

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

Pronounced on :- August 26 , 2015

+ **W.P.(C) No.7424/2015 & CM No. 13700/2015(stay)**

RAJIV MEMORIAL ACADEMIC WELFARE
SOCIETY K.D. MEDICAL COLLEGE, HOSPITAL
& RESEARCH CENTRE, & ANR.

..... Petitioners

Through: Mr.B. Adi Narayan Rao, Sr.Adv. with
Ms.Bina Madhavan, Ms. Akanksha Mehra,
Ms.Surbhi & Mr. Laksh Puri, Advocates

Versus

UNION OF INDIA & ANR.

..... Respondents

Through: Ms. Monica Arora, CGSC with
Mr.Gaurav Upadhyay, Advocate for R1/UOI.
Mr.Vikas Singh, Sr. Adv. with Mr.T. Singhdev &
Ms.Puaj Sarkar, Advocates for R-2/MCI.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE JAYANT NATH

J U D G M E N T

: **Ms.G.ROHINI, CHIEF JUSTICE**

1. This petition is filed aggrieved by the order passed by the Government of India, Ministry of Health and Family Welfare dated 15.06.2015 disapproving the scheme submitted by the petitioner under Section 10-A of the Medical Council of India Act, (for short 'the MCI Act') for establishment of a new Medical College in Mathura for the Academic Year 2015-16.

2. We have heard Shri B. Adinarayan Rao, the learned senior counsel appearing for the petitioner and Shri Vikas Singh, the learned Senior Counsel appearing for the MCI as well as Ms. Monica Arora, learned Standing Counsel appearing for the first respondent / Union of India. We have also perused the material available on record including the counter affidavit filed on behalf of MCI.

3. The impugned order dated 15.06.2015 came to be passed on the basis of the recommendation of the MCI dated 14.05.2015 recommending for disapproval of the scheme submitted by the petitioner for the Academic Years 2015-16 and 2016-17 on application of Regulation 8(3)(1) proviso (d) of Establishment of Medical College Regulations, 1999 alleging that fake/forged experience certificates had been produced by the petitioner college with regard to certain faculty Members/Residents apart from other deficiencies observed in the inspections conducted on 6th and 7th January, 2015 and 08.05.2015.

4. The writ petition, therefore, is filed with the following prayers:

“a) issue writ/writs including a writ in the nature of certiorari setting aside and quashing clause 8(3)(1) of the Establishment of Medical Colleges Regulations 1999 by means of Notification No.MCI-34(41)/2010-Med./3491 dated 16.04.2010 being ultra vires the Indian Medical Council Act, 1956 and violative of the principles of natural justice, or in the alternative declare that clause 8(3)(1)(d) is not applicable in establishment of new medical college cases;

b) issue writ/writs including a writ in the nature of certiorari setting aside and quashing the letter/communication dated 14.05.2015 issued by the Respondent No.2 returning the Application of the

Petitioner College for establishment of new Medical College for the academic year 2015-16 to the Respondent No.1;

c) issue writ/writs including a writ in the nature of certiorari setting aside and quashing the letter/communication dated 15.06.2015 issued by the Respondent No.1 to an extent of disapproving the Application of the Petitioner College for establishment of new Medical College for the academic year 2015-16;

d) issue writ/writs, order or direction, writ being in the nature of mandamus, directing the Respondent No.1 to grant Letter of Permission to the Petitioner College for establishment of new Medical College at Mathura in the name of K.D. Medical College Hospital and Research Centre for the academic year 2015-16 with an annual intake of 150 students in the MBBS course; and

e) pass any other or further order which this Hon'ble Court deems fit and proper in facts and circumstances of the present case.”

