

SUPREME COURT OF INDIA

Annai Medical College & Hospital

Vs.

Union of India

WP(Civil)No.525 of 2017

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

14.09.2017

JUDGMENT

A.M. Khanwilkar,J.,

1. The petitioners have assailed the decision dated 31st May, 2017 of the Under Secretary to the Government of India, Ministry of Health & Family Welfare (Department of Health & Family Welfare), declining to confirm the conditional Letter of Permission (for short, “LOP”) granted to the petitioners to establish a new medical college in the name and style of ‘ Annai Medical College & Hospital, Kancheepuram, Chennai ’ , from the academic session 2016- 17 and debaring the college from admitting students for the next two academic sessions i.e. 2017-2018 and 2018-2019 and further authorising the Medical Council of India (for short, “MCI”) to encash the bank guarantee of Rs.2 crore offered by the petitioner college.

2. The petitioners had submitted an application for establishment of a new medical college from academic session 2016-17 onwards with intake capacity of 150 students. That proposal was processed and, pursuant to the directives issued by the Oversight Committee (for short, “OC” , constituted by this Court), the Ministry issued a conditional LOP for the academic session 2016-17, despite a negative report submitted by the MCI pointing out several deficiencies. The LOP dated 20th August, 2016 incorporated the conditions specified by the OC. The MCI then carried out the verification of compliance submitted by the college on 3rd & 4 th November, 2016, noting the following deficiencies:-

- “i. Deficiency of faculty is 27.69 % as detailed in the report.
- ii. Shortage of Residents is 26.08% as detailed in the report.
- iii. Bed occupancy is 51.6% on day of assessment at 10 a.m..
- iv. There were only 2 Major Operations & 1 Minor Operations on day of assessment.

- v. There was only 1 Normal Delivery & NIL Caesarean Section on day of assessment.
- vi. There was NIL patient in ICCU & NICU on day of assessment.
- vii. In blood Bank no blood unit is issued after 13/07/2016.
- viii Casualty: Separate Casualty for O.G. is not available.
- ix. Paramedical and non-teaching staff: 76 Paramedical & Non-teaching staff are available against requirement of 100.
- x. Pharmaco Vigilance Committee is yet to be constituted.
- xi. Gender Harassment Committee is yet to be constituted.
- xii. Wards: Pantry rooms are available but there are no facilities.
- xiii ETO Sterilizer is not junctional.
- xiv. NIL Cadaver is available.
- xv. Website: Information uploaded is not complete. Citizens' charter is not available.”

In view of the deficiencies, the Executive Committee of the MCI decided to send a negative recommendation to the Ministry. Accordingly, MCI vide letter dated 26th December, 2016, informed the Ministry as under:-

“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 clause 3.2(i) of the directions passed by the Supreme Court mandated Oversight Committee vide communication dated 11/08/2016. The Executive Committee, after due deliberation and discussion, have 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 in para 3.2(b) vide communication dated 11/08/2016 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 Pennalur, Kancheepuram Dist. Tamilnadu by Sri Karumariamman Educational Trust, Tamilnadu, with an annual intake of 150 MBBS students under The Tamilnadu Dr. MGR Medical University, Chennai 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 20/08/2016 is liable to be encashed”

3. The Ministry granted a personal hearing to the college on 17th January, 2017 before the Director General of Health Services (for, short, “DGHS”). The Hearing Committee considered the explanation offered by the petitioner college and opined that the same was neither satisfactory nor substantiated, from the material placed before it and that it was necessary to verify the position in the medical college. The opinion of the Hearing Committee was forwarded by the Ministry to the OC for guidance. The OC, in turn, vide letter dated 14th May, 2017 opined that the deficiencies were duly explained by the college and were within the permissible limit. It opined that the LOP deserved to be confirmed. This opinion of the OC was then considered by the Ministry along with the negative recommendation submitted by the MCI and the opinion of the Hearing Committee (DGHS). The Ministry chose to accept the recommendation of the MCI in view of the deficiencies noted in the college during the inspection. As a result, the Ministry vide letter dated 31st May, 2017, communicated the decision of the Competent Authority of the Central Government to the petitioner college, debaring the college from admitting students for two academic years i.e. 2017- 18 & 2018-19 and also authorising MCI to encash the bank guarantee. The said communication reads thus:-

“ANNEXURE-P/22
Speed Post

No. U.12012/127/2016-ME-I[3084749]
Government of India
Ministry of Health & Family Welfare
(Department of Health & Family Welfare)

Nirman Bhawan, New Delhi
Dated the 31st May, 2017

To

The Principal/Dean,
Annai Medical College,
Pennaalur Kancheepuram,
Chennai - 602117,
Tamilnadu.

