

CWP No.6348 of 2016 (O&M)

[1]

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.6348 of 2016 (O&M)
Date of decision:07.04.2016**

The Chintpurni Medical College

...Petitioner

Versus

Union of India and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Rajiv Atma Ram, Senior Advocate, with
Mr. Arjun Pratap Atma Ram, Advocate, for the petitioner.

Rakesh Kumar Jain, J. (Oral)

The present litigation has a chequered history. It was initiated by some students of the Chintpurni Medical College, Pathankot, by filing CWP No.2028 of 2014 titled as “**Ms. Jagat Deep Kaur and others vs. State of Punjab and others**”, which was decided by a Single Bench of this Court on 16.09.2014, directing the State Government to secure the data as regards the recommendations of the Medical Council of India (hereinafter referred to as the “MCI”), the stand of the college for the existing batch of 4th year students and its own report, which shall be forwarded to the Central Government within a period of eight weeks. The Central Government was directed to take appropriate decision and to take further course of action which shall be dependent upon the outcome of the Central Government's decision in the light of the reports received by it. The exercise was to be completed within a period of 12 weeks.

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Undisputedly, the order dated 16.09.2014 became final. Thereafter, the COCP No.173 of 2015 titled as “**Sonal Gaur and another vs. Hussan Lal and others**” was filed for implementation of the order dated 16.09.2014. On 29.01.2016, the following order was passed by this Court in the contempt petition:-

“Repeated time has been sought by MCI. In the instant matter which is likely to impact the lives and careers of the students. No positive decision has been brought to the notice of the Court despite time being granted on several occasions. MCI cannot be permitted to take such matters so lightly. However, purely in the interest of justice, last opportunity is granted to MCI, subject to payment of Rs.1 lac as costs, which shall be deposited before the Mediation and Conciliation Centre of this Court well before the date fixed.

List again on 15.2.2016.”

After imposition of cost, the MCI filed an application bearing CM No.3655-CII of 2016 with a prayer that the order regarding imposition of cost may be recalled. That application was dismissed and further an order was passed in the contempt petition on 15.02.2016, which is reproduced as under:-

“C.M. No.3656 of 2016

Allowed as prayed for.

C.M. No.3655-CII of 2016

One of the prayers made in this application is for the waiver of the costs of Rs.1 lac imposed vide order dated 29.1.2016. The Court may give in detail the reasons as to why these costs were imposed on the Medical Council of India and also the reason as to why it cannot be waived of.

This matter has been pending for some time. The dispute which has been raised broadly in the petition pertains to the career of a number of students who were granted admission in the

Chintpurni Medical College, Pathankot. Facts as briefly set out, are that 150 students were admitted for the session 2011-2012 (hereinafter referred to as the Ist Batch). The Medical Council of India through its functionaries had inspected the College to ascertain the infrastructure and its eligibility to admit the students. No issue was raised regarding admission of the Ist batch, but for the subsequent years, however, permission was not granted by the Medical Council of India as it noticed numerous deficiencies in the College in the academic years 2012-2013. An attempt was made to admit the 4th batch. The Medical Council of India once again denied permission as it had done in the previous years as well. It is pertinent to note here that after the denial of the permission for the years 2012-13, the College had filed C.W.P. No.12368 of 2012 where directions were given to the Medical Council of India, to once again carry out inspection to ascertain the deficiencies particularly in the wake of the assertion of the college that no such deficiency existed and the fact that the college was complying with the norms in all respects. The matter was carried in an appeal before the L.P.A. Bench which re-affirmed the orders of the learned Single Judge and directions were given to the Medical Council of India to ascertain the deficiencies. The College made another application for admitting the batch of 2014-15, but deficiencies were once again pointed out by the Medical Council of India on 24.4.2014 and no permission was granted. The College then went up in a petition before the Delhi High Court questioning the decision of the Medical Council of India declining permission to them for the batch of 2015-16. The Delhi High Court declined to interfere and even passed serious remarks against the College. The matter was taken up before the Hon'ble Supreme Court where permission was granted to the College to admit students for the year 2014-15 subject to the inspection and furnishing of bank guarantee of Rs.9.5 crores. The relevant portion of the said order may be extracted here below :-

