

SUPREME COURT OF INDIA

Hamdard Institute of Medical Sciences and Research (HIMSR)

Vs.

Union of India

WP(Civil)No.480 of 2017

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

08.09.2017

JUDGMENT

A.M.Khanwilkar,J.,

1. The petitioner college made an application for renewal of permission for admission of 5th batch (100 seats) in MBBS course for the academic session 2016-17, to the Medical Council of India. Pursuant thereto, inspection of the petitioner college was undertaken on 19th & 20th November, 2015. Assessment report in that behalf was placed before the Executive Committee of the Medical Council of India (for short "MCI") in its meeting held on 27th November, 2015. That proposal was processed and eventually as per the directive issued by the Oversight Committee (for short "OC") constituted by this Court for approving the renewal of permission with certain conditions, the Central Government issued Letter of Permission (for short "LOP") on 20th August, 2016 on conditions imposed by the OC. Compliance verification assessment was conducted by the MCI on 21st December, 2016 and 6th and 7th February, 2017. The Executive Committee of the MCI considered the said report on 16th March, 2017 and noting the deficiencies forwarded its negative recommendation to the Central Government vide letter dated 20th March, 2017. The deficiencies noted were as follows:

- “ 1. Casualty: Ventilator is not available. Portable Ventilator is not functional
2. ICUs: There were only 2 patients in PICU on day of assessment.
3. 2 Static X-ray machines are available against requirement of 5.
4. Other deficiencies as pointed out in the assessment report. ”

The aforementioned decision of MCI was communicated to the petitioner college vide letter dated 20th March, 2017. Later on, as per the conditions stipulated regarding verification compliance submitted by the petitioner college was conducted on 19 th

April, 2017. The compliance verification report was considered by the Executive Committee of MCI on 28th April, 2017 when following deficiencies were noted:

“ 1. Deficiency of faculty is 5.66% as detailed in the report.

2. Shortage of Residents is 13.43% as detailed in the report.

3. The MCI vide letter dated 30th April, 2017 submitted its negative recommendation to the Ministry.

2. The Central Government granted personal hearing to the petitioner college before the UG Hearing Committee on 22 nd May, 2017. The UG Hearing Committee recorded its observations which read thus:

Srl. No.	Deficiencies reported by MCI	Observations of hearing committee
I.	Deficiency of faculty is 5.66% as detailed in the report.	As per the assessment report of the college, the deficiency of the faculty is marginal. Considering the faculty not counted the deficiency is under the permissible limit. Similarly, many of the residents who were on night duty off were not taken into consideration. College claimed surplus residents. As MRD records, bed occupancy is under permissible limit as per the MSR. In view of the Committee, deficiency of faculty is marginal which seems to have been adequately explained.. The college has made other submission which may need to be verified.. However, in the given facts, debaring the college for 2 years seems too strict.
II.	.Shortage of Residents is 13.43% as detailed in the report.	
III.	Bed Occupancy at 10 a.m. on day of assessment is 66.38%.	

3. The Ministry on the basis of the negative recommendation of the MCI vide order dated 31st May, 2017, decided to debar the petitioner college from admitting students for two academic sessions 2017-18 & 2018-19 and also authorised the MCI to encash the bank guarantee of Rs.2 crore offered by the petitioner. The petitioner college challenged this decision by filing the present writ petition. After hearing the parties this Court on 1st August, 2017, noticed that the decision of the Ministry dated 31st May, 2017 was bereft of any reasons for which it directed the Central Government to give fresh opportunity to the petitioner college and then issue appropriate order recording reasons.

4. Pursuant to the directions of this Court, fresh personal hearing was afforded to the petitioner college before the Hearing Committee on 22nd August, 2017. As the Oversight Committee (for short “OC”) was re-constituted by this Court, a member of the newly constituted OC was invited to consider the matter before submitting the second and final report after reviewing all facets of the case on 29th August, 2017. The Hearing Committee

observed that seemingly there was no deficiency of faculty and residents but it was not in a position to give any finding with regard to the bed occupancy deficiency unless physical verification was done. The Ministry, after considering the findings of the Hearing Committee issued an order on 29th August, 2017 reiterating its earlier decision dated 31st May, 2017. The relevant portion of the order/decision dated 29th August, 2017 reads thus:

“19. Whereas in compliance with the above direction of Hon’ ble Supreme Court dated 4.8.2017, the Ministry granted hearing to the college on 22.8.2017. A Member of the newly constituted Oversight Committee also attended the Hearing Committee Meeting. The Hearing Committee submitted its second and final report after reviewing all facets of the case on 29.08.2017 to the Ministry with the following conclusion:-

‘There seems no deficiency of faculty and residents. But the Hearing Committee is of the view that the Bed Occupancy as claimed by the College can not be validated by this Committee and requires physical verification.’ A copy of the Hearing Committee report containing their observations is enclosed.

20. Now considering the findings of the Hearing Committee, the Ministry reiterates its earlier decision dated 31.5.2017 to debar the Hamdard Institute of Medical Sciences & Research, Delhi from admitting students for two academic years i.e. 2017-18 & 2018-19 and authorize MCI to encash the Bank Guarantee of Rs. 2.00 Crore.”

