

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

+ LPA 661/2010 & CM 16498/2010

MEDICAL COUNCIL
OF INDIA

Through

..... Appellant
Mr. Amrendra Sharan, Senior
Advocate with Mr. Somesh Kumar
Jha and Mr. Ashish Kumar,
Advocates

versus

KJ MEHTA TB HOSPITAL
TRUST & ANR

Through

..... Respondents
Mr. Upamanyu Hazarika, Senior
Advocate with Mr. Arunav Patnaik,
Mr. Tarun Satija and Mr. D B Ray,
Advocates for R-1.
Mr. Abhimanyu Kumar, Advocate for
Mr. Sachin Datta, CGSC for R-
2/UOI.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANMOHAN

ORDER
% **25.10.2010**

In this intra-court appeal challenge is to the order dated 1.9.2010 passed by the learned Single Judge in CM No.11708/2010 arising out of W.P.(C) No.5495/2010. Be it noted, the writ petition was disposed of on 13.8.2010. By the impugned order, the learned Single Judge has directed as follows:

“11. The application is therefore disposed of with the following directions:

(i) The respondents to intimate to the petitioner the costs of the earlier inspection as well as future re-inspection within one week of today. The petitioner through counsel undertakes to pay the said amount without any claim within three days of intimation.

(ii) The respondents to re-inspect the Institute and Hospital of the petitioner. The counsel for the respondents states that the respondent may prefer to do a surprise inspection. It is clarified that the respondents would be so entitled to carry out a surprise inspection, before taking any decision in terms of the order dated 13th August, 2010.

(iii) It is clarified that the respondents while taking the decision, would be entitled to consider grant of permission for admitting lesser number of students than for which permission has been applied.”

2. This Court on 14.9.2010 in CM No.16498/2010 had passed the following order:

“Heard Mr. Amit Kumar, learned counsel for the appellant and Mr. Rajiv Nayar, learned senior counsel with Ms. Bina Madhavan and Mr. Arunav Patnaik, learned counsel for the respondent No.1 as well as Mr. Sachin Datta, learned counsel for the Union of India.

Issue notice on the question of admission and final disposal.

As the respondents have already entered appearance, no further notice need be issued.

In this intra-court appeal, the assail is to the order dated 01st September, 2010 passed by the learned Single Judge in CM

No.11708/2010 in W.P.(C) 5495/2010. While disposing of the said application, the learned Single Judge after referring to various facts has issued the following directions:-

“11. The application is therefore disposed of with the following directions:

(i) The respondents to intimate to the petitioner the costs of the earlier inspection as well as future re-inspection within one week of today. The petitioner through counsel undertakes to pay the said amount without any claim within three days of intimation.

(ii) The respondents to re-inspect the Institute and Hospital of the petitioner. The counsel for the respondents states that the respondent may prefer to do a surprise inspection. It is clarified that the respondents would be so entitled to carry out a surprise inspection, before taking any decision in terms of the order dated 13th August, 2010.

(iii) It is clarified that the respondents while taking the decision, would be entitled to consider grant of permission for admitting lesser number of students than for which permission has been applied.”

It is submitted by Mr. Amit Kumar, learned counsel for the appellant that the learned Single Judge has fallen into error by directing that respondents while taking decision would be entitled to consider grant of permission for admitting lesser number of students than for which permission has been applied.

It is further urged by Mr. Amit Kumar that if the command of the learned Single Judge is appropriately understood, it would convey that the mandate to the appellant is to inspect and consider the admission of the students in respect of the academic session 2010-2011 which is impermissible.

