

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

Judgment reserved on: 12.12.2013

% Date of Decision: 20.12.2013

+ W.P.(C) 6261/2013

RAIPUR INSTITUTE OF MEDICAL SCIENCES & ORS

... Petitioners

Through: Ms Bina Madhavan, Mr S. Udaya
Kr. Sagar and Mr Shivendra Singh, Advs.

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr Himanshu Bajaj, CGSC for R-1
Mr Amit Kumar, Mr Amitesh Kumar and Mr
Ravinder Kumar, Advs for R-2

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J.

The petitioner No.3 is a society and petitioner No.2-Dr.Shambhu Nath Gupta is its Vice-President. Seeking to start a medical college in the academic year 2013-14 in the name of respondent No.1-Raipur Institute of Medical Sciences, the petitioners applied to the respondent-Medical Council of India, seeking permission to establish a new Medical College, with intake capacity of 150 students. An assessment of physical and teaching facilities available in the said college was carried out by the assessors appointed by MCI, on 14.05.2013 and

15.05.2013. The report of the assessors was considered by the Council in its meeting held on 11/12.06.2013. As many as 19 deficiencies, including lack of adequate clinical material, were found by the Board of Governors of the Medical Council. It was also found that the patients in surgery and pediatrics were such that they did not need admission. The representatives of the petitioners were, therefore, directed to remain present before the Board of Governors on 26.06.2013, alongwith the supporting documents. The petitioner submitted its response to the said communication vide their letter dated 26.06.2013 stating therein that all the deficiencies had been corrected, fulfilling MCI norms. As regards the alleged inadequacy of clinical material and the patients in surgery and pediatrics not requiring admission, it was stated in the reply that the verified bed occupancy was 69.66% and all the patients needed admissions as indoor patients and, therefore, all of them were clinical material.

2. Vide order dated 02.07.2013, Medical Council of India informed the petitioner that the Board of Governors in its meeting held on 25/26.07.2013 had decided not to approve the establishment of new medical college at New Raipur by petitioner No. 3. Being aggrieved from the aforesaid order, the petitioner approached this Court by way of

W.P.(C) No. 4250 of 2013, which came to be decided vide order dated 08.07.2013, whereby MCI was directed to pass a speaking order, on or before 12.07.2013, dealing with the reply of the petitioners and the explanation offered by their representative during the course of hearing before the Board of Directors of MCI on 26.06.2013 and convey the speaking order immediately thereafter. The order passed by this Court on 02.07.2013 was challenged by the petitioners before the Hon'ble Supreme Court which, noticing that this Court had already directed MCI to pass a speaking order, disposed of the Special Leave Petition filed by the petitioners, directing that MCI will now pass a fresh speaking order on its own merit after verifying the compliance of the deficiency said to have been made by the petitioners. MCI vide order dated 12.07.2013, complying with the order of this Court dated 08.07.2013, recorded reasons for declining letter of permission to the petitioners

3. Pursuant to the order passed by the Hon'ble Supreme Court on 12.07.2013, physical verification of the compliances was also carried out by MCI. The fresh inspection was carried out on 23/24.08.2013 and the report of the assessors was considered by the Undergraduate Committee of the Council on 29.08.2013. The observations of the

Undergraduate Committee along with the report of the assessors were considered by the Board of Governor of MCI on 03.09.2013.

The Board of Governors noted that the bed occupancy was still inadequate as it was as low as 55% and 58% in Departments of Medicine and Surgery respectively. The Board of Governors also observed that the assessors had noted that the quality of clinical material in OPD and IPD require improvement, besides making observations with respect to maintenance of case sheets and emphasizing improvements in the same. The MCI took note of the provisions of “Minimum Requirements for 150 MBBS Admissions Annually Regulations, 1999” which *inter alia* require a functional teaching hospital with 300 beds having a minimum of 60% indoor occupancy at the time of submission of the application as well as inspection by the Medical Council of India. The Council observed that the bed occupancy was not 60% on the date of the application and the applicant had failed to achieve minimum 60% of bed occupancy even after almost one year of submitting the application. It was also observed that the requirement of a functional hospital in terms of the Regulations envisages proper maintenance of case records and since the observers felt that maintenance of record required improvement, the compliance submitted

by the petitioners did not inspire confidence. The MCI felt that the petitioners should make efforts to increase the bed occupancy for subsequent years and make a fresh application as per Regulations for the next year, within the time schedule. The decision of Council was conveyed to the petitioner vide communication dated 17.09.2013 which the petitioners have challenged by way of the present writ petition.

4. It would, thus, be seen that the letter of permission was denied to the petitioners on account of the following three (3) deficiencies:

- i. In ENT section the audiometry room was not sound proof;
- ii. The bed occupancy was not 60 per cent at the time of submitting the application onwards.
- iii. The quality of the clinical material in OPD and IPD as well as maintenance of case sheets required improvements.

