

\$~43

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

+ **W.P.(C) 9663/2015**

**RKDF MEDICAL COLLEGE HOSPITAL AND
RESEARCH CENTRE & ANR**

..... Petitioners

Through: Mr A. Sharan, Mr Parag P. Tripathi &
Mr Nidesh Gupta, Sr. Advs. with Mr Somesh
Chandra Jha & Mr Tanuj Khurana, Advs.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr Dev P. Bhardwaj, CGSC with Mr
Vidur Mohan, Adv. for R-1.

Mr T. Singhdev, Ms Biakthansangi & Ms Puja
Sarkar, Advs. for R-2/MCI.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

%

09.10.2015

CM No. 23067/2015 (Exemption)

1. Allowed subject to just exceptions.

WP(C) 9663/2015 & CM No. 23066/2015 (Stay)

2. Issue notice.

3. Mr Bhardwaj accepts notice on behalf of respondent no.1, while Mr Singhdev accepts notice on behalf of respondent no.2. On steps being taken notice shall issue to respondent no.3.

4. It is the contention of the learned senior counsels for the petitioners that pursuant to the orders passed by the Supreme Court, in the peculiar facts and circumstances of the case, the time for admission has been extended in their case, till 10.10.2015. For this purpose, reliance is placed on the order

dated 22.09.2015 passed by the Supreme Court (see page 211 of the paper book).

5. On the other hand, Mr Singhdev, learned counsel for respondent no.2/MCI, argues that the cut-off date having been crossed, this petition cannot be entertained in any case, for academic year 2015-2016. There are also other contentions raised by Mr Singhdev including the fact that the Central Government, on 28.09.2015, had taken a final decision in the matter accepting the recommendation of MCI, which is dated 24.09.2015.

6. I had proposed to give Mr Singhdev, learned counsel for respondent no.2, two days' time to respond to the various assertions made in court by the counsel for the petitioners.

6.1 In this context, I had indicated to the counsels for the respondents that in view of the fact that the petitioners assert that their deadline, as fixed by the Supreme Court, would expire tomorrow, i.e. 10.10.2015, this aspect should not come in their way if, notice is made returnable on 12.10.2016.

6.2 Mr Singhdev, however, asserts that he will not only contend that the cut-off date has been crossed, but would also contend, post 10.10.2015, that even if the petitioners' submission is accepted that the Supreme Court extended the deadline till 10.10.2015, on 12.10.2015, even that deadline would have been crossed.

7. In these circumstances, I am left with no choice but to hear the petitioners in support of their prayer for interim relief.

8. The petitioners, have challenged the order of the Central Government dated 28.09.2015, as also the recommendation of the MCI dated 24.09.2015. In short, the petitioners seek admission qua second batch of 150 students for the academic year 2015-2016. The court is, immediately, concerned with

the decision of the Central Government, which is the final decision and, as indicated above, is dated 28.09.2015. The operative part of the decision taken by the Central Government, is contained in paragraph 8 & 9 of the impugned decision dated 28.09.2015. For the sake of convenience, the relevant part is extracted hereafter:

“.....8. And whereas, as per the directions of Hon’ble Supreme Court, the said medical college was granted hearing on 26.9.2015 by the Committee constituted for this purpose. The hearing committee after considering the oral and written submission made by the representatives of the said college, observed the following:-

“The contention and documents shown by college are agreed with. The deficiency of faculty is only 7.44%.

As indicated in MCI inspection report, the Residents do not seem to be staying in the campus. The shortage of Residents as pointed out is non-condonable.

The Committee noted that the observations regarding inflated data of patients and admission of non-deserving cases just to make up members was also made during the MCI inspection on 23-24 February, 2015.

The Committee is of the view that recommendation of MCI not to grant renewal permission for 2015-2016 may be considered”

9. Now, therefore, having duly considered the order dated 22.09.2015 of the Hon’ble Supreme Court in SLP(C) No. 19513/2015 and the recommendation of the MCI dated 24.09.2015, as well as the recommendations of the Hearing Committee, the Central Government decides not to renew the permission for admission of 2nd batch for M.B.B.S. course (150 seats) for the academic year 2015-16 at RKDF Medical College Hospital & Research Centre, Bhopal, Madhya Pradesh....”

