

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

Date of decision: 5th October, 2010.

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W.P.(C) No.6792/2010

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

..... Petitioner

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

Versus

THE UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Atul Nanda & Ms. Rameeza
Hakeem, Advocates 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

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 impugns and seeks setting aside of the order dated 30th September, 2010 of the Board of Governors (hereinafter called the Board) in Supersession of the Medical Council of India (MCI) denying permission to the petitioner for admission of fifth batch of students for the academic session 2010-11 for the course of MBBS and seeks

mandamus directing the respondent no.2 Board to grant permission to the petitioner to so admit the students.

2. The respondent no.1 UOI upon recommendation of the erstwhile MCI, in the year 2006 first granted permission to the petitioner to admit students in the Medical College set up by it. Thereafter in the years 2007, 2008 & 2009 permission was granted to the petitioner to admit fresh batch of students in each year. The petitioner similarly applied for permission for the current year also. However, before the request for such permission could be considered, the MCI was dissolved vide Ordinance dated 15th May, 2010 and superseded by the Board which was also vested with the powers earlier exercised by the Central Government. The Board constituted a team of three doctors to inspect the Medical College of the petitioner to consider the request of the petitioner for admission in the current academic year. The said Inspection Team inspected the College of the petitioner between 15th to 17th June, 2010 and the Board on the basis of the report of the said inspection, vide order dated 15th July, 2010 refused permission to the petitioner.

3. The petitioner preferred WP(C) No.5187/2010 in this Court against the decision dated 15th July, 2010 of the Board. The said writ petition was allowed vide order dated 4th August, 2010 since the Board had not granted opportunity of hearing to the petitioner. The matter was remitted to the

Board for reconsideration after giving an opportunity of hearing to the petitioner and it was also provided that the Board may if deem necessary again inspect the College and attached hospital and other records of the petitioner.

4. The Board in pursuance to the order aforesaid granted a hearing to the petitioner on 9th August, 2010 though did not carry out any fresh inspection. The Board again vide order dated 23rd September, 2010 refused permission to the petitioner. The petitioner filed another writ petition being WP(C) No.6610/2010 in this Court. The said writ petition was also allowed vide order dated 28th September, 2010 for the reason of the order dated 23rd September, 2010 of the Board being a non speaking order. The matter was yet again remitted to the Board for making a fresh order on or before 30th September, 2010 on the basis of representations, replies and contentions of the petitioner in the writ petition as well as the Inspection Report and the hearing held.

5. It is in pursuance thereto that a detailed order dated 30th September, 2010 impugned in this petition has been made. This is thus the third round of litigation for admission to the same academic year.

6. The Board has noted that the Inspection Team had found the following deficiencies:

- “1. Many of senior faculty members collected for head count appeared to be civil practitioners, who on interviewing were unable to identify wards and patients;
2. Many of the faculty, SRs and JRs are regular employees of other institute and were pressurized by the management as revealed during interviews with Assessors;
3. The team of assessors in their report has given the names of 33 members of faculty who joined the medical college on or after 1st June, 2010 i.e. around 15 days before the date of assessment;
4. The pre-inspection surprise visit to the hospital on 15th June, 2010 between 1500 hrs. to 1700 hrs, revealed nearly empty casualty ward, labour room and ICU/CCU/NICU;
5. The Rural Health Centre at the time of inspection revealed absent peon, store keeper and record clerk. The Health Inspector present had no clue of the register available in the centre indicating her seldom appearance;
6. Facilities and Equipments as available in Radiology department are inadequate;
7. There is no attendance / leave register maintained in clinical department. The flimsy attendance register wherever available are from January, 2010 onwards.

8. Autoclaves and sterilizers are not available in operation theater.
9. The autoclaves, bowl sterilizers, Horizontal autoclaves are not available in O T Block;
10. Observation of OT Records, Surgery Register, Anaesthesia Register & Labour Room Register reveals grossly inadequate work load. It also revealed that many faculty and residents from surgical specialties never operate or assist in OT.
11. OPD patient load is also on lower side and hardly ever reaches the minimum required by the Council.”

7. The Board after considering the representations and contentions of the petitioner with respect to the aforesaid deficiencies held:

- (i) That there is no reason to disbelieve or reject the Report of the Inspection Team comprising of three eminent doctors who had meticulously carried out the assessment of the College.
- (ii) The report was found to be impartial and found to be reflecting true and correct picture of the petitioner College.
- (iii) That the impartiality of the Inspection Team was not challenged by the petitioner College.

