

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

THURSDAY, THE 9TH DAY OF JULY 2015/18TH ASHADHA, 1937

WA.NO. 1250 OF 2015 () IN WP(C).19552/2014

APPELLANT(S)/PETITIONER:

KERALA CHRISTIAN PROFESSIONAL COLLEGE
MANAGEMENTS FEDERATION
RAJAGIRI SCHOOL OF SOCIAL SCIENCES
RAJAGIRIVALLEY P.O., KAKKANAD, COCHIN - 682 039
REPRESENTED BY ITS SECRETARY.

BY ADVS.SRI.KURIAN GEORGE KANNANTHANAM (SR.)
SRI.TONY GEORGE KANNANTHANAM
SRI.THOMAS GEORGE

RESPONDENT(S)/RESPONDENTS:

1. MEDICAL COUNCIL OF INDIA
REPRESENTED BY ITS SECRETARY, POCKET - 14, SECTOR 8
DWARAKA, NEW DELHI - 110077.

2. UNION OF INDIA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT
DEPARTMENT OF HEALTH AND FAMILY WELFARE
MINISTRY OF HEALTH AND FAMILY WELFARE, NIRMAL BHAVAN
NEW DELHI - 110 011.

R1 BY ADV. SRI.TITUS MANI VETTM, SC,
MEDICAL COUNCIL OF INDIA

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 17.06.2015,
THE COURT ON 09-07-2015 DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS:

ANNEXURE -1 COPY OF COMMUNICATION DATED 22.05.2015 IN W.P
(C) NO.19552 OF 2015 OF THIS HONOURABLE COURT

RESPONDENT(S)' EXHIBITS:

NIL

“C.R.”

ASHOK BHUSHAN, C.J.

and

A.M. SHAFFIQUE, J.

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W.A. No.1250 of 2015

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Dated this the 9th day of July, 2015

J U D G M E N T

Ashok Bhushan, C.J.

Federation of Kerala Christian Professional College Managements is in appeal against the judgment of the learned Single Judge dated 22.05.2015, by which judgment the learned Single Judge dismissed the Writ Petition filed by the Federation seeking a declaration that Regulation 13.3 of the Post Graduate Medical Education Regulations, 2000 is illegal and unconstitutional. The Federation also prayed in the Writ Petition for quashing Exts.P2 and P4 by which letters, the Medical Council of India referring to clause 3 of Regulation 13 of the Post Graduate Medical Education Regulations, 2000 (hereinafter referred to as “the 2000

Regulations”) directed all Directors/Deans/Principles of all Medical Colleges/Postgraduate Institutes in India to ensure that the Postgraduate students undergoing Postgraduate Degree/Diploma/Super Specialty Course shall be paid stipend at par with the stipend being paid to the students of State Government/Central Government Medical Institutions.

2. Brief facts necessary to be noted for deciding the Writ Appeal are: Petitioner is a Registered Association of Managements of 4 Christian Medical Colleges and one Dental College in the State of Kerala. In all the four Colleges under the petitioner Federation there are approved Postgraduate Courses running from 2012 onwards. The recognition in Postgraduate Courses has been granted both in the clinical and non-clinical subjects (basic medical science). The 2000 Regulations were framed by the Medical Council of India under Sections 20 and 33 of the Medical Council Act,

1956 (hereinafter referred to as “the 1956 Act”). Amendments were made in the Regulations by amendment dated 20.10.2008. Clause 3 of Regulation 13 was substituted as follows:

“3. The post-graduate students undergoing Post-Graduate Degree/Diploma/Super-Specialty Course shall be paid stipend on par with the stipend being paid to the post-graduate students of State Government Medical Institutions, in the State/Union Territory where the institution is located. Similarly, the matter of grant of leave to post-graduate students shall be regulated as per the respective State Government rules.”