(emphasis is mine)

9. A perusal of the Central Government’s decision would show that it

has, broadly, following ingredients:

- (i) It clearly states that “*contention and documents*” shown by petitioner no.1 college are “*agreed with*”.
- (ii) It shows a deficiency qua Faculty, to the extent of 7.44%.
- (iii) The Residents, it seems, do not appear to be staying in the campus. As a corollary to the same, it is stated, shortage of residents is ‘non-condonable’.
- (iv) Lastly, the petitioners appear to have put forth inflated data vis-a-vis in-patients.

9.1 What is clearly discernable from the decision of the Central Government is, that there is, no application of mind. This is for the reason that in the first part, as indicated above, the Central Government says that the contentions and documents shown by petitioner no.1 college are “*agreed with*”. If there is an agreement, I cannot decipher, as to how, they could have thereafter, gone on to indicate that there are deficiencies.

9.2 Be that as it may, the petitioners have given their response to the purported deficiencies.

10. I have been taken, by the learned senior counsels for the petitioners, through the assessors’ report. It is stated that in three specialities, which is “Orthopaedics”, “Anaesthesiology” and “Radio-Diagnosis”, where adjustments could have been made, as was done in the case of “Anatomy”, as doctors with higher qualification were available, the same was not done. In short, the argument is, where a professor is available and the number of such professors available is more than the requirement, as per the MCI’s guidelines, against each speciality, then, suitable adjustment can be made qua Associate and Asstt. Professors.

10.1 In the three specialities cited above, clearly there has been no adjustment whereas, as indicated above, in the speciality dealing with anatomy, admittedly, adjustment has been made.

10.2 In this behalf, I have also been taken through clause 10 of the MCI's guidelines, which reads as follows:

“....10. Excess of Professor/ Associate Professors/ Asstt. Professor can be counted towards deficiency of Associate Professor/ Assistant Professor/ Tutor respectively in Pre & para-clinical departments. Excess of Professors/ Associate Professors can be counted towards deficiency of Assistant Professor in clinical departments. Excess of teaching faculty cannot be counted against the deficiency of Senior or Junior Residents doctors....”

(emphasis is mine)

11. This brings me to other objection, which is, shortage of Residents. A perusal of the deficiency chart appended to the assessors report would show that according to the respondents the petitioner no.1 college is short by one (1) Senior Resident, in the department of surgery. This is apparent from page 249 of the paper book.

11.1 As against this, the explanation given by the petitioners, which is part of their communication dated 26.09.2015, and is appended as Annexure P-16, page 253, at page 256 of the paper book, is as follows:

“.... 3. All the residents produced their Original Bank account pass book with their address to the assessors and these days nationalised bank accounts are opened only after compliances of all the KYC norms as per RBI guidelines.

4. All the residents are having their phone in their own names.

All the above shown proof is sufficient for the residents doctors for the local ID as per norms of MCI as per assessors guide clause non 7(h).

All the residents are residing in the resident hostel but assessor has not accepted on account that their belongings are not seen though they have been kept neatly in their respective cupboards. All the basic amenities have been provided in the resident hosteliare well maintained by daily housekeeping staff. Hence there is no deficiency.

As per our Records the only Residents among all the residents doctors Dr. Gaurav Jatav SR Gen. Surgery was on sanctioned leave due to M ch Exam for his higher studies and his leave application as well as his original admit card and original certificate he had shown to all the assessors but was not accepted by the assessors....”

11.2 A perusal of the aforesaid extracts would show, that apart from anything else, in so far as Dr. Gaurav Jatav Senior Resident Gen. Surgery was concerned, he was sanctioned leave for M ch Exams, and for this purpose, his leave application as well as original admit card and original certificate had been placed before the assessors. It seems, somehow, this piece of material was not accepted.

11.3 In so far as this aspect is concerned, I am constrained to go back to what I indicated right at the beginning, which is, that while, the Central Government, seems to have generally accepted the contentions and documents supplied by the petitioners there is nothing discernible from its order as to whether or not documents submitted qua this objection were accepted. If, as contended by the petitioners, the said documents were placed before the Central Government, it ought to have returned a finding as to whether or not it accepted the document in so far as Mr Gaurav Jatav Sr. Gen. Surgery, was concerned.

11.4 While I am dealing with objection qua shortage of Residents, I may also indicate that, in the assessment form of the MCI, which is dated 23.09.2015 (see page 213 at page 221 of the paper book), it is indicated that

there is, in fact, deficiency of 83% with respect to Residents. The said percentage is clearly contrary to the deficiency chart where shortage shown is of only one (1) Senior Resident, in surgery. This aspect, I have already adverted to above.

