

HIGH COURT OF MADHYA PRADESH AT JABALPUR
WRIT PETITION NO.8849/2017

PETITIONERS : **JAIN SARVODAYA VIDHYA
GYANPITH SAMITI
AND ANOTHER**

Vs.

RESPONDENTS : **UNION OF INDIA
AND ANOTHER**

**Present : Hon'ble Shri Justice R.S. Jha,
Hon'ble Justice Smt. Nandita Dubey.**

For the petitioners : Shri R. N. Singh, Senior Counsel
with Shri Arpan Pawar and Shri
Priyank Upadhyay, Advocates.

For respondent no.1 : Shri J. K. Jain, Asstt. Solicitor
General.

For respondent no.2. : Shri Anoop Nair, Advocate.

Whether approved for reporting:

ORDER
(30/08/2017)

Per R. S. Jha, J.

The petitioners have filed this petition praying for quashing the order passed by respondent no.1 Central Government dated 31.5.2017 disapproving and rejecting the application filed by the petitioner-institution seeking permission to establish of a new Medical College from the academic session 2017-18. The petitioners have also assailed the negative recommendation of the Medical Council of India, respondent no.2, dated 20.4.2017 on the basis of which the impugned order dated 31.5.2017 has

been passed by respondent no.1. The petitioners have also prayed for a direction to the respondent no.1 to issue a letter of permission to the petitioner-institution at Bhopal for the current academic session 2017-18 with an annual intake of 150 students in the MBBS Course.

2. The learned Senior Counsel for the petitioners submits that the petitioner-institution had filed an application on 5.7.2016 before the respondent no.1 seeking permission to establish and run a Medical College in accordance with the Medical Council of India Establishment of Medical College Regulation 1999 (hereinafter referred to as 'the MCI Regulations 1999'). It is submitted that, the application on being forwarded to respondent no.2, inspection of the petitioner-institution was conducted by respondent no.2 on 3/4.1.2017 and the inspection report was taken up for consideration by the Executive Committee of the respondent no.2 on 13.1.2017. It is submitted that the Executive Committee of the respondent no.2 forwarded a negative report and recommendation against the petitioner-institution to respondent no.1 on 31.1.2017 on the basis of which respondent no.1 issued a notice to the petitioner-institution on 14.2.2017 and granted opportunity of personal hearing to the petitioner-institution on

20/21.2.2017. It is submitted that during the course of hearing of the matter before the respondent no.1, the petitioner-institution submitted documents before respondent no.1 to indicate that it had removed all the deficiencies pointed out by the MCI during its inspection and, therefore, the respondent no.1 sent the case of the petitioner-institution back to the MCI to consider the documents submitted by the petitioner-institution on 2.3.2017. It is submitted that the matter was again examined by the Sub-Committee of the MCI which again submitted a negative report against the petitioner-institution on 7.3.2017 which was approved by the Executive Committee of the MCI on 21.3.2017.

3. The learned Senior Counsel for the petitioners submits that on the basis of the aforesaid reports, the MCI affirmed and reiterated its previous recommendation against the petitioner-institution on 20.4.2017. It is stated that the aforesaid negative recommendation and affirmation of the previous recommendation was considered by the respondent no.1 and mechanically approved by the impugned order dated 31.5.2017.

4. The learned Senior Counsel for the petitioners submits that the impugned order dated 31.5.2017 has

been passed by respondent no.1 without applying its mind to the submission made by the petitioners or taking into consideration the huge compilation of documents filed by the petitioner-institution indicating removal of deficiencies that were found by the MCI in its initial inspection.

5. It is submitted that the respondent no.2 has also not applied its mind to the compliance report submitted by the petitioner-institution in spite of the fact that the matter was sent back to it by respondent no.1 for reconsideration of the petitioner's application in the light of the documents indicating removal of the deficiencies filed by the petitioner-institution and, therefore, the negative recommendation of the MCI also suffers from non-application of mind.

6. The learned Senior Counsel for the petitioners submits that as the impugned orders have been passed mechanically without considering the documents filed by the petitioner-institution or applying their mind to the same, the impugned orders deserve to be quashed and the relief and the direction prayed for by the petitioners be granted.

7. The learned counsel for respondent no.1, per contra, submits that the petitioner-institution was found deficient in several respects by the Medical Council of India in its inspection conducted on 3/4.1.2017 and the inspection report was duly affirmed and reiterated by the MCI and forwarded to the respondent no.1. It is stated that when the matter was taken up by the respondent no.1 on 20/21.2.2017, the petitioners submitted certain documents indicating appointment of staff, etc. which had not been placed by them before the MCI during inspection and, therefore, the respondent no.1 again sent the matter to the MCI to look into the same. It is stated that the matter was re-examined by the MCI and thereafter the second negative recommendation was again submitted by it which was duly placed before the Over-Sight Committee in its proceedings held on 18.4.2017 and were approved. The learned counsel for respondent no.1 submitted that as the recommendation of the MCI were duly approved by the Oversight Committee constituted by the Supreme Court pursuant to the direction issued by it in the case of **Modern Dental College and Research Centre and Others vs. State of Madhya Pradesh and Others**, (2016) 7 SCC 353, therefore, the

respondent no.1 has duly approved the same by the impugned order dated 31.5.2017.

