

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

% **Date of decision: 18th September, 2015.**

+ **W.P.(C) 7414/2015 & CM No.13669/2015 (for directions)**

**ADVANCED MEDICAL SCIENCE AND
EDUCATION SOCIETY**

..... Petitioner

Through: Mr. R.K. Chaudhary & Mr. Anupam
Bhati, Advs.

Versus

MEDICAL COUNCIL OF INDIA & ANR

..... Respondents

Through: Mr. Vikas Singh, Sr. Adv. with Mr. T.
Singhdev, Adv. for R-1.
Ms. Shiva Lakshmi, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The petition impugns the letter dated 15th June, 2015 of the respondent No.2 Union of India (UOI) to the petitioner intimating to the petitioner disapproval of the scheme submitted by the petitioner in August 2014 for establishment of a new medical college with an intake capacity of 150 students annually in MBBS course / programme with effect from the academic year 2015-2016. Axiomatically, the petition also seeks a mandamus to the UOI and to the respondent No.1 Medical Council of India (MCI) to issue a letter of permission to the petitioner for establishing the said medical college with effect from the academic year 2015-2016.

2. Though the petition impugns the communication dated 15th June, 2015 supra and which according to the petitioner was received by it on 26th June, 2015 and further though the last date prescribed for grant of such approval was 15th July, 2015 but this petition though dated 23rd July, 2015 was filed first only on 31st July, 2015 but with defects and was thereafter re-filed on 1st August, 2015 and again on 4th August, 2015 and came up before this Court first on 5th August, 2015 when notice thereof was issued. Counter affidavit has been filed by MCI. No rejoinder thereto has been filed by the petitioner in spite of opportunity. The counsel for the petitioner and the senior counsel for MCI were heard on 24th August, 2015 and judgment reserved.

3. The case as borne out from the documents is as under:

(i) that the petitioner Society claiming to be running a 300 beds hospital in the name of S.K.S. Hospital at Bhopal, Madhya Pradesh for the last three years, in or about August, 2014 submitted a scheme therefor under Section 10A of the Indian Medical Council Act, 1956 (MCI Act) to the UOI;

(ii) that the MCI, during the scrutiny of the said application found that the Essentiality Certificate dated 27th August, 2014 issued by the Govt. of State of Madhya Pradesh as submitted by the petitioner

alongwith its scheme / application for establishment of new medical college was not in the prescribed format and did not contain the requisite particulars / information of owning and managing a 300 beds hospital and about having adequate clinical materials;

(iii) accordingly, the Executive Committee of the MCI in its meeting held on 20th November, 2014 decided to recommend to the UOI to disapprove and return the scheme submitted by the petitioner and communicated so to the UOI vide its letter dated 28th November, 2014;

(iv) UOI gave a opportunity of hearing under Section 10A(4) of the MCI Act to the petitioner;

(v) the petitioner during the said hearing produced an Essentiality Certificate dated 16th January, 2015 issued by the Govt. of State of Madhya Pradesh in favour of the petitioner;

(vi) UOI under cover of its letter dated 31st January, 2015 to MCI forwarded the representation of the petitioner alongwith the Essentiality Certificate dated 16th January, 2015;

(vii) the Executive Committee of the MCI in its meeting held on 10th February, 2015 decided that the application of the petitioner for

establishment of a new medical college be proceeded with further and vide its letter dated 16th February, 2015 to the petitioner called upon the petitioner to submit the standard inspection forms alongwith declaration forms of the faculty members and which were submitted by the petitioner on 18th February, 2015;

(viii) the college proposed by the petitioner and the attached hospital were inspected on 10th & 11th March, 2015, when the following deficiencies were found:

- “1. Deficiency of faculty is 66.67% on day of assessment.*
- 2. Shortage of residents is 97.78% on day of assessment.*
- 3. OPD attendance was NIL on day of assessment.*
- 4. Bed occupancy was 4% on day of assessment.*
- 5. There were NIL Major & Minor operations on day of assessment.*
- 6. There was NIL Normal delivery or Caesarean Section on day of assessment.*
- 7. There was no Radiological or Laboratory investigation on day of assessment.*
- 8. OPD: Registration counters are manual. Examination rooms are not furnished. ECG Room, Minor O.T., Plaster cutting room is not available. In Ophthalmology OPD, dark room, Refraction Room, Dressing Room is not available. Facilities are inadequate in Paediatrics & O.G. OPD. Infrastructure is not ready.*