- (iv) That the option of re-assessment of the petitioner College by a fresh inspection would not serve any purpose in the absence of any allegation of *mala fide* or impartiality of the Inspection Team and if the same was permitted, it would lead to endless exercise.
- (v) A large number of faculty members were found to have been appointed just prior to the inspection.
- (vi) Other faculty members were found to be private practitioners and were reported to have disclosed that they were pressurized by the management of the petitioner to present themselves for assessment; this was also supported by their failure to identify wards and patients.
- (vii) The absence of/irregularity in faculty members was viewed very seriously.
- (viii) The plea of the petitioner that there was no bar to the faculty members having private medical practice after the College hours was not accepted.
- (ix) The report of the Inspection Team that several of the faculty members were also regular employees of other Institutes was

accorded higher sanctity than the denial thereof by the petitioner.

- (x) The position during the surprise inspection was found different from the inspection on the scheduled date.
- (xi) The hospital attached to the College was found to be not having sufficient number of patients necessary for imparting education to medical students.
- (xii) The Board held that allowing students to be admitted in the aforesaid state of affairs would not be in the interest of the students. It was further held that disallowing admission in the present session would not affect the students already admitted.

8. The senior counsel for the petitioner with reference to the Minimum Requirements for 100 MBBS Admissions annually Regulations, 1999 has contended that there is no prohibition therein to the faculty members carrying on private medical practice. The only requirement is of “the teaching staff of all departments of Medical College, shall be full time”. It is also contended that the petitioner has no means to stop its faculty from so practicing.

9. It is next contended that no infrastructural deficiency has been stated in the petitioner College. Defects are pointed out in the objections qua the faculty. It is argued that the strength of the faculty required for permission for admission to this year is the same as the strength required for previous year. It is argued that when permission was granted for the last academic year, there is no reason to deny the same for the current year.

10. Challenge is also made to the finding of the Inspection Team that the faculty was not aware of the wards or familiar with the patients. It is urged that the said observations have been made with respect to two faculty members only and one of whom was away on study leave for five months and the other had recently joined. It is contended that there is nothing wrong in the petitioner having made the appointments on 1st June, 2010 and the same rather shows the seriousness and preparedness of the petitioner for admissions for the current year. It is argued that the petitioner is the most preferred Medical College in the State of Kerala and is the first choice of students and has been having brilliant results in the past with 40% of the students in the last year having first division and 15% passing with distinction and the College having an overall pass percentage of 70%. It is also urged that once the order on the basis of earlier inspection had been set aside vide order in the earlier writ petition, the said inspection could not form the basis of the order impugned in the present writ petition. It is also

contended that the personal hearing pursuant to the order in the earlier petition was a make believe / a formality.

11. The senior counsel for the respondent Board has argued that it was not the inspection which was set aside but only the earlier order which was set aside for the reason of hearing having not been given. It is contended that if the petitioner contends that the requirement of faculty members in the previous year and in the current year is the same, there is no reason for the petitioner making as many as 33 fresh appointments of faculty members on 1st June, 2010 when only five of the faculty members earlier employed by it are reported to have left in the previous years. It is urged that the said fact alone shows a major shortage of faculty members in the petitioner College in the previous years. It is contended that practical training is necessary in a Medical College. With respect to the faculty members having private practice, it is contended that the faculty members in the Medical College are not merely to teach but also to attend to the hospital in the non teaching time. It is further urged that teaching in a Medical College is not confined to class room teaching only. It is also urged that the Inspection Team comprises of very senior doctors and there is no reason for disagreeing with their report.

12. The senior counsel for the petitioner in rejoinder has urged that mere requirement of being “full time” is no prohibition from private practice.

Reference is made to the Advocates Act, 1961 and the Architects Act, 1972 urging that they expressly prohibit employment elsewhere. It is also contended that the requirements of a Hospital and the College are different and even if the private practice of the faculty members affects the hospital, the same cannot come in the way of the College being permitted to admit students.

13. This Court is not sitting in an appeal over the decision of the Board. The procedure laid down for setting up of a Medical College entails grant of permission first only for setting up a College and thereafter for admissions in the successive years and only thereafter recognition is granted. The Statute makes the decision of the Board final in this regard. This Court in exercise of power of judicial review is only concerned with the decision making process and can interfere with the decision in so far as on merits only if found to be perverse on the face of it and not by finding errors on various findings as in appeal. The MCI and now the Board, are experts in the field equipped to take the said decision. This Court is not equipped in this regard, to substitute its own views on the given facts.

