

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

Date of decision: 11th February, 2011

+ W.P.(C) 8355/2010

ALL INDIA J.D. EDUCATIONAL SOCIETY & ANR. Petitioners

Through: Mr. Chandra Shekhar with Mr.
Rajeev Kumar Arya & Mr.Saurabh
Upadhyaya, Advocates

Versus

UNION OF INDIA & ANR. Respondents

Through: Mr. Arjun Pant, Advocate for R-1.
Mr. T.K. Josep, Advocate 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 petitioners in the year 2004 established an Ayurvedic Medical College & Hospital. In accordance with the provisions of the Indian Medicine Central Council (IMCC) Act, 1970, permission was

granted to the petitioners to start the Bachelor of Ayurvedic Medicine and Surgery (BAMS) course with 50 seats, with effect from the academic year 2004-05. The petitioners thereafter, year after year, were granted conditional permission to make admissions and permissions were so granted till the year 2009-10.

2. The respondent No.2 Central Council of Indian Medicines (CCIM) on whose recommendations permission for admission of students is granted or refused, made a *suo moto* visit to the College of the petitioners on 8th February, 2010 to reassess the available facilities of teaching and practical training as well as to verify the compliance reports submitted by the petitioners from time to time. The respondent No.2 CCIM pursuant to the said inspection, on 11th June, 2010 made a recommendation to the respondent No.1 to, not grant permission to the petitioners to admit students for the academic year 2010-11 on the ground of the College of the petitioners not having the requisite faculty and the bed occupancy of the hospital attached to the College being 56.72% i.e. less than the prescribed of 60%.

3. However, the Ministry of Health & Family Welfare of the Government of India on 8th July, 2010 revised the eligibility criteria for grant of conditional permission for the academic year 2010-11 and the requisite bed occupancy was reduced from 60% to 40%.
4. Another surprise inspection of the College and hospital of the petitioners including by the officials of the CBI was made on 2nd August, 2010 and which found the College to be not having a functional Internal Patients Department (IPD) and not having a functional hospital with even 40% bed occupancy.
5. The respondent No.1 accordingly vide order dated 12th October, 2010 denied permission to the College of the petitioners to admit students for the BAMS course for the academic year 2010-11.
6. Aggrieved therefrom W.P.(C) No.733/2010 was preferred. Finding that no opportunity of being heard had been granted to the petitioners with respect to the deficiency in bed occupancy found in the inspection on 2nd August, 2010, the said writ petition was

disposed of on 29th October, 2010 with a direction for the writ petition to be treated as a representation of the petitioners qua deficiency in bed occupancy and with a direction to the respondents to consider the same.

7. In pursuance thereto, an order dated 9th November, 2010 came to be made by the respondents, again denying permission. It was recorded in the said order that the entries in the 'In Patient Register' produced by the petitioners did not depict the total number of patients available in the ward on a given day; records only of new admitted patients were shown and no record of the date when the patients were relieved from the hospital or of the treatment meted out to the patients, to verify the correctness of the 'In Patient Register' were shown and it was stated that the same were not available. It was thus found by the respondent No.1 that the petitioners had failed to prove the authenticity of the "In Patient Register". Other doubts were also cast with respect to the records produced by the petitioners.

8. The petitioners challenged the said order dated 9th November, 2010 by preferring W.P.(C) No.8063/2010 in this Court. The said writ petition came up before this Court first on 1st December, 2010 when the counsel for the petitioners after some arguments on merits contended that the writ petition be held over, till the decision of a representation which the petitioners had preferred to the respondent No.1 against the order dated 9th November, 2010. However, since this Court had heard arguments to a considerable extent, need was not felt to adjourn the petition. The petitioners having opted not to press the petition awaiting the outcome of the representation, the writ petition was dismissed as not pressed with liberty to the petitioners to avail remedies available if remained aggrieved from the order on the representation.
9. The representation of the petitioners was decided vide order dated 7th December, 2010. The petitioners this time around took the stand that the records in support of the “In Patient Register” could not be produced because the same had been destroyed in a fire. The

respondent No.1 did not believe the same, no such plea having been taken earlier and no FIR of fire having been produced, the representation was accordingly rejected.

10. Aggrieved therefrom, the present petition was filed. This petition came up before this Court first on 20th December, 2010 when the counsel for the petitioners urged only one ground; it was contended that as per the order dated 7th December, 2010 the relevant period for determining the bed occupancy was January to December of the previous year i.e. of the year 2009; however the petitioners had been refused permission on the assessment of bed occupancy from 1st April, 2010 to 2nd August, 2010 as recorded in the order dated 9th November, 2010, a copy whereof was handed over in Court. The counsel for the respondent No.1 appearing on advance notice on that date sought time to obtain instructions as to whether the bed occupancy for January to December, 2009 had been assessed or not. This Court owing to the urgency of the matter, while adjourning the matter, granted another opportunity to the petitioners to produce the

record to assess the bed occupancy and for the respondents No.1 to assess the bed occupancy for the period January to December, 2009. The matter was adjourned to 24th December, 2010.

