

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**APPELLATE SIDE CIVIL JURISDICTION****WRIT PETITION NO. 3709 OF 2015
WITH
WRIT PETITION NO. 3707 OF 2015
WITH
WRIT PETITION NO. 3711 OF 2015**

Smt. Kashibai Navale Medical
College and Hospital
Sinhgad Technical Education Society,
Survey No. 49/1, Narhe, Off. Mumbai-Pune
Bypass, Pune-411 041.
Represented through its Founder President,
Prof. M.N. Navale
Age 65 years,
Residing at STS, Vadgaon (Bk.),
Pune-411 041

....Petitioner.

Vs.

- 1 Medical Council of India,
Through its Chairman,
Pocket 14, Sector 8, Dwarka Phase-1,
New Delhi-110 001.
- 2 The Union of India,
Represented by its Secretary (Health)
Government of India,
Ministry of Health and Family Welfare,
Nirman Bhavan, Maulana Azad Road,
New Delhi-110 011.
- 3 The Principal Secretary,
Medical Education and Drugs Department,
Maharashtra State, Mantralaya,
Mumbai-400 032.

- 4 The Director,
 Directorate of Medical Education and Research
 Government Dental College & Hospital Building,
 St. George's Hospital Compound,
 Near V.T. Mumbai-400 001.
- 5 Maharashtra University of Health Sciences,
 Dindori Road, Mhasrul, Nasik-422 004. Respondents.

Mr. Sukand R. Kulkarni for the Petitioners in all the matters.

Mr. Ganesh Gole for Respondent No.1

Mr. R.A. Rodrigues a/w Mr. Abhishek Tripathi and Mr. M.R. Prajapati
for Respondent No.2.

Mr. R.V. Govilkar for Respondent No.5.

Mr. C.P. Yadav, AGP for the State.

**CORAM : ANOOP V. MOHTA AND
 K.R. SHRIRAM, JJ.
DATE : 8 MAY 2015.**

ORAL JUDGMENT (PER ANOOP V.MOHTA, J.):

Rule. Rule made returnable forthwith. Heard finally by
consent of the parties.

2 We are inclined to dispose of these Petitions by common
Judgment, as the Petitioners are same and so also the concerned
Respondent No.1-Medical Council of India (for short, "MCI"). The
Petitioners have challenged the impugned communication whereby,
MCI has restricted to the seats as per the chart, which read thus:-

Sr. No.	Course	WP No.	New/Increase	Existing	Applied	Granted
1	MS (ENT)	3709/2015	New	--	5	1
2	MD (Psychiatry)	3707/2015	New	–	3	1
3	MD (General Medicine)	3711/2015	New	–	11	4

3 After going through the communication and even otherwise, there is no denial to the submission that no hearing was given by the Respondent-MCI before passing the impugned order, that itself in our view, sufficient to interfere with the impugned communication as the basic principle of natural justice and so also the provisions of The Medical Council of India Act 1956 and the Rules made thereunder, including the procedure of giving hearing is missing. The Respondents by affidavit resisted the claim and filed reply.

4 There is no dispute that such Authorities bound to follow the basic rules and regulations, when it comes to grant of additional seats and/or grant/approval of the seat numbers so prayed. The submission revolving around the Supreme Court Judgment in the reply filed by the MCI, requires no discussion, as the law so settled needs to be tested, even otherwise based upon the facts and

circumstances of the case. We are not even going to this position in the present cases, as admittedly no hearing so contemplated was given. It is necessary to mention that such Expert Authority/Body once taken decision in accordance with law, the Court normally refused to interfere with the same, being the decision of Expert Body, but the decision so taken without giving hearing and assigning the reasons, which are necessary, this Court therefore, needs to consider the case and the grievances of the Petitioners. In the present case, without giving hearing and without assigning specific reasons for restricting seats so granted, we are inclined to interfere with the decision. However, the Respondent-MCI is directed to consider the case of the Petitioners, in accordance with law by giving hearing and to take decision and pass order by giving reasons, so that the parties/Petitioners can have a view of the matter and in a given case may comply with the deficiencies, if any, and/or may submit the details to persuade the Expert Body, that there are no major deficiencies and/or those deficiencies minor in nature, can be removed within short time and/or given time. This aspect of opportunity is very essential for passing any order by the Expert body. Therefore, we are inclined to direct MCI to reconsider their

recommendation, even if any, by giving full opportunity to the Petitioners.

5 It is made clear that the Respondent-Union of India is the final Authority, who passed the order after recommendation by the Council. In the present case, the procedure adopted by the Council (Recommendatory Authority) itself, is in the issue. After hearing, if there is a change in recommendation, the Union of India needs to consider the same, in accordance with law. Even otherwise, the recommendation so given, needs to be respected by all. We are, therefore, without disturbing the recommendation so made, but as it is without giving hearing to the Petitioners, MCI to reconsider the case of the Petitioners for the number of posts they applied as referred above and pass reasoned order after giving hearing and opportunity to the Petitioners. In the event, the respective Petitioners cases are considered, the Recommendatory Authority needs to forward the same to the Union of India for appropriate orders. The Union of India also to pass further and final order, in accordance with law.

6 Therefore, by keeping all points open, at this stage, we are

inclined to remand the matter for reconsideration to the Recommendatory Authority Respondent No.1-MCI, and direct them to pass the order, as early as possible, preferably by 18 May 2015, so that the Petitioners will get reasonable opportunity to apply for further orders, if there is a change, as any change needs to be forwarded by Recommendatory Authority to the Union of India for further decision.

7 Therefore, the following order:-

ORDER

- a) All the Petitions are accordingly allowed only to the extent of directing Respondent No.1-MCI to pass reasoned order of remaining seats, as early as, possible preferably by 18 May 2015.
- b) By keeping all points open all the Petitions are disposed of, with liberty.
- c) Rule made absolute accordingly.
- d) There shall be no order as to costs.

The parties to act on the basis of an authenticated copy of this order.

(K.R. SHRIRAM, J.)

(ANOOP V. MOHTA, J.)