

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 21.9.2011

+W.P.(C) No.6916/2011

Shree Chhatrapati Shivaji
Education Society

.....Petitioner

Through: Mr. Rajshekhar Rao, Adv.

Vs.

Board of Governors in supersession of
Medical Council of India & Ors.

.....Respondents

Through: Mr. P.S.Patwalia, Sr. Advocate with
Mr. Ashish Kumar, Advs.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

KAILASH GAMBHIR, J.Oral :

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1. By this petition filed under Article 226 of the Constitution of India, the petitioner institute seeks to

challenge the order dated 16.9.2011 passed by the respondent no.1/MCI, whereby the request of the petitioner to grant approval for establishment of a new medical college for the academic session 2011-12 has been rejected.

2. Mr. Rajshekhar Rao, learned counsel appearing for the petitioner submits that the petitioner institute has duly complied with all the deficiencies as set out by the respondent MCI in their rejection letter dated 30.8.2011. Counsel submits that sufficient time was not given by the respondent to remove the deficiencies and some of the deficiencies which were pointed out in the letter were remedial and curable. Counsel also submits that some of the deficiencies which were pointed out by the respondent in their rejection letter dated 30.8.2011 were never pointed out in earlier rejection letter dated 13.7.2011. Counsel further submits that the blood bank as on date is also in place and therefore the said deficiency pointed out by the respondent now does not exist. Counsel submits that the petitioner vide letter dated 8.9.2011 also made a request for grant of less

number of seats as per the norms, i.e. reducing the seats from 100 to 50 or 75, but the said request of the petitioner was also not considered by the respondent. Counsel also submits that in fact the impugned order passed by the respondent goes beyond the inspection report; which inspection was carried out by the visiting team of the respondent pursuant to the orders of this Court. In support of his arguments, counsel has placed reliance on the following judgments:

1. *Al-Karim Educational Trust & Anr. vs State of Bihar & Ors., (1996) 8 SCC 330.*
2. *Integrated Education Development Organisation vs Union of India, 82(1999) DLT 888.*

3. Opposing the present petition, Mr. P.S. Patwalia, learned Senior Advocate appearing for the respondent submits that sufficient opportunity was granted to the petitioner to rectify the deficiencies but the deficiencies still existed even at the time when an opportunity of hearing was given to the petitioner by the respondent. Counsel also submits that the deficiencies as were pointed out in the rejection letter dated 30.8.2011 cannot be treated as curable or remedial as they

are the basic and essential requirements as laid down by the MCI under its regulations. Counsel also submits that so far as academic session 2011-2012 is concerned, the last date for the second counseling for the state quota was 30.8.2011 and there exists no provision for 3rd counseling. Counsel thus states that so far the present academic session is concerned, the case of the petitioner now cannot be considered for the grant of recognition. Counsel also submits that the entire exercise is carried out by the respondent based on the request made by the applicant, seeking approval for a particular number of seats in their college and the same cannot be reduced or increased at any stage and the decision is taken by the respondent as per the request made by the applicant. Counsel also submits that 30.9.2011 is the deadline for admissions against the left over seats, the same are there, if any.

4. I have heard learned counsel for the parties at the admission stage itself and given my thoughtful considerations to the submissions made by them.

5. The petitioner had applied to Medical Council of India to seek permission to start 100 seats medical college at Mayani, Taluka Khatav, Satara District, Maharashtra. Necessarily the application of the petitioner had to satisfy the requirements of the regulations framed by the respondent under Section 33 of the Indian Medical Council Act, 1956. Earlier, the said application of the petitioner was rejected by the respondent as the petitioner failed to place on record the Essentiality Certificate before the stipulated date fixed by the respondent for receiving the new applications. Feeling aggrieved with the said decision of the respondent to reject its application on the ground of non-filing of the Essentiality Certificate before the specified date, the petitioner had filed writ petition No. 3549/2011 to challenge the said decision of the respondent MCI and vide order dated 26th May, 2011 this Court had dismissed the said writ petition filed by the petitioner. The order of the Single Judge of this Court was challenged by the petitioner in LPA no. 544/2011 and vide

