

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

Pronounced on: 30.09.2015

+ W.P.(C) 7107/2015 & CM APPL. 13031/2015

MALLA REDDY MEDICAL COLLEGE

FOR WOMEN & ANR

..... Petitioners

Through: Mr.Nidhesh Gupta, Sr.Adv. with
Mr.Amit Kumar, Mr.Ramesh Allanki, Mr.Avijit
Mani Tripathi, Mr.Ankit Rajgarhia, Advs.

Versus

UNION OF INDIA & ANR

..... Respondents

Through: Mr.Rakesh Kumar, Adv. for R-1.
Mr.Vikas Singh, Sr.Adv. with Mr.T.Singhdev,
Ms.Puja Sarkar, Ms.Biakthansangi, Advs. for R-
2/MCI.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE JAYANT NATH

J U D G E M E N T

Ms.G.ROHINI, CHIEF JUSTICE

1. Petitioner No.1 is a Medical College established exclusively for women which was granted the Letter of Intent dated 14.07.2013 by the MCI followed by the permission dated 15.07.2013 under Section 10-A of the Medical Council Act, 1956 (for short 'the Act') from the Academic Year 2013-14 with an annual intake of 150.

2. The College was also granted affiliation by the NTR University of Health Sciences and the first batch of students were admitted in the Academic Session 2013-14.

3. For the Academic Session 2014-15 is concerned, the petitioner College was granted renewal of permission for admission of second batch of 150 students vide proceedings of the Central Government dated 04.07.2014 on the basis of the recommendation of the MCI dated 14.06.2014.
4. While so, on 16th - 17th December, 2014, a surprise inspection was conducted by the MCI. On the basis of certain alleged deficiencies found in the said inspection, MCI by letter dated 21.01.2015 informed the Central Government that it was decided by the Executive Committee of the MCI to apply the provisos (a) and (d) of Regulation 8(3)(1) of the Establishment of Medical College Regulations, 1999 as amended on 16.04.2010.
5. The Central Government was also informed that it was decided by the MCI not to consider the renewal of permission for the petitioner College for two Academic Years i.e. 2015-16 and 2016-17.
6. The said recommendation of MCI dated 21.01.2015 was forwarded to the petitioner College by the Government of India by letter dated 03.02.2015 and the petitioner was called upon in terms of Section 10-A(4) of the Act to appear in person to make its representation against the recommendation of MCI for rejection of permission for the Academic Year 2015-16. Disputing the deficiencies alleged by the MCI, the petitioner College submitted an explanation to the Central Government apart from submitting a detailed compliance report dated 10.02.2015 to the MCI. The petitioner was also given an opportunity of hearing in terms of Section 10-A(4) of the Act by the Hearing Committee of MCI. Having considered the petitioner's explanation, the Central Government by letter dated 08.05.2015 directed MCI to conduct fresh inspection of the petitioner College.

7. However, MCI declined to do so and informed the Central Government by letter dated 14.05.2015 that in pursuance of the letter dated 08.05.2015 the matter with regard to renewal of permission to petitioner College for third batch was reconsidered by the Executive Committee of MCI in its meeting dated 13.05.2015 and in view of the deficiencies found by the MCI assessors in the inspection of the College held on 16th and 17th December, 2014, it was decided to recommend not to renew the permission for the Academic Year 2015-16. It was also stated that the MCI had decided to apply Regulation 8(3)(1) provisos (a) and (d) and therefore not to consider the Institute for permission/recognition for two Academic Years i.e. 2015-16 and 2016-17. Referring to the legal opinion of the Additional Solicitor General obtained by the MCI, it was further stated that the Executive Committee of the MCI had decided to reiterate the earlier decision not to renew the permission for admission to third batch of 150 students for the Academic Year 2015-16. In pursuance thereof, the Government of India by letter dated 15.06.2015 informed the petitioner College that the recommendation of MCI has been accepted and the petitioner was directed not to admit any students for the Academic Session 2015-16.