11. On 24th December, 2010, the counsel for the respondent No.1 pointed out that the petitioners had on the previous date misrepresented; that the order dated 7th December, 2010 read with earlier order dated 9th November, 2010 had computed the bed occupancy from 1st April, 2010 to 31st October, 2010; copies of the said orders were handed over showing that the bed occupancy was computed from 1st April, 2009 to 30th October, 2010. Finding the petitioners to have indulged in misrepresentation, the writ petition was dismissed with costs of `50,000/-.
12. The petitioners preferred intra court appeal being L.P.A. No.111/2011. The Division Bench while enhancing the costs from `50,000/- to `1,00,000/-, permitted the petitioners to address arguments on merits.

13. It is thereafter that the petition has now come up for consideration.
14. The counsel for the petitioners has relied heavily on the first inspection by the respondent No.2 CCIM on 8th February, 2010 in which the bed occupancy was reported as 56.72% i.e. more than the required of 40%. It is contended that the respondent No.2 CCIM is the statutory body constituted under the IMCC Act and its report of the contemporaneous time qua bed occupancy of the relevant year cannot be ignored.
15. I have already in *Acharya Gyan Ayurved College Vs. Department of Ayush* MANU/DE/3346/2010 held that the role of CCIM is only recommendatory and the respondent No.1 is not bound therewith.
16. It is not in dispute that another inspection comprising also of CBI officials was conducted on 2nd August, 2010 and which did not find a functional hospital which is a necessity before permission is granted for the admission to students. The orders dated 9th November, 2010 and 7th December, 2010 contain cogent reasons for

the respondent No.1 to have come to a conclusion that the petitioners did not have the requisite functional hospital. This Court is exercising only a power of judicial review. Judicial review is not of the decision but of the decision making process. Having earlier found opportunity of hearing to have been not granted to the petitioners, the same was allowed not once but several times. The Supreme Court in ***The Dental Council of India v. Subharti K.K.B. Charitable Trust*** (2001) 5 SCC 486 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 the discretion exercised by expert bodies is limited. The Division Bench of this Court in ***Dental Council of India Vs. 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. Reliance in this regard can also be placed on the recent judgment in ***Dr. Basavaiah Vs. Dr. HL Ramesh*** 2010 (7) SCALE 529 reiterating that the Courts have a very limited role particularly when no malafide has been alleged against the experts and that it would normally be prudent, wholesome and safe for the Courts to leave the decisions to the experts. It was further held that as a matter of principle the Courts should never make an endeavour to sit in appeal over the decision of the experts.

17. The respondent No.1 vide detailed order on each occasion has reached the same conclusion. It is also not in dispute that the petitioners have failed to produce the supportive documents to prove the authenticity of the “In Patient Register”. The stand of the respondent No.1 that the petitioners are bound to have the records of

the treatment meted out to the patients, of tests done on them and non production thereof raises a doubt about the authenticity of the register cannot be found fault with. Not only so, the physical inspection on 2nd August, 2010 also found so. Similarly, there is no error in the reasoning of the plea taken by the petitioners of destruction of the records in fire, being an afterthought. The petitioners are deemed to have known that the said records are required for the purpose of obtaining permission and ordinarily if the same had been destroyed, report of the incident would have been made. This Court cannot sit in appeal over the decision of the experts who have found the petitioners not eligible to admit students for the current year.

18. The counsel for the respondent No.1 has also argued that now nearly half the prescribed time for the academic year 2010-11 is over and in any case no purpose would be served.

19. The counsel for the petitioners has also produced before this Court the memo of the hearing held on 21st December, 2010 pursuant to

the directions dated 20th December, 2010 in this writ petition. During the said hearing also only the “In Patient Registers” showing bed occupancy of 56.7% were produced. The respondent No.1 was again of the view that in the absence of case sheet of IPD patients, cash receipts of cash collected for investigations, bank documents of depositing the daily cash collected from IPD patients, lab reports, lab register, X-ray register, nursing register, dispensation of medicine, duty roster of nursing staff, duty roster of doctors, diet register etc., no credence could be given to the claim of the petitioners of such occupancy. It was also observed that from the IPD registers produced, they did not appear to have been subject matter of any incident of fire as alleged.

20. The counsel for the petitioners in response to the arguments of the respondent of half the academic year over has contended that the petitioners have in fact admitted 35 students in the current academic year also. It has been enquired from the counsel for the petitioners as to how the students were admitted without permission. The

counsel then contends that in fact no permission is required. Attention in this regard is invited to a letter dated 12th April, 2005 of the Ministry of Health & Family Welfare to the petitioners.

21. The petitioners in none of the earlier rounds of litigation have contended that no permission is required.
22. The petitions have been filed on the premise that permission is required. The said argument clearly is an afterthought.
23. The counsel for the respondent No.2 clarifies that the letter dated 12th April, 2005 is only to the effect that no fresh permission every year is required with respect to the students admitted in the first year; else for fresh admissions in accordance with the IMCC Act permission is required.
24. The conduct of the petitioners shows that the petitioners have no regard for the Regulations and the petitioners have been taking contradictory pleas from time to time. Caught in other violation of admitting students without permission, an altogether new stand has

been taken. The same cannot be permitted. The Division Bench of Madras High Court in *The University of Madras Vs. Loordhu Ammal Educational Trust* MANU/TN/0474/2005 held that an institution admitting students even before University accords affiliation, is really committing a fraud and cheating those students because those students will be left in lurch if ultimately affiliation is denied.

25. There is no merit in the petition, the same is dismissed.

No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

FEBRUARY 11, 2011

‘gsr’