

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

% **Date of decision: 16th September, 2015.**

+ **W.P.(C) 7671/2015 & CM No.14973/2015 (for directions)**

TRR INSTITUTE OF MEDICAL SCIENCES **Petitioner**

Through: Mr. J.S. Bhasin with Ms. Rashmi
Priya & Mr. Nishant Shokeen, Advs.

Versus

UNION OF INDIA & ANR **Respondents**

Through: Mr. A.P. Sahay, Adv. for R-1.
Mr. T. Singhdev with Ms.
Biakthansangi & Ms. Puja Sarkar,
Advs. for R-2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The petition impugns, (i) the decision dated 29th April, 2015 of the Executive Committee of the respondent No.2 Medical Council of India (MCI) for disapproval of the scheme submitted by the petitioner for establishment of a new medical college with an intake capacity of 150 seats for MBBS course at Patancheru, Medak, District-Telangana, Hyderabad, Andhra Pradesh for the academic year 2015-2016; (ii) the communication dated 15th June, 2015 of the respondent No.1 Union of India (UOI) to the petitioner, disapproving the scheme submitted by the petitioner for establishment of the medical college; and, (iii) seeks a mandamus to the UOI

to grant letter of permission to the petitioner for starting of a New Medical College with 150 admission capacity in MBBS course for the current academic year 2015-2016.

2. The petition came up before this Court first on 12th August, 2015 when it was the contention of the counsel for the petitioner that the controversy, as entailed in the present petition, was the same as in W.P.(C) No.6529/2015 titled ***Rajshree Educatonal Trust Vs. Union of India*** in which hearing had been concluded on 5th August, 2015 and judgment had been reserved. In view of the said contention, with the consent of the counsels, hearing in this petition was concluded on the same day and judgment reserved to be pronounced along with judgment in W.P.(C) No.6529/2015. The counsel for MCI has however thereafter handed over written submissions also.

3. I have vide detailed judgment pronounced today, dismissed the writ petition of ***Rajshree Educatonal Trust*** supra. Though in the light thereof, this petition is also to be dismissed but it is deemed appropriate to set out the factual position herein.

4. In pursuance to the application dated 28th August, 2014 of the petitioner for starting a medical college with annual intake capacity of 150

admissions in MBBS course for the academic year 2015-2016, a surprise inspection of the petitioner medical college was carried out on 29th & 30th December, 2014 and in which the following deficiencies were found:

- “1. Deficiency of faculty is 85% as detailed in report.*
- 2. Shortage of Residents is more than 90% as detailed in report.*
- 3. Bed occupancy is only 6.7%.*
- 4. Wards: Infrastructure is available but yet to start functioning.*
- 5. No OPD patient was found.*
- 6. No operative work was carried out on day of assessment.*
- 7. No Radiological or Laboratory investigations were carried out on day of assessment.*
- 8. ICUs: There was no patient in any ICCU or ICUs on day of assessment.*
- 9. Principal, Dr. K.K. Dave was on leave on day of assessment.*
- 10. No Nursing staff was available on day of assessment.*
- 11. Only 10 paramedical staff were available against requirement of 112 on day of assessment.*
- 12. Hospital authorities have given average OPD attendance of more than 600 & bed occupancy approximately 70% for 3 randomly selected days but no such evidence was produced in MRD/any other record to justify them.*
- 13. Both college & hospital were closed as the management had declared vacation from 22/12/2014 to 01/10/2015. Closure of the hospital due to vacation is not permitted and justified.*
- 14. Other deficiencies as pointed out in the*

assessment report.”

5. It is the case of the petitioner that it is a Christian Minority Institution established by St. Augustin Educational Society and had declared holidays from 22nd December, 2014 to 1st January, 2015 in view of Christmas / New Year.

6. Needless to state that the Executive Committee of the MCI decided to recommend to UOI not to issue letter of permission for establishment of the new medical college for the academic year 2015-2016 to the petitioner. The said decision was communicated to the UOI vide letter dated 12th January, 2015.

7. It is the case of the petitioner that Dr. N.T.R. University of Health Sciences, Andhra Pradesh, on the report of the Local Enquiry Committee issued a consent of affiliation dated 24th January, 2015 in favour of the petitioner valid for a period of two years.

8. UOI in compliance of Section 10A(4) of the Indian Medical Council Act, 1956 (MCI Act) granted an opportunity of hearing to the petitioner and which was availed of by the petitioner. The explanation of course of the petitioner was that though it had appointed faculty and residents as per norms of MCI but the same was not present on account of the holidays

declared. Qua bed occupancy, it was explained that it was 6.7% only on the day of assessment, again on account of holidays and else as per records, was of 70%. Qua the other deficiencies, it was stated that the same had since been rectified.