8. The learned Assistant Solicitor General appearing for the respondent no.1 submits that as per the schedule prescribed and notified under the MCI Regulation which has been approved by the Supreme Court in the case of **Ashish Ranjan & Others vs. Union of India & Others (W.P(C) No.76/2015** disposed of on 18.1.2016, the last date by which the letter of permission could have been issued was 31.5.2017. It is stated that as the said date has elapsed, the prayer made by the petitioner-institution for issuance of a letter of permission cannot be considered in the light of the decision of the Supreme Court rendered in the case of **Ashish Ranjan** (supra).

9. The learned counsel for the respondent no.2 MCI has reiterated the submissions made by the learned counsel for respondent no.1 and again asserted that on account of the fact that as the last date for issuance of letter of permission has lapsed, therefore, the prayer made by the petitioner-institution in the present petition cannot be entertained in view of the decision of the Supreme Court rendered in the cases of **Ashish Ranjan** (supra), **Mridul Dhar (Minor) and Another vs. Union of India and**

others, (2005) 2 SCC 65, Priya Gupta vs. State of Chattisgarh and others, (2012) 7 SCC 433, Royal Medical Trust (Registered) and another vs. Union of India and another, (2015) 10 SCC 19, D. Y. Patil Medical College vs. Medical Council of India and another, (2015) 10 SCC 51, Poonaiyah Ramajayam Institute of Science and Technology Trust vs. Medical Council of India and another, (2015) 10 SCC 83, Manohar Lal Sharma vs. Medical Council of India and others, (2013) 10 SCC 60, Medical Council of India vs. Kalinga Institute of Medical Sciences (KIMS) & Others, Civil Appeal No.4914/2016 and Dental Council of India vs. Dr. Hedgewar Smruti Rugna Seva Mandal, Hingoli & others, Civil Appeal No.4926/2017.

10. The learned counsel for the respondent no.2 MCI, in addition, states that several discrepancies were found by the inspection team when it conducted an inspection of the petitioner-institution and these deficiencies mainly related to lack of staff and bed occupancy as is evident from the recommendation of the MCI dated 31.1.2017, Annexure P-3, filed alongwith the petition. The learned counsel for respondent no.2 has also pointed out that a perusal of Annexure P-3 dated 31.1.2017 makes it

abundantly clear that the deficiency of bed occupancy that was observed, was tried to be rectified by the petitioner-institution by admitting fake patients and giving incorrect data.

11. The learned counsel for the respondent No.2 points out that as these deficiencies relating to faculty/residents and bed occupancy are fatal to any institution, the M.C.I. while submitting its recommendation on 31.1.2017 clearly quoted Regulation 8(3)(1)(a) of the Regulations of 1999, for rejecting the application filed by the petitioner-institution. The learned counsel for respondent no.2 submits that in such circumstances, the petition filed by the petitioner be dismissed.

12. We have heard the learned counsel for the parties at length. On a perusal of the M.C.I. recommendation dated 31.1.2017 (Annexure P/3) it is apparent that the deficiency of faculty was 23.07% while the shortage of residents was 39.30%. The report also indicates that the bed occupancy was only 4.33% at 10 a.m. on the date of assessment but later on certain fake patients were admitted by the petitioner-institution, details of which have been clearly mentioned by the M.C.I. in its report. The report indicates that apart from the aforesaid

deficiencies, as many as 18 other deficiencies were found and, therefore, as the deficiency of teaching staff and/or residents was more than 30% and the bed occupancy was less than 60%, the MCI recommended rejection of the application of the petitioner-institution. The documents filed by the petitioner alongwith the petition regarding appointment of staff, etc. also indicate that most of the staff, in respect of whom details have been furnished by the petitioner-institution subsequently before respondent no.1 during hearing and on the basis of which the matter was sent back to the MCI, were appointed much after the inspection conducted by the MCI mostly in the month of January 2017, which clearly goes to show that as on the date of the MCI inspection and recommendation, the necessary staff was not available and the requisite percentage of faculty and residents had not been appointed by the petitioner-institution.

13. From the voluminous documents filed by the petitioners alongwith the petition and the inspection report of the MCI, it is apparent that as on the date of the inspection and submission of the report, the petitioner-institution suffered from the disqualification prescribed

under Regulation 8(3) of the Regulations of 1999, specially the one relating to bed occupancy.

