

SUPREME COURT OF INDIA

Kempegowda Institute of Medical Sciences

Vs.

Medical Council of India

WP(Civil)No.840 of 2017

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

21.09.2017

JUDGMENT

A.M. Khanwilkar,J.,

1. The petitioner applied for recognition/approval to increase the intake i.e. from 120 to 150 seats, of the MBBS Degree Course recognised by Rajiv Gandhi University of Health Sciences, Bangalore. That application was processed by the Medical Council of India (for short “MCI”) under Section 11(2) of the Indian Medical Council Act, 1956 (for short, “the Act”). After carrying out inspection, assessment report dated 21st April, 2017, was placed before the Executive Committee of MCI pointing out the deficiencies in the petitioner-institution.

2. The petitioner-institution, however, filed writ petition before the High Court of Karnataka, bearing Writ Petition (Civil) No. 33465 of 2017, in which direction was issued to the respondents. Pursuant thereto, inspection was carried out by the Council assessors on 21st August, 2017. The compliance verification assessment report dated 21st August, 2017 along with previous assessment report dated 16th and 17th March, 2017, and 21st April, 2017, was considered by the Executive Committee in its meeting held on 30th August, 2017. The Executive Committee decided to recommend to the Central Government not to recognise/approve the petitioner-institution for the increased intake from 120 to 150 seats under Section 11(2) of the Act and further decided to call upon the petitioner-institution to submit compliance for rectification of the deficiencies noticed in the concerned assessment report within one month, for further consideration of the matter. It was also decided by the Executive Committee to continue the application under consideration under Clause 8(3)(1)(c) of the Establishment of Medical College Regulation (Amendment), 2010 (Part-II) dated 16th April, 2010, and amended on 18th March, 2016. The communication in that behalf was sent by the MCI on 4th September, 2017 with a copy marked to the petitioner-institution to submit detailed point-wise compliance for grant of increased intake from 120 to 150 (soft copy - in editable word format with CD) with the documentary evidence in respect of the rectification of deficiencies pointed out.

3. The petitioner, however, filed the present writ petition on 7 th September, 2017, for the following reliefs:

“PRAYER

It is therefore prayed that this Hon’ ble Court be pleased to:

a. Issue an appropriate writ, order or direction in the nature of mandamus directing the Medical Council of India, Respondent No.1, to take a decision on the Inspection Report dated 21.8.2017 and recommend to the 2nd respondent, Union of India - Ministry of Health and Family Welfare, for recognition of increased intake from 120 to 150 seats in MBBS course for the academic year 2017-18 and accordingly extend the last date of admission for the increased intake of 30 seats for the academic year 2017-18.

b. Alternatively issue a writ of mandamus directing the 4th respondent, Oversight Committee to consider the case of the petitioner for increased intake of 30 seats for the academic year 2017-18 within a specified time limit, in the event, Medical Council of India decides not to recommend for renewal of permission for increased intake of students for the academic year 2017-18.

c. Pass such further orders as this Hon’ ble Court may deem fit and proper in the facts and circumstances of this case.”

4. As the communication dated 4th September, 2017, was received by the petitioner-institution, the petitioner filed interlocutory application in the pending writ petition being I.A. No. 92019 of 2017 on 14th September, 2017, for the following reliefs:-

“PRAYER

It is therefore MOST RESPECTFULLY PRAYED that this Hon’ ble Court may be pleased to:

I) Permit the Petitioner to add the following prayers in the Writ Petition

a) to issue an appropriate Writ, Order or Direction in the nature of Certiorari to quash the Communication/letter dated 4.9.2017 of the Medical Council of India.

b) to issue an appropriate Writ, Order or Direction in the nature of Mandamus directing the Central Government to grant permission/recognition of increased intake from 120 to 150 seats in MBBS course for the academic year 2017-18 and accordingly extend the last date of admission for the increased intake of 30 seats for the academic year 2017-18.

II) Pass such further orders as this Hon' ble Court may deem fit and proper in the facts and circumstances of this case.”

5. We have heard Ms. Mahalakshmi Pavani, learned senior counsel appearing for the petitioner and Mr. Vikas Singh, learned senior counsel appearing for the respondents.

6. Considering the substantive relief claimed by the petitioner in the writ petition coupled with the fact that no final decision has been taken on the proposal for enhancement of intake capacity from 120 to 150 seats by the Competent Authority, the question of granting relief to permit the petitioner-institution to admit upto 150 students in MBBS course for the academic session 2017-18 cannot be countenanced. For, as per the communication dated 4th September, 2017, the petitioner is obliged to first rectify the deficiencies and satisfy the concerned authorities of having done so. Only thereafter the Executive Committee of MCI will be in a position to make final recommendation to the Central Government, which, in turn, would take appropriate decision as may be advised. In any case, since the admission process for the academic session 2017-18 has concluded and the last date for admitting students has expired, the question of granting any relief to the petitioner to permit admission of students up to 150 seats cannot be considered. As has been observed in *Royal Medical Trust and Another Vs. Union of India*¹ we are inclined to issue following directions:-

“ (i) The application submitted by the petitioner for grant of recognition/approval for increased intake from 120 to 150 seats for the academic session 2017-18 shall be treated as having been made for the academic session 2018-19.

(ii) The MCI shall conduct a fresh inspection as per the regulations within a period of three months. It shall apprise the petitioner-institution with regard to the deficiencies, if any, and afford an opportunity to comply with the same and thereafter proceed further in accordance with law and including in conformity with the provisions of the Act and the Regulations framed thereunder.

(iii) We make it clear that the inspection shall be carried out for the purpose of academic session 2018-19.

(iv) After the Executive Committee of the MCI considers the assessment report submitted to it after inspection in terms of this order, it shall send its recommendation to the Central Government. The Central Government shall then take a final decision after affording an opportunity of hearing to the petitioner-institution, by taking assistance of the Hearing Committee as constituted by the Constitution Bench of this Court in *Amma Chandravati Educational and Charitable Trust & Ors. Vs. Union of India & Anr.*², or other directions given in the said decision and in accordance with law.

7. The writ petition and interlocutory application are, accordingly, disposed of in the above terms. There shall be no order as to costs.

Judgment Referred.

¹*WP(Civil)No.747 of 2017*

²*WP(Civil)No.408 of 2017*