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

% **Date of decision: 21st September, 2015**

\+ **W.P.(C) 6684/2015 & CM No.12189/2015 (for directions)**

**OXFORD MEDICAL COLLEGE HOSPITAL & RESEARCH CENTRE ..... Petitioner**

Through: Mr. Salman Khurshid, Sr. Adv. with Mr. Naveen R. Nath, Mr. Shravan Sahay & Ms. Mitali Chauhan, Advs.

Versus

**UNION OF INDIA & ANR ..... Respondents**

Through: Mr. Kamal Kant Jha & Mr. Kavindra Gill, Advs. for R-1/UOI.
Mr. Vikas Singh, Sr. Adv. with Mr. T. Singhdev, Ms. Biakthansangi & Ms. Puja Sarkar, Advs. for R-2/MCI.

**CORAM:-**
**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

**RAJIV SAHAI ENDLAW, J**

1. The petition impugns the communication dated 15th June, 2015 of the respondent No.1 Union of India (UOI) to the petitioner, of having accepted the recommendation dated 11th May, 2015 of the respondent No.2 Medical Council of India (MCI) not to renew the permission for admission of second batch (150 seats) of MBBS Course / Programme at the petitioner Medical College for the academic year 2015-16 and accordingly directing the

petitioner not to admit any students in the second batch of MBBS Programme for the academic year 2015-16. Axiomatically, mandamus directing UOI to decide the case of renewal of the petitioner Medical College after giving an opportunity of personal hearing, is also sought.

2. The petition dated 13th July, 2015 was filed on the same day but with defects and re-filed on 14th July, 2015 and came up before this Court first on 15th July, 2015 when notice thereof was issued. Counter affidavits have been filed by UOI and MCI and to which rejoinders have been filed by the petitioner Medical College. The senior counsel for the petitioner and the senior counsel for the MCI were heard on 3rd August, 2015, 10th August, 2015 and 11th August, 2015 and judgment reserved.

3. I may at the outset notice the aspect of the delay on the part of the petitioner in approaching the Court. The challenge is to the refusal dated 15th June, 2015 of the renewal permission. Though it is pleaded that the said communication was received by the petitioner only on 29th June, 2015 but without any supporting document. Ordinarily, the decisions in this regard are known to the concerned medical college instantly. However, even if it were to be believed that the petitioner learnt of the same only on 29th June,

2015, the delay therefrom till 15th July, 2015 in bringing the matter before the Court is inexplicable. The last date prescribed in the time schedule for grant of renewal permission is 15th July and the date for commencement of academic session of the MBBS Programme is 1st August, 2015. The petitioner, in the light thereof, ought to have made the challenge if any to the refusal of renewal permission immediately after 29th June, 2015.

4. Though the delay from 15th June, 2015 or from 29th June, 2015 to 15th July, 2015 may not appear to be much but has to be seen in the context of the facts and circumstances. It has been held in ***Smt. Sudama Devi Vs. Commissioner*** (1983) 2 SCC 1 that the question whether the principles of laches, acquiescence and waiver are attracted to particular facts is dependent upon the nature of the relief sought and the urgency therefor. It was held that there may be cases where even short delay may be fatal while there may be cases where even long delay may not be evidence of laches on the part of petitioner and that in every case it will have to be decided on facts and circumstances whether petitioner is guilty of laches. The petitioner ought to have known that after 15th July, 2015, UOI could not have granted approval to the petitioner, even if the earlier disapproval was wrong. The Courts, though in certain cases on reversing the decision of the UOI of disapproving

the scheme or denying renewal permission have directed UOI, after 15th July, to grant approval / renewal permission but only on the principle of "none can be allowed to suffer on account of delay in adjudication" and where the petitioner had acted with promptitude. Here, the petitioner itself having approached the Court on the last date prescribed for grant of approval, even if were to succeed in the petition, cannot be granted the relief for the reason of having approached the Court late. Even if this Court were to set aside the disapproval dated 15th June, 2015 of the UOI of the renewal permission sought by the petitioner and were to hold that the petitioner in fact ought to have been granted approval, the date of the said approval cannot relate back to a date before the institution of the petition. I am of the view that the petition is liable to be dismissed on the ground of laches, acquiescence and waiver alone.