order dated 10th June, 2011 the Hon'ble Division Bench of this Court on the interim application of the petitioner directed the respondent to consider the application of the petitioner without raising the objection of non-filing of the Essentiality Certificate and the Consent of Affiliation certificate before the dead line of 30th November, 2010. The said interim order of the Hon'ble Division Bench was challenged by the respondent MCI in SLP No. 16233/2011 and vide orders dated 17th June, 2011 the Hon'ble Supreme Court gave the following directions:-

“(a) The application of the College will not be rejected on the two grounds alone which are indicated in the impugned order passed by the High Court.

(b) The Council shall be at liberty to consider the application in accordance with the Rules, Regulations and the parameters provided for grant of approval of such Colleges. If as per the wisdom of the Council, conditions are not satisfied it will be at liberty to decline the approval.

(c) We extend the period by two weeks for considering and granting/refusing the approval to the medical colleges. The Council will be at liberty to inspect the College through Experts as contemplated under the Rules.

(d) The High Court would bear the matter on 14th July 2011, the date already fixed. On that day the order passed by the Council shall be placed before the High Court.

All questions are left open for final decision of the writ petition by the High Court and the order is without prejudice to the contentions of the parties.”

6. Complying with the said directions of the Hon’ble Supreme Court and of the Hon’ble Division Bench of this Court, fresh assessment was carried out by the visiting team deputed by the respondent on 29th and 30th June, 2011 and based on the assessment report, the respondent vide their letter dated 13th July, 2011 had again rejected the application of the petitioner for the grant of approval to establish a new medical college. Since the said LPA filed by the petitioner was still pending consideration before the Hon’ble Division Bench and thus in the said LPA vide order dated 14th July, 2011 it was again directed to the respondent Board of Governors to afford an opportunity of hearing to the petitioner on 19th July, 2011 and thereafter pass a speaking order. The Hon’ble Division Bench felt that proper opportunity of hearing was not afforded by the respondent before the said order of rejection dated 13th July, 2011 was passed by the respondent. Complying with the said direction of the Hon’ble Division Bench, the respondent had afforded an opportunity of hearing

to the petitioner on 18th July, 2011 and then again passed a detailed order pointing out various gross deficiencies still existing in the petitioner institute in terms of the faculty, clinical material, infrastructure, nursing staff etc. The said order dated 20th July, 2011 passed by the respondent was again brought to the notice of the Hon'ble Division Bench in the said LPA and vide orders dated 21st July, 2011 the Hon'ble Division Bench gave further directions to the respondent to depute an inspecting team for fresh inspection of the petitioner institute on the petitioner's depositing the necessary inspection fee and then again pass a reasoned order after giving due opportunity of hearing to the petitioner. It was also directed that the inspection of the petitioner institute shall be carried out by the inspecting team within a fortnight from the date of the deposit of the amount. Pursuant to the said directions given by the Hon'ble Division Bench, yet another inspecting team was deputed by the respondent comprising of 3 experts and based on the said report submitted by the assessment team the respondent Medical

Council of India vide their letter dated 30th August, 2011 intimated the various deficiencies still existing in the petitioner institute and rejected the application again. The deficiencies pointed out by the respondent in their rejection letter dated 30.8.2011 are reproduced as under:-

- “i) Funds, Budget and Audit : The Institution does not have a clear budget, or fund allocation or audit Report for last 3 years.
- ii) Staff : There is substantial shortage of teaching staff and residents and no proof of their employment like salary slips and joining report have been submitted.
- iii) Paramedical staff details are not available from assessment done this time.
- iv) Clinical Material : Clinical material shows unacceptable shortages, in terms of Bed Strength, OPD Attendance, Admissions and Investigation.
- v) Infrastructural deficiencies.
- vi) Essentiality certificate is not as per Regulation of MCI. The certificate does not clearly state that students will be adjusted by the State Govt. in other Govt. institutions in case the present institution closes down which is mandatory requirement.
- vii) Other deficiencies as noted in the Assessment Report.”