8. Aggrieved by the same, the present writ petition is filed with a prayer to declare the Establishment of Medical College Regulations, 1999 as amended on 16.04.2010 as *ultra vires* the provisions of the Act and further to quash the Central Government's letter dated 15.06.2015 as well as the MCI's recommendation dated 14.05.2015 being arbitrary and illegal. The petitioner also seeks a direction to the respondents to renew the permission

for admission of the third batch of 150 students in MBBS for the Academic Year 2015-16 in the petitioner College.

9. MCI filed a detailed counter affidavit contending that in view of the gross deficiencies pointed out in the inspection of the petitioner College conducted on 16th and 17th December, 2014, the Council had rightly decided to invoke Regulation 8(3)(1) proviso (a) apart from Regulation 8(3)(1) proviso (d) since the petitioner College had employed faculty/residents on the basis of fake/forged documents. It is also contended that since the petitioner College had failed to fulfil the minimum infrastructure, teaching faculty and other facilities, the MCI had recommended to Central Government not to grant renewal of permission for the Academic Year 2015-16 which was accepted by the Central Government by proceedings dated 15.06.2015.

10. We have heard the learned counsel for both the parties and perused the material available on record.

11. It is contended by Shri Nidhesh Gupta, the learned Senior Counsel appearing for the petitioner that the impugned order of rejection which was admittedly passed without giving an opportunity of being heard to the College is inconsistent with the scheme of Section 10-A of the Act, and therefore, the same is liable to be set aside. It is also contended that the provisos (a) to (d) of Regulation 8(3)(1) which vested the decision making power with the MCI run contrary to the statutory scheme.

12. In support of his submissions, the learned Senior Counsel relied upon ***Swamy Devi Dayal Hospital and Dental College v. Union of India and***

Ors., (2014) 13 SCC 506 and *Royal Medical Trust (Regd.) and Anr. v. Union of India*, [W.P.(C) No.705/2014 decided on 20.08.2015].

13. On the other hand, it is contended by Shri Vikas Singh, the learned Senior Counsel appearing for MCI that the deficiencies found by MCI in the inspection of the petitioner College held in December, 2014 being extremely grave, the renewal of permission for the Academic Year 2015-16 was rightly rejected and the same does not warrant interference by this Court on any ground whatsoever. Referring to the provisions of Section 10-A of the Act and Regulation 8(3) of the Regulations, the learned Senior Counsel further submitted that the Act does not provide for compliance verification but what is provided under Section 10-A(4) is only an opportunity of hearing.

14. In *Swamy Devi Dayal* (supra), the Supreme Court was dealing with the permission for starting a Post-Graduation course in a Dental College under the provisions of the Dentist's Act, 1948, the provisions of which are *pari materia* to the provisions of MCI Act, 1956.

“15. After analysing the statutory provisions and after reviewing the decisions signifying the principles of natural justice, the legal position touching upon the issue was summed up in Paragraph 22 of the judgment in *Swamy Devi Dayal Hospital & Dental College* as under:

“22. We, accordingly, sum up the legal position, touching upon the issue, on the interpretation of Section 10-A(4) of the Act as below:

22.1. Section 10-A applies to the cases of renewal of permission as well.

22.2. It contemplates grant of opportunity of being heard at two stages. First stage would be at the level of DCI after the scheme is submitted to DCI under sub-section (2) of Section 10-A of the Act. Once it is found by DCI that all the parameters for granting permission are met, it recommends the grant of approval of the scheme to the Central Government. In case a Scheme is found to be deficient, sub-section (3)(a) of Section 10-A of the Act casts an obligation on the part of DCI to give a reasonable opportunity for making a written representation and also to rectify the deficiencies, if any, specified by DCI. Second stage of adherence to the principles of natural justice is provided at the level of Central Government at the time when it has to take final decision, after the receipt of the recommendation sent by DCI. This requirement of hearing is stipulated in proviso to sub-section (4) of Section 10-A, in the event the Central Government is proposing to disapprove the scheme.

22.3. The expression “opportunity of being heard” occurring in this proviso would mean that the material that goes against the applicant and is to be taken into consideration, is to be supplied to the applicant within an opportunity to make representation. For this purpose either the report of DCI itself can be supplied or at least the deficiencies pointed out in the report have to be communicated by the Central Government to the applicant with an opportunity to furnish its comments thereupon. At that stage while giving its reply, if the applicant claims personal hearing, such a personal hearing should also be accorded.”

