

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 28th July, 2010.

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W.P.(C) No.4901/2010

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**AZEEZIA INSTITUTE OF MEDICAL
SCIENCES & RESEARCH**

..... Petitioner

Through: Mr. Rajiv Nayar & Mr. Sandeep
Sethi, Sr. Advocates with Mr. Manik
Dogra & Mr. Harris Beeran,
Advocates

Versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Neeraj Chaudhari, CGSC for R-1.
Mr. A. Sharan, Sr. Advocate with Mr.
Amit Kumar & Mr. Somesh Chandra
Jha, Advocates for R-2.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may
be allowed to see the judgment? | NO |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported
in the Digest? | NO |

RAJIV SAHAI ENDLAW, J.

1. The respondent no.1 Union of India (UOI) in response to the proposal for setting up of a new Medical College in the name and style of the petitioner, vide its letter dated 17th September, 2008, in exercise of powers under Section 10A of the Indian Medical Council Act, 1956, issued a Letter of Intent for establishment of the new Medical College at Kollam, Kerala

with an annual intake of 100 students. The said Letter of Intent was subject to fulfillment of the conditions mentioned therein. Vide subsequent letter dated 23rd September, 2008 of the respondent no.1 UOI, the establishment of the Medical College in the name and style of the petitioner was approved, initially for a period of one year with the annual intake of 100 students with effect from the academic year 2008-09 and to be renewed on yearly basis on verification of achievement of annual targets set out in the project report. It was also mentioned in the approval letter that such process of annual renewal of permission will continue till such time the establishment of the Medical College and expansion of hospital facilities are completed as per norms of Medical Council of India (MCI). It was yet further mentioned in the said approval letter that the petitioner College shall apply to the MCI for renewal of permission well before the commencement of the next academic session and that while applying for such approval, the achievement in terms of infrastructure, staff and equipment as spelt out in the time bound action plan and as required by MCI norms should be indicated. The petitioner was also prohibited from admitting the next batch of students unless renewal of permission was so granted.

2. The respondent no.1 UOI vide its letter dated 1st July, 2009 conveyed to the petitioner the approval for renewal of permission for admission of second batch of 100 students for the academic year 2009-10.

3. It is the case of the petitioner that it similarly applied for renewal for the academic year 2010-11 and that though the respondent no.2 MCI conducted various inspections in the months of January & March, 2010 for grant of such renewal and further that though the petitioner College submitted compliance reports after each of such inspections, approval was not granted; on the contrary, the College of the petitioner was again inspected on 22nd and 23rd June, 2010 but no communication was sent to it thereafter; that since the cut-off date of 15th July, 2010 was fast approaching, the representatives of the petitioner travelled to Delhi on 14th July, 2010 and were ultimately on 18th July, 2010 informed that the Board of Governors in Supersession of MCI had vide its letter dated 15th July, 2010 rejected the application of the petitioner College for renewal of permission for admission of the third batch of students into the College for the academic year 2010-11.

4. The petitioner has challenged the said letter dated 15th July, 2010 in this writ petition *inter alia* on two grounds. Firstly, it is contended that no opportunity of hearing or to make up the deficiencies was given to the petitioner after the inspection of 22nd and 23rd June, 2010 and before the letter dated 15th July, 2010 refusing permission. Secondly, the grounds on which permission has been denied are disputed. It is contended that the said grounds are contrary to the report of inspection on 22nd and 23rd June, 2010 itself. It is also stated that the deficiencies, if any, remaining and as pointed out in the letter dated 15th July, 2010 were rectified by the petitioner as

communicated in the letter dated 20th July, 2010 of the petitioner. The petitioner thus preferred this petition claiming the relief either of granting renewal of permission to the petitioner or, in the alternative of directing the Board of Governors in Supersession of MCI (respondent no.2) to conduct inspection of the petitioner College and to thereafter if so satisfied grant the renewal of permission as aforesaid to the petitioner.

5. The writ petition came up before this Court first on 23rd July, 2010. Though the respondents were represented on that date also on advance notice but without proper instructions, as transpired during the hearing held on that date; the matter was adjourned to today and the respondents were directed to bring the entire record pertaining to the petitioner College.

6. The senior counsel for the respondent Board of Governors in Supersession of MCI has informed that the entire record pertaining to the petitioner has been perused and has been brought. Though no counter affidavit has been filed but in view of the nature of the reliefs claimed, which would become infructuous on further delay and further since on hearing it was not felt that any counter affidavit was required, the counsels for the parties have been heard on the writ petition itself.

