

SUPREME COURT OF INDIA

World College of Medical Sciences Research and Hospital

Vs.

Union of India

WP(Civil)No.514 of 2017

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

05.09.2017

JUDGMENT

A.M.Khanwilkar,J.,

1. The petitioners have filed this writ petition for issuance of a writ of mandamus or any other appropriate writ, for quashing the order passed by respondent No.1 dated 31 May, 2017, debarring the petitioner medical college from admitting students in the MBBS course for the academic sessions 2017-18 and 2018-19 and authorising the respondent No.2 Medical Council of India (for short "MCI") to encash the bank guarantee of Rs.2 crore offered by the petitioners and further, to direct the respondents to grant renewal of permission to the petitioner medical college for the academic session 2017-18 and permit the college to admit students for the current year.

2. One Amma Chandravati Educational and Charitable Trust, New Delhi had applied to respondent No.1, Ministry of Health & Family Welfare, Government of India (for short "MHFW") for permission to establish a medical college at Jhajjar, Haryana in the name and style of 'World College of Medical Sciences & Research, Jhajjar' from the academic session 2016-17 onwards. In light of the opinion of the Oversight Committee (for short "OC") appointed by this Court, the MHFW vide letter/order dated 20th August, 2016, issued a Letter of Permission to the petitioners to establish the medical college, for the academic session 2016-17, subject to certain conditions, including submission of a bank guarantee of Rs.2 crore and inspection to be carried out by the OC for verification of compliance.

3. Thereafter, MCI conducted an assessment on 26th-27th October, 2016 with regard to verification of the conditions stipulated in the Letter of Permission issued on 20th August, 2016 and after considering this assessment report, the Executive Committee of the MCI, in its meeting held on 22nd December, 2016, noted certain deficiencies in the petitioner college. The MCI, vide letter dated 26th December, 2016, submitted its recommendation to the Central Government that the petitioner college should be debarred from admitting students

for two academic sessions i.e. 2017-18 & 2018-19 and that the bank guarantee furnished by the petitioners ought to be encashed. After receipt of the said recommendation, the Director General of Health Services (for short "DGHS") gave a personal hearing to the petitioners on 17th January, 2017 and then submitted its report to the Competent Authority. The relevant portion of the report reads thus:

“12. Whereas the Ministry decided to grant a personal hearing to the College on 17.01.2017 by the DGHS. The Hearing Committee after considering the oral and written submission of the College, submitted its report to the Ministry. In its report, the Hearing Committee remarked as under:

Srl. No.	Deficiencies reported by MCI	Remarks of hearing committee
i.	Deficiency of faculty is 29.23% as detailed in the report.	No satisfactory reply
ii.	Shortage of Residents is 28.26% as detailed in the report.	No satisfactory reply
iii.	Bed Occupancy is 34% on day of assessment.	No satisfactory reply
iv.	There was NIL Normal Delivery & NIL Caesarean Section on day of assessment. There was NIL woman in Labour Room.	No satisfactory reply
v.	ICUs:- There was NIL patient in ICCU & MICU, only 1 in NICU/PICU and only 2 in SICU on day of assessment.	
vi.	Central Library: It is partially air-conditioned. There is no separation of Students' Reading Room (Outside) & Students' Reading room (Inside).	To be verified in medical college
vii.	Anatomy department: There are only 65 mounted specimens	To be verified in medical college”

4. The Competent Authority forwarded the said report to the OC for guidance, which then conveyed its opinion to the MHFW vide letter dated 14th May, 2017, as follows:

“(i)Faculty:- The College has explained the grounds on which the assessors had not accepted the 4 faculty members. Faculty deficiency of 06.18% is within acceptable limits. (11 on leave + 4 not considered being late) Which is acceptable; hence there is no deficiency.

(ii) Residents:- The College has explained the grounds on which the assessors had not accepted the 6 residents. Resident deficiency is 08.69% (3on leave+6 not considered being late) which is acceptable. Hence there is no deficiency.