At this juncture, Mr. Rajiv Nayar, learned senior counsel for the respondent No.1 submitted that the Medical Council of India

had inspected the college and submitted a report on 21st /22nd June, 2010. Mr. Rajiv Nayar has drawn our attention to various aspects of the report and contended that the Medical Council of India has not found that the institution is totally ineligible for giving admission to the students. Mr. Nayar has drawn inspiration from a communication by the Government of India, Ministry of Health and Family Welfare dated 27th February, 2009 whereby the competent authority of the Government of India has directed the Secretary, Medical Council of India as follows:-

“2. It has also been decided that if a college, which has been given permission for 150 seats and during inspection some deficiencies are found, instead of rejecting their case totally, they may be considered for reduced intake capacity on pro-rata basis keeping in view the deficiencies.”

Relying upon the aforesaid, it is submitted by Mr. Nayar that the Medical Council of India on the basis of the report dated 21st /22nd June, 2010 may determine about the pro-rata quota that would be granted to the respondent institution so that they would not suffer any kind of unnecessary jeopardy or financial hazard.

Regard being had to the fact that none of the parties have challenged the inspection report dated 21st /22nd June, 2010 of the Medical Council of India, it is directed that the Medical Council of India shall take a decision within a period of two days on the basis of the communication dated 27th February, 2009 and also keeping in view the said inspection report. We have fixed two days' time to take a decision as we have been apprised at the Bar that the last date for counselling is 20th September, 2010.

Be it noted, the aforesaid fixation of pro-rata basis is without prejudice to the contentions to be raised by the learned counsel for the parties. We hope and trust that the Medical Council of India shall act with utmost objectivity and in view of the

guidelines issued by the Government of India and also their own inspection report.

It should be borne in mind that objectivity of a statutory organization reflects good governance and also frescoes an approach which would be welcomed by all for simon-pure reason that it has its own impartiality.

Let the matter be listed for further orders on 17th September, 2010.

Order dasti under the signature of Court Master.”

3. The said order was assailed in SLP(C) No.26673/2010, wherein the Apex Court has passed the following order:

“We find no reason to interfere under Article 136 of the constitution of India. The Special Leave Petition is dismissed.

However, we make it clear that the MCI can pass an order as directed by the High Court, in accordance with its Rules and Regulations, by considering the GOI letter dated 27.2.2009. The time is extended upto 22nd September, 2010.”

4. Thereafter, the matter was listed for final hearing. A suggestion was given to the Medical Council of India (for short ‘MCI’) whether it can go for inspection of the respondent college. Learned counsel for the MCI on 1.10.2010 apprised this Court that the counsel has taken a decision not to go for inspection of the respondent college. Thereafter, the matter was heard on merits and in course of hearing a consensus was arrived at on the basis of suggestions given by learned counsel for the MCI as well as by the

respondent college. We proceed to record the settlement arrived at:

- A. The MCI would not take any exception to whatever had happened in the past and would proceed with an open mind for the fresh inspection for the next academic session.
- B. The inspection shall take place on the basis of a letter issued by the respondent-college.
- C. After the inspection is carried out at the earliest, deficiencies, if any, shall be pointed out and the same shall be made good by the respondent-college.
- D. After the deficiencies are made good, there shall be further inspection and if any deficiencies are still found the same shall be also made good by the respondent-college.
- E. The regulations which are more liberal shall be applied to the respondent-college.
- F. The rejection by the MCI in pursuance of the order passed in this appeal that pro-rata benefit cannot be given, would not be an impediment while carrying out the fresh inspection and nothing in the said letter shall be treated against the respondent-college for any purpose.

- G. The existing students who are prosecuting their studies in the respondent-college shall be allowed to prosecute their studies.
 - H. If the students, who were unable to clear the first year examination, pass in supplementary examination, they would be admitted in the respondent-college and the MCI would not object to the same if other formalities as required by other authorities including the examining body are satisfied.
 - I. The criteria which shall be applicable for proposed inspection would be the second renewal inspection criteria.
5. Recording such concession, the appeal and application stand disposed of. There shall be no order as to costs.
6. Order dasti.

CHIEF JUSTICE

MANMOHAN,J

OCTOBER 25, 2010

rn/dk