

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 8101 OF 2015**

Smt. Kashibai Navale Medical
College and Hospital,
Sinhgad Technical Education Society,
Survey No. 49/1, Narhe,
Off. Mumbai-Pune Bypass,
Pune- 411 041
Represented through its
Founder President-
Prof. M.N. Navale,
Age-65 years,
Residing at STES, Vadgaon (Bk.),
Pune-411 041

...Petitioner.

Vs.

- 1 Medical Council of India
Through its Chairman,
Pocket 14, Sector 8, Dwarka Phase-1,
New Delhi-110 001.
- 2 The Union of India,
Represented by its Secretary (Health)
Government of India, Ministry
of Health and Family Welfare,
Nirman Bhavan, Maulana Azad Road,
New Delhi-110 011.
- 3 The Principal Secretary,
Medical Education and Drugs
Department, Maharashtra State,
Mantralaya, Mumbai-400 032.
- 4 The Director,

Directorate of Medical Education
and Research Government Dental
College & Hospital Building,
St. George's Hospital Compound,
Near V.T. Mumbai-400 001.

- 5 Maharashtra University of
Health Sciences, Dindori Road,
Mhasrul, Nasik-422 004. ...Respondents.

WITH

WRIT PETITION NO. 8103 OF 2015

Smt. Kashibai Navale Medical
College and Hospital,
Sinhgad Technical Education Society ...Petitioner.
Vs.
Medical Council of India & Ors. ...Respondents.

WITH

WRIT PETITION NO. 8106 OF 2015

Smt. Kashibai Navale Medical
College and Hospital,
Sinhgad Technical Education Society ...Petitioner.
Vs.
Medical Council of India & Ors. ...Respondents.

Mr. Vineet B. Naik, Senior Advocate a/w Mr. Sukand R. Kulkarni for
the Petitioner/s in all the Petitions.
Mr. Ganesh K. Gole a/w Mr. Ritesh Ratnam for Respondent No.1 in all
the Petitions.
Mr. R.A. Rodrigues a/w Mr. N.D. Sharma for the Union of India in all
the matters.
Mr. C.P. Yadav, AGP for the State in all the matters.

**CORAM:- ANOOP V. MOHTA AND
A.A.SAYED, JJ.
DATE:- 18 JANUARY 2016.**

ORAL JUDGMENT (PER ANOOP V. MOHTA, J.):-

Rule. Rule made returnable forthwith.

Heard finally, by consent of the parties.

2 We are inclined to dispose of all these Writ Petitions by passing this common Judgment, based upon the common events and the chart so placed on record. The Petitioner is an established institution and runs various medical courses, based upon the requisite permissions obtained from the State of Maharashtra, Maharashtra University of Health Sciences (MUHS), Medical Council of India (for short, "MCI") and Union of India (UOI), from time to time. This is the second round of litigation by the Petitioner before this Court.

3 The relevant dates/events which are part of the record are similar in all these Petitions. The Petitioner is essentially challenging a common order dated 12th June, 2015 issued by the Post Graduate Committee of Respondent No.1-MCI thereby, recommending

disapproval of the schemes submitted by the Petitioner-College for new courses.

4 The Petitioner-College had applied for starting of new Post-Graduate Courses (for short, “PG Courses”). Certain seats were granted, however, by restricting the number of seats applied.

5 The Petitioner-College had therefore, approached this Court by filing WP Nos. 3707 of 2015 (*and 11 other Petitions*). The main grievance of the Petitioner in those Petitions was that, no hearing as contemplated under first proviso to Section 10(A)(4) of the Indian Medical Council Act, was offered to the Petitioner before refusing to grant the seats as applied, and in some matters, although hearing was given, no order at all was passed or a cryptic order was passed without assigning any reasons. That being the grievance, this Court vide its orders dated 8 May 2015, directed MCI to give an opportunity of hearing to the Petitioner and pass appropriate orders. Considering the urgency and having regard to the fact that the cut-off date for the PG Course was 31 May 2015, this Court directed MCI to comply with the directions on or before 18 May 2015. MCI

challenged the said orders dated 8 May 2015 before the Hon'ble Supreme Court by preferring SLP (C) No. 15084 of 2015 (*and other SLPs*). The Hon'ble Supreme Court on 15 May 2015, declined to interfere with orders dated 8 May 2015 and held that MCI must comply with the orders within 10 days therefrom. Order dated 15 May 2015, passed by the Hon'ble Supreme Court reads thus:-

“ORDER

Taken on Board.

Heard.

The special leave petition is dismissed.

In the facts of the present case, the petitioner-MCI must comply with the direction given by the High Court within ten days after considering the relevant materials that have been provided by the respondents.”