5. However, for the sake of completeness, it is deemed appropriate to deal with the challenge on merits as well.

6. The undisputed facts are:

(i) The scheme of the petitioner for establishment of a new Medical College with an annual intake capacity of 150 students

to the MBBS course / programme with effect from the academic year 2014-15 was sanctioned on 18th July, 2014.

(ii) In pursuance to the application of the petitioner for renewal of permission to admit 150 students to the MBBS programme in the academic session 2015-16, inspection of the petitioner Medical College and attached hospital was carried out on 12th and 13th January, 2015 and in which the following deficiencies were found:

> "1. Birth registration submitted to Gram Panchayat is only for 115 births for the year 2014 indicating daily average of deliveries at 0.3/day which is grossly inadequate.
>
> 2. Radiological investigation workload is grossly inadequate. Workload of special investigations like Ba, IVP is NIL on day of assessment. Records of many digital X-rays and reports of X-rays of many patients are not available.
>
> 3. ICUs: There was NIL patient in PICU/NICU, only 1 patient in MICU & only 2 patients each in ICCU & SICU on day of Assessment copies of USG films of many patients were not available. Records could not be retrieved from the computer as well. Reports were not available on request.
>
> 4. ETO sterilizer is not available.

5. Audiovisual aids are inadequate in Preclinical & Paraclinical departments.

6. Pharmacology department: Space allocated is inadequate. size of staff rooms is inadequate. Seating in Clinical Pharmacology laboratory is only 15 which is inadequate.

7. Area of all preclinical departments is inadequate.

8. Forensic Medicine Department. Mortuary is not air-conditioned and is not functional. Cold storage cabinets are not available.

9. Pathology Department: Audiovisual aids are inadequate in library cum seminar room and in Demonstration Room.

10. Central Library: Actual number of titles of books available in less than that mentioned in Form A as under:

| | Department | Titles | |
|---|---|---|---|
| | | Form A | Available |
| 1. | Pathology | 82 | 48 |
| 2. | Community Medicine | 89 | 35 |
| 3. | Orthopaedics | 71 | 47 |

11. Nursing Hostel: Accommodation is of dormitory type and not in rooms.

12. Tutors and Residents are paid in cash. Pay of Tutors is Rs.15,000/- p.m. which is far less than that recommended for teaching cadres.

13. Dr. Sathyalaxmi, Asst. Prof. in Ophthalmology produced Form 16 which did not bear PAN even through it is allotted to her.

14. The following faculty have appeared for assessment at other colleges as mentioned hereunder:

| | Name | Designation | Department | Appeared at Assessment | |
|---|---|---|---|---|---|
| | | | | College | Date |
| 1 | Dr. S.S. Somasekhar | Professor | Pharmacology | JJM Davangere | 09/2014 |
| 2 | Dr. H.V. Prasad | Professor | Gen. Medicine | MVJ Bangalore | 05/2014 |
| 3 | Dr. R. Tulsi | Asst. Prof. | O.G. | | 05/2014 |

15. Fake patients have been detected on random check of certain wards. Indoor case records were found to have fictitious operative notes of the patients; however, there was no evidence of surgery carried out on these patients. Date of admission as recorded on case sheets did not match with actual information provided by the patient. Professor in charge of the Unit refused to sign the sheet on which this was recorded.

16. Number of deliveries and emergencies actually attended by faculty & Residents did not match with actual number of emergencies mentioned in hospital records.

17. Data of normal deliveries provided by the institute does not match with the date of live birth registration records submitted to Gram Panchayat Office.

18. Number of blood units issued and laboratory investigations in records of service laboratories are not commensurate with

number of surgeries, patients attending OPD & Admitted in the hospital.

19. Reports of many X-rays and USG are not available. Records & reports of many digital X-rays and USG are not available and could not be retrieved from the computer.

20. Other deficiencies are pointed out in the assessment report."

***[Pages 249-252]***

(iii) Some of the Doctors, Nurses and Staff of the petitioner Medical College made complaints dated 11th and 12th January, 2015 to the MCI, of the petitioner having presented false and fabricated information to the MCI.