14. At this stage, it is also pertinent to take into consideration the provisions of Regulation 8(3)(1) of the Regulations of 1999, as amended by the Gazette notification dated 18.3.2016.

15. Regulation 8(3)(1) of the Regulations of 1999 is in the following terms :-

“In terms of Gazette Notification dated 18.03.2016 the following additions/ modifications/ deletions/ substitutions, shall be, as indicated therein:

3.(1) In Clause 8(3)(1)(a) under the heading of “Colleges in the stage upto II renewal (i.e. Admission of third batch)” shall be substituted as:-

(a) Colleges in the stage of Letter of Permission upto II renewal (i.e. Admission of third batch)

If it is observed during any inspection/assessment of the institute that the deficiency of teaching faculty and/or Residents is more than 30% and/or bed occupancy is <50% (45% in North East, Hilly terrain, etc.), compliance of rectification of deficiencies from such an institute will not be considered for issue of Letter of Permission(LOP)/renewal of permission in that Academic Year.

In Clause 8(3)(1)(b) under the heading of “Colleges in the stage from III renewal (i.e. Admission of fourth batch) till recognition of the institute for award of M.B.B.S. degree” shall be substituted as:-

(b) Colleges in the stage of III & IV renewal (i.e. Admission of fourth & fifth batch)

If it is observed during any inspection of the Institute that the deficiency of teaching faculty and / or Residents is more than 20% and / or bed occupancy is <65%, compliance of rectification of deficiencies from such an institute will not be considered for renewal of permission in that Academic Year.

In Clause 8(3)(1)(c) under the heading of “Colleges which are already recognized for award of M.B.B.S. degree and / or running Postgraduate courses” shall be substituted as:-

(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 Academic Year and further such an institute will not be considered for processing applications 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 u/s 11(2) of the IMC Act, 1956 along with direction of stoppage of admissions in permitted postgraduate courses.

In Clause 8(3)(1)(d) under the heading “Colleges which are found to have employed teachers with fake/forged documents: the second paragraph shall be substituted as:-

“However, the office of the Council shall ensure that such inspections are not carried out at least 2 days before and 2 days after important religious and festival holidays declared by the Central/State Govt.”
(underlined by us)

16. A bare perusal of the aforesaid Regulation makes it clear that in cases where inspection of the institution is conducted and it is found that the deficiency of teaching faculties and/or residents is more than 30% and the bed occupancy is less than 50% then in those cases any steps or efforts made by the institution towards compliance and rectification of deficiencies will not be taken into consideration for issuance of letter of permission/renewal in that academic year. In other words, in cases where deficiencies in respect of faculty/residents is more than 30% and the bed occupancy is less than 50%, the application shall be rejected and no opportunity to

rectify such deficiency would be given and any steps towards removal of the same shall also not be taken into consideration.

17. A Division Bench of this Court in the case of **RKDF Medical College Hospital and Research Centre vs. Union of India and another** (W.P.No.8160/2017) decided on 21.7.2017, has taken a similar view in paragraph 21 of the aforesaid judgment.

18. In view of the aforesaid facts as stated above and the provisions of law namely, Regulation 8(3)(1)(a), it is clear and apparent that no fault can be found with the negative recommendation of the M.C.I. or the order passed by the respondent No.1 rejecting the petitioners' application on account of the fact that as on the date of the inspection/assessment, deficiency of teaching faculty/residents in the case of the petitioner-institution was found to be more than 30% and the bed occupancy was found to be less than 50%.

19. At this stage, it is also pertinent to note that the impugned order dated 31.5.2017 passed by the respondent no.1 clearly states that the respondent no.1 has rejected the application filed by the petitioner-institution by accepting the recommendations of the M.C.I

and, therefore, when the impugned order dated 31.5.2017 is considered in juxtaposition with the impugned second recommendation of the M.C.I. dated 20.4.2017 which has been filed by the respondent no.2 as Annexure R-2/14, it is clear that the respondent no.1 has in fact applied its mind and reiterated and affirmed the MCI recommendation wherein it has taken into consideration the report of its Sub-committee as well as the Executive Committee and has specifically taken note of the fact of deficiency in bed occupancy and recommended rejection of the application filed by the petitioner-institution in view of the provisions of Regulation 8(3)(1)(a) of the Regulations of 1999, on the ground that in cases where the application is not complete or deficient in respect of the requirements prescribed therein at the first instance, they are liable to be rejected. The respondent no.1 has also accepted and approved the fact that the M.C.I while forwarding its negative recommendation has also taken into account and placed before respondent no.1 the fact that the decision of the Executive Committee recommending rejection of the petitioners' application has been approved by the Oversight Committee constituted by the Supreme Court in its proceedings held on 18.4.2017,

which have also been placed before this Court during the course of hearing and are taken on record and marked as Annexure-X. In such circumstances we are of the considered opinion that the contention of the learned counsel for the petitioners that the impugned order has been passed by the respondent no.1 mechanically and without application of mind deserves to be rejected as it is apparent that the respondent no.1 has not just applied its mind but had also approved the recommendation of the MCI by taking the aforesaid aspect as well as the provisions of law into consideration.