Subject: Conditional permission granted for establishment of Medical College in 2016-17-Decision of the Central Government - Annai Medical College, Pennalur - reg.

Sir/Madam,

In continuation to this Ministry's letter dated 20.08.2016 granting conditional permission for establishment of a medical college 150 seats for the academic year 2016-17 on the basis of approval communicated by Supreme Court Mandated Oversight Committee on MCI and after granting an opportunity of hearing to the College with reference to the recommendation of the MCI's letter No. MCI-34(41) (E-80)/2016-Med. 154505 dated 26.12.2016, I am directed to convey the decision of the Central Government to debar Annai Medical College, Chennai from admitting students in next two academic years i.e. 2017-18 & 2018-19 and also to authorize MCI to encash the Bank Guarantee of Rs. 2.00 crore.

2. You are therefore, directed not to admit students in the MBBS course in the academic years 2017-18 & 2018-19 at your College. Thereafter, next batch of students shall be admitted in the College only after obtaining permission of the Central Government for renewal.

3. Admissions made in violation of the above directives 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
Telefax: 011-23062959”

4. The petitioners, being aggrieved, have filed the present writ petition. In view of the decision in *Glocal Medical College and Super Speciality Hospital & Research Centre Vs. Union of India and Another*¹, the Central Government was directed to reconsider the matter afresh after giving opportunity of hearing to the petitioners including further submission, if any, and to pass a reasoned order. Accordingly, the Hearing Committee granted opportunity of hearing to the petitioner college on 4th August, 2017 and after considering the record and oral and written submissions, the Hearing Committee reiterated its earlier decision. After receipt of the opinion given by the Hearing Committee, the Competent Authority of the Central Government reiterated its earlier decision dated 31st May, 2017, vide order dated 10th August, 2017. The last two paragraphs of the impugned decision dated 10th August, 2017 are relevant, which read thus:-

“17. Now, in compliance with the above direction of Hon'ble Supreme Court dated 1.8.2017, the Ministry granted hearing to the college on 4.8.2017. The Hearing Committee after considering the record and oral & written submission of the college submitted its report to the Ministry. The findings of the Hearing Committee are as under:-

The inspection was conducted on 3-4 November. This was just after Diwali on 29.10.2016 and thus 12 faculty and 7 residents were on leave. One faculty was not

accepted as he appeared in the Government college inspection in September. He had superannuated in October and joined the college in November. Biometric machines have been installed and 30-31 August is the date given by MCI for faculty mapping. The college could provide compliance on other deficiencies College has 146 students in the first year and the management requested that it is in the interest of students that the college is not debarred 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.

18. 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.”

Aggrieved, the petitioners have challenged the aforementioned decision by filing an Interlocutory Application (I.A. No.84899 of 2017) in this Court.

5. The principal ground urged by the petitioners is that once again, the Competent Authority of the Central Government has passed a mechanical order. In that, the explanation offered by the petitioners which commended to the OC, has not been considered. The opinion of OC has been completely disregarded by the Competent Authority. It is submitted that the deficiencies noted in the Assessment Report dated 3rd & 4th November, 2016, could not be held against the college as the inspection was done around the time of Diwali festival. Further, the faculty and residents who were on leave were called back and could not be counted against the deficiencies. It is submitted that the OC had justly noted that on excluding such faculty members and residents, the deficiencies would be within acceptable limits. The petitioners, relying on the recent decision of this Court and in the case of *Dr. Jagat Narain Subharti Charitable Trust & Anr. Vs. Union of India and Ors.*², would contend that this is a fit case to confirm the LOP for the academic session 2016-2017 and also to direct the respondents to permit the petitioner college to admit upto 150 students for the academic session 2017-2018 and further, restrain the respondents from encashing the bank guarantee.