11.5 Mr Gupta, learned senior counsel for the petitioners, has argued that a perusal of page 221 of the paper book would show that it is a clear case of over-writing, forgery and interpolation, in as much as, there was a line put across in the last column at page 221 to denote initially that there was no deficiency, and thereafter, it was filled up, apparently with the following: “83% Deficiency”. To buttress his submission that there has been interpolation, Mr Gupta, has drawn my attention to the foot of the page and the column where “83% deficiency” is indicated. It is seen that, while there are signatures of four (4) persons at the foot of the page (which includes three assessors and the Dean of the college), in the column where the change has purportedly been effected, signatures of only the three (3) assessors are found.

11.6 This is a matter, which would require a response from the MCI. Therefore, this is not an issue, on which, I can return, at this stage, a prima facie finding.

12. Be that as it may, the third objection, which is raised, is with regard to Bed Occupancy. According to the MCI/ Government, the petitioners claim of 91% Bed Occupancy is not correct, and that, the fact that the Bed Occupancy on the date of the inspection, was only 67.7%.

12.1 Mr Gupta has said that even if one were to believe the report rendered by the assessors of MCI, unless the Bed Occupancy is less than 60%, this objection cannot sustain. In support of his submission, that the parameters

set down for Bed Occupancy is 60%, Mr Gupta has relied upon a gazette notification dated 03.07.2015. Serial no. 10 of that notification, reads as follows:

“ Requirement for 150 admissions (M.B.B.S. – U.G.) only.

S. No .	Infra structural facilities		LOP (1 st batch)	1 st renewal (2 nd batch)	IInd renewal (3 rd Batch)	III renewal (4 th batch)	IVth Renewal (5 th Batch)	Reco gnition
xx x	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx
10.	Bed occup ancy %	Other States	60%	60%	60%	75%	75%	75%
		North Eastern States And Hill States, Notified Tribal Areas, Union Territories Of Andaman & Nicobar Island, Daman & Diu, Dadra & Nagar Haveli and Lakshadweep	50%	60%	60%	60%	60%	60%

12.2 Mr Singhdev says that this gazette notification is not applicable.

12.3 Mr Gupta, on the other hand, says that in so far as Bed Occupancy is concerned, the position has not changed. Mr Singhdev has not been able to demonstrate before me, at least at this juncture, as to what was the position prior to 03.07.2015. Mr Singhdev appears for MCI with regular frequency. I would have expected him to immediately inform me as to the exact position, which prevailed, prior to 03.07.2015. But notwithstanding this, we will have to re-visit the matter based on what Mr Singhdev has submitted before

me.

13. This is in so far as the broad merits of the objections taken by the Central Government are concerned.

14. Apart from what is noticed above, learned counsels for the respondents have stated that since cut-off date of 30.09.2015 is crossed, this writ petition cannot be entertained for academic year 2015-2016.

15. As indicated above, on 22.09.2015, the Supreme Court directed the MCI, in a SLP filed by it [SLP No. 19513/2015 against final judgement and order dated 01.07.2015 of the Madhya Pradesh High Court passed in WP No. 7521/2015], to carry out an inspection. The directions issued by the Supreme Court, are contained in the operative part of its order, which read as follows:

“... From the aforesaid order it is made clear that the petitioner- MCI was directed by this court also to make inspection of the respondent-college and submit report in a sealed cover on 21.09.2015. This order has also not been complied with.

Mr Vikas Singh, learned senior counsel appearing for the MCI, however, assured this Court that by tomorrow, the 23rd September, 2015, the inspection shall be completed and the report shall be sent to the Government by special messenger, which must reach by 24th September, 2015. The Government shall give hearing to the respondents on 26th September, 2015 and take a final decision by 28th September, 2015.

In the peculiar facts of the case and sequence of developments and delay caused because of many reasons, the cut-off date fixed by 30th September, 2015 may be extended for ten (10) days.

For all these reasons, this special leave petition is dismissed.

The question of law is kept open with liberty to the respondents to approach the Court if the decision goes against

them....”

16. Concededly, on 24.09.2015, the MCI, submitted its report, which as indicated above, was examined by the Central Government, on 28.09.2015. Since, the Supreme Court had, in the last three lines of its order dated 22.09.2015, given liberty to the respondents, who are the petitioners herein, to approach the court if, the final decision went against them, the petitioners filed an application with the Supreme Court.

