reason which weighed with the Competent Authority of the Government of India can be discerned from paragraphs 17 and 18 of the impugned Communication-cum-Order dated 10th August, 2017, issued under the signature of the Under Secretary to the Government of India. The same read thus:

“17. Now, in compliance with the above direction the Hon’ble Supreme Court dated 1.8.2017, the Ministry granted hearing to the college on 03.08.2017. The Hearing Committee after considering the records and oral and written submission of

the college submitted its reports to the Ministry. The observation of hearing committee is as under:

The college submitted that MCI conducted compliance verification as per OC orders on 18-19 November 2016. However, without assigning any reason, MCI visited the college again on 21 December, 2016 to re-inspect. In the submission of the college, since MCI was required to conduct compliance verification only once for confirmation of LOP for 2016-17, it did not allow the 2nd inspection to happen. The college representatives also informed that on the day i.e. 21.12.2016 they contacted OC over telephone. It was informed by OC that MCI was authorized for only one inspection. The college was asked if they obtained the same confirmation from OC in writing to which they replied in the negative. After the November inspection the college vide letter dated 20.11.2016 raised its objection with the OC that they were not allowed to put the dissent note by the assessor and this was prejudicial to the college. They also informed the OC about the date for major and minor surgeries with photo and video proofs. They also submitted other information pertaining to OPD, investigations to the OC. It is also seen from November SAF report that there was faculty deficiency of 1.5% only and residents deficiency of 6.52%. The college did not submit any compliance since as per its version neither MCI nor OC conveyed any deficiency to it. In the opinion of the Committee, MCI was not precluded from conducting inspection subject to sufficient reason and justification. But no adverse comments such as the college/hospital was closed has been made by the assessor during the 2nd visit to the college. The November inspection had no major deficiencies. In the peculiar facts of the case, the Committee recommends that LOP for 2016-17 may be confirmed. No fresh batch for 2017-18 may be allowed. For the session 2018-19, the college may apply for renewal permission to MCI.

18. Accepting the recommendations of the Hearing Committee, the Ministry confirms the conditional permission granted to the College in 2016-17. Further, it has been decided not to permit admission of students in MBBS courses for the academic session 2017-18 at the College. The College may apply afresh for renewal of permission for the academic session 2018-19 as per MCI Regulation.

19. Admission made in violation of above conditions will be treated as irregular and action will be taken as per provision of IMC Act, 1956 and the Regulations made there under.”

(emphasis supplied)

6. Being aggrieved by this decision the petitioners have filed I.A. No.76155 of 2017 in the pending writ petition before this court praying for quashing the aforementioned order dated 10th August, 2017, to direct the respondents to grant renewal of permission for 2 nd year and to permit the petitioner college to admit 150 students in MBBS course for the academic session 2017-18 and further, allow the petitioner college to participate in the ongoing central counselling process.

7. According to the learned counsel for the petitioners, the petitioners were advised that second inspection was not permissible after 15th December, 2016. The petitioners, therefore, questioned the necessity for the second inspection by the Assessing Team on 21st and 22nd December, 2016. Inspection was already completed in November, 2016, during which no major or serious deficiency was found. From the available record, as has been rightly noted by the OC, the deficiencies reported in the Assessment Report in respect of faculty were 1.5% and residents 6.52% which were within acceptable limits and the other deficiencies were subjective sans any express stipulation therefor. It was submitted that the petitioners are willing to comply with all the formalities that may be necessary and further conditions, if any. The petitioners are willing to provide inspection of the college to MCI if the Court so directs. It is submitted that considering the fact that the petitioner college has already started functioning from academic session 2016-17 and fulfills all the infrastructure and academic facilities, it ought to continue by confirming the LOP 2016-17, and admitting students even for the academic session 2017-18. The petitioners have placed emphasis on the observation made by the Competent Authority that in the Inspection carried out in November, 2016, no major deficiency has been noticed, which itself is a valid reason to permit the petitioner college to admit students in MBBS course even for academic session 2017-18.