Petitioner filed Writ Petition, being W.P(C) No.19552 of 2014 challenging Regulation 13(3). It was also pleaded in the Writ Petition that the Regulations are beyond the provisions of Sections 20 and 33 of the 1956 Act. It was pleaded that the fee structure both of Government allotment and management allotment are different for clinical and non-clinical subjects. It is stated that fixing

the same stipend for students undergoing clinical and non-clinical subjects is discriminatory. It is pleaded that the Medical Council of India cannot compel private Colleges to pay stipend merely because Government pays and that too at the rates fixed at the discretion of the Government for their Medical Colleges. It was further pleaded that the State makes the payment from public Exchequer whereas private institutions have limited resources generated through fee structure. Learned Single Judge dismissed the Writ Petition. Challenging the judgment of the learned Single Judge this Writ Appeal has been filed.

3. Shri Kurian George Kannanthanam, learned Senior Advocate appearing for the petitioner raised only the following two submissions. (1) Regulation 13(3) of the 2000 Regulations are beyond the scope of Sections 20 and 33 of the 1956 Act, hence the said Regulations are ultra vires of the 1956 Act. (2) There

is a marked difference between clinical and non-clinical disciplines. Although Postgraduate students in clinical discipline discharges various functions in the hospital whereas students of non-clinical discipline only engage themselves in academic studies, hence there cannot be uniform stipend for both the streams. Direction for payment of uniform stipend for both clinical and non-clinical disciplines is discriminatory and arbitrary.

4. Shri Titus Mani Vettom, learned Standing Counsel for the Medical Council of India refuting the submissions of learned counsel for the petitioner contended that students of both clinical and non-clinical disciplines joined training and they have to be uniformly paid stipend. It is submitted that under Section 33 of the 1956 Act, the Medical Council of India is fully empowered to make Regulations for payment which is paid during the course of training. It is submitted that there is no discrimination in payment of

uniform stipend to students of both clinical and non-clinical disciplines. It is further submitted that postgraduate students are single community and cannot be classified in clinical and non-clinical disciplines as pointed out by the petitioner.

5. We have heard the learned counsel for the parties and perused records.

6. The 1956 Act has been enacted to provide for the reconstitution of Medical Council of India and the maintenance of a Medical Register for India and matters connected therewith. Medical Council of India has to prescribe the minimum standards of medical education. Under Section 20, the Council may prescribe the standards of Post-graduate for the guidance of Universities, and may advise Universities in the matter of securing uniform standards for the Postgraduate medical education throughout India and for this purpose the Central Government may constitute from among

the members of the Council a Postgraduate Medical Education Committee. Section 33 which is relevant for the present case provides for power to the Council for making regulations. Section 33 is as follows:

33. Power to make regulations.- *The Council may, with the previous sanction of the Central Government, make regulations generally to carry out the purposes of this Act, and, without prejudice to the generality of this power, such regulations may provide for-*

- (a) the management of the property of the Council and the maintenance and audit of its accounts;*
- (b) the summoning and holding of meetings of the Council, the times and places where such meetings are to be held, the conduct of business thereat and the number of members necessary to constitute a quorum;*
- (c) the resignation of members of the Council;*
- (d) the powers and duties of the President and Vice-President;*
- (e) the mode of appointment of the Executive Committee and other Committees, the summoning and holding of meetings and the conduct of the business of such Committees;*
- (f) the tenure of office, and the powers and duties of the Registrar and other officers and servants of the councils;*

(fa) the form of the scheme, the particulars to be given in such scheme, the manner in which the scheme is to be preferred and the fee payable with the scheme under clause (b) of sub-section (2) of section 10A;]

¹[(fb) any other factors under clause (g) of sub-section (7) of section 10A;]

(fc) the criteria for identifying a student who has been granted a medical qualification referred to in the Explanation to sub-section (3) of section 10B;]

(g) the particulars to be stated, and the proof of qualification to be given in the applications for registration under this Act;

(h) the fee to be on applications and appeal under this Act;

(i) the appointment, powers, duties and procedure of medical inspection and visitors;²

(j) the course and period of study and of practical training to be undertaken, the subjects of examination and the standards of proficiency therein to be obtained, in Universities or medical institutions for grant of recognised medical qualifications;]

(k) the standard of staff, equipment, accommodation, training and other facilities for medical education;]

(l) the conduct of professional examinations, qualifications of examiners and the conditions of admission to such examinations;]

(m) the standard of professional conduct and etiquette and code of ethics to be observed by medical practitioners; and]

(ma)the modalities for conducting screening tests under sub-section 4(A), and under the proviso to sub-section (4B), and for issuing eligibility certificate under sub-section 4(B) of section 13;

(n)any matter for which under this Act provision may be made by regulations.

