

SUPREME COURT OF INDIA

Major S.D.Singh Medical College and Hospital

Vs.

Union of India

WP(Civil)No.673 of 2017

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

12.09.2017

JUDGMENT

Dr.D.Y.Chandrachud,J.,

1. The petitioner has called into question an order dated 31 May 2017 of the Union government, prohibiting it from admitting students for the MBBS course during academic years 2017-18 and 2018-19 and authorizing Medical Council of India (‘MCI’) to encash a bank guarantee of Rs 2 crores.

2. During the pendency of these proceedings, by an order dated 11 August 2017, the Union government was directed to furnish an opportunity of being heard to the petitioner and to pass a reasoned order by the end of August 2017. Pursuant to the above directions, a fresh order has been passed on 30 August 2017 which has been called into question in I A No 85887 of 2017.

3. On 6 May 2011, MCI issued a letter of intent to the petitioner under Section 10-A of the Indian Medical Council Act, 1956 (‘IMC Act’) for academic year 2011-12. The Union government issued a letter of permission on 28 June 2011, allowing the petitioner to admit 100 students for the MBBS degree course. For academic years 2012-13, 2013-14 and 2014-15, permissions were granted to the petitioner on 22 June 2012, 5 June 2013 and 4 July 2014. On 15 June 2015, the petitioner was declined permission to admit the fifth batch of students for academic year 2015-16. MCI conducted an inspection of the college on 2 March 2016 and on 6 and 7 April 2016. The following deficiencies were noticed:

1. “Deficiency of faculty is 70.75% as detailed in the report.
2. Shortage of Residents is 89.55% as detailed in the report.
3. Medical Superintendent Dr C S Aggarwal was not available on both days of assessment.

4. OPD attendance on day of assessment was 552 against requirement of 800.
5. Bed occupancy was 24.46% on day of assessment.
6. There was NIL Major operation & 02 Minor operations on day of assessment.
7. There was NIL Normal Delivery & NIL Caesarean Section on day of assessment.
8. CT Scan is not functional.
9. Workload of Special investigations like Ba, IVP was NIL on day of assessment.
10. Radiological investigation workload is grossly inadequate.
11. Histopathology workload was only 03 & Cytopathological workload was only 04 on day of assessment.
12. Labour Room: Labour Register is not available. There is no sister i/c.
13. Radiodiagnosis Department: Only 2 mobile X-ray machines are available against requirement of 4. Only 3 static X-ray machines are available against requirement of 5. Only 2 USG machines are available against requirement of 3.
14. OPD: Plaster room & Plaster Cutting Room are common. Cancer Detection clinic is non-functional.
15. Casualty: Reception counter in Casualty is non-functional and laden with dust.
16. MRD: Staff is inadequate.
17. Wards of Tb & Chest, Skin & VD & Psychiatry are common for males & females.
18. CSSD: Staff is not adequate. I/c Nurse/Technician is not available.
19. Central Library: It is not fully air-conditioned. Students' reading Room (Inside), Staff Reading Room, Residents' reading Rooms are not air-conditioned. Internet connection is not available.
20. Central Photography Section is not functional
21. Students' Hostels: Visitors' room, A.C. Study room with Computer & Internet Recreation room are not available.

22. Interns' Hostel: Visitors; room, A.C. Study room with Computer & Internet Recreation room are not available.
23. Residents' Hostel: Visitors' room, A.C. Study room with Computer & Internet, Recreation room are not available.
24. Canteen facilities are inadequate.
25. Anatomy Department: Specimens available are only 80. Cadavers are not available. Capacity of cold storage for dead bodies is inadequate.
26. Pathology department: Only 80 specimens are available.
27. Microbiology Department: Only 1 Service Laboratory is available against requirement of 7.
28. Community Medicine Department: Demonstration room has capacity of only 30 which is inadequate.
29. RHTC: It is non-functional. It is just labeled & located in a college campus. There are no clinical, survey, Immunization, family welfare or National Health Programme activities. No record is available.
30. UHC: It is not available. A private nursing home was shown as UHC which is not permissible. No manpower is available. There are no clinical, survey Immunization, family welfare or National Health Programme activities. There is no record.”