5. On a bare perusal of the aforementioned decision it is amply clear that despite the inconclusive opinion given by the Hearing Committee regarding the bed occupancy deficiency vide its report dated 29th August, 2017, the Ministry chose to reiterate its earlier decision dated 31st May, 2017.

6. The petitioners have assailed this decision on diverse counts, including that the Ministry has passed a mechanical order even on this occasion despite a clear direction given by this Court to record reasons. Our attention was invited to the Chart appended to the impugned decision dated 29th August, 2017, which has noted in the column “Comments of Hearing Committee” to the effect that “As (per) MRD records, bed occupancy is under permissible limit as per the MSR.” It was also contended that the factual position stated in paragraph 19 of the impugned decision dated 31st August, 2017, creates serious doubt about the manner in which the matter has been processed by the Ministry. There was no reason for the Hearing Committee to review its report dated 22nd August, 2017 which was obviously favourable to the petitioners. It was vigorously contended by the petitioners that the petitioner Institution enjoys high reputation and that the proposal submitted by the petitioner college was for the 5th batch in MBBS course for the academic session 2016-17. Further, considering the fact that there was no deficiency in regard to infrastructure and academic matters, the order in question cannot stand the test of judicial scrutiny. Accordingly, it was submitted that the impugned orders dated 31st May, 2017 and 29th August, 2017 be quashed and set aside and appropriate directions be issued to the respondents to not only confirm the LOP in respect of

5th batch in MBBS course for academic session 2016-17, but also to permit the petitioner college to admit students for academic session 2017-18.

7. Learned counsel appearing for the respondents, on the other hand, would justify the order passed by the Competent Authority of the Central Government and submit that the grievance made by the petitioners is untenable.

8. We have heard Mr. Mukul Rohatgi, learned senior counsel appearing for the petitioner college and Mr. Vikas Singh, learned senior counsel appearing for MCI and Mr. Maninder Singh, learned Additional Solicitor General appearing for Union of India.

9. After considering the rival submissions, we have no hesitation in observing that the Competent Authority of the Central Government has once again passed a mechanical order on 29 th August, 2017, which is on the face of it, not in conformity with the spirit of the directions given by this Court on 1st August, 2017, to consider all aspects of the matter and record reasons.

10. Notably, in the present case, the deficiency in respect of faculty and residents has been found to be insignificant or within the permissible limits. The deficiency regarding bed occupancy, noted in the assessment report dated 19th April, 2017 was, however, quite significant and beyond the permissible limits. The Hearing Committee which submitted its observation to the Competent Authority of the Central Government, after the second round of hearing on 22nd August, 2017 and in the second and final report dated 29th August, 2017, did not record any conclusive opinion about the deficiency in respect of bed occupancy. This can be discerned from the extracted portion of the opinion in paragraph 19 of the impugned decision dated 29th August, 2017. As the deficiency regarding bed occupancy requires physical verification to ascertain whether it is within permissible limit, we would prefer to adopt the same course as in other cases decided today i.e. in the case of Melmaruvathur Adhiparasakthi Institute of Medical Sciences and Research Vs. Union of India and Anr. , and Subharti Medical College Vs. Union of India.

11. Reverting to the arguments of petitioners that the factual position stated in paragraph 19 of the impugned decision dated 29th August, 2017, we find force in the argument of the respondents that the Hearing Committee chose to review all facets of the case and submitted second and final report on 29th August, 2017 after the OC was re-constituted by this Court. That became necessary because the OC was not in place on 22nd August, 2017. In our opinion, no fault can be found with the Hearing Committee for having submitted second and final report after considering all facets of the case on 29th August, 2017. The fact remains that the observation of the Hearing Committee was that it was not possible for the Hearing Committee to validate the deficiency pertaining to bed occupancy without doing physical verification.

12. Indeed, the petitioners have stoutly relied on the notings made in the Chart appended to the impugned decision dated 29th August, 2017, which states: “As (per) MRD records, bed

occupancy is under permissible limit as per the MSR.” That comment is not found below column: “Hearing Committee findings on 22.8.2017 and Review on 29.8.2017” . What, however, has been mentioned under this column is that the college authorities produced the admission record of the patients along with the case sheets in respect of 363 patients. It is then noted that the authenticity of the bed occupancy and the genuineness of the patients cannot be validated on the basis of the available data unless physical verification was done. This observation is relevant and cannot be disregarded. In other words, there is no conclusive observation of the Hearing Committee in respect of the deficiency pertaining to bed occupancy noted in the assessment report dated 19th April, 2017 as 66.38%. Considering the fact that this deficiency is significant, it is a relevant factor and presumably must have weighed with the Competent Authority while taking decision on 31st May, 2017 as well as on 29th August, 2017.

13. As aforesaid, in the fact situation of the present case, we are inclined to adopt the course resorted to in the case of Melmaruvathur Adhiparasakthi Institute of Medical Sciences and Research (supra), decided today, involving similar fact situation.

14. We accordingly direct the respondents, in particular the 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 option to remove the same within the time limit as may be specified. The petitioner college shall then report its compliance and communicate the removal of deficiencies to 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.

15. We make it clear that the inspection to be done will be for considering the confirmation of renewal permission for admission of 5th batch (100 seats) in MBBS course for academic session 2016-17. The bank guarantee furnished by the petitioners 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.

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