7. I am quite clear that in the present state of affairs, the Court cannot grant the first relief of grant of renewal of permission to the petitioner. The

senior counsel for the respondent Board of Governors has rightly contended that the said function has statutorily been vested in the MCI / Board of Governors and this Court cannot appropriate the task to itself. The role of this Court is confined only to judicial review of the action taken by the MCI / Board of Governors and that too primarily as to the decision making process. To be fair, the senior counsel for the petitioner also did not press for the said relief and confined the arguments to the grant of opportunity of being heard and or re-inspection. When a statute confers a discretionary power to be exercised by competent authority, the Court cannot direct the competent authority to exercise discretion in a particular manner. The court can always direct the competent authority to exercise discretion vested in it in accordance with law. (see *Suresh Estates Pvt. Ltd. Vs. Municipal Corporation of Greater Mumbai* (2009) 3 SCC 186).

8. The senior counsel for the respondent no.2 Board of Governors in Supersession of MCI has in pursuance to the directions on the last date contended that it is not as if the petitioner College has been condemned unheard. It is informed that inspection of the petitioner College was carried out by the MCI on 21st & 22nd January, 2010, 22nd March, 2010 as well as on 30th April, 2010 and after each of the said inspections, notices dated 6th February, 2010, 5th April, 2010 & 13th May, 2010 respectively were issued to the petitioner pointing out the deficiencies and owing where to the MCI informed the petitioner College that the MCI could not recommend to the

Government of India the renewal of permission for admission for the current academic year to the petitioner. It is contended that the petitioner has suppressed the said documents from this Court. Copies of the said letters are handed over in the Court.

While it is correct that the said letters have not been filed by the petitioner before this Court but it cannot really be said that the petitioner has suppressed the said factum. As aforesaid, in Para 6 of the petition itself the petitioner has mentioned of the said inspections and has stated that after each of the aforesaid letters, the petitioner College had reported compliance of deficiencies mentioned in each to the MCI.

9. It was enquired from the senior counsel for the MCI as to why if the MCI was not satisfied of the petitioner College meeting the targets for the current academic year, was the petitioner not informed of the refusal of renewal / permission then only and as to why the subsequent inspection of 22nd and 23rd June, 2010 was conducted. The senior counsel for the respondent no.2 Board of Governors in Supersession of MCI replies that the same was necessitated owing to the unfortunate events in May/June, 2010 of the Chairman of MCI having been removed on corruption charges and leading ultimately to supersession of MCI. Attention is invited to the Indian Medical Council (Amendment) Ordinance, 2010 published in the Gazette of 15th May, 2010 superseding of MCI and appointing the Board of Governors

to exercise the powers and functions of MCI under the Indian Medical Council Act. The said Ordinance also confers on the said Board of Governors the powers of the Central Government under Section 10A of the Indian Medical Council Act. The senior counsel for the Board of Governors of MCI contends that in the face of loss of faith in the erstwhile MCI, the Board of Governors decided to re-inspect the College of the petitioner as also other Colleges, rather than rely upon the inspections and notices issued earlier by the MCI and it is for this reason that the inspection of 22nd and 23rd June, 2010 was conducted. The senior counsel further contends that the petitioner has wrongly averred that it learnt of the refusal of renewal / permission only on 18th July, 2010. It is stated that the report of inspection on 22nd and 23rd June, 2010 was put on the website on 30th June, 2010.

However, in my view the same would be immaterial. Though the inspection team stated to be comprising of eminent heads of department of reputed Medical Colleges has in the report mentioned various deficiencies in the petitioner College but the fact remains that the same still did not constitute the refusal of renewal/permission. The inspection team was / is not the final authority for granting or refusing the permission for renewal. The said power, pursuant to the Ordinance aforesaid, vested in the Board of Governors only and the Board of Governors admittedly for the first time vide letter dated 15th July, 2010 (supra) only took a decision in that regard.

10. The Establishment of New Medical Colleges, Opening of Higher Courses of Study and Increase of Admission Capacity in Medical Colleges Regulations, 1993 govern the grant of permission to set up a new Medical College. It is provided therein that the permission to establish a new College and admit students will be granted initially for a period of one year and will be renewed on yearly basis subject to verification of the achievements of annual targets and re-validation of the Performance Bank Guarantees; this process of renewal of permission is to continue till such time the establishment of the Medical College and expansion of hospital facilities is completed and a formal recognition of the Medical College granted. It is also provided that further admissions are liable to be stopped at any stage unless the requirements of various steps for development are to the satisfaction of MCI.

11. From the aforesaid, it transpires that the test to be applied at the time of renewal of permission is only of achievement of annual targets. There does not appear to be any power to review the initial permission granted for setting up the Medical College.