5. Before proceeding further, the facts leading to the filing of the present petition may be noticed. The petitioner which is a registered society intended to establish a medical college with an intake of 150 seats at Mathura, U.P. Accordingly, an application was made on 29.08.2014 in terms of Section 10-A of the MCI Act. In pursuance thereof, the MCI conducted a surprise inspection on 06.01.2015 and 07.01.2015 and by letter dated 31.01.2015 recommended to the Government of India not to grant Letter of Permission to the petitioner college in view of the deficiencies observed in the inspection. On 26.02.2015, the petitioner submitted the compliance report and having considered the same, the MCI conducted a

surprise inspection on 09.04.2015 for compliance verification. Again on 08.05.2015, another surprise inspection was conducted by MCI for compliance verification. According to the petitioner, all the deficiencies pointed out by the MCI were non-existent and the petitioner institution has fully complied with the standards prescribed in the Establishment of Medical College Regulations, 1999 read with Minimum Requirements for 150 MBBS Admissions Annually Regulations, 1999. However, the MCI by proceedings dated 14.05.2015 pointed out the following deficiencies:

“The Executive Committee of the Council considered the assessment report (8th May, 2015) along with the compliance verification assessment report (9th April, 2015) and previous assessment report (6th & 7th January, 2015) and noted the following:-

1. On verification, it is observed that fake/forged experience certificates have been produced by the following faculties/residents:
 - (i) Dr.Neety Singh, SR, Deptt. Of Radio-Diagnosis
 - (ii) Dr.Vikas Chand Dubey, Dr. Deptt. Of General Medicine
 - (iii) Dr.Vivek Asthana, Sr.Deptt. of Anaesthesia
 - (iv) Dr.Pankaj Kumar, Sr.Deptt. of ENT
 - (v) Dr.Mukesh Bharti Sr.Deptt. of Orthopedics
2. Bed occupancy on previous day of assessment is 79.33%.
3. There was only 1 Normal delivery & Nil Caesarean section on day of assessment. On previous day, there was Nil Normal delivery & Nil Caesarean section. In the month of January there were only 45 total deliveries & in the month of April there were only 38 deliveries which were inadequate.
4. Special investigation like Ba, IVP are not carried out.
5. Other deficiencies as pointed out in the assessment report.”

6. It was also stated in the said letter dated 14.05.2015 that the Executive Committee of MCI has decided to apply Regulation 8(3)(1) proviso (d) of the Establishment of Medical College Regulations, 1999 as amended by Notification dated 16.04.2010 and thus recommended disapproval of the scheme submitted by the petitioner college for the Academic Years 2015-16 and 2016-17 observing that there is no provision under Section 10-A of the MCI Act or the Regulations made thereunder to keep the application pending with MCI.

7. Accepting the recommendation of the MCI, the Government of India passed the order dated 15.06.2015 disapproving the petitioner college's scheme. However, as far as the application of the proviso (d) to Regulation 8(3)(1) is concerned, it is mentioned that the Ministry has not taken any decision thereon and the same would be communicated subsequently.

8. The impugned action was assailed by the petitioner contending *inter alia* that the proviso (d) to Regulation 8(3)(1) which excludes an opportunity of being heard to the applicant and which vests the decision making power with the MCI for grant of Letter of Permission runs contrary to the statutory scheme since the Central Government alone is competent under Section 10-A of the MCI Act either to accept or reject a scheme submitted by a college. Thus, it is contended that the proviso (d) to Regulation 8(3)(1) is *ultra vires* the Act and is liable to be struck down.

9. On merits, it is contended that the MCI had raised non-existent deficiencies as is evident from the compliance report dated 26.02.2015 submitted by the petitioner as well as the assessment reports of MCI. It is also contended that the impugned order dated 15.06.2015 passed by the Government of India was without application of mind and without affording

an opportunity of being heard to the petitioner. So far as the allegation that the petitioner had produced fabricated certificates with regard to experience of the Senior Residents engaged by it is concerned, it is sought to be explained that the proviso (d) to Regulation 8(3)(1) cannot be made applicable to an institute which seeks permission to establish a new college. The petitioner also sought to draw a distinction between 'teaching faculty' and 'resident doctors' and contended that the proviso (d) to Regulation 8(3)(1) cannot be made applicable to the Senior Residents. It is also contended that the services of all the Senior Residents whose experience certificates were alleged to be forged/fake documents were already terminated and therefore, no deficiency exists as alleged in the MCI's assessment report. It is further explained that the petitioner in fact had engaged Residents more than the number that was prescribed under the Regulations, as reflected from the second and third inspection reports of MCI, and therefore even after excluding the five Residents pointed out by MCI, the alleged deficiency cannot be substantiated. The deficiency with regard to the bed occupancy has also been seriously disputed by the petitioner and it is contended that the bed occupancy in fact was 64.3% i.e. 193 out of 300.

