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

Date of Decision: 13th August, 2015

+ **W.P.(C) No.7101/2015 & CM No. 13021/2015(stay)**

MEDICITI INSTITUTE OF MEDICAL
SCIENCES (MIMS) & 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 UOI.
Mr.Vikas Singh, Sr.Adv. with Mr.T.Singhdev,
Adv. for R-2/MCI.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE JAYANT NATH

Ms. G. Rohini, Chief Justice (Oral)

1. The petitioner medical college has been established with 100 MBBS seats in Medchal Mandal of Ranga Reddy District of Telangana in the year 2001.
2. It is not in dispute that the petitioner was also granted recognition by MCI and has been included in the Schedule of recognized institutions for five years by proceedings dated 21.01.2008. Subsequently, the petitioner was granted the approval for increase of intake from 100 to 150 for the Academic Year 2012-13 and the permission for additional 50 seats was also renewed for subsequent years.

3. The present petition is filed aggrieved by the action of the Union of India in rejecting the permission for renewal for additional intake of 50 seats by order dated 15.06.2015 on the basis of MCI's recommendation dated 14.05.2015.

4. We have heard the learned senior counsel for both the parties and considered the material available on record.

5. A perusal of MCI's report dated 14.05.2015 on the basis of which the impugned order of rejection came to be passed shows that for compliance verification of the deficiencies pointed out in the assessment report relating to the inspection held on 5th and 6th December, 2014, a surprise inspection was carried out by the Council's assessors on 08.05.2015 and noted the following:

- “1. Resident deficiency – the shortage of residents is 9 out of 139 i.e. more than 5%.
2. RHTC – cold chain equipment is inadequate.
3. Other deficiencies as pointed out in the assessment report.”

6. In view of the same, the Executive Committee of MCI decided to recommend not to renew the permission for additional intake for Academic Year 2015-16 and the same was conveyed to the Union of India by letter dated 14.05.2015.

7. Shri Nidhesh Gupta, learned senior counsel appearing for the Petitioner has placed before this Court the Notification dated 01.07.2015 issued by the MCI amending the Minimum Requirement for 150 MBBS Admissions Annually Regulation, 1999 and submitted that as per the said

amendment, 71 Resident Doctors are required for 3rd renewal whereas even according to the MCI's report, the petitioner College has shortage of 9 out of 139 Resident Doctors. Thus, it is submitted that the petitioner College has much more than the required number of 71 Resident Doctors and, therefore, the deficiency of shortage of Resident Doctors cannot be a valid ground to recommend rejection of the renewal of permission to the petitioner College. With regard to the other objection pointed out in the MCI's recommendation dated 14.05.2015, i.e. inadequacy of RHTC - cold chain equipment, the learned senior counsel for the Petitioner submitted that in fact, there is no requirement in the Regulations to have cold chain facility at Rural Health Training Centre and at any rate, the said facility has also been now provided by the Petitioner college.

8. It is contended by Shri Vikas Singh, learned senior counsel appearing for the MCI that the amendment to the Regulations by Notification dated 01.07.2015 is not applicable to the Academic Session 2015-16 and the petitioner cannot claim the benefit of the same.

9. Even assuming that the Notification dated 01.07.2015 is not applicable for the Academic Year 2015-16, it appears to us that the fact that the MCI thought it fit to reduce the strength of Resident Doctors from 139 to 71, evidently on being satisfied that 71 Residents would be sufficient to satisfy the requirement of medical college with 150 students, is a relevant factor which needs to be taken into consideration for appreciating the plea of the petitioner that the shortage of 9 out of 139 Resident Doctors is not a grave deficiency so as to result in rejection of renewal. Admittedly, 130 Resident Doctors were engaged by the petitioner College as against the

Residents of 139 stipulated in the un-amended Regulations and the deficiency even according to MCI is only 6.4%. Having regard to the fact that the petitioner undertakes to rectify even the said shortage of 9 Residents, it appears to us that the recommendation of MCI to reject the renewal is unwarranted. Similarly, the alleged inadequacy of RHTC – Cold Chain Equipment is also a deficiency which can be rectified and the petitioner undertakes to rectify the same.