8. According to the respondents, the inspection conducted in November, 2016 will be of no avail to the petitioner college. For granting permission to the petitioner college to admit students for academic session 2017-18, a fresh inspection was inevitable. There has been no inspection in that regard as of now. Hence, the relief as claimed by the petitioner college cannot be acceded to. It is submitted that since the petitioners were responsible for not providing second inspection, it is not open to them to find fault with the decision of the Competent Authority of the Government of India. It is submitted that no permission can be granted to any professional college, much less medical college imparting MBBS course, without proper scrutiny and inspection. According to the respondents, this writ petition as well as the application are devoid of merits and deserve to be dismissed.

9. Having considered the rival submissions, it is noticed that the OC in its communication dated 14.5.2017 has clearly noted that there was no major deficiency. The deficiencies reported in the assessment report in respect of faculty were only 1.5 % and residents 6.52 %. These were within the acceptable limits. The petitioner college has been functioning from academic session 2016-17. Even the Competent Authority in the impugned decision has not opined that the deficiencies noticed earlier were significant or critical. On the other hand, in paragraph 17, the Competent Authority has plainly noted that the November SAF Report mentions that there was faculty deficiency of 1.5% and residents deficiency of 6.52% only. Such deficiencies by no standard can be said to be critical. The same, as rightly observed by the OC, were within permissible limits.

10. On a perusal of the record it is noticed that the Assessors of the MCI had inspected the college on 18 th and 19th November, 2016, as is evident from the Assessment Form for 150 MBBS Admissions Report submitted to the MCI, running into 36 pages (Annexure-P/12) to this writ petition. The Summary of Assessment recorded in the prescribed format reads thus:

“Summary of Assessment

1. Saraswati Medical College, Unnao is run by Trust ‘Saraswati Educational Charitable Trust’

2. The college has got LOP from GOI with intake of 150 seats for last academic year 2016-17 with reference to the conditional approval accorded by Oversight Committee

3. Type of assessment: Regular - LOP No. of seats:

4. PG courses : No

5. Deficiency of the infrastructure of college and hospital if any: Pl. Mention category wise:

6. Deficiency of clinical material if any: Pl mention category wise:

Only one major operation (C-section) wa.s done till 12.30 pm. No minor surgeries done till 1.00 pm Investigations both Radiological and Laboratory inadequate. Cross verified by assessors. On an average only 1 unit of blood being dispensed per day. Total of 7 units were stored on the day of assessment. Most of the OPDs had few patients.

7. Deficiency of teaching staff if any: Shortage of teaching faculty is 1.5 %

8. Deficiency of resident doctors if any:

Shortage of resident doctors is 6.52 %

9. Any other Remarks: As mentioned in the report”

After this assessment report was submitted, another surprise inspection was proposed on 21st December, 2016. Since the said inspection was scheduled after 15th December, 2016, the Principal of the petitioner college questioned the said action and placed the objection on record in writing vide letter dated 21.12.2016 which reads:

“SARASWATI MEDICAL COLLEGE  
LIDA, Madhu Vihar, P.O. Asha Khera, NH-25,  
Lucknow Kanpur Highway,  
Unnao (UP), Pin-209859 Tel: (+91) 515-307000,  
Email: smc@saraswaticolleges.com  
Ref. No. SMC/MCI/2016-17/014

Dated: 21/12/2016

To,  
The Secretary,  
Medical Council of India, New Delhi.

Sub: Surprise Assessment of Saraswati Medical College on 21st December, 2016.

Sir/Madam,

In reference to MCI Letter no.MCI-34(41) (UG)/2017-18Med./dt.21/12/2016 regarding Surprise Assessment of Saraswati Medical College, Unnao on 21st December, 2016. I have to submit the following,

- 1.Compliance Assessment & Verification of Physical and other facilities of Saraswati Medical College, Unnao, as per the direction of the OC, has already been conducted by MCI on 18th & 19th November, 2016 vide letter no.MCI-34(41)/2016 - Med./dt.18/11/2016.
2. MCI vide letter no. MCI-34(41)(R-107)/2016- Med./142566 dt. 08/11/2016 has informed the college that assessment Inspection will be held upto 15th December 2016 only.
3. LOP has already been granted to the College by the Ministry of Health and Family Welfare and per direction of the OC an inspection verifying our compliance has already been undertaken by the MCI on 18th & 19th Nov., 2016. Since the OC has given no further direction for re-inspection of the Compliance Inspection held by MCI on 18th & 19th Nov., 2016 and since the MCI has categorically communicated to the college that inspection will be carried out only upto 15th December, 2016, the college does not see any merit to undergo any further Compliance inspection for the session 2016-17, hence denied the inspection on 21st December, 2016 BY THE MCI team.