7. Disputing the said deficiencies a detailed reply/representation dated 2.9.2011 was filed by the petitioner in reply to the said rejection letter and yet again due opportunity of hearing was granted to the representatives of the petitioner by the respondent Board on 2.9.2011. After

granting the said opportunity of hearing to the petitioner and after having considered the reply/representation made by the petitioner, the respondent still found that the petitioner failed to meet the requirements of the regulations and, therefore, was not found entitled for the grant of approval by the respondent. The respondent in their impugned letter dated 16.9.2011 pointwise dealt with the deficiencies pointed out by the respondent in their rejection letter dated 30.8.2011 and the response submitted by the petitioner. With regard to the said deficiencies, the petitioner was found wanting and lagging in fulfilling the laid down requirements as stipulated in the regulations. Feeling aggrieved with the said decision of the respondent, the petitioner has now approached this Court again by way of the present writ petition.

8. It is a settled legal position that for seeking permission for establishing a new medical college, such a college has to fulfill the norms laid down and the regulations framed by the respondent MCI under Section 10A read with Section 33 of the Indian Medical Council Act. In para 6 of the

impugned letter dated 16.9.2011, the Board of Governors has clearly observed that the statutory provisions contained in Section 10A(7) of Indian Medical Council Act, 1956 envisages that the scheme for the establishment of a new Medical college should meet; firstly, the prescribed minimum standards of medical education; secondly, person seeking to establish the medical college has adequate financial resources; thirdly, necessary facilities in respect of staff, equipment, accommodation, training and other facilities to ensure proper functioning of medical college; fourthly, adequate hospitals facilities; fifthly, programme drawn to impart proper training to students likely to attend such medical college; and sixthly, the requirement of manpower in the field of practice of medicine. The respondent Medical Council of India in the impugned letter has in detail dealt with contentions raised by the petitioner disputing the existence of deficiencies in the petitioner institute or their rectification by them and in the final analysis has rejected the application of the petitioner institute.

9. There can be no dispute with the legal position that the rules and regulations framed by the MCI in exercise of the powers conferred by it under section 33 of the Act have a statutory force and not in any circumstance the requirements or compliance with them can be compromised. The petitioner has stated at bar that some of the deficiencies pointed out in the impugned letter are curable in nature. For instance, one of the requirements laid down in the regulations is that there should be a blood bank in place, which was one of the deficiencies pointed out in the impugned letter. Counsel for the petitioner during the course of the arguments very fairly admitted the fact that blood bank was not operational even till the date of the hearing granted by the respondent. This Court does not find any infirmity in the reasoning given by the respondent that an operational blood bank is vital for the functioning of a teaching hospital and in the absence of such a blood bank, clearly the proposed medical college to be established by the petitioner is deficient in terms of the infrastructure facilities. This Court cannot appreciate the

arguments advanced by the counsel for the petitioner that the establishment of the blood bank is a curable and remedial defect. The existence of blood bank is an essential and necessary part of the infrastructure and requirement provided in the regulations and the same should have been in existence at least till the stage of the last visit made by the team of assessors but despite the fact that the petitioner had applied to seek its approval about a year ago, it still did not have the basic infrastructure as that of existence of a blood bank. There were other various infrastructural deficiencies pointed out in the impugned letter which still exist even after rectification of the many deficiencies as claimed by the petitioner, such as the Intensive Care Unit equipments were still not arranged by the petitioner. Another instance which came to light was that how the petitioner could be paying salaries to its faculty members in cash for the period w.e.f. January to July, 2011 with no proof of statutory deductions like provident fund, income tax, etc being produced by the petitioner before the team of assessors or before the appeal committee. The petitioner also could not

satisfy the respondent about the recruitment of the teaching staff and in fact the admission was made by the petitioner before the appeal committee that the teaching staff was attached to some other medical colleges and they would join after the college gets permission from the Medical Council of India. Hence looking at the deficiencies as pointed out in the impugned letter *prima facie*, this court is not persuaded that there is any infirmity or perversity in the order passed by the respondent MCI rejecting the application of the petitioner.

