

SUPREME COURT OF INDIA

Shri Venkateshwara University through its Registrar

Vs.

Union of India

WP(Civil)No.445 of 2017

(Dipak Misra,CJI., Amitava Roy and A.M.Khanwilkar,JJ.,)

01.09.2017

JUDGMENT

Dipak Misra,CJI.,

In this writ petition preferred under Article 32 of the Constitution of India, the petitioner-University and its functionary have prayed for issue of a direction for quashment of the order dated 31st May, 2017, contained in letter No.U-12012/ 27/2016-ME-I [3084749] debarring the petitioners from admitting the students in MBBS course for academic sessions 2017-2018 and 2018-2019 and authorizing the respondent No.2, the Medical Council of India (MCI) not to encash the bank guarantee furnished by the petitioners to the MCI and further to issue writ of mandamus or any other direction in the nature of mandamus directing the respondents to grant renewal of permission for academic year 2017-2018 and further to admit the students in the said academic session.

2. The assertions made in the writ petition and the documents annexed thereto exhibit the history of litigation which, we are inclined to think, has a different colour. Suffice it to note that for the academic session 2016-2017, the MCI had inspected the Institution and found certain deficiencies. The summary of assessment, which was submitted by a team of four doctors on 12th November, 2016, has been brought on record. Paragraphs 9, 10, 11 and 12 of the said summary of assessment read as follows:-

“9. Any other remarks: Most of the faculty as well as resident doctors has joined this institute in last one & half month prior to the inspection. It is not known or could not be verified whether those faculties were considered by MCI in the same academic year where they were previously working or whether these faculty is appointed on permanent basis or temporarily. Most of them did not have permanent address proof. Patients in the ward were admitted with very vague complains which did not require admission, like pain abdomen, itching, cough mild fever, joint pains, irritation in the eyes, low back pains. In some wards both Male and female patients were admitted in

the same ward (Like Psychiatry). In pediatrics patients above age of 14 were admitted with vague/no complain.

10. No patients were in labor. No Lscs, No Normal Delivery on the date of inspection.

11. Only one major surgery on the day of inspection (Open cholecystectomy) & One minor (D & C).

12. College website does not show names of all the faculty members (Like only one name appears on website out of five present in Pharmacology.)”

3. We are not referring to other aspects of the summary of assessment, as the deficiencies pointed out are within the permissible limit. Be it noted, the deficiencies which are noted earlier were by the inspecting team, and the Oversight Committee constituted by this Court accepted the explanation offered by the University and imposed certain conditions and recommended for grant of Letter of Permission and eventually the same was granted by the Central Government for the year 2016-17.

4. After the inspection that was conducted on 11th and 12th of November, 2016, another inspection took place on 9th December, 2016. The team of the assessors vide letter dated 9th December, 2016, has communicated to the MCI, which reads as follows:-

“We reached the Dean's office. The Dean was present in his office. However, he left his chamber immediately and was not to be seen for next 15 minutes. Whereafter he returned to inform us his refusal to allow us to conduct the MCI assessment today even after presenting MCI order to conduct the assessment. He stated that it was a holiday declared by their own university for Eid, which falls 5 days later. It was not national or State or local holiday. He also mentioned that there were no doctors in wards or OPD or Emergency as it was a holiday. When questioned again, regarding the patients' services can also stop on a holiday, he had no answer. He had no answer as to why the Dean and two or three possible officers were working on a holiday, if all the doctors were on a holiday. We then asked him to give his refusal in writing. It took two hours for the Dean to hand over the letter.

In the meantime the assessors went on rounds of campus. There were no patients. There were no doctors in campus. Hostel rooms and wards, OPD had no patients or nurses to be seen. In all ICUs, there were no patients admitted. Casualty area and reception area there were no patients, in laboratory, no patients for giving the samples. Only 10 to 12 cars were patient in the campus. No sign of a running hospital was seen in the entire hospital. Infrastructure looked highly inadequate. All beds were seen to be fresh. We, the assessors' team, wondered how an entire hospital service can take holiday as mentioned in the Dean's reply since a hospital should run on a 24x7 basis for an entire year. The way, the Dean refused for the assessment quoting invalid excuses shows and confirms the non-functioning of the Hospital as well as Medical

College/classes which are self declared holidays from 08.12.2016 to 12.12.2016. The dates looked like tailored dates confirming with the assessment dates as and when the assessment occurred also the letter submitted to the MCI by the College on 08.12.2016 mentions holidays of 10th & 11th December of Saturday and Sunday respectively and Monday 12 for Eid. No mention is found of 9th December as claimed by the Dean in his letter. At the fag end of the process, another letter was submitted to us with some of the key words changed and we were pressurized to include this and replace the first letter. So we are submitting both the letter for your perusal.”

5. On the basis of the assessors report, the MCI vide letter dated 26th December, 2016, recommended to the Ministry as follows:-

“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 the directions passed by the Supreme Court mandated Oversight Committee and communicated vide Ministry of Health & F.W. letter dated 12/09/2016 [para 1(i)]. The Executive Committee, after due deliberation and discussion, has 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 and communicated vide Ministry of Health & F.W. letter dated 12/09/2016 [in para 2(b)], 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 Gajaroula, Dist Amroha, Uttar Pradesh by Shri Venkateshwara University, Meerut (Trust name - Shri Bankey Bihari Educational & Welfare Trust) under Shri Venkateshwara University, Gajroula, Amroha, 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 12/09/2016 is liable to be encashed.”