14. In so far as the decision making process is concerned, the only challenge now after earlier rounds of litigation can only be that the Board did not re-inspect the Institute of the petitioner. It is not as if the Board has not considered the said aspect. No fault can be found with the reasoning of

the Board of fresh inspection being not necessary for the reason of it being the admitted position that faculty members were indeed having private practice and the only question being whether such private medical practitioners could be members of faculty or not. I also find that the earlier inspection team had found a difference in position at the time of surprise inspection before the scheduled date and on the schedule time. The petitioner was found to be stage managing the inspection. Such possibility in the event of a fresh inspection also could not be ruled out. Thus, no error entitling interference on this ground is made out. Even otherwise such repeated inspections cannot be directed or demanded. The Supreme Court has laid down a time schedule for admissions and such repeated inspections are not feasible for abiding by the time schedule also. The senior counsel for the petitioner of course contends that Supreme Court in exercise of powers under Article 142 has been extending the said time schedule and upon petitioner succeeding, would also be entitled to extension. Reference may however be made to *Neelu Arora Vs. UOI* (2003) 3 SCC 366 holding that when detailed scheme has been framed and the manner in which it has to be worked out is also indicated therein, merely because a certain number of seats are not filled up is not a reason enough for adopting one more round of counselling and it is not advisable to go on altering the scheme. The Supreme Court in *Arvind Kumar Kankane Vs. State of UP* AIR 2001 SC 2800 also held that if counselling goes on continuously for a long period, it

will upset the course of study. This Court also in ***Maharaja Agarsen Institute of Technology Vs. GGSIP University*** 116 (2005) DLT 290 (DB) and ***Miss Sunint Kaur Vs. GGSIP University*** ILR (2005) 1 Delhi 215 has commented against mid-session admissions. The said principle would apply in these facts also.

15. I am unable to accept the contention of the petitioner that the condition requiring members of faculty to be in full time employment of Institute/College does not bar them from having private practice. Being in full time employment connotes giving one's time and energy to that employment only without any distraction. Members of faculty if held to be entitled to private practice cannot be expected to give their best to imparting education and would always be lured into shortcuts while teaching to make time for their lucrative private practice. The Supreme Court in ***Dr. Haniraj L. Chulani Vs. Bar Council of Maharashtra and Goa*** AIR 1996 SC 1708 in relation to Advocates held that such restriction is for ensuring full time attention towards the profession and with a view to bringing out their best so that they can fulfill their role. It was further held that a person who wants to have a second string to his bow cannot urge that he is deprived of his right to live. To the same effect is the judgment in ***Satish Kumar Sharma Vs. Bar Council of H.P.*** 2001 (2) SCC 365. Once the said contention of the petitioner is negated, the reason given by the Board for denying permission to the petitioner i.e. of the petitioner not having the required faculty is good

enough for dismissal of this petition. The contention of the senior counsel for the petitioner that the petitioner can have no control over its faculty members cannot be accepted. It is the responsibility of the petitioner College to have the requisite faculty members and to ensure performance of their duties by them.

16. This Court as aforesaid would not otherwise substitute its opinion over that of the experts. Reliance in this regard can be placed on the recent judgment in *Dr. Basavaiah Vs. Dr. HL Ramesh* 2010 (7) SCALE 529. Again in *The Dental Council of India v. Subharti K.K.B. Charitable Trust* (2001) 5 SCC 486 the Supreme Court held that it is the function of the Central Government under Section 10A of the Dentists Act, 1948 to accord approval for establishing Dental College and the jurisdiction of the Court to interfere with discretion exercised by expert bodies such as Inspection Committee is limited. The Division Bench of this Court in *Dental Council of India v. Integrated Education Development Organization* (2000) 56 DRJ 283 also held that the question whether or not a technical College should be granted permission to admit students and to start classes has to be left to the concerned authority constituted for such purpose and the High Court sitting in extraordinary jurisdiction under Article 226 of the Constitution normally ought not to interfere as such a matter does not lie in the province of the Court; the power to interfere exists only when the decision suffers from

mala fide and arbitrariness and is unjust, unfair or unreasonable. No such case is made out in the present case.

17. There is no merit in the petition. The same is dismissed.

No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

5th October, 2010
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