(iv) That the Executive Committee of the MCI, after considering the report of the inspection and the complaints received, vide letter dated 12th February, 2015 recommended to the UOI not to renew the permission for admitting second batch of 150 students in MBBS Programme to the petitioner Medical College.

(v) The Executive Committee of the MCI also decided to refer the matter to Ethics Committee of MCI for consideration of the

faculty members since some of them had appeared during the inspection of other medical colleges also.

(vi) UOI, in compliance of first proviso to Section 10A(4)of the Indian Medical Council Act, 1956 (MCI Act), on 12th March, 2015 gave an opportunity of hearing to the petitioner Medical College and which was availed of by the petitioner Medical College.

(vii) In the meanwhile, the petitioner had also represented against the inspection report and reported compliance of deficiencies to the MCI and MCI again inspected the petitioner Medical College and attached hospital on 8th April, 2015 and in which the following deficiencies were found:

> "1. Deficiency of faculty is 18.09% as detailed in report.
>
> 2. Shortage of Residents is 67.90% as detailed in the report.
>
> 3. A large number of patients admitted in various wards did not merit admission. There were very few post-operative patients in General Surgery & Orthopaedics wards. Patients were admitted for very minor complaints.
>
> 4. Only 1-2 unit of blood are issued daily. Operations performed in the hospital are relatively simple nature & do not require transfusion.

5. On day of assessment, operative workload of Major operations was 7 which is inadequate. Out of 7 operations, 4 were Cataract operations. There was no operation in Orthopaedics.

6. Special investigations like Ba, IVP are not carried out.

7. Birth register & Parturition register show total 150 deliveries over a period of 3 months of January – March 2015 which is inadequate.

8. ICUs: There was no patient in ICCU on day of assessment. There were only 2 patients each in ICU & NICU/PICU.

9. Mortuary is not air-conditioned & non-functional.

10. Central Library: No explanation has been given for the discrepancy in number of titles between Form A & actually available.

11. Other deficiencies as pointed out in the assessment report."

***[Pages 255-256]***

(viii) A representation dated 9th April, 2015 was made by the petitioner to the MCI with respect to inspection of 8th April, 2015.

(ix) The Executive Committee of the MCI, after considering the report of inspection of 8th April, 2015 and the representation dated 9th April, 2015 of the petitioner, decided to recommend to the UOI not to renew the permission for admitting second batch of 150 students in the MBBS Programme to the petitioner

Medical College and communicated so to UOI vide letter dated 11th May, 2015.

(x) UOI, vide impugned communication dated 15th June, 2015 to the petitioner, communicated its decision to accept the recommendation of MCI and refused permission for renewal to the petitioner to admit the second batch of students in the academic year 2015-16.

7. The senior counsel for the petitioner contended:

(a) That at the time of inspection on 8th April, 2015 a number of Junior and Senior Residents were at rural hospitals and some others were in Operation Theatre and yet others were not available at 11:00 AM for the reason of having left in the morning after doing night duty.

(b) That though most of them arrived at 11:30 AM to 12:00 noon, but their presence was not recorded.

(c) That during the inspection on 12th and 13th January, 2015, no shortage / deficiency in teaching faculty was found and the deficiency found of Resident Doctors was only of 2.5%.

(d) The report of the inspection dated 8th April, 2015 finding deficiency of faculty of 18.09% and deficiency of Residents of 67.90% is thus obviously wrong.

(e) That no new deficiencies can be found in inspection for compliance verification.

(f) Attention was invited to the judgment dated 5th August, 2014 of the Division Bench of this Court in W.P.(C) No.6699/2015 titled ***Career Institute of Medical Sciences and Hospitals Vs. Union of India*** finding *prima facie* substance in the contention of the petitioners therein, that report of a surprise inspection cannot form the basis of applying the Clause (b) to proviso to Regulation 8(3)(1) of the Establishment of Medical College Regulations, 1999 (EMC Regulations) having regard to the expression "regular inspection" employed in the said Clause.