(iii) Bed Occupancy:- The College has explained the grounds which are acceptable and hence there is no deficiency.

(iv) Deliveries:- This deficiency is subjective. No MSR.

(v) ICUs:- This deficiency is subjective. No MSR.

(vi) Central Library:- Explanation of the College is acceptable.

(vii)Anatomy department:- This deficiency is subjective. No MSR.

LOP Confirmed ”

5. Despite the aforesaid opinion of the OC, confirming that there was no deficiency, respondent No.1 passed an order on 31st May, 2017, whereby it debarred the petitioner medical college from admitting students for two academic sessions i.e. 2017-18 and 2018-19 and also authorised the MCI to encash the bank guarantee offered by the petitioners.

6. Aggrieved, the petitioners filed this writ petition on 3rd July, 2017 and the same was heard along with connected matters involving similar issues, being *Glocal Medical College and Super Speciality Hospital and Research Centre v Union of India & Anr*¹. This Court vide judgment and order dated 1st August, 2017 issued directions to the Competent Authority to reconsider the matter afresh and to record reasons. The relevant portion of the order reads as under:

“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”

In light of the aforesaid order, the petitioners were granted a fresh hearing before respondent No.1 on 3rd August, 2017 during which the petitioners submitted a fresh representation to respondent No.1. Despite the fresh hearing, respondent No.1 issued an order dated 10th August, 2017, confirming its earlier order and rejected the said representation. The relevant portion of the order is enumerated hereunder:

“16. Now, in compliance with the above direction of Hon’ ble Supreme Court dated 01.08.2017, the Ministry granted hearing to the college on 03.08.2017. The Hearing Committee after considering the record and oral & written submission of the college submitted its report to the Ministry. The findings of Hearing Committee are as under: The committee noted that the inspection was conducted on 26th - 27th October, 2016. Diwali was on 29th October. The argument of the college that the inspection was too close to a major national festival cannot be disputed. As per regulations MCI should not conduct inspections two days before or after major festivals. In this case the head count on the first day of inspection on 26.10.2016 was 3 days before Diwali. Further, 10 faculty have been verified by the assessors but were not considered in head count since they came later than the appointed time of 11:00 AM. The college has submitted declaration form for the 27 faculty/residents who were not considered by MCI. The salary slips in respect of these 27 staffs do not bear details of bank account, PAN/PRAN etc. The college has submitted from MCI vendor that the Biometric Attendance Machine have been installed. It suggests 140 faculty are available of which 112 were enrolled. Since this happened subsequently to the inspection, it does not have bearing on the extent of deficiency as on the day of inspection. The bed occupancy figure of 62% as claimed by the college is supported by the MRD data. The assessors have noted as only 34%. In view of the magnitude of the deficiencies pointed out in the inspection 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.

17. 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 Crores.”

7. The petitioners, aggrieved by the aforementioned decision, have filed an Interlocutory Application in the pending writ petition bearing I.A. No.79050 of 2017, praying for quashing the orders passed by respondent No.1 dated 31st May, 2017 and 10th August, 2017, which debarred the petitioner college for two years and authorised respondent No.2 to encash the bank guarantee of Rs.2 crore offered by the petitioners. The petitioners have also prayed for further direction against the respondents to confirm the LOP of the petitioner medical college for the year 2016-17 and grant renewal of permission to the petitioner medical college for the academic session 2017-18 and allow the petitioner medical college to admit 150 students in the MBBS course for the academic session 2017-18 by participating in the current year

counselling process on the basis of conditional LOP. This application has been heard along with the writ petition.