10. Hence, a bare perusal of the impugned letter shows that the deficiencies pointed out broadly are under the head of funds, budget and audit; staff; clinical material and infrastructural deficiencies. These findings have been arrived at by the inspecting body after carry out the inspection pursuant to the orders of this court. Inspection is a fact finding exercise and in the present case the impugned letter is a decision of the respondent which itself is an expert body and after consideration of the opinion of an expert body which is the inspecting team. It is a settled legal position that this

court will not ordinarily interfere in the findings of facts arrived at by an expert body, till they are shown to be patently perverse, illegal or arbitrary. It will be useful here to refer to the judgment of the Apex Court in the case of ***The Dental Council Of India vs. Subharti K.K.B Charitable Trust & Anr. (2001) 5 SCC 486*** wherein it was held that the Court's jurisdiction to interfere with the discretion exercised by expert's like the MCI is limited. It further held that:

"At present, there is tremendous change in social values and environment. Some persons consider nothing wrong in commercializing education. Still however, private institutions cannot be permitted to have educational, 'shops' in the country. Therefore, there are statutory prohibitions for establishing and administering educational institution without prior permission or approval by the concerned authority. On occasions, the concerned authorities, for various seasons, fail to discharge their function in accordance with the statutory provisions, rules and regulations. In some case, because of the zeal to establish such educational institution by persons having means to do so, approach the authorities, but because of red-tapism or for extraneous reasons, such permissions are not granted or are delayed. As against this, it has been pointed out that instead of charitable institutions, persons having means, considering the demands of the market rush for establishing technical educational institutions including medical college or dental college as a commercial venture with sole object of earning profits and/or for some other purpose. Such institutions fail to observe the norms prescribed under the Act or the Regulations and exploit the situation because of ever increasing demand for such institutions. In such cases, permissions are refused by the authorities without there being any bias or extraneous considerations. It is, therefore, submitted that Courts normally should not interfere with a decision taken by the expert body such as Medical Council or Dental Council by straightaway issuing mandamus directing the authority to grant approval or permission to establish such institution. Where the authority has refused approval, the institution may not be well equipped to impart education and may not have qualified teachers, staff or other

infrastructure necessary for running the institution. If permission is straightaway granted by the Court, society, education and ultimately the student suffer.

..... There cannot be any dispute that normally the court should not interfere with the functioning of the educational institutions, particularly, expert bodies like the MCI or the DCI. Still however, the question is posed that if such bodies act arbitrarily for some ulterior purpose, whether the court has the power to set right such arbitrary exercise of power by such authorities. We find the answer to this question in the affirmative. We also agree with the learned Solicitor General that educational institutions should not be permitted to be commercialized for earning money, but at the same time, the court can do very little in this filed as it is the function of the expert bodies, such, as Medical Council of India or the Dental Council of India. However, citizens would lose faith in such institutions if the allegations made in this appeal are repeatedly made with regard to the Inspection Reports and granting of approval by the Central Government. We leave this question for the Central Government to deal with appropriately as it is the function of the concerned authorities to plug the loopholes and see that in such matters nothing hanky panky happens."