“Looking at the peculiar facts of the case and the circumstances stated hereinabove, we direct the petitioners to file undertakings by President/Chairman and Secretary of the petitioner's institutions running medical colleges within

10 days from today, to the effect that there is no defect in the medical colleges run by them and they would also state that their deposit with the MCI, which is around Rs.10 crores, be forfeited by way of penalty if the statement made in the undertaking is found to be incorrect at the time of the next inspection. A draft undertaking has been given to this Court. A copy of the undertaking, which might be filed by the institutions, shall be served upon the office of the Medical Council of India as well as to the Ministry of Health and Family Welfare, Govt. of India, New Delhi.

We also record the fact that in the recent past, the Medical Council of India has renewed recognition of Government Medical Colleges on the basis of undertakings and therefore, we see no reason not to permit the private colleges to admit students on the basis of undertakings given by their office bearer as a special case.

Notwithstanding any direction given in the case of Priya Gupta (supra), if undertaking as stated hereinabove are filed by the institutions managing medical colleges for the academic year 2014-15, admissions shall be given to the students from the merit list prepared by the States and they shall be charged fees prescribed by the Government Medical Colleges of their respective States. The State Authorities, i.e. the Directorate of Medical Education & Research, of the respective States shall send students, in order of their merit, to the medical colleges run by the petitioners, which are situated within their States, within one week from the date of receipt of a copy of this order and the said students shall be admitted to the MBBS Course in accordance with the rules and regulations of the MCI and also regulations dated 16.4.2010 framed by the Medical Council of India, provided undertakings as mentioned above are filed on behalf of the concerned institutions.

It is also clarified that there would be no further counseling in respect of the students who are to be given admission, even if it might result into some heart burning among other students, but in the peculiar facts of the case,

we given this direction.

In no case, the admission shall be given after 30 th September, 2014. This order shall also apply to all the institutions which had filed their petitions earlier for renewal of their recognition for the academic year 2014-15, but their petitions were rejected or withdrawn for whatever reason, provided undertaking as stated hereinabove are filed by the President/Chairman and the Secretary of those institutions. All those petitions shall be deemed to have been revived and this order shall be deemed to have been passed in those cases also. This order shall only be in respect of renewal of recognition and not for creation of additional seats or for new colleges.

We also record that the Union of India has supported the petitioners in the interest of students. We also direct the Union of India to give wide publicity to this order in print as well as electronic media in the interest of the concerned students.

It is directed that the list of students getting admission in pursuance of this order shall be placed on record of this Court by Ist October, 2014 by the concerned institutions and a copy thereof shall also be sent to the MCI.

These matters shall be treated as part-heard and shall be notified for further hearing in the month of December, 2014.”

It is not in dispute that the students were indeed admitted to the College.

The petitioners have filed this contempt petition alleging violation of the order passed in C.W.P. No.2028 of 2014 which directions may also be extracted here below :-

“VII. The way forward

13. However, if there arises a situation that even for the existing batch of students, the college cannot continue, it should be left to the authorities to decide the issue in the manner which is contemplated under the regulations. Even while disposing of the petition seeking for transfer of the students, I would direct the State Government to undertake

a communication with the Central Government by forwarding the recommendations of the MCI and gather its own details and share the information of the Central Government with its own recommendations. The Central Government has an important role to play in the matter of permission for establishment of a new college and new course of study under Section 10A. In this case, after establishment of the college, if facilities have floundered and the Medical Council of India also recommends that it will not possible to allow for the students to carry on with the course, then the Central Government will take an appropriate decision on the information secured from the State Government and the Medical Council of India and grant such permission to the State Government setting out the manner of how the State could take over the responsibility on behalf of the students. The State will decide from its own sources as well as from the information furnished by the MCI whether it will take over the college and run the course or transfer the students and ensure that no rules by the existing colleges are breached as regards their own intake capacity. The mandate shall therefore be : State Government will secure the data as regards the recommendations of the Medical Council of India, the stand of the collage for the existing batch of the 4th year students and make its own report and forward the same to the Central Government within a period of eight weeks. The Central Government will take appropriate decision and the further course of action will depend on the outcome of the Central Government's decision in the light of the reports received by it. I am unable to set any time limit for the Central Government since it is not made a party but the State Government may impress upon the urgency involved for such a decision and help complete the whole exercise within 12 weeks. VIII. Parting thoughts for students and college.”