12. It was enquired from the senior counsel for the petitioner as to whether the Act or the Regulations provide for any opportunity of hearing to be granted or of deficiency notice to be issued before refusing permission for renewal. The senior counsel for the petitioner besides contending that such

an opportunity is now an important ingredient of the principles of natural justice by which MCI is bound, invited attention to the proviso to Section 10A(4) and to Section 3B(b)(ii) inserted in the MCI Act vide Ordinance aforesaid. However, the said provisions concern giving of an opportunity of being heard before disapproving a scheme for setting up of a new Medical College. The senior counsel for the petitioner contends that the refusal of renewal of permission tantamounts to refusal of permission to set up a Medical College.

I do not agree with the same. The refusal of renewal does not tantamount to refusal of permission to set up a Medical College. The only effect of refusal of renewal is to disable the petitioner College from admitting students in the current academic session. If the petitioner College is able to satisfy the MCI / Board of Governors that it has achieved the targets, it may be permitted to admit students in the next academic year and so proceed towards recognition.

However, there is merit in the contention of the petitioner that the opportunity of being heard is inbuilt and has to be necessarily granted in compliance of the principles of natural justice. Naturally, the refusal of renewal has serious repercussions on the Medical College and may also lead ultimately to refusal of permission to set up a Medical College. Further, such refusal is dependent upon the assessment to be made by the MCI /

Board of Governors of the achievement of targets; the possibility of a misconception / misunderstanding in such assessment, capable of being explained cannot be ruled out. It is well nigh possible that persons authorized by the MCI / Board of Governors to inspect make a mistake either in observing or in reporting or that the MCI / Board of Governors make a mistake in understanding of the said report. Even otherwise, some deficiencies are of technical or trivial nature capable of being rectified on being given notice. Thus it has to be necessarily held that MCI / Board of Governors before refusing renewal are required to give notice to the College which has been issued formal permission to set up a Medical College.

13. Faced with the aforesaid, the senior counsel for the Board of Governors in Supersession of MCI contends that such opportunity was given to the petitioner vide notices dated 6th February, 2010, 5th April, 2010 and 13th May, 2010 (supra) by the erstwhile MCI. It is contended that such opportunity cannot be given *ad infinitum*.

Though notices were given but the enquiry initiated by the erstwhile MCI was not continued by the Board of Governors. Rather, the Board of Governors abandoned the enquiry initiated by the erstwhile MCI and did not even choose to proceed on the basis of inspections done by the MCI and instead chose to carry out their own inspection. The Board of Governors did not choose to proceed from the step where left by MCI. Had it been so, the

Board of Governors was well entitled to take advantage of the notices / opportunity given by MCI. However, having chosen to proceed afresh, the Board of Governors cannot rely on the earlier notices and were required to give their own notice. It thus has to be necessarily held that the action of the Board of Governors of refusing renewal vide letter dated 15th July, 2010 on the basis of inspection of 22nd and 23rd June, 2010 and without giving any deficiency notice or opportunity of hearing to the petitioner is bad in law and cannot be sustained.

14. The senior counsel for the Board of Governors then contends that the petitioner has also concealed from this Court, the notice dated 7th July, 2010 issued by the Board of Governors to the petitioner with respect to the alleged misrepresentation detected during the inspection on 22nd and 23rd June, 2010. It is contended that during the said inspection, the petitioner was found to be employing three faculty members who were also shown as faculty members in other Colleges seeking similar permissions/renewals. It is urged that the same constitutes misrepresentation and on the basis whereof the petitioner can be disqualified for a period of two years. Copy of one such notice and reply of the petitioner thereto was handed over in the Court.

15. At the outset, I may state that though the petitioner has not filed the said documents also before this Court but has in para 19 (ix) of the writ petition referred to the same. Though the misrepresentation as aforesaid

alleged can disqualify the petitioner for two years but the fact remains that no order of disqualification is shown or argued to have been made. Only the show cause notices have been issued to the petitioner and to which reply dated 8th July, 2010 was submitted by the petitioner. The Board of Governors while refusing the renewal to the petitioner College vide letter dated 15th July, 2010 did not refuse the same on the said ground of misrepresentation. The refusal of renewal cannot be justified before this Court on a ground not taken in the order. If at all, the Board of Governors remains entitled to take a decision on the show cause notice issued; however that matter would be distinct from the matter under consideration. Without the Board of Governors till now holding the petitioner guilty of misrepresentation or taking a decision till now on the show cause notice issued, this Court cannot deny the relief to the petitioner, if otherwise found entitled to, on such grounds.

16. I have also perused the documents to *prima facie* satisfy myself whether any possibility, of the petitioner on opportunity being granted, being able to satisfy the Board of Governors exists or not; inasmuch as it was felt that if the petitioner is found to have no case whatsoever, the relief of re-inspection / opportunity of hearing need not be granted.