16.1 The application, being: IA No. 3/2015 was moved by the petitioners before the Supreme Court, on 01.10.2015. The said application was taken on board and was listed for hearing on 06.10.2015. On 06.10.2015, at the request of the counsel for the petitioners, the matter was listed for hearing on 08.10.2015.

16.2 On 08.10.2105, the petitioners withdrew their application to enable them to move the High Court. The order passed by the Supreme Court, on 08.10.2015, reads as follows:

“.... Mr A. Sharan, learned senior counsel appearing for the applicant seeks permission to withdraw this application to enable him to move the High Court. Without expressing any opinion, we allow the applicant to withdraw this application. The application is, accordingly, dismissed as withdrawn.....”

17. It is in this background that the petitioners have approached this court. The petitioners have contended that because in the order dated 22.09.2015, the court observed that the cut-off date was extended by ten (10) days, they have approached this court with the writ petition.

17.1 I may indicate, I had asked the counsels for the petitioners at the very outset as to why they had approached this High Court and not the Madhya Pradesh High Court. The answer that I got was: First, that the court was on

vacation next week. Second, given the period of extension, window available was narrow. Third, it was not as if, this court, did not have jurisdiction since the contesting respondents were situated within the territorial jurisdiction of this court.

17.2 It is, therefore, the assertion of the petitioners that the time period fixed by the Supreme Court would expire on 10.10.2015.

17.3 Mr Singhdev, however, contends that this was not the purpose of the direction issued. It is his contention that this direction was issued to deal with a situation, which could have arisen, (that is paucity of time to make admissions) in case the report of MCI was in favour of the petitioners. The learned counsel thus, stated, that the direction was issued to give enough leeway to carry out admissions, as by the time the Central Government would have taken a decision in the matter, it would have been too close to 30.09.2015.

18. These are submissions which have been made by the learned counsel across the board. This court has no way of knowing what transpired in court. I can, therefore, only go by the orders of the court. My prima facie impression, based on the orders of the Supreme Court, is that, the deadline, was extended by ten (10) days. This conclusion I have reached for the reason that the Supreme Court, while giving liberty to the petitioners to approach the High Court, was aware, on 08.10.2015, that the cut-off date (i.e. 30.09.2015) had already been crossed.

19. Furthermore, Mr Gupta has also relied upon the Judgement of the Division bench of this court dated 30.09.2015, passed in WP(C) No. 7106/2015, titled: ***Malla Reddy Institute of medical Sciences & Anr. Vs Union of India & Anr.***, whereby directions have been issued by the

Division Bench for academic year 2015-2016, on 30.09.2015. Mr Gupta says that the Division Bench has not only granted two (2) weeks to the Central Government to consider the petitioner's request in that case for a fresh inspection (with a direction to complete the exercise within two weeks), but has also, granted permission to allow provisional admission for academic year 2015-2016.

20. In these circumstances, having regard to the overcall circumstances, I am inclined to issue the following *protem* directions:

(i) The petitioners, pending the disposal of the main petition, are permitted to provisionally admit students for academic year 2015-2016. The admit cards issued to the students will clearly indicate that admissions are provisional and are subject to the final orders in the writ petition. Furthermore, an undertaking will be taken from the students that they shall not claim any equity on the basis of provisional admission granted to them.

(ii) The petitioners shall file an undertaking with this court to the effect that in case the final decision in the writ petition goes against them, they would refund to the students the entire fee collected by them, for grant of provisional admission. The said affidavit will be filed by the petitioners within three (3) days from today.

(iii) Since, according to the counsel for the petitioners, the first counselling is to take place on 11.10.2015, the admission process could conclude only by 14.10.2105. Therefore, this leeway is granted to the petitioners till 14.10.2015.

(iii)(a) I may only note that this arrangement is made in line with the notice issued by the Association of Private Dental and Medical College of Madhya Pradesh, and the order of the Division Bench of the Madhya

Pradesh High Court in a batch of writ petition, in which the lead petition being: WP No. 8810/2015, dated 28.09.2015.

21. Learned counsels for the respondents, at this stage say that they would require at least two (2) weeks' time to file a counter affidavit. The request is acceded to. Rejoinder, if any, be filed before the next date of hearing.

22. List on 18.11.2015.

23. Dasti under the signatures of the Court Master.

RAJIV SHAKDHER, J

OCTOBER 09, 2015

kk