

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

**Date of decision: 6<sup>th</sup> August, 2010.**

+ **W.P.(C) No.5296/2010 & CM.No.10415/2010 (for interim relief)**

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**JHALAWAR HOSPITAL & MEDICAL  
COLLEGE SOCIETY**

..... Petitioner

Through: Mr. Sandeep Sethi, Sr. Advocate with  
Mr. C.K. Sharma, Advocate.

Versus

**UNION OF INDIA & ANOTHER**

..... Respondents

Through: Mr. A.S. Chandhiok, ASG with Mr.  
Jatan Singh, Mr. Sandeep Bajaj and  
Mr. Ashok Singh, Advocates for UOI.  
Mr. Amit Kumar and Mr. Somesh  
Chandra Jha, Advocates for MCI.

***CORAM :-***

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

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

**RAJIV SAHAI ENDLAW, J.**

1. The petitioner, a Society promoted by the Government of Rajasthan was granted permission in the year 2008 for establishing a Medical College in the backward district of Jhalawar with an intake of 100 students annually. Thereafter permission to admit the students was renewed in the year 2009. The petitioner similarly sought permission to admit 3<sup>rd</sup> batch of students in the academic year 2010. With a view to verify whether the prescribed targets

had been met by the petitioner college or not, the erstwhile Medical Council of India (MCI) carried out inspection in March, 2010. A notice was issued by the MCI to the petitioner pointing out the deficiencies found. The petitioner responded to the said notice, explaining as to how the deficiencies pointed out had been remedied. The erstwhile Medical Council of India was satisfied with the said response of the petitioner and recommended the case of the petitioner to the Central Government for permission to admit students in the current academic year also. However, before the permission could be granted to the petitioner, the Medical Council of India was superseded by Board of Governors vide Ordinance dated 15<sup>th</sup> May, 2010. The Board of Governors in super-session of MCI again carried out inspection in June, 2010 and without giving any notice to the petitioner, pointing out any deficiencies and without hearing the petitioner have vide letter dated 15<sup>th</sup> July, 2010 refused permission to the petitioner to admit students in the academic year 2010.

2. A similar matter was considered by this court in WP(C) 4901/2010 titled *Azeezia Institute of Medical Sciences & Research Vs. Union of India* decided on 28<sup>th</sup> July, 2010; for the reasons stated therein an opportunity was granted to the College for hearing and the Board of Governors directed to reconsider the matter, if necessary, after inspection of the Institute of the petitioner therein. The same order was also made on 4<sup>th</sup> August, 2010 in WP(C) 5187/2010 titled *Sri Kanchi Kamakoti Peetam*

***Charitable Trust Vs. Union of India.***

3. The counsel for the respondent no.2 Board of Governors in supersession of MCI has contended that in the present case the inspection of June, 2010 has *inter alia* found shortage in teaching staff of 8.7% while the relaxable limit is to the extent of 5% only. It is contended that owing to the said report of the team which inspected in June, 2010, no case for reconsideration is made out. The senior counsel for the petitioner has responded by contending that the Inspection Team did not consider the teaching staff which was absent on the date of inspection and/or who could not immediately produce their original certificates. It is contended that explanation in this respect was given by the petitioner vide its letter dated 23<sup>rd</sup> July, 2010 and which has not been considered by the Board of Governors. The senior counsel for the petitioner has further contended that regard has to be given also to the fact that the petitioner is not a private college but is a college of the Government of Rajasthan and is situated in a backward area and is intended for the upliftment of the said area and minor deficiencies should not come in the way of the petitioner college being allowed to be established and to mature. Attention in this regard is invited to order dated 13<sup>th</sup> August, 2009 in WP(C) 215/2009 titled ***Muthukumaraan Educational Trust Vs. UOI***, order dated 18<sup>th</sup> September, 2009 in WP(C) 295/2009 titled ***Society for T. Medical College Vs. UOI***, order dated 9<sup>th</sup> October, 2009 in WP(C) 460/2009 titled ***Government Medical College, Jagdalpur Vs. UOI***, and order dated 9<sup>th</sup> October, 2009 in WP(C)451/2009

titled *State of MP Vs. Medical Council of India*, of the Supreme Court of India in relation to Government Colleges and whereby MCI was directed to conduct a fresh inspection of the Government Colleges.

4. The question whether the deficiency beyond the permissible limits exists in the petitioner college or not is not to be determined by this Court and is to be decided by the Board of Governors. The fact remains that the petitioner was not given any opportunity of hearing and/or to meet the grounds on the basis whereof the Board of Governors has refused permission to the petitioner. Thus there is no difference in the present case from the aforesaid two cases decided by this court.

5. Accordingly, for the reasons stated in the judgment in *Azeezia Institute* (supra), the Board of Governors in Supersession of MCI are directed to grant an opportunity of hearing to the petitioner and if necessary, to inspect the College and attached hospital and other records of the petitioner and to thereafter take decision as to whether the petitioner is entitled to renewal of permission to admit students for the current academic year or not. Axiomatically, the order dated 15<sup>th</sup> July, 2010 refusing such renewal is set aside. The senior counsel for the Board of Governors in Supersession of MCI has suggested that this Court for the sake of expediency fix a date of hearing. With the consent of the counsels, the petitioner is directed to appear for hearing on 9<sup>th</sup> August, 2010 at 1800 hours at the MCI Headquarters. Considering the time constraint, the respondent

Board of Governors in Supersession of MCI to complete the exercise as expeditiously as possible and in any case well before the time available for admission for the current academic year.

6. The senior counsel for the petitioner has further sought an order enabling the petitioner to make admissions for the current academic year. Reliance in this regard is placed on the judgment dated 23<sup>rd</sup> July, 2010 of the Division Bench of the Madhya Pradesh High Court in WP(C) 9653/2010 titled *State of Madhya Pradesh Vs. UOI* whereby the admissions were permitted for the current academic year subject to the inspection ordered of the Medical College. I am, however, not inclined to adopt the said course. As of now, the petitioner has not been granted the permission by the Board of Governors who alone are entitled to grant such permission to the petitioner Medical College to admit the students. This Court has merely directed the Board of Governors to give an opportunity of being heard to the petitioner and reconsider. If in the interregnum admissions are allowed, the rights of the students so admitted would also accrue; in the event of the Board of Governors inspite of hearing not granting the permission to the petitioner to admit students for the current academic year, the fate of the students so admitted in the interregnum shall be left in lurch. This Court thus cannot allow provisional admissions. The counsel for the respondent in this regard has also relied upon *Medical Council of India Vs. Rajiv Gandhi University of Health Sciences* 2004(3) SLR 773 where the Supreme Court reiterated the law laid down in *Union of India Vs. Era Educational Trust*

2000(5) SCC 57 laying down that interim order should not be granted as a matter of course, particularly in relation to the matter where standards of institutions are involved and the permission to be granted to such institutions is subject to certain provisions of law and regulations applicable to the same. It was further held that directions for admissions of students in institutions which are yet to get approval from the concerned authority ought not to be made. I therefore do not find the petitioner entitled to the said interim relief claimed.

The petition is disposed of in the above terms. No order as to costs.

**CM.No.10416/2010 (u/s 151 CPC)**

Allowed subject to just exceptions.

**RAJIV SAHAI ENDLAW  
(JUDGE)**

**6<sup>th</sup> August, 2010**  
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