6. The Ministry granted a personal hearing to the Institution on 17th January, 2017, by the Directorate General of Health Services. The Hearing Committee, after permitting the Institution to file written submissions, eventually, submitted its report to the Ministry. The Ministry forwarded the report of the Hearing Committee to the Oversight Committee for guidance. The Oversight Committee vide letter dated 14th May, 2017, conveyed the following views to the Ministry:-

“EC has not considered the assessment report of assessment carried out on 11th-12th Nov. 2016. As per the assessment report dated 11th - 12th Nov. 2016, there is no deficiency in infrastructure, faculty/residents strength, clinical material and investigation workload that would warrant disapproval of the scheme. There are certain remarks such as : (i) Most of the faculty and resident doctors have joined in last one and a half months prior to inspection. It is not known or could not be verified

whether those faculties were considered by MCI in the same year, where they were previously working or where these faculty were appointed with permanent address proof. There are no remarks given by the College. However, it was the responsibility of the assessment team to verify the above about the faculty.

ii) Patients in the ward were admitted with very vague complaints which did not require admission like pain in abdomen, itching, cough, mild fever, joint pains, irritation in the eyes, low back pains. In some wards, both male and female patients were admitted in the same ward (like Psychiatry). In Paediatrics, patients above the age of 14 were admitted with vague/no complaint.

The remarks about patients are not specific and are general in nature.

iii) No patients were in labor. No LSCS. No Normal delivery on date of assessment. This is a subjective remark without MSR.

iv) Only 1 major & 1 minor surgery on date of assessment. This is a subjective remark without MSR.

v) It is reported in SAF that the College website does not show name of all the faculty members (only 1 name appears on website out of 5 present in Pharmacology). Names of all faculty (including Pharmacology) are shown on website (<http://vimshospital.edu.in/wp-content/uploads/2016/12/Faculty-10-Nov-2016.pdf>).

7. Thereafter, the Union of India passed an order on 31st May, 2017. As the order was an unreasoned one, this Court in *Glocal Medical College and Super Specialty Hospital & Research Centre vs. Union of India & Others*¹ had given certain directions and the present matter was included. The direction given on 1st August, 2017, by this Court reads as follows:-

“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.”

8. In compliance of the aforesaid order, the Ministry granted hearing to the Institution on 3rd August, 2017 and on 10th August, 2017, passed the following order:-

“The college informed that compliance verification was carried out by MCI on 11-12 November, 2016. As per SAF form the deficiency was 1.5% in faculty and 8.6% in residents. The college had declared extended holiday due to Eid and informed MCI on 08.12.2016. But MCI conducted surprise inspection on 09.12.2016. The college did not allow inspection as only one compliance inspection was warranted as per OC orders. It is seen from assessors note that on their visit to the college on 09.12.2016, the campus wore a completely deserted look. There was no sign of a functional hospital. In the opinion of the Committee, MCI was not precluded from conducting inspection subject to sufficient reason and justification. The Committee agrees with the decision of the Ministry conveyed by letter dated 31.05.2017 to debar the college for 2 years and also permit MCI to encash bank guarantee. Accepting the recommendations of the Hearing Committee, the Ministry reiterates its earlier decision dated 31.05.2017 to debar the college from admitting students for a period of two years i.e. 2017-18 and 2018-19 and also to authorize MCI to encash the Bank Guarantee of Rs.2 Crore.”

9. Criticizing the aforesaid order, it is submitted by Mr. Mukul Rohatgi and Mr. Harin P. Raval, learned senior counsel for the petitioners that the order passed by the Union of India is absolutely unjustified, inasmuch as the inspecting team of the MCI could not have conducted a surprise inspection on 9 th December, 2016. However, there is a subsequent amendment to the Medical Council of India Regulations, which clearly states that the MCI shall ensure that such inspections are not carried out at least 2 days before and 2 days after important religious and festivals holidays declared by the Central/State Government. Learned senior counsel would further submit that the controversy is squarely covered by the decision rendered by this Court on 30th August, 2017, in *Kanachur Islamic Education Trust (R) vs. Union of India and Another*².

10. Mr. Maninder Singh, learned Additional Solicitor General supporting the order passed by the Union of India contended that the inspection report clearly spells out the deficiencies in the Institution and if the Letter of Permission is granted, it would be travesty of justice. It is his further submission that the controversy in the instant case is remotely not covered by the decision rendered in *Kanachur Islamic Education Trust (R)* (supra). Additionally, learned Additional Solicitor General would harp upon the fact that the entire exercise has been carried out for the academic session 2016-2017 and not for 2017-2018.