9. *Wards: Unitwise distribution of beds is not shown. Nursing stations are not properly placed. Oxygen cylinder is not available. Saline stands are also very few.*
10. *Casualty: List of doctors posted was not submitted. Disaster Trolley, Crash cart, Emergency drug tray is not available.*
11. *O.T.s: Equipments like defibrillator, ventilator, infusion pumps is not available;*
12. *ICUs: There was no patient in ICCU, MICU, SICU, NICU/PICU on day of assessment. Central oxygen / suction is not available.*
13. *Labour room: Separate room for Eclampsia is not available.*
14. *ETO Sterilizer is not available.*
15. *Audiometry & Speech therapy is not available.*
16. *MRD: It is partly computerized.*
17. *Preclinical departments of Anatomy, Physiology, Biochemistry are not functional.*
18. *Dean's office is functioning from the hospital as the college building is not yet ready.*
19. *Lecture Theaters: They are not available.*
20. *Central Library: It is under construction.*
21. *Hostels for Students, Residents & Nurses are under construction.*
22. *Residential quarters are under construction.*
23. *Recreational facilities are not available.*
24. *Common Rooms for Boys & Girls: they are not functional.*
25. *Central Photography Section: It is not functional.*
26. *Website: Information is not updated.*
27. *Videography of various facilities was carried out*

but at last moment it was disclosed by the college authorities that the said Videography and photographs were deleted inadvertently and DVD of the same has not been provided by the college authorities to be forwarded to MCI.

28. *Other deficiencies as pointed out in the assessment report.”*

(ix) MCI vide its letter dated 18th March, 2015 to the UOI recommended disapproval of the scheme submitted by the petitioner;

(x) petitioner vide its letter dated 17th April, 2015 represented against some of the deficiencies reported and reported compliance / rectification of the others;

(xi) another inspection of the petitioners' proposed medical college and attached hospital was carried out on 22nd April, 2015 and in which also the following deficiencies were found:

- “1. Deficiency of faculty is 66.67% as detailed in the report.*
- 2. Shortage of Residents is 55.55% as detailed in the report.*
- 3. OPD attendance on day of assessment is 255 which is inadequate.*
- 4. Bed occupancy is 1.33% on day of assessment which is grossly inadequate.*
- 5. There was NIL Major & NIL Minor operations on day of assessment.*

6. *There was NIL Normal delivery & NIL Caesarean section on day of assessment.*
7. *There was NIL Radiological & NIL laboratory investigation on day of assessment.*
8. *Facilities are inadequate in Paediatrics & O.G., OPD. Deficiency remains as it is.*
9. *Casualty: Emergency tray, Disaster trolley, Crash car are not available. Deficiency remains as it is.*
10. *ICUs: There was no patient in ICCU or in any of ICUs on day of assessment. Central Oxygen & Suction are not available. Deficiency is not rectified.*
11. *ETO Sterilizer is not available. Deficiency remains as it is.*
12. *Audiometry & Speech Therapy are not available.*
13. *Preclinical departments of Anatomy, Physiology & Biochemistry are not furnished & non-functional. Deficiency remains as it is.*
14. *Lecture Theaters: Audiovisual aids & E class facility are not available. Deficiency remains as it is.*
15. *Central Library: It is not furnished. Books & Journals are not available. Deficiency remains as it is.*
16. *Students' Hostels are under construction. Deficiency remains as it is.*
17. *Nurses' Hostel is under construction. Deficiency remains as it is.*
18. *Residential quarters are under construction. Deficiency remains as it is.*
19. *Common Rooms for Boys & Girls are not furnished. Deficiency remains as it is.*
20. *Recreational facilities are not available.*

Deficiency remains as it is.

21. *Central Photographic section is not functional. Deficiency remains as it is.*

22. *Other deficiencies as pointed out in the assessment report.”*

(xii) MCI vide its letter dated 11th May, 2015 to UOI again recommended disapproval of the scheme submitted by the petitioner;

(xiii) UOI on the basis thereof vide impugned communication dated 15th June, 2015 to the petitioner disapproved the scheme.