6. Per contra, the respondents, would contend that there is no infirmity in the decision of the Competent Authority in its order dated 31st May, 2017. The impugned decision dated 10th August, 2017, passed by the Competent Authority is a well considered decision. It has taken into account all the relevant records and previous proceedings whilst considering the explanation offered by the petitioners. The explanation did not find favour with the Competent Authority, whose opinion must be taken as final. Having rejected the explanation, it would follow that the deficiencies noticed in the Assessment Report dated 3rd & 4th November, 2016, were beyond the permissible limit. It is submitted that in the fact situation of the present case, no relief be granted to the petitioners. Further, the decision of this Court relied upon by the petitioners was on the facts of that case which has no application to the case of the petitioners.

7. We have heard Mr. Mukul Rohatgi, learned senior counsel for the petitioners, Mr. Maninder Singh, learned Additional Solicitor General for the Union of India and Mr. Vikas Singh, learned senior counsel along with Mr. Gaurav Sharma, learned counsel for the Medical Council of India.

8. On a bare perusal of the impugned decision dated 10th August, 2017, it is manifest that the Competent Authority inter alia noticed as follows:-

“(i) Absence of large number of faculty members and residents beyond the permissible limit on the day of inspection.

(ii) Explanation offered by the petitioners about the absence of faculty members and residents due to leave granted to them and also because the inspection was done just after Dewali festival, was unsatisfactory.

(iii) Explanation regarding one faculty was not accepted as he was present during the Government college inspection in September.

(iv) No compliance was provided in respect of other deficiencies.”

9. As regards the deficiencies of faculty members and residents, it was contended before the Hearing Committee that the absence of such large number of medical staff was mainly attributable to Diwali festival. The Hearing Committee has dealt with that contention and noted that Diwali was on 29th October, 2016, whereas the inspection was conducted on 3rd & 4th November, 2016. That was obviously beyond two days from Diwali festival and was permissible in terms of Clause 8 (3)(1)(d) of the Establishment of Medical College Regulations, 1999. A similar argument has been considered and rejected by this Court in the case of *Shri Venkateshwara University Vs. Union of India*³ and in *Royal Medical Trust & Anr. Vs. Union of India & Anr*⁴. Hence, no fault can be found with the view taken by the Competent Authority. The Hearing Committee also considered the explanation given by the petitioners regarding one faculty whose presence was noticed during the inspection of the Government College in September, 2016. The Hearing Committee then observed that the college could not provide compliance in respect of other deficiencies. The other deficiencies noticed in the Assessment Report dated 3rd & 4th November, 2016, which remained unexplained, were very significant and cannot be overlooked. It is seen that the Bed Occupancy on the day of assessment was only 51.6%. It was also noticed that the Hospital, with so many indoor patients, had not utilized any blood unit after 30th July, 2016. Indeed, the petitioners have asserted that the concerned staff who was maintaining the Blood Bank Register was not available and the “up-to-date register” was kept by him in his locker. This explanation did not find favour with the authorities. The other critical deficiency noticed in the Assessment Report was that only 76 paramedical & non-teaching staff were available as against requirement of 100. The statutory scheme provides for a minimum ratio of staff

and Beds to be maintained. The OC, however, brushed aside these deficiencies by observing that there was no minimum standard requirement MSR in that regard.

10. Considering the above, it is not possible to countenance the argument of the petitioners that the view taken by the Competent Authority is unjust, manifestly wrong or suffers from the vice of extraneous consideration. The impugned decision dated 10 th August, 2017 refers to all the relevant materials pointing towards the deficiencies in the college which still persisted, notwithstanding the undertaking given by the college to remove the same. That undertaking was the basis for issuing conditional LOP for the academic session 2016-2017.

11. Be that as it may, it is also not possible to sustain the argument of the petitioners that the impugned decision is a mechanical order passed by the Competent Authority. Similar argument has been considered and rejected in the case of Royal Medical Trust (supra). The dictum in paragraph 52 of the said decision will apply on all fours. The same reads thus:-

“52. What Dr. Dhawan submits basically is that as the order passed by the Central Government after the order passed by the High Court of Kerala does not really reflect any reason, this Court should axe the same treating it as arbitrary and grant the LOP and that would be within the power of judicial review. The order passed by the Central Government has to be appreciated in its entirety. We repeat at the cost of repetition that neither the Central Government nor the Hearing Committee is expected to pass a judgment as a Judge is expected to do. The order must reflect application of mind and should indicate reasons. We may reiterate that the order dated 31st May, 2017, was bereft of reason, but the order impugned, that is the order dated 14th August, 2017, cannot be said to be sans reason. Learned senior counsel would contend with all the vigour at his command that it is not a reasoned one and for the same 23 (2004) 2 SCC 150 50 our attention has been drawn to the penultimate paragraph of the order.”