15. Considering an identical issue, a three Judge Bench in **Royal Medical Trust** (supra) has reiterated the above view expressed in **Swamy Devi Dayal** (supra).

16. With regard to intimation of the result or outcome of the inspection, it has further been held in **Royal Medical Trust** (supra):

“(C) Intimation of the result or outcome of the inspection would then be communicated. If the infrastructure and facilities are in order, the concerned Medical College should be given requisite permission/renewal. However if there are any deficiencies or shortcomings, the MCI must, after pointing out the deficiencies, grant to the college concerned sufficient time to report compliance.

(D) If compliance is reported and the applicant states that the deficiencies stand removed, the MCI must cause compliance verification. It is possible that such compliance could be accepted even without actual physical verification but that assessment be left entirely to the discretion of the MCI and the Central Government. In cases where actual physical verification is required, the MCI and the Central Government must cause such verification before the deadline.

(E) The result of such verification if positive in favour of the Medical College concerned, the applicant ought to be given requisite permission/renewal. But if the deficiencies still persist or had not been removed, the applicant will stand disentitled so far as the academic year is concerned.”

17. In the light of the ratio laid down in **Royal Medical Trust** (supra), we are unable to accept the contention on behalf of MCI that Section 10-A(4) has only provided for hearing but not compliance verification.

18. Following the ratio laid down in ***Swamy Devi Dayal*** (supra) and ***Royal Medical Trust*** (supra) a Full Bench of this Court in **W.P.(C) No.7106/2015** titled *Malla Reddy Institute of Medical Sciences & Anr. v.*

Union of India & Anr. and W.P.(C) No.8541/2015 titled *Lord Buddha Siksha Pratisthan & Anr. v. Union of India & Anr.* held that the provisos (a) to (d) to Regulation 8(3)(1) of the Regulations shall not in any way circumvent the opportunity of being heard/opportunity to rectify the deficiencies under Section 10-A(3) & (4) of the Medical Council Act. Therefore, the action of the MCI in declining to undertake fresh inspection for compliance verification despite being asked by the Central Government is contrary to the statutory scheme. The Central Government also committed an error in accepting the said recommendation of the MCI resulting in the impugned order of rejection of renewal dated 15.06.2015.

19. Having held so, in the normal course we would have directed fresh inspection by MCI after giving an opportunity to the petitioner to rectify the deficiencies so as to enable the Central Government to consider the petitioner's request for renewal of permission for the Academic Year 2015-16.

20. However, as per the time schedule for the Academic Year 2015-16, the time for inspection expired long back and there is no possibility to undertake an inspection at this point of time since the statutory schedule is already over.

21. In identical circumstances, the Supreme Court in **Special Leave Petition (C) No.15043 of 2015, Padmashree Dr.D.Y. Patil Medical College vs. Medical Council & Anr.** held that:

“23. Considering the statutory time schedule and that the same is already over and in the facts and circumstances of the case, it would not be appropriate to direct inspection to be made and

thereafter a decision to be taken for the current academic session 2015-16 as that would be in breach of the law laid down in various decisions of this Court which is binding. Thus, we direct that the application which has been submitted by the college for the academic session 2015-16 be considered for the next academic session, subject to fulfilment of other requisite formalities, as may be necessary, and thereafter the MCI shall conduct an inspection well-in-time as per the time schedule fixed under the Regulations of 1999. The Special Leave Petition is dismissed with the aforesaid modification. Ordered accordingly.”

22. In the facts and circumstance of the present case, though the impugned order dated 15.06.2015 is hereby set aside, there cannot be any direction to MCI to conduct a re-inspection and to take further steps for grant of renewal for the Academic Year 2015-16.

23. Accordingly, the writ petition is disposed of with the direction that the application which has been submitted by the petitioner for the Academic Year 2015-16 be considered for the next Academic Year subject to compliance of all the deficiencies specified by MCI.

There shall be no order as to costs.

CHIEF JUSTICE

JAYANT NATH, J

SEPTEMBER 30, 2015

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