No other ground was urged during the course of hearing.

5. Regulation B3.1(d) of the Minimum Requirements for 150 M.B.B.S. Admissions annually Regulations, 1999, requires the audiometry room in the ENT section to be sound proof. A perusal of the inspection report dated 23/24.8.2013 would show that though audiometry room was available, it was not sound proof/sound treated as per the requirements. Therefore, the petitioners are required to make the

audiometry room in the ENT section sound proof as per the requirement of the MCI before their application for grant of letter of permission can be considered.

6. During the course of arguments it was an admitted position that the Regulations framed by the MCI require 60 per cent occupancy at the time of submission of the application to the MCI as well as at the time of inspection of the hospital by MCI and up to 2nd renewal of the medical college. However, the learned counsel for the MCI could not show to me any Regulation requiring minimum of 60 per cent indoor bed occupancy in each of the Departments. Though the Regulations do prescribe distribution of beds amongst various departments, the said distribution is altogether different from the bed occupancy. A hospital may have bed-distribution in terms of the Regulations framed by MCI but still may not have 60 per cent bed occupancy in each of the Departments. This is not the case of the MCI that the distribution of beds amongst various departments was not in conformity with their Regulations in the hospital of the petitioners. Therefore, if the overall bed occupancy in the hospital of the petitioners was 60 per cent at the time of submission of the application as well as at the time of inspection of the hospital and the same continues to be as such, the MCI will not be

justified in denying the Letter of Permission merely because the bed occupancy in each of the major departments was not 60 per cent or more.

7. It is stated in the report dated 23/24.8.2013 that the quality of clinical material available in the Out-Patient and In-Patient Departments needs improvement and the maintenance of case sheets also needs improvements and, therefore, the assessment was less. The aforesaid deficiency was found in the General Medicine Department as well as in the General Surgery Department. However, the report does not indicate how, in what manner and to what extent the quality of clinical material and maintenance of case sheets needed improvement. No specific deficiency in the clinical material available in the aforesaid Department or in the case sheets maintained therein is pointed out in the report of the assessors. In the absence of particulars of the alleged deficiencies in the quality of clinical material and maintenance of case sheets, it is not possible for the petitioners to know what precisely are the improvements they are required to make up in this regard. Such vague reports, without such particulars as would enable the applicants to know what precisely were the deficiencies they were required to make up cannot be a valid ground for rejection of the Letter of Permission. Therefore, the MCI, in

my view, was not justified in denying letter of permission to the petitioners on the aforesaid ground.

8. The next question which comes up for consideration is as to whether, the overall bed occupancy was 60 per cent at the time of submission of the application and continued to be so till the time inspection was carried out on 23/24.8.2013. If it is found that the overall bed occupancy in the hospital of the petitioners was less than 60 per cent at any point of time on or after submission of the application for grant of Letter of Permission, the petitioners would not be entitled to grant of permission to start a medical college with intake of 150 admissions.

This can hardly be disputed that the bed occupancy prescribed in the Regulations is genuine admissions of patients and if it is found that the patients were admitted, only with a view to hoodwink the assessors of the MCI as regards extent of bed occupancy, at the time of inspection by them, by admitting persons, who did not need admission as indoor patients, such patients have to be excluded from consideration, while computing the bed occupancy in the hospital of the applicant.

A perusal of the inspection report dated 15.5.2013 would show that in Pediatrics Department nine (9) patients were found admitted and

out of them six (6) patients were such who did not deserve admission. Only three (3) patients were found deserving admission. In General Surgery Department forty-eight (48) patients were found admitted but as much as 50 per cent of them, i.e. twenty-four (24), did not qualify for surgical admission. In Orthopedics Department eighteen (18) patients were found admitted but only one (1) of them was found deserving admission, meaning thereby that seventeen (17) out of eighteen (18) patients in Orthopedics Department did not deserve admission.

9. Though the learned counsel for the petitioners disputed the report of the assessor with respect to the requirement for admission of the aforesaid patients as indoor patients, this Court in exercise of its writ jurisdiction under Article 226 of the Constitution cannot go into such questions and must necessarily accept the report of the assessor, particularly, when the inspection was carried out in the presence of the representatives of the petitioners. As observed in Manohar Lal Sharma Vs. MCI & Ors. 2013 (11) SCALE 294, when the inspection team consists of doctors of unquestionable integrity and reputation, who are experts in the field, there is no reason to discard the report of such an inspection.

Since the petitioners were required to have 300 bed hospital, the bed occupancy at the time of inspection on 15.5.2013 should have been at least 180 and all the indoor patients should have been genuine patients who required indoor treatment in the said hospital. If the patients who did not genuinely require admission in the wards are excluded from consideration, the number of occupied beds falls well below 180 since as many as forty-seven (47) patients in the opinion of the assessor did not deserve admission as indoor patients.