10. It is relevant to note that the petitioner College is existing for the past about 14 years and has been running continuously all these years. More particularly, the impugned order of rejection is only with regard to renewal of permission for additional intake of 50 students for the Academic Year 2015-16. Therefore, we are of the view that instead of adopting a pedantic approach, the MCI could have given an opportunity to the petitioner College to rectify the deficiencies. According to us, the first respondent/Union of India is also not justified in accepting the recommendation of MCI for rejection of renewal without application of mind to the nature of the deficiencies pointed out therein. In fact, before passing the rejection order dated 15.06.2015 which is a final order under Section 10-A(4) of the MCI Act, it is mandatory to give an opportunity of hearing to the petitioner as held in *Swami Devi Dayal Hospital and Dental College v. Union of India and Ors.*; **(2014) 3 SCC 506**. So far as the requirement of “opportunity of being heard” occurring in the proviso to Section 10-A(4), the Supreme Court observed:

“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.”

11. In the present case, the petitioner College was admittedly not afforded such an opportunity of being heard before passing the impugned order of rejection. In the facts and circumstances of the case on hand, we are of the opinion that the impugned recommendation of MCI dated 14.05.2015 as well as the rejection order dated 15.06.2015 passed by the Union of India are unsustainable being contrary to the statutory scheme.

12. Shri Vikas Singh, the learned senior counsel appearing for the MCI raised a further objection placing reliance upon the time schedule prescribed in *Priya Gupta v. State of Chhattisgarh & Ors.*, (2012) 7 SCC 433. Submitting that strict adherence to the time schedule is mandatory, the learned senior counsel contended that any direction for re-inspection at this stage would amount to deviating the mandatory time schedule.

13. It is no doubt true that adherence to the time schedule is essential, however, as held in *Priyadarshani Dental College & Hospital v. Union of India & Ors.*, (2011) 4 SCC 623, there is a distinction between an application for permission and an application for renewal of permission.

14. While suggesting for modification of time schedule in cases of renewal of permission, it was further observed in *Priyadarshani Dental College & Hospital case* (supra):-

“23. In all these cases, the petitioners, who were the applicants for renewal were existing dental colleges, which were functioning for three or four years and each college had admitted hundreds of students either directly or through the State Government allotment. The colleges had the benefit of initial permission and several renewals of permission. Refusal of renewal of permission in such cases should not be abrupt nor for insignificant or technical violations. Nor should such applications be dealt in a casual manner, by either granting less than a week for setting right the “deficiencies” or not granting an effective hearing before refusal. The entire process of verification and inspection relating to renewal of permission, should be done well in time so that such existing colleges have adequate and reasonable time to set right the deficiencies or offer explanations to the deficiencies. The object of providing for annual renewal of permissions for four years, is to ensure that the infrastructural and faculty requirements are fulfilled in a gradual manner, and not to cause disruption.

24. In the context of what has happened in these cases, it is necessary to emphasise the distinction between the applications for fresh permissions and applications for renewal of permissions. They require distinct time schedules.....”

15. In the light of the observations in *Priyadarshani Dental College & Hospital* (supra), we are of the view that this is a fit case where a direction can be issued for re-inspection even at this stage.

16. For the reasons stated above, the impugned order of rejection dated 15.06.2015 passed by the first respondent and the recommendation of the

MCI dated 14.05.2015 are hereby set aside and the writ petition is disposed of with a direction to MCI to conduct a re-inspection of the petitioner College and submit its recommendation to the first respondent/Union of India within 2 weeks from today. The first respondent thereupon shall pass an appropriate order afresh in accordance with law.

The writ petition is accordingly disposed of.

CHIEF JUSTICE

JAYANT NATH, J

AUGUST 13, 2015

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