6 Although MCI was required to pass a reasoned order by 26 May 2015, (in terms of orders of this Court dated 8 May 2015 and orders dated 15 May 2015 of the Supreme Court), MCI held its first meeting only on 27 May 2015, and ultimately, the impugned order came to be passed on 12 June 2015 i.e. after the cut-off date of 31 May 2015. According to the Petitioner, it received the order much after 12 June 2015. This order recommends the disapproval of

various new courses as applied by the Petitioner-College. Therefore, the Petitioner has filed the present Petitions.

7 The Petitioner had earlier filed the Petitions under Article 32 before the Supreme Court challenging the orders dated 12 June 2015. However, as per the liberty given by the Hon'ble the Supreme Court, the Petitioner by withdrawing those Petitions on 3 August 2015, filed the present Petitions in this Court on 7 August 2015. As the Supreme Court had directed expeditious hearing of the matter, the Petitions are accordingly heard by this Court.

8 MCI has filed its Affidavit in Reply dated 24 August 2015. On 7 September 2015, the Central Government tendered a Counter Affidavit. To this Counter Affidavit an order dated 4 September 2015 of the Central Government was appended. Since, order dated 4 September 2015 is the final order, time was granted to the Petitioner to amend the Petitions to incorporate challenge to order dated 4 September 2015 of the Central Government also.

9 The particulars of the Applications of Petitioner, Inspection

Report, Assessment order passed by MCI, compliances by the Petitioner, Disapproval, List of Proposed Colleges restricted seats, deficiencies are shown in the chart, which reads as under:-

Sr. No.	Course	WP No.	Application	Inspection Report	Assessment by MCI	Compliance by the Petitioner	Disapproval	List of proposed Colleges	Deficiencies 12-06-2015
1	MS (ENT) 0-5	8101/15	28-04-14	26-09-14 No Def.	14-11-14 Restricting 1	06-12-14	15-01-15 Rep. 6-2-15	13-02-15	Page 225
2	MD (Psychiatry) 0-3	8103/15	28-04-14	26-09-14 No Def.	14-11-14 Restricting 1	06-12-14	15-01-15 Rep. 6-2-15	13-02-15	Page 210
3	MD (General Medicine) 0-11	8106/15	28-04-14	27-09-14 No Def.	05-11-14 Restricting 4	06-12-14	15-01-15 Rep. 6-2-15	13-02-15	Page 310

10 The Petitioner has given justification/answer to the fresh deficiencies so raised in the Petition. It is further stated that earlier deficiencies and compliance reports were already submitted by the Petitioners. It is submitted that the Petitioner has complied with all the deficiencies even after the passing of the impugned order of MCI. Submissions are made accordingly and the matters proceeded from time to time for hearing.

11 The learned Senior Counsel appearing for the Petitioner, after hearing, even submitted draft Minutes of Order dated 12 October 2015, which is filed on record. However, the contesting Respondent-MCI, objected the same on various grounds and accordingly placed on record the written communication dated 14 October 2015 and in

support of the same, placed on record the Judgment of the Hon'ble Supreme Court in Medical Council of India Vs. Al Millat Foundation Trust & Ors.¹, wherein the incomplete Application for one academic year, was not considered for the subsequent academic year. The submission was also made that such inspection and physical assessment process prescribed by the statute, cannot be permitted by the Court, as it is necessary for them to carry out the physical assessment before passing any order of recommendation. The submission was also raised that the last date for grant of permission by the Central Government for the Post-graduate courses for the academic year 2016-17 is 28 February 2016 and the last date for the Post-graduate Committee/Council of MCI to make its recommendation to the Central Government is 31 January 2016. Another submission is also raised that the concerned affiliation is required for the academic year 2016-17, that will be done by the MUHS after making its own inspection/enquiry.

12 The learned Senior Counsel appearing for the Petitioner conceded/submitted to the position that, though the Writ Petitions are

1 2015(9) SCALE 679

filed for the academic year 2015-16 in view of the facts and circumstances and as the Respondent-MCI failed to take timely action within prescribed period though directed by this Court and the Supreme Court, and though they have not been granted relief for the academic year-2015-16 their Applications/Petitions be considered for the next academic year 2016-17 for all the purposes and requested that the Applications be considered accordingly by directing the concerned Respondents to take steps at the earliest and pass appropriate order, so that this year they will not suffer further for want of inaction and delayed action of the concerned Respondents.

13 The Petitions, are pending for final hearing and as the affidavits and materials are placed on record to show that there were no deficiencies earlier and as those new deficiencies, even if any, are stated to be complied with and are required to be checked by the Respondents after taking inspection and making due assessment, as per the law. The issues with regard to the compliances and/or non-compliances of the deficiencies, therefore, need to be adjudicated/assessed by the Respondents at the earliest. Had the decision taken by the Respondents as per the earlier orders of this

Court and the Supreme Court, within time so directed, the Petitioner could have taken steps within the prescribed period and could have applied accordingly for the next academic year 2016-17. The submission on behalf of MCI that the Petitioner ought to have filed the fresh Application by May 2015 for the academic year 2016-17, in our view, is not acceptable in the peculiar facts and circumstances of the present cases. The learned Senior Counsel appearing for the Petitioner has submitted that the Petitioner could not have applied for the academic year 2016-17, because of the pendency of the decision before MCI (pursuant to the directions of this Court and Supreme Court) for the academic year 2015-16 and they were hopeful of being granted reliefs for academic year 2015-16.