The Executive Committee of MCI, at a meeting held on 3 May 2016 considered the assessment reports and noted the deficiencies. There were as many as 30 deficiencies, including the above. Based on these deficiencies, MCI by its letter dated 15 May 2016 recommended to the Union government not to renew permission for admission of a fresh batch of students for 2016-17. The Union government accepted the recommendation and issued a communication dated 10 June 2016 declining permission for fresh admissions for 2016-17.

4. After the constitution of the Oversight Committee by the judgment of this Court in *Modern Dental College and Research Centre v State of M P I*¹, a fresh report of compliance was furnished by the college to the Union government. A compliance verification assessment for recognition of the college under Section 11(2) was conducted on 19 July 2016. The following deficiencies were noticed:

1. “Deficiency of faculty is 72.4% as detailed in report.
2. Shortage of Residents is 88.05% as detailed in the report.

3. Both Dean Dr Suresh Prasad & Medical Superintendent Dr C S Aggarwal were not available on day of assessment.
4. OPD attendance on day of assessment was 318 against requirement of 800.
5. Hospital is practically non-functional since 11 July 2016.
6. Bed Occupancy was only 5% on day of assessment. All the wards wore deserted look. There were no patients in many wards.
7. Occupancy in Intensive Care Units was NIL on day of assessment.
8. There was NIL Major & NIL Minor operation on day of assessment. Last operation was done on 11 July 2016.
9. There was NIL Normal Delivery & Nil Caesarean Section on day of assessment.
10. CT Scan was not functional on day of assessment.
11. Workload of Special Investigations like Ba, IVP was NIL on day of assessment.
12. Radiological investigation workload is grossly inadequate.
13. Laboratory investigation workload is NIL on day of assessment.
14. Histopathology & Cytopathology workload was NIL on day of assessment. No record was available regarding samples under process in Histopathology laboratory.
15. Available USG machines are 2 against requirement of 3.
16. OPD: Colposcope is not available.
17. Casualty: There was NIL patient in Casualty.
18. Central Library: It is not fully air-conditioned.
19. Canteen facilities are inadequate.
20. Anatomy department: Available specimens are only 56. Capacity of cold storage bodies is not adequate.
21. Pathology department: Available specimens are only 63.
22. Microbiology department: All service laboratories are non-functional.

23. RHTC: It is partially functional. There is no clinical, Survey, Immunization, family Welfare & National Health Programmes. No record is available.

24. There was no display of name of Dean outside his office.” The Executive Committee of MCI considered the assessment reports on 23 August 2016 when the above deficiencies were noted. MCI once again directed the college to send its compliance. The Oversight Committee approved conditional recognition for the college on 29 August 2016. This was subject to the following conditions:

“(i) An undertaking on affidavit from the Dean/Principal and the Chairman of the Trust affirming that the deficiencies pointed out by the assessors of the Council in the compliance verification assessment stands rectified;

(ii) A Bank Guarantee for a sum of Rs. 2 crores in favour of the Council which shall be valid for a period of one year or till such time the first renewal inspection takes place, whichever is later. It was further directed that the inspection of the medical colleges which have been recommended for grant of Conditional Letter of Permission / Recognition by the then Oversight Committee shall be conducted after 30 September 2016 and any college which is found to have not complied / rectified the deficiency as per their undertaking shall be debarred from admitting any students for a period of 2 years i.e. 2017-18 & 2018-19.”

Following this, the Union government issued conditional recognition on 12 September 2016.

5. A compliance verification assessment was carried out on 21 February 2017. The following deficiencies were noted :

“a. “Deficiency of faulty is 84.76% as detailed in the report.

b. Medical Superintendent has crossed age of 70 years; hence not eligible to hold the post.

c. Shortage of Residents is 94.02% as detailed in the report.

d. Bed Occupancy at 10 a.m. on day of assessment is 20.85%.

e. There was NIL Major & NIL Minor assessment on day of assessment. There was Major Operation after 17 February 2017.

f. There was NIL Normal Delivery & NIL Caesarean Section on day of assessment.

g. Workload of plain X-rays for indoor patients is NIL on day of assessment.

h. Details of tests conducted in service laboratories of Microbiology were not provided.

i. There was NIL patient in Causality on day of assessment.