Notice was issued in these proceedings and a number of orders were passed. During the course of proceedings, the Court

concerned with the career of the students involved, questioned the State as to whether these students who had been admitted, could be shifted in government colleges elsewhere in the State particularly when the petitioners relied upon Annexure P-2, a letter written by the Vice Chancellor of the Baba Farid University of Health Sciences suggesting that keeping in view the studies of the students, they may be distributed to other colleges after adopting due procedure, i.e. taking permission from the Government of Punjab and the Medical Council of India/Government of India. For the purpose of reference, the relevant portion of the said letter is extracted here below :

“The first batch admitted in the college in the year 2011 has reached the final professional course due to the fact that there are no admissions in the college after the year 2011 and there is a gap of three years, the college is grossly deficient of teaching of students. There is very insufficient faculty to teach the very important subjects like EYE, ENT, pediatric, SPM, medicine and surgery. There is also acute shortage of clinical material, hardly any indoor admission and no obst. And Gynae work.

In view of the above and keeping in view the study and training of the students studying in the college it is suggested that students must be distributed in other colleges after adopting the due procedure i.e. University needs the permission of Govt. of Punjab and Medical Council of India/Government of India.”

The State Government then wrote to the Medical Council of India on 31.8.2015 giving particulars and the names of the colleges where the students could be adjusted. The relevant extract of the chart as given, may be extracted here below :-

Sr.No.	Name of Institute	Intake Capacity (2015)	No. of students going to appear in final year exam.	No. of students proposed to be shifted.
1.	Govt.Medical College, Patiala.	200	153	26
2.	Govt.Medical College, Amritsar	150	155	26
3.	Guru Govind Singh Medical College,	100	53	15

	Faridkot.			
4.	Christian Medical College and Hospital, Ludhiana.	75	78	10
5.	Dayanand Medical College and Hospital, Ludhiana.	70	70	10
6.	Gian Sagar Medical College Ramnagar Banur, Distt.Patiala.	100	100	18
7.	Sri Guru Ramdas Institute of Medical Sciences, Amritsar.	150	104	18
8.	Adesh Institute of Medical Sciences, Bhatinda.	150	147	18

Along with the aforesaid chart, names of the students who had to be adjusted in terms of the aforesaid, were also given.

While taking this document on record, this Court passed an order dated 3.9.2015 asking the Medical Council of India to take a decision in this regard before the next date of hearing. The case was then adjourned to 14.9.2015, 29.9.2015, 13.10.2015, 21.10.2015, 29.1.2016 and on 29.1.2016, this Court recorded its displeasure as the Medical Council of India failed to give any information to the Court in this regard inviting an order imposing costs of Rs.1 lac upon it. It is then that the present application has been filed seeking recall of this order as also trying to justify the fact that the Medical Council of India is not involved in the issue at all and the mandate of the Writ Court was only to the State Government and not the Medical Council of India, so as to warrant imposition of costs by this Court. A prayer has been made specifically that the stand of the Medical Council of India was also on record of the proceedings and hence no fresh response was required.

After consideration of the submissions made by the learned counsel for the Medical Council of India seeking recall of the order dated 29.1.2016, I am of the opinion that there will be no occasion to waive of the costs keeping in view the fact that the Medical Council of India failed to respond to the communication of the State dated 31.8.2015 which was specifically put to them vide this Court's order dated 3.9.2015 and repeated opportunities were given to it to come out with a clear stand.

The Medical Council of India was very well within its rights to assert that it is not competent to accede to the request/suggestions made by the State Government, but under no circumstances it can be permitted to hold up the Court proceedings which it had done since 3.9.2015 till today. It is only after imposition of costs that the Medical Council of India has cared even to file a specific response to the queries of the Court and that too, with a prayer that the costs be waived of.

Finding no justification in the Medical Council of India holding up the Court process for such an inordinate long period on an issue which pertains to the career of the students, I find absolutely no reason to waive of the costs and recall the order dated 29.1.2016. The prayer is rejected.

