

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

Date of decision: 28th September, 2010.

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W.P.(C) No.6610/2010

**SRI KANCHI KAMAKOTI PEETAM CHARITABLE TRUST, SUT
ACADEMY OF MEDICAL SCIENCES PETITIONER**

Through: Mr. Rajiv Nayyar, Sr. Advocate with
Mr. Tarun Satija, Advocate

Versus

UNION OF INDIA & ANR RESPONDENTS

Through: Mr. Ravinder Aggarwal, Advocate for
respondent no1.
Mr. Amit Kumar with Mr. Ashish
Kumar & Mr. Somesh Chander,
Advocates for respondent no.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 petitioner by this writ petition challenges the order dated 23rd September, 2010 of the Board of Governors in Supersession of the Medical Council of India (MCI), refusing permission to the petitioner to admit students for MBBS course in the current academic session. The erstwhile MCI had in the year 2006 granted permission to the petitioner to set up a Medical College. The petitioner in pursuance to the said permission admitted students to the MBBS courses in the year 2006. Thereafter in the years 2007, 2008 & 2009, the permissions were granted to the petitioner to admit students. The petitioner applied for permission to admit students for

the current academic year also. The petitioner claims that its Institute was inspected by the erstwhile MCI. However, in the interregnum, vide Gazette Notification dated 15th May, 2010, MCI was superseded by the Board of Governors and which vide order dated 15th July, 2010, denied permission to the petitioner. The petitioner preferred WP(C) No.5187/2010 before this Court; finding that no hearing had been given to the petitioner, vide order dated 4th August, 2010 the Board of Governors were 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.

2. It is the contention of the petitioner that the Board of Governors did not choose to inspect the Institute of the petitioner though gave a hearing to the petitioner on 9th August, 2010 and after nearly one and a half months vide order dated 23rd September, 2010 permission has been refused.

3. The order dated 23rd September, 2010 is as good as a non speaking order. It only records that pursuant to the detailed discussion at the time of personal hearing it had been decided not to reassess the College and to reiterate the earlier decision.

4. The petitioner had not only in the writ petition preferred earlier but also in its representation dated 23rd July, 2010 to the Board of Governors after the earlier order of refusal dated 15th July, 2010, given reasons as to why it was entitled to permission for the current year and as to why the reasons which had prevailed with the Board of Governors in the order dated 15th July, 2010 were incorrect. In the absence of the order dated 23rd September, 2010 containing any reasons, it cannot be deciphered as to why the Board of Governors did not find the said representations of the petitioner

to be satisfactory. The right to a reasoned order is now well ingrained as the fourth ingredient of the principles of natural justice and specially when the orders of the bodies such as MCI / Board of Governors are subject to judicial review under Article 226 of the Constitution of India, the absence of reasons tends to deprive the aggrieved party of its right to judicial review also. From the order dated 23rd September, 2010 it is impossible to make out as to what prevailed with the Board of Governors in refusing permission.

5. I have in judgment dated 28th July, 2010 in WP(C) No.4901/2010 titled ***Azeezia Institute of Medical Sciences & Research Vs. Union of India*** held that refusal of permission to admit students after the permission to set up Medical College has been granted, is to be viewed differently from the first permission. Once an Institute has been permitted to set up Medical College and has been permitted to admit students in the last four years, as the petitioner in the present case, the refusal of permission and the consequent gap year also jeopardizes the career of the students already admitted to the Medical College. The same casts suspicion / doubt about the College and its continuance and consequently affects the career of the students studying in and passing out from the said College. It is even otherwise likely to be prejudicial to the students inasmuch as the College in the absence of the students in the current year would be forced to cut corners, again to the detriment of the other students already admitted to the College. Unfortunately, none of the said factors appear to have been considered by the Board of Governors while taking the decision on 23rd September, 2010.

6. The counsel for the respondent MCI appearing on advance notice has sought to justify the order by referring to the inspection and the reasons prevailing prior to the order dated 15th July, 2010; the same is impermissible as per the judgment of the Apex Court in ***Mohinder Singh Gill Vs. Chief***

Election Commissioner (1978) 1 SCC 405. The counsel for the respondent MCI has also sought to justify the order by averring malpractices prevailing in Medical Colleges. However, such generalities cannot come into play in decision qua a particular College.

7. The senior counsel for the petitioner also contends that the Board of Governors could have between hearing on 9th August, 2010 and 23rd September, 2010 inspected the petitioner College and satisfied itself.

8. The Establishment of New Medical Colleges, Opening of Higher Courses of Study and Increase of Admission Capacity in Medical Colleges Regulations, 1993 also provide for the targets to be achieved by a Medical College in each year after it has been granted permission to set up a Medical College. I have enquired from the counsel for the MCI whether there is any power in the MCI to review the decision earlier taken. The said question has come up because one of the reasons given in the order dated 15th July, 2010 is of the approach road to the hospital being very narrow. *Prima facie* the said aspect should have been the subject matter of consideration at the time of grant of permission to set up the Medical College and unless the case of the road having shrunk is made out, the same cannot form a reason for the permission to be denied to admit students in a subsequent year. Similarly the other reasons given in that order are not in relation to the targets prescribed for the fourth permission being not met but general in nature.

9. Though the Supreme Court in ***Mridul Dhar Vs. Union of India*** (2005) 2 SCC 65 has prescribed 30th September as the last date for admission, the senior counsel for the petitioner invites attention to the order dated 23rd September, 2010 of the Supreme Court in SLP No.23830-23832/2010 titled ***Kerala Pvt. Medical College Management Association Vs. Noorbina Banu K.*** extending the time for completion of admission

process to 25th October, 2010. It is contended that if the petitioner is found entitled to admit students in the current year, the State can admit students to the petitioner College in the further rounds of counselling still underway. The counsel for the respondent MCI however contends that the said order of the Supreme Court is not of general application but was passed in exercise of powers under Article 142 of the Constitution of India.

10. The Supreme Court in *Charles K. Skaria Vs. C. Mathew (Dr.)* (1980) 2 SCC 752 has held that the Courts must see that no costly seat for advanced studies in which the community as a whole has stake, is wasted; the Court should not give up the search for alternatives. In this spirit, it is felt that the Board of Governors in Supersession of MCI should reconsider their decision and if still of the view that the petitioner is not entitled, to set out reasons therefor in their order.

11. In the light of the aforesaid, the respondent Board of Governors is directed to pass a fresh order giving reasons on the application of the petitioner. Resultantly, the order dated 23rd September, 2010 is set aside. Considering the time constraint, the Board of Governors to make a fresh order on or before 30th September, 2010 on the basis of the representations, replies and contentions in the writ petitions as well as the inspection report and the hearing held. It is further clarified that it will still be open to the respondent Board of Governors to if so deem proper to inspect the petitioner either after notice or even without notice and in the event of the Board of Governors choosing to do so, the time of 30th September, 2010 shall stand extended to 4th October, 2010.

12. With the aforesaid directions, the petition is disposed of. No order as to costs.

Copy of this order be given dasti under signature of the Court Master to the counsel for the parties.

**RAJIV SAHAI ENDLAW
(JUDGE)**

28th September, 2010
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