20. We are also of the considered opinion that the expert body namely, the MCI and its Sub-Committee and Executive Committee have examined and inspected the petitioner-institution and found it to be deficient in bed occupancy and there is nothing on record to indicate that the aforesaid finding of the MCI is either malafide or perverse and, therefore, this Court in view of the inherent limitation contained in exercise of its writ jurisdiction, is not required to examine nor can it go into the correctness or otherwise of the recommendation of such an expert body as has been held by the Supreme Court in the cases of **Dental Council of India vs. Subharti K. K. B. Charitable Trust and Another**, (2001) 5 SCC 486,

Basavaiah (Dr.) vs. Dr. H. L. Ramesh and others, (2010) 8 SCC 372 and **G. Sundarrajan vs. Union of India and others,** (2013) 6 SCC 620.

21. We also find substance in the submission of the learned counsel for the respondents to the effect that the time schedule notified by the MCI and approved by the Supreme Court has to be strictly adhered to. It is worth noting that the amendment in the Regulations of 1999, relating to the time schedule were duly taken note by the Supreme Court in its decision in the case of **Ashish Ranjan** (supra), from a perusal of which it is clear that the last date by which the letter of permission can be issued or is required to be issued by the Central Government is 31st of May of the year concerned and no letter of permission thereafter can be issued and that the Supreme court while approving the aforesaid time schedule has clearly directed that *“the order passed today be sent to the Chief Secretaries of all the States so that they shall see to it that all the stakeholders follow the schedule in letter and spirit and not make any deviation whatsoever.”*

22. In the instant case, the impugned order rejecting the application of the petitioner-institution was passed by the

respondent no.1 on 31.5.2017 and as the last date for issuing the letter of permission is over, therefore, as per the directions of the Supreme Court in the case of **Ashish Ranjan** (supra) as well as **Mridul Dhar (Minor) and Another vs. Union of India and others**, (2005) 2 SCC 65, **Priya Gupta vs. State of Chattisgarh and others**, (2012) 7 SCC 433, **Royal Medical Trust (Registered) and another vs. Union of India and another**, (2015) 10 SCC 19, **D. Y. Patil Medical College vs. Medical Council of India and another**, (2015) 10 SCC 51, **Poonaiyah Ramajayam Institute of Science and Technology Trust vs. Medical Council of India and another**, (2015) 10 SCC 83, **Manohar Lal Sharma vs. Medical Council of India and others**, (2013) 10 SCC 60, **Medical Council of India vs. Kalinga Institute of Medical Sciences (KIMS) & Others**, Civil Appeal No.4914/2016 and **Dental Council of India vs. Dr. Hedgewar Smruti Rugna Seva Mandal, Hingoli & others**, Civil Appeal No.4926/2017, the relief sought by the learned counsel for the petitioners cannot be entertained thereafter and no application seeking establishment of a new Medical College can be directed to be entertained, processed or allowed after the said cut-off date.

23. In view of the aforesaid discussion and the facts and circumstances of the present case, we are of the considered opinion that as the petitioner-institution was deficient in faculty/residents as well as in bed occupancy and did not fulfill the mandatory necessary criteria as prescribed in Regulation 8(3)(1)(a) of the Regulations of 1999, the application filed by the petitioner-institution seeking permission to establish or run a Medical College could not have been considered for the academic year 2017-18 nor could any report or document relating to the subsequent removal of deficiency be considered in view of the specific terms and provisions of Regulation 8(3)(1) (a) of the Regulations of 1999, moreso as the MCI recommendations have been duly approved by the Oversight Committee constituted by the Supreme Court and, therefore, no fault can be found with the impugned orders rejecting the petitioner's application.

24. We are also of the considered opinion that as the last date for grant of permission is over, the prayer made by the learned Senior Counsel for the petitioners for a direction to the authorities to grant permission to the petitioner-institution to establish a Medical College or to admit students for the academic year 2017-18 cannot be acceded to and is hereby rejected.

25. The petition filed by the petitioners being meritless is accordingly dismissed.

In the peculiar facts and circumstances of the case there shall be no order as to costs.

(R. S. JHA)
J U D G E

(NANDITA DUBEY)
J U D G E

mms/-