9. MCI carried out another surprise inspection of the petitioner medical college on 7th April, 2015. The report of the said inspection found:

- “1. Neither Dean nor Medical Superintendent are available on day of assessment.*
- 2. Deficiency of faculty is 95% on day of assessment. No faculty is available in college, OPD, OT, wards, emergency department of the hospital.*
- 3. Shortage of residents is 100%.*
- 4. Bed occupancy is Zero on day of assessment.*
- 5. Ward infrastructure is not functional due to absence of doctors & patients. Nurses & paramedical staff were absent from many duty areas. Records of patient, attendance, investigations & indoor cases were requested but were not submitted.*
- 6. OPD was vacant, without faculty, Residents & patients. Paramedical staff was absent in most OPDs including Casualty.*
- 7. No operative work has been carried out on day of assessment. Records of previous surgeries were requested but not submitted. Verbal enquiries with CMO & Nursing staff revealed that no operations have been performed in last few days.*
- 8. Radiological procedures were NIL on day of assessment.*
- 9. ICUs: ICCU & ICU were vacant on day of*

assessment.

- 10. Dean, Dr. Kalpana Dave & Vice Dean, Dr. Vidya Sagar were absent on day of assessment. No other faculty were allotted administrative responsibility in their absence. Medical Superintendent Dr. Hanumantarayudu reported at 2 p.m.*
- 11. Skeletal Nursing staff was present on day of assessment.*
- 12. Only 203 paramedical staff were present on day of assessment.*
- 13. OPD attendance was NIL. No patients were observed in wards. Some patients were shown in casualty but they did not have valid registration numbers.*
- 14. College authorities cited "Local Holiday" as a reason for gross absence of staff & Residents. However no such holiday has been declared as a holiday by State Government. Also, mandatory emergency & Casualty services were also non-functional. No Resident or faculty were found attending the casualty or emergency duties in hospital.*
- 15. Data submitted by institute of clinical material & investigations appears fraudulent. No records have been maintained in the laboratories. Numbers of investigations do not match with number of OPD & IPD patients.*
- 16. Other deficiencies as pointed out in the assessment report."*

10. It is the case of the petitioner that due to various religious festival during the first week of April, 2015 i.e. Mahavir Jayanthi (2nd April, 2015), Good Friday Easter (3rd April, 2015) and Hanuman Jayanthi on different dates, the petitioner had issued a Circular dated 1st April, 2015 declaring that

it shall remain closed from 4th April, 2015 to 9th April, 2015.

11. Needless to state that MCI vide letter dated 11th May, 2015 to the UOI returned the application of the petitioner for establishment of new medical college, recommending disapproval thereof. UOI in accordance therewith, vide letter dated 15th June, 2015 to the petitioner disapproved the scheme submitted by the petitioner for establishment of new medical college.

12. The delay between 15th June, 2015 and Mid-August, 2015 in filing this petition is explained by filing of W.P.(C) No.490/2015 before the Supreme Court which was withdrawn on 3rd August, 2015 with liberty to move the High Court.

13. The reports aforesaid of the two inspections of the petitioner medical college, speak for themselves and I need not to say anything further.

14. Though it is heartening to notice that the petitioner, though a Christian Minority Institution, celebrates all religious festivals of other religions also with equal number of holidays but I am afraid, as per my understanding, a medical college and hospital cannot be run in this fashion. In fact, the counsel for the MCI during the hearing pointed out that though in the writ petition explanation of Good Friday Easter on 3rd April, 2015 being a holiday is also given but the Circular dated 1st April, 2015 of the petitioner filed as

Annexure P-12 to the petition, discloses holidays from 4th April, 2015 to 9th April, 2015 on the occasion of Hanuman Jayanthi and not on the occasion of Easter / Good Friday. The plea of 3rd April, 2015 being a holiday on account of Easter / Good Friday is thus clearly an afterthought.

15. The counsel for MCI during the hearing also drew attention to a Circular dated 19th December, 2014 purported to have been issued by the petitioner and filed as Annexure P-6 to the petition and contended that the same has been fabricated at the time of filing of the petition, inasmuch as the petitioner at the time of submitting reply to the UOI in pursuance to the opportunity of hearing given, did not make any reference thereto and stated to the contrary. It was contended that though in the alleged Circular, instructions to suit the purpose of the petitioner are sought to be given but it is an afterthought, inasmuch as at the contemporaneous time nothing of the sort was pleaded.

16. The counsel for the petitioner had otherwise adopted the arguments made by the counsel for the petitioner in *Rajshree Educatonal Trust* supra and which have been dealt with in the judgment therein pronounced today. Need is not felt to reiterate the same here.

17. The only additional arguments made by the counsel for the petitioner

was that the petitioner now has removed all the deficiencies and should be allowed to make admissions to the MBBS course of the current academic year, after carrying out a fresh inspection. Alternatively, it was suggested that just like the MCI and UOI grant permission to the Government Medical Colleges on furnishing undertaking, permission to the petitioner medical college should also be given on furnishing an undertaking.

18. The petitioner medical college, while making an application for establishment of medical college has clearly misrepresented that it has the requisite faculty and the infrastructure and which it has been found to be not having in the two inspections already conducted of the petitioner medical college. No reliance can thus be placed on the representation and undertaking of the petitioner. Moreover, the MCI Act and the Establishment of Medical College Regulations, 1999 (EMC Regulations) require the medical college to be having the requisite infrastructure and faculty on the date of making the application and not now at this stage.

19. There is no merit in the petition.

20. Dismissed. No costs.

RAJIV SAHAI ENDLAW, J.
SEPTEMBER 16, 2015/‘bs’..