

Writ Petition No.15498/2015
(Gyanjeet Sewa Mission Trust vs. Union of India and others)

30.09.2015

Shri Amalpushp Shroti, Advocate for the petitioner.

Shri Vikram Singh, Advocate for the Union of India.

Shri Rajas Pohankar, Advocate for the Medical Council of India.

Shri P.K. Kaurav, Dy. Advocate General for the respondents/State.

Heard counsel for the parties.

As short question is involved and because of urgency, we take up this matter for final disposal forthwith. Counsel for the respondents have no objection in that behalf. They have waived notice for final disposal and also consented for immediate final disposal of the matter in view of the urgency.

2. The writ petition takes exception to the order passed by the Under Secretary to the Government of India, Ministry of Health and Family Welfare dated 11.09.2015 as also the order passed by the Medical Council of India dated 24.08.2015 Annexure P-11 and P-12 respectively.

3. This is second round of writ petition by this petitioner. On the earlier occasion, the petitioner had to challenge the

decision of the appropriate Authority, which challenge was upheld on the finding that principles of natural justice were not observed by the appropriate Authority whilst deciding the matter in issue, vide judgment dated 01.07.2015 in W.P. No.7915/2015. That decision has been upheld by the Supreme Court with the dismissal of SLP (Civil) No.18125/2015 on 18.08.2015, filed by the Medical Council of India. After dismissal of the Special Leave Petition, the Medical Council of India acted upon the directions given by this Court and caused to conduct inspection of the institution on 20th and 21st of August, 2015. It, however, once again submitted a negative recommendation to the Central Government on 24.08.2015 (Annexure P-12). The Central Government after receipt of the said recommendation proceeded to pass order on 11.09.2015 (Annexure P-11), disapproving the scheme submitted by the petitioner for establishment of a new Medical College at Jabalpur in the State of Madhya Pradesh.

4. The grievance of the petitioner, on this occasion, is no different. On this occasion also, the challenge to the orders passed by the two Authorities is on the argument that the Authorities proceeded with the matter in utter disregard of

the statutory obligation and, more so, the observations of this Court in the decision dated 01.07.2015. In that, no notice whatsoever was given by the Medical Council of India before submitting a negative report against the petitioner institution mentioning about the deficiencies, vide recommendation dated 24.08.2015. Similarly, the Central Government before passing the order dated 11.09.2015 did not issue notice to the petitioner. In other words, the decision is vitiated not only on account of breach of principles of natural justice, but non-compliance of statutory requirement in Section 10-A(3) and (4) of the Indian Medical Council Act, 1956.

5. The fact so asserted is indisputable. The impugned order passed by the Medical Council of India as also by the Central Government makes no reference to having issued any notice to the petitioner before passing the same.

6. The learned counsel for the Central Government as well as the Medical Council of India, in all fairness, accept that no notice was given to the petitioner. On this count alone, both the orders deserve to be set aside and the petitioner deserve to be relegated before the Medical Council of India for being afforded opportunity of being heard before submitting negative recommendation to the

Central Government. However, that may delay the entire process of consideration of the proposal, which may eventually end up in not starting the College in this academic year. Resultantly, denying 150 medical seats to the students community, in particular, in the State of Madhya Pradesh, if the permission was to be legitimately granted to the petitioner – institution in that behalf.

7. Since the Central Government is the final Authority and the Medical Council of India is only a recommending Authority, we deem it appropriate to relegate the petitioner before the Central Government for deciding all the issues as may be relevant for consideration of proposal regarding scheme for establishment of a new Medical College at Jabalpur submitted by the petitioner.

8. We have no manner of doubt that the Central Government will keep in mind that the petitioner claims that it has provided all the statutory and requisite facilities and is geared up to commence the College in this academic year (2015-2016) itself, if permission is accorded. The application for that permission was made by the petitioner to the Central Government on 26.08.2014, much before the cut off date. However, because of the inappropriate processing of the proposal, the delay has occasioned. The

delay is in no way attributable to the petitioner, which fact can be discerned from the reasons recorded in the order dated 01.07.2015 passed in W.P. No.7915/2015; as also the present situation arising on account of not giving notice to the petitioner before passing the final order by the Central Government – notwithstanding the statutory requirement in that behalf and clear direction issued by the Court in the earlier round of writ petition.