Regards,

SD/-

Prof. B.P. MATHUR Principal”

It is noticed that the inspecting team did not insist on the second inspection and chose to leave the college on account of the stand taken by the Principal of the petitioner college. That fact was reported to the MCI and the Executive Committee of the MCI considered the proposal in its meeting held on 13th January, 2017 and noted as follows:

“...The Executive Committee of the Council also perused the letter dated 21/12/2016 from the appointed team of Council Assessors stating therein as under:- With reference to email letter no. MCI-34(41)/2016-Med./dated 21.12.2016 for the above cited subject, we went to the college and reached there at 10 am and met the Principal, Dr. B.P. Mathur who informed us that they did not want the assessment to be done and gave a letter stating the same. The letter from the Principal is attached along with the filled SAII form.”

The Committee further perused the letter dated 21/12/2016 from the Principal, Saraswati Medical College, Unnao. The Committee submitted its recommendation to MCI vide letter dated 15.01.2017 as under:-

“In view of the above, the college has failed to abide by the undertaking it had given to the Central Govt. that there are no deficiencies as per clause 3.2(i) of the directions passed by the Supreme Court mandated Oversight Committee vide communication dated 11/08/2016. The Executive Committee, after due deliberation and discussion, have decided that the college has failed to comply with the stipulation laid down by the Oversight Committee. Accordingly, the Executive Committee recommends that as per the directions passed by Oversight Committee in para 3.2(b) vide communication dated 11/08/2016 the college should be debarred from admitting students in the above course for a period of two academic years i.e. 2017-18 & 2018-19 as even after giving an undertaking that they have fulfilled the entire infrastructure for establishment of new medical college at Unnao, Uttar Pradesh by Saraswati Educational Charitable Trust, Lucknow, Uttar Pra,desh under Chhatra.pati Shahuji Maharaj University, Kanpur, the college was found to be grossly deficient. It has also been decided by the Executive Committee that the Bank Guarantee furnished by the college in pursuance of the directives passed by the Oversight Committee as well as GOI letter dated 20/08/2016 is liable to be encashed.”

11. On the basis of the recommendation of the MCI, the Ministry decided to grant a personal hearing to the college on 8th February, 2017 by the DGHS. The Hearing Committee after examining the oral and written submissions of the college, submitted its report to the Ministry. The report of the Hearing Committee was forwarded to the OC for guidance. The OC after examining the matter, vide letter dated 14th May, 2017 noted that the Executive Committee of MCI did not point out any deficiency from the assessment reports. On the other hand, the deficiency reported in the assessment report in respect of faculty was only 1.5% and residents of 6.52% which was within the acceptable norms. The OC further noted that the rest of the deficiencies were subjective sans any express stipulation in that behalf and therefore commended confirmation of Letter of Permission.

12. Considering the above, we find that the inspection for issuance of Letter of Permission for academic session 2017-18 was duly carried out on 18 and 19th November, 2016. We reject the contention raised by the respondents that no inspection in relation to academic session 2017-18 has been carried out as of now. Indeed, the petitioners objected to the second surprise inspection intended on 21st and 22nd December, 2016 as the same was after the cut off date 15th December, 2016. The purpose for which the second surprise inspection became necessary, when the earlier report was pending consideration and that too after the cut off date 15th December, 2016, has not been explained or noted either by the Executive Committee in its meeting held on 13 th January, 2017 or for that matter by the Hearing Committee and more so by the Competent Authority of the Central Government. Significantly, it is not a case where the college officials prevented the inspecting team from entering the college. The petitioner college only placed their objection on record as per the advice given to them that such inspection by the MCI after the cut off date was not

permissible. The inspecting team chose to leave the college without doing any inspection. The Competent Authority, however, mechanically acted upon the recommendation of the MCI to debar the petitioner college for two years and authorised the MCI to encash the Bank Guarantee of Rs.2 crores vide order dated 31st May, 2017.