8. The petitioners contend that the Competent Authority has once again passed a mechanical order without considering the relevant record and completely disregarded the opinion of the OC, which was after due consideration of the explanation offered by the petitioners. It is submitted that the inspection conducted on 26th-27th October, 2016 was too close to a major national festival. That fact is not in dispute as Diwali was on 29th October, 2016. It was not permissible to conduct inspection two days before or after any major festival. That stipulation is to obviate the possibility of ascertaining the correct position regarding the faculty, residents, bed occupancy and absence on account of the festival. It is submitted that the inspecting team adopted a hyper technical approach in ignoring the presence of staff/faculty who came in later than the appointed time of 11.00 a.m. The explanation offered by the petitioners had found favour with the OC. Further, the factum of salary slips, in respect of 27 staff members, which did not bear details of bank account, PAN/PRAN etc., was in the nature of clerical lapse and not pertaining to infrastructure and academic requirement. If the inspecting team had any suspicion, it could have made further inquiries to reassure itself before reckoning that fact to deny grant of permission. Significantly, the college had submitted Biometric Attendance Machine records but that has been completely disregarded because it was furnished subsequent to the inspection. The Competent Authority mechanically adopted the same reasons given by the MCI, as on the earlier occasion, which rendered the statutory remedy under Section 10A (4) of the Indian Medical Council Act, 1956, meaningless. The statutory remedy provided by the enactment is to enable the college to produce material in rebuttal of a fact noticed by the MCI in its negative recommendation. Similarly, the explanation offered by the college regarding bed occupancy, supported by MRD data, has been disregarded and instead the noting made by the Assessing Officer has been preferred. It is submitted that the avowed object of relegating the petitioner college before the Competent Authority, with direction to the Competent Authority to reconsider the entire matter afresh and to record reasons, has been defeated by the mechanical approach adopted by the Competent Authority. No analysis has been done in reference to the opinion recorded by the OC in its letter dated 14th May, 2017, which had accepted the explanation offered by the petitioners. The Competent Authority has not given any tangible reason as to why the opinion of the OC was incorrect or unacceptable. It is therefore submitted that the writ petition and the application be allowed and appropriate directions be issued to the respondents.

9. The respondents, on the other hand, would contend that it is not open to this Court to sit over the subjective satisfaction of the inspecting body, which is an independent body consisting of respectable persons from the field of medicine. It is submitted that no fault can be found with the decision of the Competent Authority, which has decided the matter on the basis of the recommendation made by the MCI. The impugned decision is a well considered one and deals with all the relevant matters necessitating the action of debarring the petitioner college from admitting students for two academic sessions and authorising MCI to encash the bank guarantee of Rs.2 crore offered by the petitioners. The respondents have essentially relied on the assessment report founded on the information gathered during the inspection

conducted on 26th-27th October, 2016. It is submitted that the verification and head count was done on 26th October, 2016, which was three days before Diwali, inasmuch as Diwali was on 29th October, 2016. Accordingly, the head count conducted on 26th October, 2016 was not in breach of the statutory provision. Hence, the finding of the assessors could neither be ignored nor disregarded on the basis of some specious plea taken by the college. Moreso, because discrepancy was also noticed in the salary slips in respect of almost 27 staff members, raising grave suspicion. It is submitted that even the finding regarding bed occupancy noted in the assessment report cannot be taken lightly, merely because the petitioners are relying on MRD data. The possibility of manipulating the MRD data cannot be ruled out. Further, the physical verification done by an independent agency on the spot must be given more credence, particularly when the statutory authority such as MCI and Competent Authority have accepted the same. The respondents contend that the writ petition is devoid of merits and ought to be dismissed.

10. Having considered the rival submissions, we are in agreement with the petitioners that the Competent Authority has once again failed to consider the relevant matters in the spirit of the direction given by this Court on 1st August, 2017. It has mechanically adverted to the recommendation of the Hearing Committee, which, in turn, has reproduced the factual position narrated in the assessment report in respect of the inspection conducted on 26th-27th October, 2016. The Competent Authority has not examined the matter with respect to the specific plea taken by the petitioners which had found favour with the OC. The OC in its recommendation dated 14th May, 2017 had noted that the faculty deficiency was only 06.18% which was within the acceptable norms. The OC had noted that the assessing team completely glossed over the fact that some staff was on leave due to the ensuing Diwali festival and that 4 staff members had come late after the scheduled time. The explanation offered by the petitioners in that behalf found favour with the OC. However, neither the Hearing Committee nor the Competent Authority has dealt with the factual matrix and in particular, the explanation offered by the petitioners, including the fresh representation.