7. First submission of the learned Senior counsel for the petitioner is that Regulation 13(3) is beyond the power of Sections 20 and 33. Regulation 13 which relates to training programme and relevant for the present case is quoted below:

“13. Training programme.-(1) The training given with due care to the post-graduate students in the recognised institutions for the award of various post-graduate medical degrees/diplomas shall determine the expertise of the specialist and /or medical teachers produced as a result of the educational programme during the period of stay in the institution.

(2) All the candidates joining the post-graduate training programme shall work as 'Full Time Residents' during the period of training and shall attend not less than 80% (Eighty percent) of the imparted training during each

academic year including assignments, assessed full time responsibilities and participation in all facets of educational process.]

(3) The post-graduate students undergoing Post-Graduate Degree/Diploma/Super-Specialty Course shall be paid stipend on par with the stipend being paid to the post-graduate students of State Government Medical Institutions/Central Government Medical Institutions, in the State/Union Territory where the institution is located. Similarly, the matter of grant of leave to post-graduate students shall be regulated as per the respective State Government rules]

(4)(a) Every institution undertaking post-graduate training programme shall set up an Academic Cell or a Curriculum Committee, under the chairmanship of a senior faculty member, which shall work out the details of the training programme in each sociality in consultation with other department faculty staff and also coordinate and monitor the implementation of these training programmes.

(b) The training programmes shall be updated as and when required. The structured training programme shall be written up and strictly followed, to enable the examiners to determine the training undergone by the candidates and the Medical Council of India inspectors to assess the same at the time of inspection.

(c) Post-Graduate students shall maintain a record (log) book of the work carried out by them and the training programme undergone during the period of training including

details of surgical operations assisted or done independently by M.S./M.Ch. candidates.

(d) The Record (Log) Books shall be checked and assessed periodically by the faculty members imparting the training.]

(5) During the training for award of Degree/ Superspecialty/ Diploma in clinical disciplines, there shall be proper training in Basic medical sciences related to the disciplines concerned; so also in the applied aspects of the subject; and allied subjects related to the disciplines concerned. In the post-graduate training programmes including both clinical and basic medical science, emphasis has to be laid on preventive and social aspects. Emergency care, facilities for Autopsies, Biopsies, Cytopsies, Endoscopy and Imaging etc. shall also be made available for training purposes.]

(6) The post-graduate students shall be required to participate in teaching and training programme of undergraduate students and interns.

(7) Training in Medical Audit, Management, Health Economic, Health Information System, Basics of Statistics, Exposure to Human Behavior Studies, Knowledge of pharmaco-economic and introduction to non-linear mathematics shall be imparted to the post-graduate students.

(8) Implementation of the training programmes for the award of various post-graduate Degree and Diplomas shall include the following:-

(a) Doctor of Medical (M.D./Master of surgery (M.S.)

- i. **Basic Medical Sciences-** *The teaching and training of the students shall be through Lectures, Seminars, Journal clubs, Group discussions, Participation in Laboratory and experimental work, and involvement in research studies in the concerned specialist and exposure to the 'applied aspects' of the subject relevant to clinical specialties.*
- ii. **Clinical disciplines-** *The teaching and training of the students shall include graded responsibility in the management and treatment of patients entrusted to their care; participation in seminars, journal clubs, group discussions, clinical meetings, grand rounds, and Clinico-Pathological Conferences; practical training in Diagnosis and Medical and Surgical treatment; training in the Basic Medical Sciences, as well as in allied clinical specialties.*

(b) Doctor of Medicine (D.M./Magister Chirurgiae (M.Ch.)_

The training programme shall be on the same pattern as for M.D./M.S. in clinical disciplines; with practical training including advanced Diagnostic, Therapeutic and Laboratory techniques, relevant to the subject of specialization. Post-graduate Degree/ Diploma/ Superspecialty Residents in Surgical Specialties shall participate in surgical operations as well.