The ambit of the writ jurisdiction in case like the present one has thus been well settled through judicial pronouncements like the above mentioned. Here it would also be pertinent to refer to the judgment of the Apex Court in the case of ***Union of India vs. Era Educational Trust and Anr. (2000)5 SCC 57*** wherein the court held that:

"Apart from Order XXXIX even with regard to the Medical education, there are various decisions of this Court laying down the principle that normally Court should not interfere and even if interference is required in a case of unsustainable order, the authority should be directed to reconsider the case on the norms prescribed under the

Act and/or the Rules. In *Shivaji University v. Bharti Vidyapeeth and Ors.* : [1999]1SCR1142 , after considering the order passed by the University, the Court directed the University to reconsider the question in the light of the observations made in the judgment. In similar set of circumstances, in *Civil Appeal Nos. 5045 and 5046 of 1998 in Medical Council of India, New Delhi v. State of H.P. and Anr.*, this Court on 16.2.2000 observed that since the refusal was based on deficiencies for running a Medical College, it would have been appropriate for the High Court to have remitted the matter to the Medical Council of India or the Union of India for reconsideration, even if it was of the opinion that the order of the Medical Council of India deserved to be set aside and the Court ought not to have issued a writ of Mandamus directing grant of permission. Further, in *Andhra Pradesh Christian Medical Educational Society v. Government of Andhra Pradesh* : [1986]2SCR749 , it was held that even in a case where students were admitted in the Medical Colleges and who have continued their studies for more than a year, this Court refused to recognise such admission and observed:

We regret that the students who have been admitted into the college have not only lost the money which they must have spent to gain admission into the college, but have also lost one or two years of precious time virtually jeopardising their future careers. But that is a situation which they have brought upon themselves as they sought and obtained admission in the college despite the warnings issued by the University from time to time.

The Court further observed:

Any direction of the nature sought by Shri Venugopal would be in clear transgression of the provisions of the University Act and the regulations of the University. We cannot by our fiat direct the University to disobey the statute to which it owes its existence and the regulations made by the University itself. We cannot imagine anything more destructive of the rule of law than a direction by the court to disobey the laws.

8. Similarly in Krishna Priya Ganguly and Ors. v. : [1984]1SCR302 , for granting interim order, this Court cautioned thus:

...that whenever a writ petition is filed provisional admission should not be given as a matter of course on the petition being admitted unless the court is fully satisfied that the petitioner has a cast-iron case which is bound to succeed or the error is so gross or apparent that no other conclusion is possible.

The Court further observed:

Unless the institutions can provide complete and full facilities for the training of each candidate who is admitted in the various disciplines, the medical education will be incomplete and the universities would be turning out doctors not fully qualified which would adversely affect the health of the people in general."

Hence as is evident from above that in exercise of writ jurisdiction this Court should be slow to interfere with the findings arrived at by the expert bodies until something so perverse or arbitrary is shown so as to persuade this court to show its indulgence. Looking into the impugned letter and taking a prima facie view, this court does not find the present to be a fit case to exercise its writ jurisdiction.

11. The judgment of the Apex Court in the case of *Al-Karim (supra)* cited by the petitioner would not be applicable to the facts of the case at hand as there the institution was already functioning and the delay was with regard to affiliation by the university and not permission by the MCI. Even otherwise, the court categorically held that the even the Supreme court has been constrained to exercise its jurisdiction and would not mean that the importance of fulfilling the essential prerequisite set by the Medical Council

for granting recognition be diluted. The judgment of this court in the case of *Integrated Education Development Organisation(supra)* cited by the petitioner also reiterates that the requirements and the parameters of the expert bodies like the Dental Council of India are sine qua non for establishment of these kinds of institutions and the same requirement cannot be diluted. The said judgment would not help the case of the petitioners as in the said case the two deficiencies pointed out were unreasonable whereas in the case at hand, even on a cursory glance the deficiencies pointed are weighty and cannot be given a go by for granting permission.

12. Hence, in the light of the above discussion , this court does not find any merit in the present petition and the same is hereby dismissed.

Dasti under signatures of the Court Master.

September 21, 2011
mg/rkr

KAILASH GAMBHIR, J