12. Notably, this Court in the aforementioned case of Royal Medical Trust (supra), has ordained that no relief can be granted to such institutions to admit students for the academic session 2017-2018, since, the cut-off date for the admission to the MBBS course is over and the academic session has commenced. Resultantly, we may mould the relief as done in the case of *Varunarjun Trust and Anr. Vs. Union of India and Ors*⁵. wherein it is observed thus:-

“18. Be that as it may, the opinion of the Hearing Committee, which is the basis for passing the impugned decision, is founded on the performance of the college on the day of inspection dated 18th - 19th November, 2016. The question is: whether absence of faculty members and residents on the given day, assuming it to be substantial in number, per se, could be the basis for determining the efficiency and performance of the college for the rest of the academic session while considering the proposal for grant of permission? There is nothing in the opinion of the Hearing Committee or the decision of the Competent Authority that requisite number of

faculty members and residents was not employed in the petitioner college or that the claim of the petitioner college in that behalf was bogus. The noting is about the absence of such large number of faculty and residents on the day of inspection and during the duty hours. Assuming that the college could not secure the presence of those persons at the time of inspection, it does not follow that those faculty members and residents were not on the pay roll and in the employment of the petitioner college. This aspect certainly requires proper verification and consideration by the concerned authority.”

19. A priori, we may adopt the course as in the case of *World College of Medical Sciences & Research Vs. Union of India*⁶, by directing the respondents to allow the students already admitted in the petitioner college on the basis of conditional LOP for the academic session 2016-17, to continue their studies. The MCI shall send its Inspection Team within a period of three months to submit an assessment report regarding the overall performance and efficiency of the petitioner college and deficiencies, if any, and give time to the petitioner college to remove those deficiencies within the time specified in that regard. The petitioner medical 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 submit its recommendation to the Central Government. The Ministry shall take a final decision within one month of the receipt of the recommendation from the MCI. Until such decision is taken and communicated to the petitioners, the Bank Guarantee offered by the petitioners in the sum of Rs. Two Crore shall not be encashed by the MCI but the petitioners shall keep the same alive. In the event the final decision of the Competent Authority of the Central Government is adverse to the petitioners, it will be open to them to take recourse to such remedies as may be available in law.”

13. Accordingly, we dispose of this writ petition and interlocutory application in the same terms, as follows:-

“(i) The respondents are directed to allow the students already admitted in the petitioner college on the basis of conditional LOP for the academic session 2016-17, to continue their studies.

(ii) The MCI shall depute its Inspection Team within a period of two months to submit an assessment report regarding the overall performance and efficiency of the petitioner college and deficiencies, if any, and give time to the petitioner college to remove those deficiencies within the time specified in that regard.

(iii) The petitioner medical 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 submit its recommendation to the Ministry. The Ministry shall then take a final decision within one month of the receipt of the recommendation from the MCI.

(iv) We direct that until the final decision is taken by the Ministry and communicated to the petitioners, the Bank Guarantee offered by the petitioners in the sum of Rs. Two Crore shall not be encashed by the MCI but the petitioners shall keep the same alive. In the event the final decision of the Competent Authority of the Central Government is adverse to the petitioners, it will be open to them to take recourse to such remedies as may be permissible in law.

(v) We direct that the stated inspection to be conducted by the MCI will be to consider confirmation of LOP in favour of petitioner college for the academic session 2016-2017.

(vi) We further direct the respondents to treat the renewal application submitted by the petitioner college for the academic session 2017-18 as having been made for the academic session 2018-19 and process the same in accordance with law with promptitude.

14. Writ petition and interlocutory application are disposed of in the above terms. No order as to costs.

Judgment Referred.

¹(2017) 8 SCALE 0356

²WP(C)No.513 of 2017

³WP(C) No.445 of 2017

⁴WP(C)No.747 of 2017

⁵WP(C) No.787 of 2017

⁶WP(C) No.514 of 2017