9. Accordingly, we direct the Central Government to reconsider the proposal submitted by the petitioner for establishing a new Medical College at Jabalpur and take final decision thereon on or before 8th October, 2015. We are specifying this date as the admission process to all the Private Medical Colleges in the State of Madhya Pradesh will commence only after the declaration of results of the common online examination to be conducted by APDMC on or around 8th October, 2015 and to complete the admission process before 14th October, 2015, as observed in the order dated 28.09.2015 passed in W.P. No.8810/2015 (PIL) and companion cases. The question: whether the admission process can be permitted after 30.09.2015, will be finally answered in the said proceedings. For the time being, however, we place on record the submission made by

the counsel for the writ petitioner that in the case of **RKDF Medical College Hospital and Research Center**, the Supreme Court has already extended the cut off date for consideration of the proposal for renewal of permission by 10 days in terms of order dated 22.09.2015 passed in SLP (Civil) No.19513/2015.

10. Be that as it may, for the reasons reordered hitherto, we quash and set aside the order passed by the Central Government dated 11.09.2015 (Annexure P-11) and direct the Central Government to decide the proposal afresh on or before 8th October, 2015 by giving fair opportunity to the petitioner. The requirement of notice in terms of Section 10-A(4) is dispensed with, with the consent of the petitioner given through the counsel appearing before this Court. The petitioner assures to file its response/explanation before the Central Government on or before 3rd October, 2015. The petitioner will be free to raise all contentions, as may be permissible in law and including in the context of the deficiencies noted in the recommendation of the Medical Council of India dated 24.08.2015 (Annexure P-12). The respondent No.1 shall deal with those matters point-wise and give a reasoned decision in the event, the same is adverse to the petitioner – so that the petitioner can avail of

further remedy, as may be permissible in law. It will be open to the petitioner to present the response/explanation in the office of the respondent no.1 at 11:00 A.M. on 3rd October, 2015, on which date and time, the respondent No.1 – the Secretary of the Department shall make himself available for affording hearing and conclude the hearing on the same day or on the following day and ensure that final decision is taken before 8th October, 2015; and communicated to the petitioner by e-mail/fax on the same day. The respondent No.1 shall continue with the hearing irrespective of office non-working day, in view of the urgency and the exceptional situation attributable to the lapse of the respondent no.1 in not giving prior notice to the petitioner before disapproving the scheme.

11. If the decision is in favour of the petitioner, it will be open to the petitioner to apply to APDMC/State of Madhya Pradesh to provide sufficient number of students for admission to the 1st year MBBS Course in the petitioner-College.

12. For the nature of order that we have passed, it is not necessary to dilate on the other factual matrix and contentions. For which reason, we have not highlighted the same in this order.

13. After this order is dictated, now the counsel for the petitioner submits that the other points raised by him must also be dealt with. According to him, the petitioner should be permitted to commence provisional admission process as has been done in the case of Shri Astha Foundation For Education Society vs. Government of India and others in W.P. No.6447/2015, by the Bench at Indore. We have perused the order dated 28.09.2015 passed by the Division Bench at Indore in the said writ petition. That is an interim order. In the present case, we have decided to finally dispose of the writ petition. For which reason, the question of considering the request for permitting the petitioner to proceed with the provisional admission, does not arise. Further, we are doubtful about the correctness of the said approach. For, there is no express provision in the Regulations, at least brought to our notice by the counsel for the petitioner, empowering the Authorities to allow the College such as the petitioner (without grant of recognition) to admit students on provisional basis. Notably, the present case is not one of renewal permission, but “grant of fresh permission” to start a new medical college. Suffice it to observe, that since the petitioner has already succeeded on the other contention, we do not wish to dwell on this

contention any further. Counsel for the respondents have justly relied on the decisions in the case of **Medical Council of India vs. Rajiv Gandhi University of Health Sciences and others, (2004) 6 SCC 76** and **Dental Council of India vs. S.R.M. Institute of Science & Technology and another, (2004) 9 SCC 676** that such interim orders should be eschewed. For the reasons already recorded, we need not dilate on these decisions any further.