10. Shri Vikas Singh, the learned Senior Counsel appearing for MCI has strenuously contended that this Court, while exercising the power of judicial review under Article 226 of the Constitution of India, cannot substitute its own decision to that of the decision of the expert body reached on appreciation of the material available on record. Placing reliance upon *Tata Cellular v. Union of India*, (1994) 6 SCC 651, *Union of India v. K.G. Soni*, (2006) 6 SCC 794, *Heinz India Pvt. Ltd. & Anr. v. State of Uttar*

Pradesh & Ors., (2012) 5 SCC 443 and *Siemens Akteingesellschaft & Siemens Ltd. v. Delhi Metro Rail Corporation Ltd. & Ors.*, (2014) 11 SCC 288, it is submitted by the learned Senior Counsel that the interference by this Court under Article 226 with the decision of an expert body is warranted only to prevent arbitrariness or favouritism and the test to be adopted by the court should be to consider whether something has gone wrong of a nature and degree which requires its intervention. It is also submitted by the learned Senior Counsel that the deficiencies found during the inspection of the petitioner college are grave in nature and therefore the MCI has rightly recommended for disapproval of the permission. The further contention of the learned Senior Counsel is that since the petitioner college is found to have employed the faculty/Residents with fake and forged documents, it is essential to take a serious view of its conduct and the same being a deficiency which cannot be rectified/cured, the decision of MCI in recommending for disapproval of the scheme cannot be found fault with on any ground whatsoever.

11. There can be no dispute as to the ratio laid down in the decisions cited by Shri Vikas Singh. However, this is a case where the petitioner was not given an opportunity of being heard before passing the impugned order dated 15.06.2015. In *Swami Devi Dayal Hospital and Dental College v. Union of India and Ors.* (2014) 3 SCC 506, while holding that before passing a rejection order, it is mandatory to give an opportunity of hearing to the applicant, 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 with 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.”

12. In the present case, the petitioner college was admittedly not afforded such an opportunity of being heard before passing the impugned order of rejection dated 15.06.2015. As noticed above, the petitioner is seriously disputing the deficiencies alleged in the recommendation of the MCI dated 14.05.2015. Had an opportunity of hearing been given to the petitioner before passing the order of rejection dated 15.06.2015 in terms of Section 10-A(4) of the MCI Act, perhaps the petitioner would have established that the alleged deficiencies are without any basis.

13. It is also relevant to note that during the pendency of the present petition, the Central Government by letter dated 14.08.2015 informed the petitioner of its decision that Regulation 8(3)(1) proviso (d) shall not be applicable to the petitioner society. The letter dated 14.08.2015 has been produced by the petitioner along with an additional affidavit dated 17.08.2015 and a perusal of the same shows that the Government of India was of the view that the proviso (d) to Regulation 8(3)(1) is applicable only in respect of proposals for renewal of permission subsequent to the establishment of the new medical college and that the same does not apply to the proposals for establishment of new medical college.

14. Since the Government of India which is the competent authority under Section 10-A of the MCI Act to grant the permission made it clear that

Regulation 8(3)(1)(d) shall not be made applicable to the proposed college of the petitioner, the controversy is limited only regarding the other deficiencies, namely, (i) on previous day, there was Nil Normal delivery & Nil Caesarean section; (ii) in the month of January, there were only 45 total deliveries and in the month of April there were only 38 deliveries which were inadequate; and (iii) special investigation like Ba, IVP are not carried out. Having regard to the specific case of the petitioner that the said deficiencies are non-existent and there was no opportunity for the petitioner to establish the same, we are of the view that the matter requires reconsideration.

15. Accordingly, the rejection order of the Union of India dated 15.06.2015 and the recommendation of MCI dated 14.05.2015 are hereby set aside and the writ petition is disposed of with the direction to MCI to conduct re-inspection of the petitioner college and submit its recommendation to the Union of India within two weeks from today. The first respondent thereupon shall pass an appropriate order afresh in accordance with law.

16. Writ petition is accordingly disposed of. No costs.

CHIEF JUSTICE

JAYANT NATH, J

AUGUST 26, 2015

PMC