11. To appreciate the controversy in issue, it is necessary to mention that on the basis of the recommendation of the Oversight Committee, the Central Government had granted the Letter of Permission. The Oversight Committee had imposed certain conditions. One such condition was to furnish the bank guarantee amounting to Rs.2 crores and to remove certain deficiencies and file an affidavit of affirmation of removal of deficiencies that was meant for 2016-2017. Though, Mr. Singh, has laid immense stress that the inspection was carried out for 2016-2017, we are not inclined to accept the same. We are disposed to think that the inspection was done for academic session 2017-2018 because we have been apprised in the

course of hearing that the Institution had applied for grant of renewal of permission for the academic session 2017-2018.

12. The thrust of the matter is whether the inspecting team could have inspected on 9th December, 2016. It is worthy to note that the Medical Council of India with the previous sanction of the Central Government had amended the “Establishment of Medical College Regulations 1999” . The amended clause 8(3)(1)(d) reads as follows:-

’ ’ However, the office of the Council shall ensure that such inspections are not carried out at least 2 days before and 2 days after important religious and festival holidays declared by the Central/State Govt.”

13. In Kanachur Islamic Education Trust (R) (supra), while dwelling upon the same, this Court has held:-

“The fact that the petitioner's college/institution is a minority institution and that a major festival for the said community was scheduled on 12.12.2016 and that the day previous thereto i.e. 11.12.2016 was a Sunday, are facts which may not be wholly irrelevant.”

14. Thereafter, the Court has proceeded to state thus:-

“The observation of the Hearing Committee that petitioner’ s college/institution has not explained the deficiency of faculty is belied by its representations and also the observations amongst others of the Oversight Committee. The conclusion that a few residents might have been on leave on account of NEET (PG) examination but not all, also seems to be inferential in the face of exhaustive explanation provided by the petitioner's college/institution. In this context, the observation of the Oversight Committee in its communication dated 14.5.2017 that eight colleges including the petitioner’ s college/institution had been assessed twice in quick succession for the same purpose though not authorized by it in its guidelines, deserves attention. The Hearing Committee seems to have ignored the explanation provided by the Professor and Head of Department of Surgery, explaining the treatment given to the three patients named in clause xii (a) to (c) of the Inspection Report in concluding that, the petitioner's college/institution had not responded thereto. Its deduction that there might have been more instances of multiple entries in the OPD patient statistics based on five such instances is also visibly presumptive. The striking feature of the observations of the Hearing Committee, on the basis of which the impugned decision has been rendered, is the patent omission on its part to consider the relevant materials on record, as mandated by this Court by its order dated 1.8.2017. The findings of the Hearing Committee, in our comprehension, thus stands vitiated by the non-consideration of the representations/ explanations of the petitioner's college /institution, the documents supporting the same, the recommendations/views of the MCI, the observation of the earlier Hearing Committee, DGHS and Oversight

Committee, as available on records. The Central Government as well readily concurred with the observations of the Hearing Committee in passing the impugned order, which per se, in our estimate, is unsustainable in the singular facts and circumstances of the case.”

15. On a careful reading of the aforesaid judgment, we do not think that the clause has been interpreted as not to allow any inspection on a Sunday, but the Court have said in the factual matrix of the said case that the Institution was a minority institution and a major festival for the said community was scheduled on 12th December, 2016 and the day previous thereto i.e. 11th December, 2016, was a Sunday and the said facts are not wholly irrelevant. The said analysis cannot be regarded as the construction of the clause.

16. Having said that, we shall proceed to analyze what the clause precisely conveys. On a careful reading of the same, it is quite clear and unambiguous that the obligation of the MCI is to ensure that inspections are not to be carried out at least 2 days before and 2 days after an important religious and festival holidays declared by the Central/State Government. In the clause, the words which gain significance are “important religious and festival holidays On 12 th December, 2016, it was Milad-un-Nabi and it is the day of festival. The inspection was done on 9th December, 2016, which was a Friday. The amended clause of the notification state only covers 2 days before the festival declared as a holiday by the Central/State Government and 2 days thereafter. In the case at hand, the inspection team had gone for inspection on 9th December, 2016, and they were deprived to carry out the inspection. It was not covered by the concept of two days of moratorium. In such a situation when the Institution does not allow the team of the MCI or the assessors of the MCI, it will be adding premium to deviancy. Conferment of this kind of privilege is absolutely unwarranted. Therefore, the directions sought for grant of renewal of Letter of Permission for the academic session 2017-2018 is not acceptable.

17. Though we have so held, yet we think it appropriate that the students who have been admitted in the Institution for the academic session 2016-2017, shall continue their studies. The MCI shall send the inspecting team to the Institution within a period of two months. After the report is filed, the MCI shall apprise the Institution with regard to the deficiencies and give a date for removal of the same so that the Institution would be in a position to do the needful. We may hasten to add that the inspection that will be carried out and the further follow up action shall be done for the academic session 2018-2019.

18. As we intend to appreciate the inspection report and the deficiencies and the action taken up thereon by the Institution, list the matter on 15 th November, 2017. The renewal application that was submitted for the academic session 2017-2018 may be treated as the application for the academic session 2018-2019. The bank guarantee which has been deposited shall not be encashed and be kept alive.

Judgment Referred.

¹WP(Civil)No.41 of 2017

²WP(Civil) No.468 of 2017