

SUPREME COURT OF INDIA

Melmaruvathur Adhiparasakthi Institute of Medical Sciences and Research

Vs.

Union of India

WP(Civil)No.680 of 2017

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

08.09.2017

JUDGMENT

A.M.Khanwilkar,J.,

1. The petitioner has assailed the decision of the Department of Health and Family Welfare, Ministry of Health and Family Welfare, Government of India, dated 31st May, 2017, debarring the petitioner college from admitting students for the academic sessions 2017-18 & 2018-19 and permitting respondent No.2 Medical Council of India (for short “MCI”) to encash the bank guarantee of Rs.2 crore offered by the petitioner. During the hearing of the writ petition on the earlier occasion on 11th August, 2017, it was noticed that the order dated 31st May, 2017, was bereft of reasons. Hence, the Competent Authority of the Central Government was directed to afford an opportunity of hearing to the representatives of the petitioner institution and take assistance of the Oversight Committee (for short, “OC”) constituted by this Court and pass a reasoned order by the end of August 2017. Pursuant thereto, the Competent Authority of the Central Government afforded an opportunity of hearing to the petitioner college on 25th August, 2017 and permitted the petitioner college to file a fresh representation. A member of the OC was present during the hearing. The Hearing Committee then submitted its report to the Competent Authority of the Central Government. On the basis of the said recommendation, the Competent Authority of the Central Government issued an order dated 31st August, 2017, reiterating its earlier decision dated 31st May, 2017. This decision has also been assailed by the petitioner college.

2. The principal argument of the petitioner is that the Competent Authority of the Central Government has once again passed a mechanical order without examining the relevant aspects of the matter highlighted by the petitioner and more particularly, the explanation offered in reference to the deficiencies noted in the assessment report. The counsel for the petitioner has taken us through the relevant documents to contend that the satisfaction recorded by the Hearing Committee and, moreso, by the Competent Authority of the Central Government, is manifestly wrong and contrary to the position emerging from the documents on record. It is submitted that the Hearing Committee has not given any conclusive opinion

about the deficiencies. Instead, it has noted that until physical re-verification of the corrections in deficiencies is done, it was not possible to recommend renewal permission. In such a situation, it was not open to the Competent Authority of the Central Government to reiterate its earlier decision dated 31st May, 2017. It is submitted that this Court may issue appropriate directions to the respondents as has been issued in other cases decided by this Court involving similar fact situation.

3. The respondents, on the other hand, have justified the impugned orders dated 31st May, 2017 and 31st August, 2017 debarring the petitioner college from admitting students (150 seats) for the academic sessions 2017-18 & 2018-19 and authorising the MCI to encash the bank guarantee of Rs.2 crore. It is submitted that the petitioner college was in default in removing the deficiencies despite the conditional recognition granted earlier, as was noticed from the assessment reports (22 nd March, 2017 and 7th March, 2017). The explanation offered by the petitioner college did not commend to the Hearing Committee on 13 th April, 2017, as a result of which a negative recommendation was submitted to the Competent Authority of the Central Government which, in turn, passed the order on 31st May, 2017. It is submitted that having regard to the nature of deficiencies which were beyond the permissible limit, the question of showing any indulgence to the petitioner college did not arise. It is submitted that the Competent Authority of the Central Government has considered all the relevant aspects and thereafter, reiterated its decision dated 31st May, 2017. That being a considered view taken by the Competent Authority, no further indulgence is warranted in the present case.

4. We have heard Mr. C.A. Sundaram, learned senior counsel appearing for the petitioner, Mr. Vikas Singh, learned senior counsel appearing for the respondent Medical Council of India and Mr. Maninder Singh, learned Additional Solicitor General appearing for the Union of India.

5. It would be apposite to advert to the factual position regarding the deficiencies noted in the assessment reports dated 22nd March, 2017 and 7th March, 2017, which read thus:-

” 1. Deficiency of faculty is 21.96%.

2. In respect of Dr. Nagendran, Asso. Prof. of ENT, signature and spelling of name were not matching in morning attendance sheet and afternoon physical verification.

3. In respect of the following Senior Residents, signature was not matching in morning attendance sheet and afternoon physical verification:

(i) Dr. Suka, Orthopaedics;

(ii) Dr. SathishPrabhu, Radiodiagnosis.

4. Shortage of Residents is 24.70% as detailed in the report.

5. Bed Occupancy is 36.31% on day of assessment.

6.O.T. were closed and no operations other than 2 Gynaec Operations were performed on day of assessment.

7. There was NIL Normal Delivery & only 1 Caesarean Section on day of assessment.

8. Data of OPD attendance and Laboratory & X-ray investigations provided by the Institute appear to be inflated

9. There were only 05 patients in Casualty at the time of taking round

10. Workload of Antenatal USG was NIL on day of assessment.”

6. The petitioner had submitted a representation to rebut the aforesaid factual position, which was duly considered on the earlier occasion by the Hearing Committee but was found to be unsatisfactory. Hence, the Hearing Committee submitted a negative report to the Competent Authority which, in turn, passed the order dated 31st May, 2017, debaring the petitioner college from admitting students for two academic sessions and to encash the bank guarantee of Rs.2 crore. The order dated 31st May, 2017, however, was found to be an unreasoned order. It reads thus:-

“No.U.12012/127/2016-ME.I[FTS.3084749]
Government of India
Ministry of Health and Family Welfare
(Department of Health & Family Welfare)
Nirman Bhavan, New Delhi,
Dated the 31st May, 2017

To
The Principal/Dean,
Melmaruvathur Adhiprasakthi Institute of Medical Sciences,
Melmaruvathur
Tamil Nadu – 603319

Subject: Conditional Recognition granted in 2016-17 to Melmaruvathur Adhiprasakthi Institute of Medical Sciences, Melmaruvathur - Decision of the Central Government.