j. CT Scan is not functional. Wards of Tb & Chest, Psychiatry and Skin & VD are common for males/females. There were NIL patients in these wards on day of assessment. Deficiency remains as it is. k. Central Library: It is not fully air-conditioned. Only 12 Internet Nodes are available. Deficiency remains as it is. l. Students' Hostel: Computer in Study room is nonfunctional & does not have Internet. Interns' Hotel: Computer in Study room is nonfunctional and does not have Internet. Recreation room is not available.

m. Residents' Hostel: Computer in Study room is nonfunctional & does not have Internet.

n. Canteen: Although infrastructure is available, presently canteen services are not available. o. RHTC: Details not provided. Faculty from Community Medicine were not present at time of visit. UHC: Details not provided. Faculty from Community Medicine were not present at time of visit. p. Other deficiencies as pointed out in the assessment report.”

The Executive Committee considered the assessment report dated 21 February 2017 in its meeting held on 21 March 2017. After deliberation, it was decided to recommend to the Central Government not to approve the conditional recognition granted to the college by the Oversight Committee. It was further decided to invoke Regulation 8(3)(1)(c) of the MCI Establishment of Medical College Regulations, 1999. Regulation 8(3) (1)(c) stipulates that if in any medical college which is at the stage of recognition under Section 11(2) of the IMC Act, 1956 it is noticed that the deficiency of faculty is more than 10% and/or bed occupancy is less than 70%, such an institute will not be permitted to admit students in that academic year. The said Regulation also provides that if the afore-mentioned deficiencies are noticed in the college MCI will issue a notice calling upon the college to show cause as to why the recognition granted to the college be not withdrawn. The relevant portion of Regulation 8(3)(1)(c) is reproduced hereinbelow:

“(c) Colleges which are already recognized for award of M.B.B.S degree and /or running Postgraduate courses. If it is observed during any inspection / assessment of the institute that the deficiency of teaching faculty and /or Residents is more than 10% and / or bed occupancy is <70%, compliance of rectification of deficiency from such an institute will not be considered for issue of renewal of permission in that processing application for Postgraduate courses in that Academic Year and will be issued show cause notices as to why the recommendations for withdrawal of recognition of the courses run by that institute should not be made for undergraduate

and postgraduate courses which are recognized under Section 11(2) of the IMC Act, 1956 along with direction of stoppage of admissions in permitted postgraduate courses.”

By a letter dated 24 March 2017, MCI recommended that the college should, in view of the deficiencies, be debarred from admitting students for 2017-18 and that the bank guarantee furnished by the petitioner be encashed. An opportunity of being heard was thereafter furnished by the Hearing Committee constituted by the Union government, which affirmed the decision of the MCI on 31 May 2017.

6. On 11 August 2017, this Court, while entertaining the writ petition filed by the college, directed the Union government to afford a hearing and to issue a fresh order. Following the above directions, a hearing was granted to the college on 24 August 2017 and an order was issued on 30 August 2017 affirming the earlier decision. The order passed by the Union government notes that the representative of the Oversight Committee could not attend the meeting of the Hearing Committee.

7. The petitioner has urged that the college has received the recommendations of MCI and permissions of the Union government since 2011-12 and, until date, four batches have been admitted. For academic session 2015-16, permission was denied to the college on 15 June 2015. For 2016-17 the college, despite the grant of conditional recognition under Section 11(2), was unable to admit students since no students were supplied by the third respondent (Director General, Medical Education, State of U P). In consequence, the college does not presently have students for the first and second year of the MBBS degree course.

8. The petitioner submitted that for compliance verification, the college was inspected on 21 February 2017. The petitioner has adverted to the fact that the assessment report dated 21 February 2017 is relevant since in the impugned order dated 30 August 2017, it has been stated that no dissent note on the assessors’ report was given by the college. The grievance of the petitioner is that it had explained the alleged deficiencies together with supporting documents which has not been considered. For example, it has been submitted that the faculty could not present itself on 21 February 2017 “because of the short time and some faculty were on leave and some faculty were not counted” . According to the petitioner, since no students were admitted for the first two academic years of the MBBS course at the relevant time, the faculty of seven departments was idle with no work of teaching. According to the assessment report, 34 out of 113 members of the faculty were not available though the petitioner has submitted details about them. The petitioner points out that where as at one stage the deficiency of faculty is recorded at 72.4%, at another stage, it is recorded at 84.76%.