8. Per contra, the senior counsel for the MCI contended:

(I) That the challenge under Article 226 of the Constitution of India can only be to the decision making process and not to the decision itself. Reliance in this regard is placed on ***Tata Cellular Vs. Union of India*** (1994) 6 SCC 651, ***Union of India Vs. K.G. Soni*** (2006) 6 SCC 794, ***Heinz India Pvt. Ltd. Vs. State of Uttar Pradesh*** (2012) 5 SCC 443 and ***Seimens Aktiengeselischaft & Seimens Ltd. Vs. Delhi Metro Rail Corporation Ltd.*** (2014) 11 SCC 288.

(II) That the plea of the petitioner in its representation, on the basis of amendment dated 1st July, 2015 to the EMC Regulations applicable with effect from the academic session 2016-17, in which the requirements of Residents and faculty at the time of admission of second batch of students has been reduced, cannot be accepted for the academic session 2015-16; moreover different yardstick cannot be applied for the petitioner from that applied for all other colleges for the academic year 2015-16.

(III) That the reliance placed by the petitioner on ***Career Institute of Medical Sciences and Hospitals*** supra is misconceived inasmuch as the MCI / UOI has not invoked the proviso to Regulation 8(3)(1) vis-à-vis the petitioner Medical College inasmuch as the deficiencies found in the first inspection were not such as to invite application of the said proviso, though the deficiencies found in the second inspection are within the parameters of the proviso but the question of applying the proviso to second inspection does not arise.

(IV) That in the representation dated 9th March, 2015 of the petitioner with respect to the first inspection of 12th and 13th January, 2015, the petitioner Medical College has admitted the deficiencies mentioned at serial Nos.2,4,12 and 15 in the report of the said inspection and the explanation furnished by the petitioner therefor is unacceptable and clearly so.

(V) That the MCI, vide its letter dated 17th March, 2015 to the petitioner, communicated to the petitioner that the explanation given of Tutors / Residents being paid in cash and with respect

to fake patients was not tenable and that the deficiencies of Radiological Investigations, ETO Sterilizer were not even reported to have been rectified / removed.

(VI) That the compliance verification inspection cannot be confined to only the deficiencies found in the first inspection and has to be necessarily a complete inspection of the parameters of infrastructure and faculty required to be made.

(VII) That as per the Assessors Guide for Undergraduate Assessment 2015-16 of the MCI, the verification of teaching faculty / others has to be at 11:00 AM on the first day only and no verification is to be done for the faculty Residents coming after 11:00 AM; exemption is carved out only with respect to Junior Residents / Senior Residents on night duty in the hospital who are permitted to appear for assessment till 12:00 noon.

(VIII) The petitioner, even in the writ petition has given no explanation whatsoever with respect to the finding of the second inspection of deficiency of faculty; it is only in rejoinder that a feeble attempt in that regard is made.

(IX) Attention was invited to the report of second inspection of 8th April, 2015 to demonstrate that the benefit of acceptable explanations of the petitioner was given to the petitioner.

(X) That there are no allegations of *mala fide*, ulterior motive or extraneous consideration against the members of the inspection team.

(XI) That the inspection reports have been signed by the Principal of the petitioner Medical College without any objection.

(XII) That it is not the plea of the petitioner Medical College that the faculty members found absent had arrived/come by 12:00 noon.

(XIII) That no distinction between surprise and regular inspection can be drawn; attention in this regard was drawn to, i) judgment dated 20th December, 2013 in W.P.(C) No.6261/2013 titled ***Raipur Institute of Medical Sciences Vs. Union of India,*** ii) judgment dated 15th January, 2014 in LPA No.18/2014 titled ***Raipur Institute of Medical Sciences Vs. Union of India***, iii) order dated 10th March, 2014 in W.P.(C) No.1562/2014 titled ***U.P. Unaided Medical Colleges Vs. Union of India,*** iv)

abstract of MCI Executive Committee Meeting dated 23rd January, 2014, and v) copy of Minutes of the General Body Meeting held on 28th March, 2014.

(XIV) Giving advance notice defeats the purpose of inspection.

9. The senior counsel for the petitioner in rejoinder contended, i) that the petitioner had *bona fide* wrongly assumed that the deficiency in faculty of 18.09% was pardonable, ii) that the petitioner on affidavit has stated that the requisite faculty was available at 12:00 AM; and, iii) that the second inspection was only for one day and not for two days.