Sir/Madam,

In continuation to this Ministry’ s notification dated 15.09.2016 granting conditional recognition to Melmaruvathur Adhiprasakthi Institute of Medical Sciences, Melmaruvathur for award of MBBS degree for 150 intake on the basis of approval communicated by Supreme Court Mandated Oversight Committee on MCI (OC) and after affording an opportunity of hearing to the college with reference to MCI letter

No.MCI-34(41) (RG-25)/2015-Med/180572 dated 29.03.2017 sent after compliance verification assessment, I am directed to convey the decision of the Central Government to debar your College from admitting students against the allowed intake of 150 seats for two academic years i.e. 2017-18 & 2018-19 and also to authorise MCI to encash the bank guarantee of Rs.2.00 Cr.

2. You are therefore, directed not to admit students for 150 seats in MBBS course for the academic years i.e. 2017-18 & 2018-19 at your College.

3. Admissions made against the above decision of Central Government will be treated as irregular and action will be initiated under IMC Act & Regulations made thereunder.

Yours faithfully,
Sd/- (D V K Rao)
Under Secretary to the Govt. of India
Tele fax: 011-2306 1120”

7. Considering the tenor of the aforementioned order, this Court vide order dated 11th August, 2017, directed the Competent Authority to give an opportunity to the petitioner college and pass a reasoned order. Pursuant thereto, the Competent Authority has passed an order on 31st August, 2017. Until paragraph 9, the said order merely refers to all the previous proceedings and documents, including the direction given by this Court on 11th August, 2017. Paragraphs 10 and 11 of the impugned decision are relevant. The same are reproduced below:-

“10. Now, in compliance with the above direction of Hon’ ble Supreme Court dated 11.8.2017, the Ministry granted hearing to the college on 25.8.2017. A member of the Oversight Committee was present during the entire proceeding of the Hearing Committee. The Hearing Committee after considering the oral and written submission of the college submitted its report with the following conclusion:-

“The Hearing Committee does not recommend renewal until physical re-verification of the corrections in deficiencies”

A copy of the Hearing Committee report containing the above observation is enclosed

11. Accepting the recommendations of the Hearing Committee, the Ministry reiterates its earlier decision dated 31.5.2017 to debar the Melmaruvathur Adhiprasakthi Institute of Medical Sciences & Research, Melmaruvathur from admitting students (150 seats) for two academic years i.e. 2017-18 & 2018-19 and authorize the MCI to encash the Bank Guarantee of Rs. 2.00 Crore.”

8. On a plain reading of the aforesaid decision, it is crystal clear that the Competent Authority has merely relied on the recommendation made by the Hearing Committee. The recommendation of the Hearing Committee, as extracted in paragraph 10 of the same decision, however, is an inconclusive opinion. The Hearing Committee had opined that physical re-verification of the corrections in deficiencies was necessary before accepting or rejecting the explanation offered by the petitioner college. In this view of the matter, we fail to understand as to how the Competent Authority could have reiterated its earlier decision dated 31st May, 2017. No singular reason has been assigned by the Competent Authority of the Central Government as to why it was impelled to reiterate its earlier decision dated 31st May, 2017, despite the fresh representation filed by the petitioner college and, moreso, the inconclusive view expressed by the Hearing Committee.

9. We must therefore, set aside the impugned decision dated 31st August, 2017, passed by the Competent Authority of the Central Government. However, that cannot be the basis to grant relief to the petitioner college or justify issue of directions to the respondents so as to permit the petitioner college to admit students for the academic session 2017-18. For, the deficiencies noted in the assessment reports reproduced earlier are quite significant concerning the infrastructure and academic matters and are beyond the permissible limit. That position needs to be verified as has been observed by the Hearing Committee in its report submitted after the hearing on 25th August, 2017. Therefore, in the present case it would not be safe to straightaway accede to the request of the petitioner college to direct the respondents to issue recognition/approval for the academic session 2016-17 and to allow the petitioner college to admit students for the academic session 2017-18.

10. While dealing with matters involving similar fact situation, this Court in the case of *Shri Venkateshwara University through its Registrar and Another Versus Union of India and Another*¹, and *Krishna Mohan Medical College and Hospital & Anr. Versus Union of India and Another*² issued directions to MCI to send its Inspecting Team to the petitioner college and inform the petitioner college about the deficiencies, if any, with option to remove the same within the time limit as may be specified in that behalf.

11. Accordingly, we direct MCI to send its Inspecting Team to the petitioner college within a period of three months and inform the petitioner college about the deficiencies if any, with the option to remove the same within the time limit specified in that behalf. The petitioner medical college shall then report its compliance and communicate the removal of deficiencies to the MCI, whereafter it will be open to the MCI to verify the position and then prepare its report to be placed before the Competent Authority for being processed further in accordance with law. Final decision be taken by the Competent Authority within one month from receipt of the report from MCI. In the event the final decision is adverse to the petitioners, it will be open to them to take recourse to further remedies as may be available in law.

12. We make it clear that the inspection to be done will be for considering the application for recognition/approval for the academic session 2016-17, and if approved, to issue consequential directions including to allow the petitioner to admit 150 students in academic

session 2018-19. The bank guarantee furnished by the petitioner shall not be encashed but the same shall be kept alive until further orders to be passed by the Competent Authority of the Central Government in that behalf.

13. Writ petition is disposed of in the aforementioned terms. No order as to costs.

Judgment Referred.

¹WP (Civil)No.445 of 2017

²WP (Civil)No.448 of 2017