C.M. No.3655-CII of 2016 is dismissed.

C.O.C.P. No.173 of 2015

All the decisions that the Medical Council of India has referred to, pertain to the erstwhile suggestions given by the State which at best, can be termed to be vague considering that a general proposal was submitted to the Medical Council of India for shifting the students in principle. At no point of time, the State ever came out with specific proposal giving out the names of the colleges where the students can be accommodated in other colleges of the State.

Whether a decision has to be taken by the Medical Council of India or at the level of the Central Government, the decision ought to have been taken and Court informed appropriately but the students cannot be left in a lurch.

Confronted with the situation, learned counsel for the Medical Council of India states that they would respond positively to the suggestion made by the State vide its letter dated 31.8.2015 within three weeks. It will be the duty of the Medical Council of India to take up this issue with the Central Government as well and take a conscious decision in this regard.

List for further proceedings on 10.3.2016.”

Admittedly, the MCI challenged the order dated 29.01.2016, by which cost of ₹1 lac was imposed upon it well as the order dated 15.02.2016

by which their application was dismissed, by way of SLP (C) No.6832-33/2016 which was dismissed on 10.03.2016 by the Apex Court.

Thereafter, three orders dated 15.03.2016, 18.03.2016 and 28.03.2016 were passed by the MCI, Government of India and the State of Punjab respectively. All the aforesaid three orders are reproduced as under:-

“MEDICAL COUNCIL OF INDIA

No. MCI-34(41)/2015-Med./175206

Dated:15.03.2016

The Secretary,
Govt. of India,
Ministry of Health & F.W.,
Nirman Bhawan,
New Delhi.

Sub: Sonal Gaur and others V/s. Husun Lal and others/
Contempt Case in the Hon'ble High Court of Punjab &
Haryana-COCP No. 173 of 2015) – Regarding shifting of
MBBS first batch's (2011) students from Chintpurni
Medical College, Pathankot, Punjab.

Sir,

I am directed to inform you that the Council office had received a letter dated 31/08/2015 from the Director, Directorate of Medical Education and Research, Punjab stating therein as under:-

“The Hon'ble Court has ordered the State Government to send a proposal of shifting the students from Chintpurni Medical College to other recognized Medical Colleges of the State clearly mentioning name of student and name of the Institute to which the student is proposed to be shifted to Medical Council of India within one week. Kindly grant permission to shift MBBS (2011 Batch) students and approval of additional intake capacity to various Medical Colleges as mentioned below:

S.No	Name of Institution	Intake Capacity (2015)	No. of students going to appear in Final year Exam	No. of students proposed to be shifted
1	Govt. Medical College, Patiala	200	153	26

2	Govt. Medical College,Amritsar	150	155	26
3	Guru Gobind Singh Medical College, Faridkot	100	53	15
4	Christian Medical College and Hospital, Ludhiana	75	78	10
5	Dayanand Medical College and Hospital, Ludhiana	70	70	10
6	Gian Sagar Medical College, Ramnagar Banur, Dist. Patiala	100	100	18
7	Sri Guru Ramdas Institute of Medical Sciences, Amritsar	150	104	18
8	Adesh Institute of Medical Sciences, Bathinda	150	147	18

In perusal of above orders the required proposal to shift MBBS first batch (2011) students from Chintpurni Medical College to other recognized Medical Colleges of the State is as under:-

Sr. No.	Roll No	Regd. No.	Name	F. Name	M. Name	College Name
1	13441501	2011-CPM/P-006	AMANDEEP KAUR	RUPINDER JIT SINGH	GURPREET KAUR	GMC PATIALA
2 to 140		xxx	xxx	xxx	xxx	xxx
141	13441644		LALIT SACHDEVA	VINOD KUMAR	NIRMALA SACHDEVA	Adesh Medical College, Bathinda

Thereafter, the Hon'ble High Court of Pb. & Haryana at Chandigarh in COCP No. 173/2015 filed by Sonal Gaur and Anr. has passed orders in the matter. The operative part of the order dated 15.02.2016 passed by the Hon'ble High Court of Punjab & Haryana at Chandigarh in COCP No. 173/2015 reads as under:-

“...Along with the aforesaid chart, names of the students who had to be adjusted in terms of the aforesaid, were also given.