- (c) **Diplomas _** *The teaching and training of students shall include graded clinical responsibility; Lectures, Seminars, Journal clubs, Group Discussions and participation in Clinical and Clinico-Pathological Conferences, practical*

training to manage independently common problems in the socially; and training in the Basic Medical Sciences.

9. A postgraduate student of a postgraduate degree course in broad specialties/super specialties would be required to present one poster presentation, to read one paper at a national/state conference and to present one research paper which should be published/accepted for publication/sent for publication during the period of his postgraduate studies so as to make him eligible to appear at the postgraduate degree examination.”

Regulation 13(3) is thus part of training programme as delineated in Regulation 13.

8. Stipend is a fixed payment which is paid to the Postgraduate students undergoing Postgraduate Degree/Diploma/Super Specialty courses. Section 33 (k) provides as follows:

“the standards of staff, equipment, accommodation, training and other facilities for medical education.”

9. Section 33(k) is the regulation making power of the Council. Section 33 provides that the Council may, with the previous sanction of the Central

Government, make regulations generally to carry out the purposes of this Act, and, without prejudice to the generality of this power, such regulations may provide for different heads as enumerated.

10. Thus the Regulations contains a general power of making regulations and few items in Section 33 are not exhaustive. There are two reasons on account of which the first submission of the learned counsel for petitioner cannot be accepted. Firstly, the Regulations provide for making regulation generally to carry out different purposes of the Act. Regulation making power is thus not confined to any particular field and extend to any subject which is with the object of carrying different purposes of the Act. Providing for medical education and governing all aspects therein is the legislative scheme of the 1956 Act. General power to provide for any matter which may facilitate quality medical education thus has to be conceded under the

Regulation making power of the Council. We thus are of the view that general Regulation making power as contained in Section 33 of the 1956 Act to the Council shall cover a provision for payment of stipend. Secondly, Section 33(k) as noted above provides for making of regulation for “training and other facilities for medical education”. The training facilities for medical education has got wide import. All aspects during the period of training in medical education can be covered under the phrase. Stipend paid during the period of training is one of the facilities extended to the students for achieving their object, i.e., obtaining medical education as a specialist. We are thus of the view that Regulation 13(3) is fully covered by the regulation making power of the Council under Section 33(k) of the 1956 Act. Thus the first submission of the learned counsel for the petitioner cannot be accepted.

11. Now coming to the second submission of the

learned counsel for the petitioner that clinical and non-clinical are two different disciplines for which no uniform stipend can be directed to be paid. Submission is that although students taking education in clinical discipline have to perform duties in the hospital attached to the College, management has no grievance regarding payment of stipend to the students of clinical discipline. But non-clinical students do not perform any work in the hospitals and they are only engaged in academic training and they cannot be paid the same stipend which is being paid to the clinical students.

12. For appreciating the above submission of the learned counsel it is necessary to look into the statutory scheme as delineated by the 2000 Regulations. Regulation 10 provides that for award of various Postgraduate Degrees or Diplomas, period of training is fixed. Regulation 13 gives details for training programme. The requirement under Regulation 13(2)

that all the candidates joining the post-graduate training programme shall work as 'Full Time Residents' during the period of training and shall attend not less than 80% (Eighty percent) of the imparted training during each academic year including assignments, assessed full time responsibilities and participation in all facets of educational process. For imparting training there is no distinction between clinical and non-clinical disciplines. Postgraduate training whether belonging to clinical or non-clinical has to be imparted training similarly Regulation 13(5) clearly indicate that training is contemplated both for clinical disciplines as well as (basic medical science) non-clinical which is clear from following as stated in Regulation 13(5):

“.....In the post-graduate training programmes including both clinical and basic medical science, emphasis has to be laid on preventive and social aspects. Emergency care, facilities for Autopsies, Biopsies, Cytopsies, Endoscopy and Imaging etc. shall also be made available

for training purposes.”