13. The said order dated 31st May, 2017, passed by the Ministry has been assailed in the present writ petition. As noted earlier, the writ petition was heard along with the connected cases on 1st August, 2017 on which date this Court directed the Central Government to reconsider the matter afresh and record reasons. Pursuant to the said directions, the petitioners submitted representation before the Central Government and also participated in the hearing before the Hearing Committee on 3rd August, 2017. The Hearing Committee without reference to the relevant matters, once again reiterated the position taken earlier, that the petitioner college did not permit second inspection to happen. Neither the purpose of second inspection has been elaborated nor any justification has been given by the Hearing Committee as to why the second inspection was required and moreso when the first inspection was done about a month earlier. The Central Government has mechanically accepted the recommendation of the Hearing Committee and has passed the impugned decision on 10th August, 2017, as can be discerned from the observations in paragraphs 17 and 18 of the impugned decision.

14. We have no hesitation in taking the view that the Hearing Committee as well as the Central Government have failed to consider all the relevant aspects of the matter and the conclusion reached by the said authorities is, on the face of it, without application of mind, if not perverse. We are conscious of the fact that there is nothing in the Regulations which expressly or for that matter by implication prohibits the MCI from undertaking multiple inspections. However, when that action is questioned, it is expected that the MCI must offer some justification for the second surprise inspection when its Assessors had already carried out that exercise recently on 18th and 19th November, 2016 and submitted an elaborate report running into 36 pages in the prescribed format in that regard (Annexure-P/12). The Hearing Committee as well as the Competent Authority of the Central Government were expected to examine this aspect of the matter before taking any final decision, especially when the inspection report on record did not point out any deficiency except the marginal deficiency of faculty of 1.5% and residents of 6.52% which were obviously within the permissible norms.

15. The question is: whether this approach of the Competent Authority can be an impediment for consideration of prayer to allow the petitioner college to admit students in MBBS course for academic session 2017-18? Notably, the Competent Authority has already confirmed the conditional permission granted to the college for the academic session 2016-17 but has not permitted the petitioner college to admit students in MBBS course for the academic session 2017-18. Further, the impugned decision even if read as a whole nowhere mentions the cause for the second inspection when only one month back on 18th and 19th November, 2016 a proper inspection was done and a comprehensive report was submitted in that regard in the prescribed format and which was pending consideration before the MCI. The argument now raised by the respondents that the petitioners having objected to second

inspection are not entitled for the relief, therefore, does not commend us. Considering the fact that the petitioner college fulfills the infrastructure and academic requirements and has already become functional from academic session 2016-17, by admitting the first batch of students in MBBS course and as even the Competent Authority has noticed that there are no major deficiencies, in the larger public interest, we allow this petition and the application filed by the petitioners. We are also inclined to issue further directions to the respondents as have been issued in the judgment of Dr. Jagat Narain Subharti Charitable Trust and Anr. vs. Union of India and Ors., delivered on 30th August, 2017.

16. We, accordingly, quash and set aside the impugned decision to the extent it bars the petitioners to admit upto 150 students in the academic session 2017-18. Instead, we direct the respondents to permit the petitioner college to take part in the current year counselling process. The cut-off date for completing the admissions in respect of the petitioner college, however, is extended till 5th September, 2017. The respondents shall forthwith make available students willing to take admission in the petitioner college through central counselling in order of their merit. This direction is being issued in exercise of plenary powers of this Court under Article 142 of the Constitution of India, in the peculiar facts of the present case to do complete justice and in larger public interest, so that the aspiring students who have not been admitted to the 1st year MBBS course for the academic session 2017-18, in order of their merit in NEET examination, will get opportunity to be admitted in the petitioner college. At the same time we make it clear that the MCI or the Competent Authority of the Central Government is free to inspect the petitioner college as and when deemed fit and, if any deficiency is found after giving opportunity to the petitioner college, may suitably proceed against the college in accordance with law. This arrangement will subserve the ends of justice.

17. No order as to costs.