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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 31.08.2015

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Judgment pronounced on: 22.09.2015

+ LPA 578/2015 & CM No.17359/2015 (stay)

MEDICAL COUNCIL OF INDIA

THR ITS SECRETARY

..... Appellant

Through: Mr.Vikas Singh, Sr.Adv. along
with Mr.T.Singhdev, Ms.Biakthan Sanghi and
Ms.Puja Sarkar, Advocates.

Versus

JAMIA HAMDARD (DEEMED UNIVERSITY)

& ORS

..... Respondents

Through: Mr.Parag P.Tripathi, Sr.Adv. along
with Ms.Ekta Sikri, Mr.Saket Sikri, Mr.Kunal
Bahri, Ms.Anasuya Choudhury and
Mr.Prannoy, Advs. for R-1 & 2.

Mr.Bhagvan Swarup Shukla, Standing Counsel
along with Mr.G.L. Bhatia, Adv. for UOI.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. The present appeal is filed seeking to impugn the order dated 20.08.2015 passed by the learned Single judge in W.P.(C) 5941/2015.

2. The brief facts which led to filing of the writ petition are that respondent No. 1 was given the status of a deemed university under Section 3 of the UGC Act, 1956 on 10.05.1989. Respondent No.1 has set up respondent No.2-Hamdard Institute of Medical Science and Research.

On 27.09.2011 respondent No.1 submitted a proposal to the appellant-Medical Council of India (hereinafter referred to as 'Appellant) for establishment of a new medical college. On 29.06.2012 respondent No. 1 was granted approval for establishment of a new medical college with an annual intake of 100 students from the academic year 2012-2013. Thereafter a renewal was received for the academic year 2013-14 and 2014-2015. In September 2014 respondent No.2 applied for renewal of permission for admission to the fourth batch of students in the MBBS course for the academic year 2015-2016. A team of the appellant visited the campus of respondent No. 2 for carrying out verification on 12/13th November, 2014. In the inspection that was carried out certain deficiencies were noticed by the team which were communicated to respondent No. 3/Union of India (hereinafter referred to as 'UOI') by the appellant on 22.12.2014. Thereafter under Section 10A(4) of the IMC Act, UOI/respondent No. 3 gave a hearing to respondent No.1 on 19.01.2015.

3. Before any communication could be issued by UOI pursuant to the hearing, the appellant carried out a re-inspection on the campus on respondent No. 2 on 12/13th February, 2015. On 11.05.2015 the appellant informed UOI that in the inspection carried out on 12/13th February, 2015, certain deficiencies were still found and hence, the appellant informed that the Executive Committee of its council has decided to recommend that the permission for admission for the fourth batch of 100 students be declined. In the meantime, prior to issue of the said communication dated 11.05.2015 by the appellant, UOI on 08.05.2015 sent a communication to the appellant with a copy addressed to

respondent No.1 pursuant to the hearing, that was granted under Section 10A (4) of the IMC Act, stating that the Government has taken a decision to recommend for approval the case of respondent No.1 after obtaining an undertaking from the said college. In response to the said communication dated 08.05.2015 of UOI, the appellant on 14.05.2015 stated that the Executive Committee has reiterated its earlier decision to recommend to the Central Government not to renew the permission for admission of the fourth batch of 100 students for the academic year 2015-16.

4. In view of the above development, respondents No.1 and 2 filed the writ petition being W.P.(C) 5763/2015 before this court. The same was disposed of by the learned Single Judge on 29.05.2015 with a direction to the Central Government to take a final view on the respondent No.1's application on or before 07.06.2015. Against the said order dated 29.05.2015, respondents No.1 and 2 filed LPA No. 388/2015. On 08.06.2015, the court noted that UOI has taken a decision accepting the revised recommendations of the appellant whereby renewal of the permission to respondents No.1 and 2 had been refused for the academic year 2015-16. On 07.06.2015 UOI had accepted the recommendations of the appellant and had decided not to renew the permission for admission to the fourth batch of MBBS course to respondents No.1 and 2. Respondents No.1 and 2 were permitted to withdraw the LPA with liberty to take steps to challenge the said decision of UOI. Hence, the present writ petition was filed before the learned Single Judge.

5. By the impugned judgment dated 20.08.2015, the learned Single Judge allowed the writ petition of respondents No. 1 and 2 holding that the letter dated 7/8th May, 2015 issued by UOI is not only in respect of

respondent No.2 Medical College but is also with respect to other medical colleges. The said recommendations qua respondent No. 2 clearly states that the case of respondent No. 2 is recommended for approval on an undertaking to be obtained from the said college. The order further holds that this is in contrast to another college where the direction is “*The compliance may be verified. The college may then be considered for approval.*” Hence, the order concludes that there was no direction to the appellant to have the compliance verified in the case of respondent No.2 and the case of respondent No.2 had been recommended for approval. All that the appellant was required to do was to check whether the undertaking has been obtained and is in compliance with the directions of UOI dated 08.05.2015. No revised recommendations were sought for or required from the appellant. It was also noted that in the reply affidavit, UOI has only referred to the deficiencies pointed out by the appellant in the letter dated 14.05.2015 and based on the same issued the impugned communication dated 07.06.2015 of disapproval. There is no attempt to deal with the approval which has already been granted to respondent No.2 vide letter dated 7th /8th May 2015 in its reply affidavit. The learned Single Judge held that having once granted approval, after the hearing under Section 10A (4) of the IMC Act, UOI could not render the hearing nugatory by subsequently passing the order dated 07.06.2015. However, keeping in view the fact that some deficiencies were brought on record by the appellant in its communication dated 11.05.2015, the impugned order permits counselling and admission of students subject to respondents No.1 and 2 filing an affidavit with the appellant of having removed the deficiencies found in the second inspection of 12th/13th

February 2015 as recorded in the letters dated 11.05.2015 and 14.05.2015 of the appellant. The appellant was also, if so deemed necessary, permitted to carry out an inspection of respondent No.2 college to verify the undertaking and if any deficiencies persist, the order states that the consequences would follow.