The above contemplate requirement for training in basic medical science. Regulation 13(6) mandates that the postgraduate students shall be required to participate in teaching and training programme of undergraduate students and interns. The students in non-clinical discipline i.e., basic medical science had to teach the undergraduate students and interns. In the curriculum undergraduate and interns both clinical and non-clinical subjects are included. Thus students of non-clinical subjects have also to perform various functions while undergoing training in the Postgraduate Course. Regulation 13(8)(a)(i) provided that for MD and MS Degrees and Diploma for Basic Medical Science the teaching and training programme shall be through Lectures, Seminars, Journal Clubs, Group Discussions, participation in Laboratory and experimental work and involvement in research studies in the concerned

specialty and exposure to the applied aspects of the subject relevant to clinical specialties. The above provision further indicate that training of non-clinical students is not confined only to academic classes but exposure has to be to the applied aspects as well.

13. Payment of stipend to Postgraduate students is with a purpose and object. Regulation contemplates that training imparted to postgraduate students shall be such which may turn them into experts having specialised knowledge. As per Regulation 8(3) every student, selected for admission to a Postgraduate medical course is required to be registered with Medical Council of India or any of the State Medical Council. All Postgraduate students are thus registered medical practitioners. While imparting training they assist health care providing health care to citizens by Government hospitals and private hospitals which is the object and responsibility of the State. Provision for

payment of stipend is fully in consonance with the said object and purpose. When the Postgraduate students belonging to both streams are to take similar training for the prescribed period, there cannot be any discrimination in payment of stipend. Submission of learned counsel for the petitioner that payment of same stipend to both disciplines is discriminatory does not have any basis. The mere fact that for acquiring training in the clinical subject students of clinical subjects has to visit or perform duties in the hospital in no manner militate against the rights of non-clinical students to receive stipend who were also imparted training by various mechanisms as noted above looking to the nature of the discipline they are admitted. Providing different stipend to Postgraduate students of Degree and Diplomas can be termed as discriminatory, arbitrary and shall be open to challenge on the ground of violation of Article 14 of the Constitution of India.

We thus do not find any error in Regulation 13(3) providing for payment of stipend at the same rate for both clinical and non-clinical streams.

14. Learned counsel for the appellant has also referred to Ext.P1 to the Writ Petition which contains annual tuition fee structure for Government allotment and management allotment. It is submitted that comparatively a less fee is realised from students of non-clinical courses and payment of stipend equivalent to that of clinical discipline is unjustified. Payment of different fee structure for Government allotment and management allotment has no bearing on the stipend which is to be paid to the students during the period of training. Allotment under Government quota and management quota is a matter regulating the admission in postgraduate course. Once a student is admitted to Postgraduate medical courses, whether under Government quota or management quota the

same form a common stream. Mere fact that from the Government allotment a lesser fee is realizable is not relevant. Management is entitled to get the fee determined as per its requirement taking care of all aspects of the matter including payment of stipend. We have no doubt that management while claiming fee fixation for the students must be claiming payment of stipend as one of the items under which fee is being claimed. Stipend is paid to Postgraduate medical students consequent to the training which requirement being equal for clinical and non-clinical subjects there cannot be any differentiation in the payment of stipend. We are thus not persuaded to accept the submission of the learned counsel for the petitioner that payment of stipend of same amount to clinical and non-clinical disciplines is discriminatory and arbitrary.

15. In view of the forgoing discussion, we do not find any substance in the above submissions raised by

the learned counsel for the petitioner. The learned Single Judge did not commit any error in dismissing the Writ Petition.

Writ Appeal is dismissed.

**ASHOK BHUSHAN,
CHIEF JUSTICE.**

**A.M. SHAFFIQUE,
JUDGE.**

VSV