4. The counsel for the petitioner argued:

(a) that the Govt. of Madhya Pradesh vide order dated 8th January, 2015 had declared 10th March, 2015 as a local holiday for all government offices / institutions situated at Bhopal, on the occasion of Rang Panchmi;

(b) that 21st April, 2015 was also declared as a holiday by the Govt. of State of Madhya Pradesh on the occasion of Parshuram Jayanthi;

(c) that thus the inspection by the MCI on both the occasions was on holiday and thus vitiated;

(d) that in the present case there is clear violation of the first provisos to Section 10A(4), in non-grant by the UOI of opportunity of

being heard to the petitioner before rejecting the scheme submitted by the petitioner.

5. Per contra the senior counsel for MCI argued:

(I) that the proposed medical college and the hospital of the petitioner, in the inspection on 10th & 11th March, 2015, having been found deficient in faculty of 66.67% and shortage of residents of 97.78%, the petitioner was not entitled to any opportunity to rectify;

(II) the factum that the proposed medical college of the petitioner does not have the requisite infrastructure and faculty is evident from the letter dated 11th March, 2015 of the three Government Doctors who had inspected the proposed medical college and hospital of the petitioner on the said date, reporting as under:

“This is to bring to your kind notice that as per routine procedure of MCI inspection the videography was carried out of the Pre/Para Clinical departments of the College, Hostels, Staff Quarters, Lecture Halls (which were under construction) RHTC & UHTC. But at the last moment it was disclosed by the College Authority that the above mentioned videography and photography was deleted inadvertently and DVD of the above mentioned videography has not been provided by the College authorities to forward to Medical Council of India.

This is for your information and necessary action.”

(III) that the petitioner intentionally deleted the video of the inspection to avoid its fraud coming on record;

(IV) that the Establishment of Medical College Regulations, 1999 (EMC Regulations) require the MCI to ensure that inspections are not carried out at least three days before upto three days after important religious and festival holidays declared by the Central / State Government. Inspection is thus not prohibited three days before and three days after all holidays but only three days before and three days after “important religious and festival holidays declared by the Central / State Government”;

(V) that the State of Madhya Pradesh had not declared neither 10th March, 2015 nor 21st April, 2015 as holidays. A copy of the order dated 22nd November, 2014 of the Govt. of State of Madhya Pradesh in this regard was handed over in the Court;

(VI) that if at all 10th March, 2015 was subsequently declared as a holiday, it must have been an optional holiday;

(VII) that similarly the Notification dated 22nd November, 2014 on which reliance is placed by the petitioner to contend that 21st April, 2015 was a holiday, is a list of general and optional holidays with the

government servants being entitled to avail of any three optional holidays; 21st April, 2015 finds mention in the list of general holidays on the occasion of Parshuram Jayanthi as well as in the list of optional holidays on the occasion of Akshaya Tritiya;

(VIII) that the petitioner in the writ petition had claimed 21st April, 2015 to be a holiday not on the occasion of Parshuram Jayanthi but as a holiday on account of Akshaya Tritiya which was an optional holiday;

(IX) that the UOI had admittedly given an opportunity of hearing to the petitioner pursuant to the first negative recommendation of the MCI and was not required to give a second opportunity of hearing.

6. The counsel for the petitioner after the judgment had been reserved submitted photocopies of the documents regarding declaration of holidays, typed copies whereof were filed alongwith the petition.

7. I have considered the rival contentions.

8. Though the senior counsel for the MCI in his arguments did not take the plea of delay on the part of petitioner in filing the petition but I am of the view that the present petition is liable to be dismissed only on the ground of delay, laches, acquiescence and waiver on the part of the petitioner in

approaching this Court. As aforesaid, the disapproval by the UOI of the scheme submitted by the petitioner for establishment of a new medical college with effect from the academic year 2015-16 is vide letter dated 15th June, 2015. Ordinarily, such disapprovals are known immediately, from the website of the MCI. However, if the plea of the petitioner of having learnt of the disapproval only on 26th June, 2015 is to be believed, even then, I am unable to fathom the delay till 31st July, 2015 in filing the petition even though the same was ready on 23rd July, 2015 and which filing also was defective requiring re-filing on 1st August, 2015 and 4th August, 2015. As per the time schedule prescribed, the last date for grant of approval was of 15th July, 2015. Considering the same, the petitioner ought to have approached the Court immediately after 26th June, 2015. The petitioner not only failed to do so but allowed the date of 15th July, 2015 to pass. Though the petition bears the date of 23rd July, 2015, meaning it was ready on that date, but the filing for the first time as aforesaid was after another one week therefrom on 31st July, 2015. The petitioner even then did not take care to file the petition to be able to come up for hearing immediately and ultimately brought the petition for hearing only on 5th August, 2015.