10. I may record that the hearing on one of the days in this petition was along with the hearing in W.P.(C) No.6529/2015 titled ***Rajshree Educational Trust Vs. Union of India*** and the senior counsel for the petitioner had adopted several arguments of the counsel for the petitioner in ***Rajshree Educational Trust*** supra. The said contentions of the counsel for the petitioner in ***Rajshree Educational Trust*** have been rejected by me in judgment dated 16th September, 2015 pronounced by me in that matter.

11. The Supreme Court, in ***Manohar Lal Sharma Vs. Medical Council of India*** (2013) 10 SCC 60 and to which no reference is made in the subsequent judgment dated 20th August, 2015 in W.P.(C) No.705/2014 of three Judges of the Supreme Court in ***Royal Medical Trust (Regd.) Vs. Union of India,*** *inter alia* held as under:

> *"19. 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. Rigid rules of natural justice are, therefore, not contemplated or envisaged. Rule 8(3)(1) of the Establishment of Medical College Regulations (Amendment) Act, 2010 (Part II), provides for only an "opportunity and time to rectify the deficiencies". Compliance report is called for only to ascertain whether the deficiencies pointed out were rectified or not. 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."*

12. It is clear from the above that there cannot be repeated inspections and compliances.

13. I have also recently in judgment dated 20th August, 2015 in W.P.(C) No.5941/2015 titled ***Jamia Hamdard (Deemed University) Vs. Union of India*** and for the detailed reasons given therein and with which it is not deemed necessary to burden this judgment, held that no error can be found in MCI not giving another opportunity after the second inspection to rectify the defects found therein. It was further held that Section 10A(4) of the MCI Act does not provide for multiple opportunities to rectify the defects and provides for only one opportunity/opportunity of hearing; if it were to be held that after each inspection, to verify whether the deficiencies pointed out in the earlier inspection had been removed or not and if fresh deficiencies were to be found, a fresh opportunity of hearing were to be given, it would become an endless exercise which cannot possibly be completed, at least within the time schedule therefor laid down by the Supreme Court and prescribed by the Regulations and which would needlessly delay the commencement of the academic session. An exception may however be carved out for a situation where in the light of the two inspection reports a clarification may be deemed necessary by the UOI before it takes a decision

and in which cases it was held that UOI would be entitled to seek an explanation or if the time permits, direct further verification.

14. I have considered the deficiencies pointed out in the two inspections of the petitioner Medical College. Deficiencies in delivery, deficiencies in patients in ICU, ICCU, PICU, MICU and SICU, deficiencies in library are common to both inspections.

15. Though in the first inspection, no deficiency in faculty and Residents is mentioned but it is recorded in the Report thereof that Doctors and Residents were shown to have been paid in cash and that the pay of Doctors shown was far below than that recommended for teaching cadres; similarly with respect to faculty, it was stated that three of the faculty members had appeared in assessment at other colleges also.

16. I am also unable to hold that merely because the shortage of Residents reported in second inspection is as high as 67.9%, when all that was stated in the report of the first inspection was of the Doctors and Residents being paid in cash, is such a contrast which is unbelievable. Cases of medical colleges, for the purposes of headcount of faculty members during the inspection, producing persons not actually teaching in the medical college are rampant.

It is thus well nigh possible that though the petitioner, prepared for the first inspection, was able to meet the head count, was the second time a round caught unaware. Moreover, no conclusive finding in that regard can be given in writ jurisdiction. It is only on examination and cross examination of witnesses in an appropriate proceeding that conclusive finding whether the report of deficiencies in Residents is correct or not can be given. I may only state that the petitioner along with the petition has not produced any material whatsoever on the basis of which this Court can say that the petitioner indeed has the requisite number of Residents and the report of deficiencies is incorrect.

17. Else, I agree with the contention of the senior counsel for the MCI that the scope of writ petition is confined to the decision making process and with which no error can be found. The decision of the UOI, based on the recommendation of the MCI and which in turn is based on the inspection report, is not such which can be said to be totally illogical which no reasonable man could have reached. Thus no ground for inference therewith, is made out.

18. There is no merit in the petition.

Dismissed.

No costs.

**RAJIV SAHAI ENDLAW, J**

**SEPTEMBER 21, 2015**
'gsr'..