9. Following the receipt of MCI’ s letter dated 24 March 2017, the Union government directed the petitioner by its letter dated 5 April 2017 to appear for a hearing on 11 April 2017. The petitioner has submitted that it appeared before the Hearing Committee and submitted its objections but a non-speaking order was issued. Pursuant to the directions

issued on 11 August 2017 by this Court, the petitioner appeared before the Hearing Committee on 24 August 2017 and submitted its objections on the report of MCI dated 21 February 2017. According to the petitioner, it has a total faculty of 113 of which 44 are teachers for the first and second years of the MBBS course. The petitioner has submitted that 44 members of the faculty have no work of teaching, in the absence of students. According to it, it has submitted a list of faculty including Form 16 showing the TDS certificates evidencing the engagement of faculty in the college. A similar explanation has, according to the petitioner, been submitted in relation to residents. The grievance of the petitioner is that the impugned order dated 30 August 2017 is a non-speaking order. It has been urged that the annexures of the order would indicate that the submissions which were urged were rejected only on the ground that no dissent note was furnished to the report of the assessors. The petitioner urges that there was no occasion to record any dissent note in the report dated 21 February 2017 and this was possible only after receipt of the letter of the Union government dated 5 April 2017 which was complied with on 9 April 2017. These submissions have been urged to buttress the contention that the impugned orders dated 31 May 2017 and 30 August 2017 have been passed in a mechanical manner.

10. Having considered the submissions which have been urged on behalf of the petitioner, we are of the view that the explanation which has been submitted by the petitioner in regard to the availability of faculty and other infrastructure raises purely factual issues. In the very nature of things, this is a matter which requires verification by MCI as an expert statutory body. The availability of faculty and their presence on the date of inspection is a matter for factual determination and cannot be re-appreciated by the court. The petitioner has stated that it has not admitted any student for two consecutive academic years as a result of which it has no students for the first and second years of the MBBS degree course. The impugned orders have to be read as a composite whole and the ultimate conclusion cannot be read torn out of the context set out in the entirety of the factual background noticed in the determination. The orders passed by the Union government in the present regard cannot be construed in the same manner as orders passed by a court in a judicial proceeding. The court cannot overlook the fact that in the assessment reports of March and April 2016 and July 2016, serious deficiencies have been noted in the availability of faculty and residents and in regard to bed occupancy. These deficiencies, have been observed to have continued in the assessment report dated 21 February 2017. In the very nature of things, it would not be appropriate for this Court to reappraise the factual situation for itself, particularly in the absence of any cogent material evidencing that the deficiencies have been rectified. However, it would be in the fairness of things to permit the petitioner to have an opportunity to establish before the MCI that all the deficiencies have been duly rectified by the petitioner. This exercise, however, shall enure only for academic year 2018-19 and not prior thereto. The cut-off date for admissions to the MBBS degree course for 2017-18 has already elapsed following which the academic session has commenced.

11. We accordingly direct that:

“(i) The case of the petitioner shall be duly considered by MCI and by the Union government in accordance with the prevalent regulations for academic year 2018-19.

(ii) The bank guarantee which was furnished by the petitioner shall be kept live in the meantime and shall not be encashed.

(iii) MCI shall conduct a fresh inspection as per the Regulations within a period of two months. It shall apprise the petitioner-institution with regard to the deficiencies and afford an opportunity to rectify the same and, thereafter, proceed to act as contemplated under the Act.

(iv) After MCI sends its recommendation to the Central government, it shall take a final decision according to law after affording an opportunity of a hearing to the petitioners. MCI shall take the assistance of the Hearing Committee constituted by the Constitution Bench decision in *Amma Chandravati Educational and Charitable Trust and Others v Union of India and another*³ or other directions given in the said decision.”

12. Having regard to the interest of medical education and the observations contained in the judgment delivered today by this Court in Writ Petition (c) No 674 of 2017 in *Madha Medical College and Research Institute through its Managing Director v Union of India*², we decline to grant any relief in respect of academic year 2017-18 to the petitioner.

13. The petition shall accordingly stand disposed of in these terms.

¹(2016) 7 SCC 0353

²WP(Civil)No.408 of 2017