10. In Manohar Lal Sharma (supra), Section 10A of the Indian Medical Council Act, 1956, which deals with grant of permission for establishment of new medical colleges and new courses of study, to the extent it is relevant for the purpose of this writ petition reads as under:

“7. (c) whether necessary facilities in respect of staff, equipment, accommodation, training and other facilities to ensure proper functioning of the medical college or conducting the new course or study or training or accommodating the increased admission capacity, have been provided or would be provided within the time-limit specified in the scheme.

(d) whether adequate hospital facilities, having regard to the number of students likely to attend such medical college or course of study or training or as a result of the increased admission capacity, have been provided or would be provided within the time-limit specified in the scheme;”

It was further observed by the Hon’ble Supreme Court that the requirements are statutorily prescribed and, therefore, the MCI has no

power to dilute the same. If MCI dilutes the minimum standards, that will be doing violence of the statutory requirements, since in the absence of such requirements the college will be producing half baked and poor quality doctors who would do more harm to the society than service.

11. It is stated in the writ petition that no opportunity of hearing was given to the petitioner before passing the order conveyed to them vide communication dated 17.9.2013. As observed in Manohar Lal Sharma (supra), the MCI while deciding to grant permission or not to grant permission is not functioning as a quasi judicial authority but only as an administrative authority. The rigid rules of natural justice, therefore, are not contemplated or envisaged. It was, therefore, held that compliance report is called only to ascertain whether the deficiencies pointed out were rectified or not and if the MCI is not satisfied with the manner of compliance it can conduct a surprise inspection. After that no further time or opportunity to rectify the deficiencies is contemplated nor further opportunity of being heard is provided. I, therefore, find no merit in the said contention.

12. For the reasons stated hereinabove, I am of the considered view, that since at the time of inspection on 15.5.2013 the bed occupancy,

computed on the basis of the patients who genuinely required admission comes to be less than 60 per cent and the audiometry room in the ENT section was not found to be sound proof as per the requirement of the MCI, the application of the petitioners was rightly rejected by the MCI for the year 2013-2014.

13. The next questions which arises for consideration is as to whether the petitioners should be asked to apply afresh for grant of letter of permission for the admission year 2014-2015 or the application which they had submitted for the admission year 2013-2014 can be considered as an application for the admission year 2014-2015. Though at the time of inspection on 15.5.2013, the bed occupancy computed on the basis of genuinely indoor patients was less than 60 per cent, the said occupancy at the time of inspection on 23/24.8.2013 was not stated to be less than 60 per cent. If the said occupancy had continued to be 60 per cent or more on and after 23/24.8.2013, the petitioners can on the strength of the inspection dated 23/24.8.2013, seek grant of Letter of Permission for the admission year 2014-2015. In the facts & circumstances of the case, no useful purpose, in my view, will be served by directing the petitioners to apply afresh for the admission year 2014-2015.

14. The writ petition is, therefore, disposed of with the following directions:

- i. The application which the petitioners had submitted seeking letter of permission for the year 2013-2014 shall now be considered by the Medical Council of India for the admission year 2014-2015.
- ii. A surprise inspection of the premises of the petitioners shall be carried out by the competent assessors appointed by the Medical Council of India on a date which the Medical Council of India shall not disclose to the petitioners in advance.
- iii. The entire visit of the assessors appointed by the MCI shall be got videographed at the cost of the petitioners.
- iv. The application of the petitioner shall be considered and processed for the admission year 2014-2015 on the basis of the above directed surprise inspection and an appropriate decision in accordance with law will be taken by the MCI well in time and communicated to the petitioners immediately thereafter.
- v. In Manohar Lal Sharma (supra), the Hon'ble Supreme Court *inter alia* observed that a surprise inspection contemplates no notice and if the notice is given in advance, it would not be a surprise inspection and will give room for the College to hoodwink the assessors by

springing a surprise, by making perfect what was imperfect. It was further observed that MCI can conduct a surprise inspection to ascertain whether the deficiencies had been rectified and the compliance report be accepted or not. In my view, all the inspections carried out by the assessors appointed by the MCI, should be surprise inspection, so that there is no scope for (i) arranging or admitting patients, (ii) arranging/hiring/borrowing equipments or employing teachers, on a temporary basis, so as to project compliance of the Regulations at the time of inspection, and later withdrawing/removing such temporarily arranged infrastructure. I also feel that all such inspections should be got videographed throughout the inspection, so that there is no dispute with respect to what actually was available at the time of inspection. MCI is, therefore, directed to consider making all inspections by its assessors to assess the infrastructure including hospital equipments and faculty of a proposed/existing medical college surprise, and get them videographed throughout the inspection. The CD of such recording should be submitted to MCI, on or before the time of submission of the inspection report.

In the facts & circumstances of the case, there shall be no orders as to costs.

DECEMBER 20, 2013
BG/b'nesh

V.K. JAIN, J.