17. The factual matrix with respect to the aforesaid enquiry is lengthy and it is not deemed appropriate to burden this judgment with the same. All that

can be said is that there are areas where after considering the contentions in the communication dated 20th July, 2010 (supra) of the petitioner there is need for the Board of Governors to decide whether the deficiencies pointed out exist or not and or as to whether they stand removed. The senior counsel for the respondent Board of Governors has in this regard pointed to the same letter, in several paragraphs whereof it is contended that the petitioner has admitted the deficiencies. While it is so, but the petitioner College has also stated that upon the same being pointed out in the letter dated 15th July, 2010 the same have been rectified. I have already held above that such deficiency notice is required to be given and opportunity to explain and / or rectify the deficiencies capable of rectification to be given. The same was admittedly not given pursuant to the inspection of 22nd and 23rd June, 2010 and prior to the refusal on 15th July, 2010.

18. The next major controversy revolves around the possibility now, of granting opportunity or of re-inspection. The senior counsel for the Board of Governors urges that the Apex Court in *Mridul Dhar Vs. Union of India* (2005) 2 SCC 65 has laid down the schedule for admission. It is urged that as per the said schedule, the letter of permission for establishment of a new Medical College (and the date in which respect is stated to apply to letter of renewal also) to be issued by 15th July of each year and first round of the admission process to be completed by 25th July. The senior counsel for the petitioner rebuts by contending that in the present case, the Board of

Governors are themselves at fault, having carried out the inspection for renewal, required to be undertaken much earlier, only on 22nd and 23rd June, 2010 and intimation of refusal having been given vide letter dated 15th July, 2010 only. It is further contended that the Board of Governors have themselves extended the date from 15th June, 2010 to 15th July, 2010. It is further urged that the aforesaid date do not prevent the Courts from giving directions for extension thereof. Attention in this regard is invited to the order dated 13th August, 2009 of the Apex court in WP(C) No.215/2009 titled *Muthukumaran Educational Trust Vs. UOI* where the Apex Court directed the MCI to conduct inspection of the Colleges and to give recommendation to the UOI, after the prescribed date and also to the order dated 29th April, 2010 of this Court in WP(C) No.2528/2010 also directing inspection after the prescribed dates.

19. The senior counsel for the Board of Governors has also suggested that the delays occurred owing to the unfortunate events in the MCI leading to supersession as aforesaid thereof. However, the MCI for the reason of its own state of affairs cannot prejudice the petitioner. If owing to the happenings in the MCI, the MCI was unable to act within time, it cannot on the basis thereof deprive the petitioner of hearing if otherwise entitled to.

20. I have also weighed the equities. Though it is easy to suggest that the petitioner can satisfy the MCI / Board of Governors of having met the

targets and apply for renewal for the next academic year but the fact remains that the same would lead to a break in the life of petitioner academic Institution. Such gap years are not good particularly for an educational Institution. Moreover the petitioner is an unaided educational Institution. It has incurred expenditure on infrastructure and on faculty on the premise of continuous running of academic years. Such a gap can play havoc with the financial health of the Institution and will definitely also affect the students already admitted in the Institution. It can similarly also affect the hospital attached to such Medical College. Such hospital ultimately will have no Resident Doctors from the Medical College against the gap year.

21. This Court is not expressing any view on whether the permission for renewal has to be granted or not. All that this Court requires the Board of Governors in Supersession of MCI to do is to, before refusing renewal to the petitioner, hear the petitioner and verify whether the deficiencies pointed out in the letter dated 15th July, 2010 have been rectified or not as contended by the petitioner. If the said deficiencies have been rectified and if after hearing the petitioner the Board of Governors is satisfied that the petitioner has met the targets required to be met, it would be unjust to deprive the petitioner College of admissions for the current year, thereby marring the reputation of the petitioner for the ensuing years also. The petitioner has stated that the delays even if any would not be fatal and it is not as if the exercise will be an exercise in futility. It is contended that the State Government and other

allocating agencies have already allocated students for admission to the petitioner College and if the petitioner succeeds in satisfying the Board of Governors, it would be able to run the current academic year. It is also stated that in any case, the process of admission goes on till 30th September, 2010. There is no serious challenge to the said arguments.

22. The petition is therefore allowed in aforesaid terms. The respondent Board of Governors in Supersession of MCI is directed to grant an opportunity of being heard to the petitioner and if necessary to inspect the College, attached hospital and other records, if any, of the petitioner and to thereafter take a decision as to whether the petitioner is entitled to renewal of permission for the current academic year or not. Axiomatically, the order dated 15th July, 2010 refusing such renewal is set aside. Considering the time constraints, the respondent Board of Governors to undertake the aforesaid exercise as soon as possible and in any case well before the time available for admission for the current academic year.

The petition is disposed of. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

28th July, 2010
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