9. Though the delay from 26th June, 2015 to 5th August, 2015 may not

appear to be much but has to be seen in the context of the facts. As per the prescribed time schedule, the last date for grant of permission was 15th July, 2015 and the date for commencement of the academic session was / is 1st August, 2015. 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 of the petitioner 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 long after the date prescribed

for grant of approval and even if were to succeed in the petition, cannot be granted the relief for the reason of having approached the Court long after the last date prescribed for grant of approval. Even if this Court were to set aside the disapproval dated 15th June, 2015 of the UOI of the scheme submitted 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 and would at best relate back to 5th August, 2015 and which is beyond the prescribed time.

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

11. Considering the extent of deficiencies found during the two inspections of the proposed medical college and hospital of the petitioner and further finding that the petitioner has not placed any material before this Court, for this Court to form an opinion that the deficiencies at least now have been removed, I had during the hearing enquired from the counsel for the petitioner as to on what basis, this Court can grant the relief to the petitioner.

12. The counsel for the petitioner replied, that upon an opportunity of hearing being given by the UOI to the petitioner and which has been denied

to the petitioner, the petitioner will produce the said material before the UOI. Alternatively, it was suggested that another inspection of the proposed medical college and hospital of the petitioner be directed and which would show that no such deficiencies exist.

13. I am unable to accept the aforesaid contention. The petitioner has approached this Court impugning the disapproval dated 15th June, 2015 and seeking a mandamus for grant of approval. It is not as if the petition is filed only seeking the relief of grant of an opportunity.

14. The disapproval dated 15th June, 2015 by the UOI was on the basis of the negative recommendation of the MCI and which negative recommendation in turn was premised on the report of the inspection pointing out the deficiencies aforesaid. It was / is therefore incumbent upon the petitioner to satisfy this Court at least on the basis of documents of the deficiencies, at least at the time of filing of the petition not existing or having been wrongly reported. In the absence thereof, merely because a challenge has been made does not require this Court to direct MCI / UOI to reconsider. This, in my view constitutes yet another ground for dismissal of this petition on merits as well.

15. That leaves the star contention of the petitioner, of the impugned disapproval dated 15th June, 2015 being bad for the reason of having been made without giving an opportunity of hearing to the petitioner, required to be statutorily given under the first proviso to Section 10A(4) of the MCI Act.

16. I am unable to accept the contention of the senior counsel for the MCI that in the facts and circumstances of the present case, an opportunity of hearing having been given by the UOI after the first negative recommendation of the MCI, the requirement of the proviso aforesaid stands satisfied.

17. I have in judgment dated 20th August, 2015 in W.P.(C) No.5941/2015 titled ***Jamia Hamdard (Deemed University) Vs. Union of India*** reiterated in judgment dated 1st September, 2015 in W.P.(C) No.7128/2015 titled ***Kanachur Islamic Education Trust (R) Vs. The Ministry Of Health and Family Welfare*** held that UOI under the proviso aforesaid to Section 10A(4) of the MCI Act is not required to give a second opportunity of hearing, after a second inspection, even if the deficiencies found in the two inspections may not be identical. However it was so held where the hearing given by the UOI was pursuant to the stage under Section 10A(3)(b) of the MCI Act i.e. where the negative recommendation of the MCI on which hearing was given

by the UOI was post inspection. Here, the only hearing given by UOI to the petitioner was post the negative recommendation of the MCI not after inspection but after Section 10A(3)(a) stage. MCI, on paper scrutiny of the scheme submitted by the petitioner in August, 2014 had found the same to be defective for the reason of the essentiality certificate filed therewith being not in the requisite form. Though Section 10A(3)(a) as per its plain language and also as interpreted by me in judgments supra requires MCI to upon finding any defect during the paper scrutiny of the scheme to give a reasonable opportunity to the applicant for making a written representation and to rectify the same but MCI instead of granting such an opportunity to the petitioner proceeded to make a negative recommendation to the UOI. UOI, before taking any decision on the said negative recommendation, as required, gave an opportunity of hearing to the petitioner and in which hearing the petitioner produced the Essentiality Certificate since obtained and which led to the UOI remitting the matter to MCI. It is only thereafter that MCI proceeded to inspect the proposed medical college and hospital of the petitioner and for the reason of the deficiencies found wherein, again made negative recommendation.