6. We have heard the learned senior counsel for the parties and perused the record. In the first inspection that was carried out by the appellant on 12th/13th November 2014, the following deficiencies were noted by the assessors who visited the college of respondent No.2.

- “1. Shortage of Residents is 8.7% as detailed in the report.
2. No workshop in Medical Education Technology has been conducted by MEU during the year.
3. Anatomy department: There are only 32 mounted specimens/in the museum.
4. Pathology department: There are only 130 mounted specimens in the museum.
5. Other deficiencies as pointed out in the assessment report”

7. UOI was informed on 22.12.2014 by the appellant of the inspection and a recommendation was given not to renew the permission for admission to the fourth batch in view of the said deficiencies.

8. Thereafter, UOI has in compliance with Section 10A (4) of the IMC Act given a hearing to respondents No.1 and 2 on 19.01.2015. UOI took a long time to communicate its decision pursuant to the said hearing. A decision was communicated on 08.05.2015. The following decision was taken:-

Sl.	College name	Committee recommendations
1.	Hamdard Institute of Medical Sciences & Research, New Delhi	An undertaking may be obtained from the college. Recommended for approval.

9. Clearly, UOI had taken a decision in the hearing to recommend for approval the case of respondents No. 1 and 2. All that was required by respondents No. 1 and 2 was to give an undertaking of having rectified the defects. We agree with the learned Single Judge that if any physical verification of the facilities had to be carried out by the appellant, the same would have been so stipulated by UOI as has been done for another college where it is categorically stated that the compliance would be verified and then the college would be considered for approval. We also agree with the view of the learned Single Judge that the said communication dated 08.05.2015 issued by UOI shows grant of approval of the scheme to respondent No.2 in exercise of powers under Section 10A (4) of the IMC Act. This approval could not have been superseded casually as appears to have been done in the present case by UOI when issuing the second communication dated 07.06.2015.

10. On the scope of Section 10A (4) of the IMC Act, reference may be had to Section 10A(4) of the IMC Act which reads as follows:-

“10A. Permission for establishment of new medical college, new course of study.

.....

(4) The Central Govt. may, after considering the scheme and the recommendations of the Council under sub-section (3) and after obtaining, where necessary, such other particulars as may be considered necessary by it from the person or college concerned, and having regard to the factors referred to in sub-section (7), either approve (with such conditions, if any, as it may consider necessary) or disapprove the scheme and any such approval shall be a permission under sub-section (1):

Provided that no scheme shall be disapproved by the Central Government except after giving the person or college concerned a reasonable opportunity of being heard;
....”

11. The legal position that a hearing is to be granted before disapproval of any scheme is no longer *res integra*. In the latest judgment of the Supreme Court in the case of ***Royal Medical Trust (Regd.) & Anr. vs. Union of India & Anr.*** dated 20.08.2015 in W.P.(C) 705/2014, a Three-Judge Bench of the Supreme Court held as follows:-

“23.sub-section (3)(a) and proviso to sub-section (4) of Section 10A oblige the MCI and the Central Government respectively to grant to the applicant reasonable opportunity to rectify the defects and of being heard. The Statute thus recognizes that before any adverse decision is taken as regards the Scheme, the applicant must be afforded reasonable opportunity. ...”

12. Hence, a hearing is to be granted prior to rejection of the application of a scheme by the Central Government. The hearing that is granted cannot be rendered nugatory by first passing an order approving the scheme and thereafter changing the order rejecting it. We agree with the view taken by the learned Single Judge that there was no ground available or plausible explanation given by UOI as to why the first approval granted on 08.05.2015 has been reversed in its impugned communication dated 07.06.2015.

13. In the above context, reference may also be had to the judgment of the Supreme Court in the case of ***Royal Medical Trust (Regd.) & Anr. vs. Union of India & Anr.*** dated 20.08.2015 in W.P.(C) 705/2014. In para 27 the Supreme Court gave a Schedule. The relevant portion of the

Schedule reads as follows:

“27.

(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 that academic year is concerned.”

14. Hence, the Supreme Court in the said judgment has clearly held that in case compliance is reported, such compliance can be accepted without actual physical verification and the assessment is left at the discretion of MCI and the Central Government. Where actual physical verification is required, it is only in those circumstances that the Central Government may call for such verification to be done before the deadline. In the light of the said legal decision, the directions of the Central Government accepting the contention of respondents No.1 and 2 in the hearing given under Section 10A (4) accepting compliance based on an

undertaking cannot be faulted with.

15. In our opinion the impugned order also takes care of the deficiencies which have been communicated in letter dated 11.05.2015 by the appellant. Suggestion has been made to UOI/MCI to, if so deemed necessary, notwithstanding the approval having been granted, conduct an appropriate inspection. In case deficiencies persist, the order states that the consequences shall follow.

16. We see no reason to interfere with the impugned order. The present appeal is accordingly dismissed.

(JAYANT NATH)
JUDGE

(CHIEF JUSTICE)

SEPTEMBER 22, 2015

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