14 As stated earlier, despite the orders passed by this Court and the Supreme Court, MCI did not take the decision before 31 May 2015, which was a cut-off date of making an Application, and decision so taken was only some time on 12 June 2015. MCI cannot be heard to say that the Petitioner ought to have made an Application prior to 31 May 2015 for the academic year 2016-17, when their Application for the academic year 2015-16 was yet to be decided by

MCI. MCI cannot be permitted to take advantage of their own wrong in not deciding the Applications in time, as directed. These facts, in our view, are relevant to consider the case of the Petitioner that their Applications so filed within time for the academic year 2015-16 be considered, now for the year 2016-17. We are informed that the Petitioner has expended about Rs. 40 lacs in making the Applications and has also furnished Bank Guarantee to the extent of Rs.80 lacs. It is submitted on behalf of the Petitioner that all the infrastructure is in place in respect of which they have incurred huge expenses and the deficiencies are complied with. Therefore, to avoid further delay, we are inclined to direct that the Application filed by the Petitioner for academic year 2015-16, be considered by the Respondents for academic year 2016-17, in accordance with law, at the earliest.

15 The Judgment of the Supreme Court in Al Millat Foundation Trust (Supra), in view of above stated facts, would not be applicable in the present case. We decline to grant the reliefs for year 2015-16, but are inclined to direct the Respondents to consider the Applications for the next academic year 2016-17. The Petitioner should not be made to suffer because of delayed action of the

Respondents and pendency of the matters in the Court. In the present case, as noted, the Applications were made within time for the year 2015-16 and it is also submitted that the deficiencies are complied with and that there were no serious deficiencies. It is also submitted with some vehemence that fresh deficiencies have been pointed out in the impugned order of MCI, which were not pointed out in the earlier orders and the Petitioner had no opportunity to deal with the same. The Respondents' delay in not taking action and not taking decision within the time prescribed for the academic year 2015-16, despite the orders passed by this Court and the Supreme Court, just cannot be the reason and/or ground for the Respondents not to treat the said Applications for the academic year 2015-16, for the academic year 2016-17. The Hon'ble Supreme Court, in some matters have directed the Respondents to consider the Applications for the next academic year.

16 As we have already recorded, the request to treat these Applications for the academic year 2016-17, therefore, cannot be denied. The Respondents to consider the same in accordance with law by following due procedure and by giving opportunity to the

Petitioner.

17 In view of the Supreme Court's Judgment cited by the learned counsel appearing for the Respondents-MCI, there is no question of considering the case of the Petitioner for the academic year 2015-16, by this Court, at this belated stage. However, in view of the specific order passed by the Supreme Court in these matters and in the interest of justice, by keeping all points open, we are inclined to pass the order of treating the Applications for the year 2015-16 so filed and in view of the pendency of these Petitions, as the Applications for the year 2016-17 and also for the reason that in view of the pendency of the decision by MCI for the year 2015-16, even on the cut off date, the Petitioner could not have been expected to apply as per the prescribed period in the May 2015 for the year 2016-17.

18 The MUHS is also directed to consider the Applications of the Petitioner for affiliation, for the year 2016-17, uninfluenced by the impugned orders of MCI/Central Government, if required, as for earlier year the affiliation was granted. Timely decision, at least for this academic year 2016-17 is expected from the Respondents. There

is no force in the submission of the Respondents that the Petitioner is entitled for reliefs, if any, for the academic year 2017-18 only.

19 In the circumstances, we pass the following order:-

ORDER

- a) MCI to consider the Applications already filed by the Petitioner for the respective new courses for the academic year 2015-16, by treating it as Applications for the academic year 2016-17 and after taking necessary inspection, decide the same in accordance with law, uninfluenced by orders dated 12 June 2015 and 4 September 2015, within three weeks from today. The Central Government to take final decision on or before 28 February 2016, in accordance with law.

- b) Respondent No. 5-MUHS to consider the Application/s of affiliation filed by the Petitioner for the academic year 2016-17 expeditiously and

uninfluenced by orders dated 12 June 2015 and 4 September 2015, in accordance with law.

- c) Rule made absolute in all the Petitions in the above terms, accordingly.
- d) There shall be no order as to costs.

The parties to act on the basis of an authenticated copy of this Judgment/Order.

(A.A.SAYED, J.)

(ANOOP V. MOHTA, J.)