11. Having said thus, we would have proceeded to issue directions to the respondents to allow the petitioner medical college to admit students in the MBBS course for the academic session 2017-2018. However, in the present case, we find that the MCI, which is an expert body, on the day of assessment has noticed deficiency of 29.23% of Faculty, 28.26% of Residents and 34% of Bed Occupancy, each of which was beyond the permissible limits. It has also taken into account the factum of 'Nil Normal Delivery' and 'NIL Caesarean Section' on the day of the assessment. Further, there was only 1 patient in NICU/PICU and 2 in SICU on the day of assessment and none in ICCU and MICU. It has also noticed that the Central Library was partially air-conditioned and there was no separation of Students' Reading Room (Outside) and Students' Reading Room (Inside). Further, there were only 65 mounted specimens in the Anatomy Department. Indeed, the OC in its letter dated 14th May, 2017 has noted that the explanation submitted by the college regarding deficiencies of Faculty, Residents and Bed Occupancy was acceptable and, therefore, within the permissible norms. As has been noticed earlier, the Competent Authority in the impugned decision did not accept the explanation offered by the petitioner college but, as aforesaid, no analysis is

found in the impugned decision as to why the same was rejected and, moreover, no tangible reason is forthcoming as to why it chose to deviate from the opinion expressed by the OC. At the same time, we also find that the OC has not dealt with the factum noticed by the Competent Authority in the impugned decision that the salary slips in respect of 27 staff members of the college did not bear details of bank account, PAN, PRAN etc. That presupposes that there was no clear identity about the staff employed by the college to the extent of 27 persons which is quite significant and raises grave suspicion. The communication sent by the OC also does not explain as to why the Bed Occupancy figure of 62%, as claimed by the college, should be accepted as against the physical verification done by the assessor on the given day which found only 34% Bed Occupancy. The OC has also not recorded any reason as to why the abysmal level of occupancy and indoor patients in ICCU/ MICU/PICU and SICU was irrelevant. Absence of indoor patients was a reflection on the performance of the hospital as a whole, which inevitably would deprive the students of the said college of proper experience and exposure. The deficiencies noticed by the MCI were significant and beyond the permissible limits and the Competent Authority has not dealt with the relevant material including the fresh representation submitted by the petitioners.

12. As we are not satisfied with the manner in which the Competent Authority has handled the issue in spite of remitting the matter for reconsideration and for recording reasons, we may follow the course adopted in the case of *Shri Venkateshwara University through its Registrar and Another Versus Union of India and Another*², and *Krishna Mohan Medical College and Hospital & Anr. Versus Union of India and Another*³. In the latter case, the Court observed thus:-

“21. No endeavour whatsoever, in our comprehension, has been made by the respondents and that too in the face of an unequivocal direction by this Court, to fairly and consummately examine the materials on record in details before recording a final decision on the issue of confirmation or otherwise of the LOP granted to the petitioner college/institution as on 12.09.2016. True it is that the Regulations do provide for certain norms of infrastructure to be complied with by the applicant college/institution for being qualified for the LOP depending on the stages involved. This however does not obviate the inalienable necessity of affording a reasonable opportunity of hearing to the person or the college/institution concerned vis-a-vis the scheme for establishment of a college before disapproving the same. The manner in which the respondents, in the individual facts of the instant case, have approached the issue, leads to the inevitable conclusion that the materials on records do not support determinatively the allegation of deficiency in course of the process undertaken, as alleged. We are thus of the considered opinion that in view of the persistent defaults and shortcomings in the decision making process of the respondents, the petitioner college/institution ought not to be penalised. Having regard to the progression of events, the assertions made by the petitioners in the representations countering the deficiencies alleged, the observations/views expressed by the Oversight Committee in its communication dated 14.05.2017 and the DGHS in the hearing held on 17.01.2017 negate the findings with regard to the deficiencies as recorded by the assessors of the