While taking this document on record, this Court passed an order dated 3.9.2015 asking the Medical Council of India to take a decision in this regard before the next date of hearing. The case was then adjourned to 14.9.2015, 29.9.2015, 13.10.2015, 21.10.2015, 29.1.2016 and on 29.1.2016, this Court recorded its displeasure as the

Medical Council of India failed to give any information to the Court in this regard inviting an order imposing costs of Rs. 1 lac upon it. It is then that the present application has been filed seeking recall of this order as also trying to justify the fact that the Medical Council of India is not involved in the issue at all and the mandate of the Writ Court was only to the State Government and not the Medical Council of India, so as to warrant imposition of costs by this Court. A prayer has been made specifically that the stand of the Medical Council of India was also on record of the proceedings and hence no fresh response was required.

After consideration of the submissions made by the learned counsel for the Medical Council of India seeking recall of the order dated 29.1.2016, I am of the opinion that there will be no occasion to waive of the costs keeping in view the fact that the Medical Council of India failed to respond to the communication of the State dated 31.8.2015 which was specifically put to them vide this Court's order dated 3.9.2015 and repeated opportunities were given to it to come out with a clear stand.

The Medical Council of India was very well within its right to assert that it is not competent to accede to the request/suggestions made by the State Government, but under no circumstances it can be permitted to hold up the Court proceedings which it had done since 3.9.2015 till today. It is only after imposition of costs that the Medical Council of India has cared even to file a specific response to the queries of the Court and that too, with a prayer that the costs be waived of.

Finding no justification in the Medical Council of India holding up the Court process for such an inordinate long period on an issue which pertains to the career of the students, I find absolutely no reason to waive of the costs and recall the order dated 29.1.2016. The prayer is rejected.

C.M. No.3655-CII of 2016 is dismissed.

C.O.C.P. No.173 of 2015

All the decisions that the Medical Council of India has referred to, pertain to the erstwhile suggestions given by the State which at best, can be termed to be vague considering that a general proposal was submitted to the Medical Council of India for shifting the students in principle. At no point of time, the State ever came out with specific proposal giving out the names of the colleges where the students can be accommodated in other colleges of the State.

Whether a decision has to be taken by the Medical Council of India or at the level of the Central Government, the decision ought to have been taken and Court informed appropriately but the students cannot be left in a lurch.

Confronted with the situation, learned counsel for the Medical Council of India states that they would respond positively to the suggestion made by the State vide its letter

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dated 31.8.2015 within three weeks. It will be the duty of the Medical Council of India to take up this issue with the Central Government as well and take a conscious decision in this regard.

List for further proceedings on 10.3.2016. “

A copy of the order dated 15.02.2016 passed by the Hon'ble High Court of Pb. & Haryana at Chandigarh is enclosed.

Aggrieved by the above order of the Hon'ble High Court, the MCI filed an SLP(C) No. 6832-33/2016 before the Hon'ble Supreme Court. The Hon'ble Supreme Court vide its order dated 10.03.2016 has dismissed the said SLP of the MCI and has passed the following order:-

“We are not inclined to interfere with the order passed by the High Court. However, learned Additional Solicitor General requests for one week's time to comply with the order of the High Court.

The special leave petitions are dismissed and one week time is granted to comply with the order of the High Court.

We request the High Court to take up the matters immediately after one week.”

A copy of the order dated 10.03.2016 passed by the Hon'ble Supreme Court is enclosed.

In pursuance of the Order dated 15.02.2016 passed by the Hon'ble High Court of Punjab and Haryana at Chandigarh in COCP No. 173 of 2015 and Order dated 10.03.2016 passed by the Hon'ble Supreme Court in SLP © No. 6832-33/2016, the matter alongwith letter/ proposal dated 31/08/2015 received from the Director, Directorate of Medical Education & Research, Punjab with regard to shifting of MBBS first batch (2011) students from Chintpurni Medical College, Pathankot Punjab to other Medical Colleges in Punjab was forwarded to the members of the Executive Committee through circulation on 12/03/2016 and the decision of the members of the Executive Committee is as under:-