18. In such a situation, in my opinion, UOI was required to give an opportunity of hearing to the petitioner, the petitioner having not availed of an earlier opportunity of hearing on the deficiencies. The denial of such a hearing to the petitioner and disapproval of the scheme submitted by the petitioner is thus clearly an infraction of the mandate of the first proviso to Section 10A(4).

19. I had however during the hearing enquired from the senior counsel for the MCI whether not the deficiencies found being within the non rectifiable range prescribed in proviso (a) to Regulation 8(3)(1) of the EMC Regulations, the petitioner was not entitled to an opportunity and time to rectify the deficiencies under Regulation 8(3)(1) as interpreted by the Division Bench of this Court in judgment dated 28th May, 2015 in W.P.(C) No.5041/2014 in *Shree Chhatrapati Shivaji Education Society Vs. Union of India*. Regulation 8(3)(1), though requires the UOI / Central Government to convey the deficiencies to the applicant and provide the applicant an opportunity and time to rectify the deficiencies but the proviso thereto provides that in respect of “Colleges in the stage upto II renewal (i.e. Admission of third batch)”, if it is observed during any regular inspection of the institute that the deficiency of teaching faculty and / or Residents is more

than 30%, such an institute will not be considered for renewal of permission in that academic year. I had enquired whether not the phrase “Colleges in the stage upto II renewal.....” would include colleges seeking approval for establishment. It appears that the use of the word “upto” is indicative of the establishment permission also being within the ambit thereof. In this regard, it may also be stated that though a reading of Section 10A(4) indicated that the same is concerned only with approval for establishment but the Supreme Court in *Swamy Devi Dayal Hospital and Dental College Vs. The Union of India* (2014) 13 SCC 506 held the same applicable to cases of renewal of permission also.

20. However, the senior counsel for the MCI stated that the MCI has not been invoking the proviso (a) to Regulation 8(3)(1) supra in cases of establishment of new medical college.

21. In that view of the matter, need is not felt to give any conclusive finding on this aspect.

22. The only question which thus remains for consideration is the relief if any to be granted in this petition in view of my finding hereinabove of the impugned disapproval dated 15th June, 2015 of the UOI having been found to be in infraction to first proviso of Section 10A(4) of the MCI Act.

23. Notwithstanding the said infraction of statutory provision, I do not, in the facts and circumstances, find the petitioner entitled to the relief of setting aside of the disapproval dated 15th June, 2015 and an opportunity of hearing before the UOI for the following reasons:

- (i) The delay aforesaid in approaching the Court.
- (ii) The conduct of deleting the video recording of the inspection.
- (iii) Failure to place any material before this Court to demonstrate that the deficiencies had been rectified at least on the date of filing of the petition.
- (iv) Supreme Court in *M.C. Mehta Vs. Union of India* (1999) 6 SCC 237 held that if on the admitted or indisputable factual position only one conclusion is possible and permissible, the Court need not issue a writ merely because there is violation of principles of natural justice. A number of judgments, holding that notwithstanding the breach of natural justice, relief can be refused if the Court thinks that the case of the applicant is not one of “real substance” or that there is no substantial possibility of success or that the result will not be different, even if natural

justice is followed, were noticed, though no final opinion expressed thereon. However earlier, in *S.L. Kapoor Vs. Jagmohan* (1980) 4 SCC 379 it was held that where only one conclusion is possible, the Court may not issue writ to compel observance of natural justice, not because it approves the non-observance of natural justice but because Courts do not issue futile writs.

- (v) Though the Supreme Court in *M.C. Mehta* supra had hesitated from giving a conclusive view on the matter but subsequently in *Aligarh Muslim University Vs. Mansoor Ali Khan* (2000) 7 SCC 529 and in *Karnataka State Road Transport Corporation Vs. S.G. Kotturappa* (2005) 3 SCC 409 held that the useless formality theory can be applied, depending upon the facts of the case.
- (vi) I am of the view that the present is a fit case for invoking the useless formality doctrine as reiterated in *Municipal Committee, Hoshiarpur Vs. Punjab State Electricity Board* (2010) 13 SCC 216.
- (vii) The High Court of Madras in *Chennai Medical College &*

Hospital & Research Centre, Trichy Vs. Government of India

2014 SCC Online Madras 7065 has applied the said empty formality principle to the proviso to Section 10A(4) of the MCI Act.

24. I therefore do not find the petitioner entitled to any relief and dismiss the petition.

No costs.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 18, 2015

‘bs/gsr’..