MCI in the inspections held. Consequently, on an overall view of the materials available on record and balancing all relevant aspects, we are of the considered opinion that the conditional LOP granted to the petitioner college/institution on 12.09.2016 for the academic year 2016-17 deserves to be confirmed. We order accordingly. However, as the Act and Regulations framed thereunder have been envisioned to attain the highest standards of medical education, we direct the Central Government/MCI to cause a fresh inspection of the petitioner college/institution to be made in accordance therewith for the academic year 2018-19 and lay the report in respect thereof before this Court within a period of eight weeks herefrom. A copy of the report, needless to state, would be furnished to the petitioner college/institution at the earliest so as to enable it to avail its remedies, if so advised., under the act and the Regulations. The Central Government/MCI would not encash the bank guaranteed furnished by the petitioner college/institution. For the present, the impugned order dated 10.8.2017 stands modified to this extent only. The direction for a writ, order or direction to the respondents to permit the petitioner college/institution to admit students for the academic year 2017-18, in the facts of the case, is declined. The Registry would list the writ petition and I.A. No. 73716 of 2017 immediately after the expiry of period of eight weeks, as above mentioned..”

In the case of Shri Venkateshwara University (supra), this Court observed thus:-

“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. 16-18. As we intend to appreciate the inspection report and the deficiencies and the action taken up thereon by the Institution, list the matter on 15th 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.”

13. Be that as it may, we shall revert to the grievance of the petitioners that inspection could not have been conducted on 26th-27th October, 2016, as the said dates were too close to a major national festival. This argument deserves to be rejected, bearing in mind the interpretation of Clause 8(3)(1)(d) of the Establishment of Medical College Regulations, 1999 in the case of Shri Venkateshwara University (supra), which postulates that 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. In the present case, the head count was carried out on the first day of inspection, on 26th October, 2016, as noted in the assessment report. Diwali was on 29th October, 2016, and

thus, the inspection on 26th October, 2016 in no way offended Clause 8. Further, if the argument of the petitioners was to be accepted, it would result in a situation where the inspection report dated 26th-27th October, 2016 will have to be discarded as a whole. As the feasibility of grant of LOP for medical college is essentially founded on such assessment report, if that report is to be discarded then the petitioners cannot get any relief whatsoever, without fresh inspection. It is not necessary for us to dilate either on this aspect or any other contention raised by the petitioners as we are inclined to adopt the course predicated in the aforementioned two recent decisions of this Court.

14. Accordingly, we deem it appropriate to direct that the students already admitted in the petitioner medical college for the academic session 2016-2017 be permitted to continue their studies. However, we decline to issue directions for grant of renewal of LOP for the academic session 2017-2018. We direct MCI to send its Inspecting Team to the petitioner college within a period of two months and inform the petitioner college about the deficiencies if any, with option to remove the same within the time limit specified in that behalf. The petitioner medical college shall report its compliance and communicate the removal of deficiency to MCI, whereafter it will be open to the MCI to verify the position and then prepare its report to be submitted before this Court. Be it noted that the purpose of said inspection would be to consider the renewal of LOP in favour of petitioner college for the academic session 2018-2019. We further direct the respondents to treat the renewal application submitted by the petitioner college for the academic session 2017-18 for the academic session 2018-19. The bank guarantee furnished by the petitioners shall not be encashed but the same be kept alive until further orders. The Registry shall place the matter for further consideration after ten weeks.

Judgment Referred.

¹(2017) 8 SCALE 0356

²WP(Civil)No.445 of 2017

³WP(Civil)No.448 of 2017