“The members of the Executive Committee of the Council considered the letter/ proposal dated 31/08/2015 received from the Director, Directorate of Medical Education & Research Punjab with regard to shifting of MBBS first batch (2011) students from Chintpurni Medical College, Pathankot, Punjab to other Medical Colleges in Punjab in pursuance of the Order dated 15/02/2016 passed by the Hon'ble High Court of Punjab and Haryana at Chandigarh in COCP No. 173 of 2015 and Order dated 10/03/2016 passed by the Hon'ble Supreme Court in SLP © No. 6832-6833/2016 and decided to accept the proposal of the State Govt. for shifting of MBBS first batch (2011) students from Chintpurni Medical College, Pathankot, Punjab to other Medical Colleges in Punjab.”

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In view of the above, you are requested to allow the State Govt. of Punjab to shift the students of 2011-12 batch to other Medical Colleges of the State of Punjab as per letter dated 31.08.2015 of the Govt. of Punjab (copy enclosed).

Yours faithfully,

Sd/- (In Eng.)
(Dr. Reema Nayyar)
Secretary I/c.

Encl: As above.

Endst. No.34(41)/2015-Med.175207

Dated:15.03.2016

Copy forwarded for information to the Director, Directorate of Medical, Education & Research, Sikhya Bhawan, E Block, 7th Floor, Punjab School Education Board's Building SAS Nagar – 160062 (Punjab).

Sd/- (In Eng.)
(Dr. Reema Nayyar)
Secretary I/c.”

“SPEED POST

No. U-12012/120/2015-ME-I
Government of India
Ministry of Health & Family Welfare
(Department of Health & Family Welfare)

Nirman Bhawan, New Delhi-110011
Dated the 18th March, 2016

To

The Director,
Directorate of Medical Education and Research,
Govt. of Punjab,
Sikhya Bhawan, E-Block, 7th Floor,
Punjab School Education Board's Building,
SAS Nagar-160062.

Subject: Shifting of 141 MBBS Students of first batch (2011-12) from Chintpurni Medical College, Pathankot, Punjab to other recognized Medical Colleges of Punjab State-Approval of Central Government-Regarding.

Sir/Madam,

I am directed to say that the Medical Council of India vide their letter No.34(41)/2015-Med./175206 dated 15.3.2016 recommended that the State Government of Punjab may

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be allowed to shift 141 MBBS students of 2011-12 batch from Chintpurni Medical College, Pathankot, Punjab to other Medical Colleges of the State of Punjab as proposed by the State Government of Punjab vide their letter No. Admission/2015/15520 dated 31.08.2015. A copy of MCI's letter dated 15.03.2016 is enclosed.

2. After considering the recommendation of MCI, approval of the Central Government is hereby conveyed for shifting 141 MBBS students of 2011-12 batch from Chintpurni Medical College, Pathankot, Punjab to other Medical Colleges of the State of Punjab as proposed by the State Government of Punjab vide their aforementioned letter dated 31.08.2015.

Sd/- (In Eng.)
(D.V.K. Rao)
Under Secretary to the
Govt. of India
Telefax: 011-23062959.

Copy to: The Secretary, Medical Council of India, Pocket-14, Sector-8, Dwarka, New Delhi.”

“Minutes of the meeting held on 28.03.2016 (Monday) at 10.00 a.m. in Committee Room, Punjab Health System Corporation, Phase VI, Mohali regarding Shifting of 141 MBBS students of 1st Batch (2011-2012) from Chintpurni Medical College, Pathankot, Punjab to other recognized Medical Colleges of State of Punjab in compliance to orders of Hon'ble Punjab & Haryana High Court, Chandigarh in COCP No. 173 of 2015.