14. Our attention was also invited to the decision of the Bombay High Court, in the case of **Sau. Mathurabai Bhausahab Thorat Sevabhavi Trust vs. Union of India and others** in W.P. No.5481/2015 dated July 7th, 2015. No doubt, the Bombay High Court by a detailed judgment passed interim directions during the pendency of the writ petition and the Supreme Court declined to interfere with that order by dismissing SLP (Civil) No.22599/2015 on 17.08.2015. However, that was because the matter before the Bombay High Court was due for final hearing very shortly on 25th August, 2015. Thus, neither the order of the Supreme Court, pointed out to us in that case nor that of the Bombay High Court, can be cited as a binding precedent on the question that we are called upon to answer. Besides this reason, we may further note that the case before the

Bombay High Court was relating to proposal for “renewal permission” and not for grant of fresh permission, as in this case.

15. Counsel for the petitioner then persuaded us to take a view that instead of relegating the petitioner before the Central Government, the entire matter should be decided by this Court itself. For that, reliance has been placed on a recent unreported operative order passed by the Supreme Court dated September 24, 2015 in Civil Appeal No.7953/2015 in the case of **Rajiv Memorial Academic Welfare Society and another vs. Union of India and another**. That order reads thus:-

“By a detailed order passed today we have allowed the appeal arising out of SLP(C) No. 25946/2015 and dismissed the appeal arising out of SLP(c) No. 26834/2015. The directions which are given in the Judgment read as under:

“We are satisfied that in the aforesaid circumstances there was no need to direct conducting of re-inspection by the Medical Council of India and for the Academic Year 2015-2016 direction could have been given by the High Court for grant of permission once the order of the Central Government was found to be contrary to law.

The offshoot of the aforesaid discussion would be to allow the appeal filed by the Appellant/Society and dismiss the appeal of the Medical Council of India. The Government of India is directed to pass appropriate orders granting

permission to the appellant/Society in respect of the college in question for the Academic Year 2015-2016 within a period of two days, having regard to the fact that the last date for conducting the admissions is 30th September, 2015. The College is also permitted to admit the students in accordance with law.”

Since the typing of the judgment containing directions therein and signing may take a couple of days, the aforesaid portion of the order should be out today and parties would be given copy thereof so that the necessary directions be complied with by the authorities/parties concerned.”

We fail to understand, as to how this order will be of any avail to the petitioner. The reasons for which this order has been passed, has not been placed before us. We were told that the reasons are still not available on the official Website of the Supreme Court. In our opinion, this order cannot be the basis to accept the argument of the petitioner that the Court itself should decide all the issues noted by the Medical Council of India pertaining to the known deficiencies, on its merits in exercise of writ jurisdiction. In any case, we are not inclined to do so in absence of any binding precedent pointed out to us that the discretion to be exercised by the appropriate Authority, in respect of matters relevant therefor, must be considered for the first time by the High Court itself. Once the Central Government passes

a reasoned order, after giving opportunity to the petitioner, the situation may be different. In that case the Court will have the assistance of those reasons and the correctness whereof can be tested and if found to be untenable the Court will be in a position to mould the reliefs prayed by the writ petitioner to do substantial justice.

16. The challenge of the present petitioner, therefore, will have to be limited to the factum of not giving opportunity of hearing before the final decision was taken by the Central Government. That grievance will have to be redressed first; and after giving opportunity if the Central Government was to negative the claim of the petitioner by a reasoned order; in that eventuality, probably, it may be possible to invoke the principle expounded by the Supreme Court in the case of **Rajiv Memorial Academic Welfare Society and Another vs. Union of India and Another** in Civil Appeal No.7954/2015 dated 24.09.2015, if applicable to the facts of this case.

17. Besides this, no other contention has been raised which need to be dealt with in this order. In view of the urgency, we have tried to be very brief in our reasoning so that the Authority should get sufficient time to deal with all the issues that will be raised by the petitioner while

considering the proposal regarding establishment of a new Medical College at Jabalpur.

18. The petition is **disposed of** on above terms with no order as to costs.

C.C. as per rules.

(A. M. Khanwilkar)
Chief Justice

(Sanjay Yadav)
Judge

PSM