The following were present in the meeting:

- | | | |
|-----|---|-------------|
| 1. | Dr. Manjit Kaur Mohi, Director
Medical Education & Research, Punjab,
Chandigarh | Chairperson |
| 2. | Dr. Raj Bahadur, Vice Chancellor, BFUHS,
Faridkot | Member |
| 3. | Dr. D.S. Sidhu, Registrar, BFUHS, Faridkot | Member |
| 4. | Dr. B.S. Bal, Principal, GMC, Amritsar | Member |
| 5. | Dr. K.D. Singh, Principal, GMC, Patiala | Member |
| 6. | Dr. Rajeev Sharma, Representative,
GGSMC, Faridkot | Member |
| 7. | Dr. Sandeep Kaushal, Representative,
DMC, Ludhiana | Member |
| 8. | Dr. Bobby John, Principal, CMC, Ludhiana | Member |
| 9. | Dr. Geeta Sharma, Director-Principal,
SGRD Medical College, Amritsar. | Member |
| 10. | Dr. Krishan Vij, Principal,
Gian Sagar Medical College, Banur. | Member |

11. Dr. Harkiran Khaira, Principal, Member
AIMS, Bathinda

The Principal, Chintpurni Medical College, Pathankot did not attend the meeting. He has sent his letter of regret for not attending the meeting.

The Chairperson apprised the Hon'ble Members that in compliance to orders of Hon'ble Punjab and Haryana High Court, Chandigarh in COCP No. 173 of 2015 titled Sonal Gaur and others Vs. Hussan Lal and others, the students of 141 MBBS 1st batch (2011) are to be shifted from Chintpurni Medical College, Pathankot to other recognized Medical Colleges in the State of Punjab. The Hon'ble Court has directed to file the compliance report on next date of hearing i.e. 28.03.2016.

The Punjab Government has written to Medical Council of India vide letter No. Admission/2015/15520 dated 31.08.2015 for the shifting of these students to other recognized Medical Colleges of the State.

After considering the recommendations of Medical Council of India, approval of Government of India, Ministry of Health & Family Welfare was conveyed to Directorate of Medical Education & Research, Govt. of Punjab vide letter dated 18.03.2016 for shifting 141 MBBS students of batch 2011-2012 to other Medical Colleges of Punjab.

Following points were discussed in the meeting: -

1. The Secretary, Medical Education & Research has already written a letter to MCI that Endowment Fund of Rs. 10 Cr. should be transferred to the Government of Punjab. This amount will be utilized for the purpose of fee and other expenses for education and training of the shifted students.
2. All the students/interns shall be shifted as per list dated 31.08.2015.
3. The colleges are unable to provide the hostel facilities to the shifted students as all have facility adequate for their students only. All shifted students should stay and attend the College and Hospital at their own expenses.
4. The college will get fee for these undergraduates as per the terms of the prospectus (as applicable) to respective colleges from endowment fund.
5. All students (for internship) should follow the migration procedure as laid down by the BFUHS.
6. Institutes will not provide the stipend to the shifted interns unless college get endowment fund.
7. The University will issue a certificate whenever required about experience (training, posting etc.) of student.
8. All the data of students (attendance, Duty roster, posting etc.) should be shifted to BFUHS.
9. Infrastructure and staff including faculty are adequate at all college (except Gian Sagar Medical College, Ram

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Nagar, Banur – to submit the same shortly)

After deliberate discussion: It was RESOLVED to shift the 141 MBBS students of 1st batch 2011-2012 from Chintpurni Medical College, Pathankot to other recognized Medical Colleges in the State of Punjab as conveyed by Medical Council of India vide letter No. MCI-34(41)/2015-Med/175206 dated 15.3.2016.

All these shifted students will report to their respective colleges as mentioned against their names by First April 2016 (list attached)

The meeting ended with vote of thanks.”

The petitioner then filed SLP(CC) No.5976 of 2016 to challenge the order dated 15.02.2016 passed by this Court in COCP No.173 of 2015 as the main prayer and the orders dated 15.03.2016 and 18.03.2016 passed by the MCI and the Government of India respectively as the ancillary prayer.

The SLP came up for hearing on 21.03.2016, in which the following order was passed by the Supreme Court:-

“Permission to file SLP is granted.

The learned senior counsel appearing for the petitioner seeks permission to withdraw this petition, so as to approach the Punjab & Haryana High Court for ventilating grievances of the petitioner. It has been further submitted that the petitioner will file a petition tomorrow, i.e., on 1st April, 2016 so that it can be circulated on 4th April, 2016.

Without examining the merits of the case, we permit the petitioner to withdraw this petition. The special leave petition is disposed of as withdrawn.

Till 4th April, 2016, no action will be taken in pursuance of the impugned order.”

The petitioner has then filed the present writ petition which was listed for preliminary hearing on 04.04.2016 and the following order was passed on that date:-

“CM No.4184 of 2016

CWP No.6348 of 2016 (O&M)

[18]

Allowed as prayed for.

CM No. 4185 of 2016

This application is filed for placing on record the attached documents with the additional affidavit.

Application is allowed.

Additional affidavit along with attached documents are taken on record.

CWP No. 6348 of 2016

Arguments heard in part.

For further hearing, adjourned to 6.04.2016.

Till then, no action would be taken in pursuance of the impugned order.”

On 06.04.2016, inadvertently presence of the respondents has been marked though notice of motion has not been issued so far in this petition. However, the following order was passed on 06.04.2016:-

“On the joint request of learned counsel for the parties, adjourned to 07.04.2016.

To be taken up at 2.00 P.M.

Till then, interim order to continue.”

At the outset, counsel for the petitioner has been asked as to how the writ petition is maintainable against the orders dated 15.03.2016, 18.03.2016 and 28.03.2016 passed by the MCI, Government of India and the State of Punjab respectively if these orders are the result of the order dated 15.02.2016 passed by a Coordinate Bench of this Court, though in the contempt jurisdiction.

Learned counsel for the petitioner has submitted that all these three orders are independent orders and are not the consequence of the order dated 15.02.2016 and rather the impugned orders are the misreading of the order dated 15.02.2016 passed in the contempt petition, therefore, the SLP

was withdrawn by the petitioner from the Supreme Court for the purpose of challenging these orders before this Court.

I have heard learned counsel for the parties and examined the available record.

There is no dispute that the decision in **Ms. Jagat Deep Kaur's case (supra)** has already become final and the directions contained therein have to be meticulously complied with. Since there was non-compliance, therefore, the contempt petition was filed by Sonal Gaur and another in which, because of the laxity on the part of the MCI in implementing the order, cost of ₹1 lac was imposed on 29.01.2016 and their application for recalling the order, imposing the cost, was dismissed on 15.02.2016 and a separate order was passed in the contempt petition as well. That order became the bedrock for the impugned orders for the purpose of shifting all the students from the petitioner-college to various other colleges and as a result thereof, the petitioner challenged the order dated 15.02.2016 primarily before the Apex Court in SLP (CC) No.5976 of 2016 along with ancillary orders, which have been impugned in the present petition.

The petitioner, for the reasons best known to them, withdrew the SLP to approach this Court by way of the present writ petition.

It is submitted by counsel for the petitioner that he could not have challenged the order dated 15.02.2016 by way of an appeal under Section 19 of the Contempt of Courts Act, 1971 as it could have been challenged only by way of SLP before the Supreme Court but the same has been withdrawn and in the present petition, the said order dated 15.02.2016

CWP No.6348 of 2016 (O&M)

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has not been challenged.

It is for the petitioner to imagine as to which order they would like to challenge before this Court but the fact remains that all the three orders, impugned in the present petition, have been passed pursuant to the order dated 15.02.2016 and this Court cannot set aside the order passed by the Coordinate Bench of this Court in the writ jurisdiction as the only remedy lies with the petitioner is to take the matter to the higher Court.

Consequently, in my considered opinion, the present petition is not maintainable until and unless the order dated 15.02.2016 is assailed by the petitioner along with the other three orders which are impugned herein because the impugned orders have been passed specifically in view of the order dated 15.02.2016, may be under the threat of the contempt, as alleged.

Thus, in view of the aforesaid discussion, the present writ petition is dismissed being not maintainable. However, the petitioner, if so advised, may avail its other remedy in accordance with law.

At this stage, counsel for the petitioner has submitted that they may avail their other remedy shortly and may be protected for some time.

In view of the earnest request made by counsel for the petitioner, it is ordered that the order dated 18.03.2016 passed by the Government of India shall not be given effect to till 12.04.2016.

A copy of this order be given to the learned counsel for the petitioner under signatures of Special Secretary attached to this Bench.

April 07, 2016
vinod*

(Rakesh Kumar Jain)
Judge