

RA-CW No.239 of 2016, CM No.9361-CWP of 2016
CM Nos.10706-07-CWP of 2016 in
CWP No.7348 of 2016

Aakansha Mahajan and others

Versus

Union of India and others

Present: Mr. Arjun Partap Atma Ram, Advocate
for review petitioner-respondent No.6.

Mr. M.L. Saggar, Sr. Advocate with
Mr. Armaan Saggar, Advocate for the petitioners.

Mr. Abhay Sharma, Advocate for
Mr. Manish Dadwal, Advocate for respondent No.1.

Mr. P.S. Mattewal, Addl. AG, Punjab
for respondent No.2.

Ms. Shivangi Sharma, Advocate
for respondent No.3-MCI.

[1]. Writ petition was filed on 21.04.2016 which came up for hearing before this Court on 22.04.2016. Notice of motion was issued. On the asking of the Court, learned counsel for respondents No.1 to 6 accepted notices and prayed for time to file their respective replies. Case was adjourned to 26.04.2016. From 26.04.2016, writ petition was adjourned to 28.04.2016 and then to 03.05.2016 on request. It was ordered to be shown in urgent list.

[2]. Thereafter, on request of both the parties, writ petition was further adjourned to 05.05.2016. From 05.05.2016, it was adjourned for a day i.e. 06.05.2016 on request of the parties. On 06.05.2016, the case was further adjourned to 12.05.2016 and

then to 26.05.2016 on request of learned counsel for the respondents. Replies were not filed and thereafter, the case was further adjourned to 07.06.2016 i.e. during vacation.

[3]. Perusal of orders from the date of issuance of notice on 22.04.2016 till 26.05.2016 reveals that the case was being adjourned for very short intervals keeping in view the urgency involved in the writ petition. Replies were not filed even on 07.06.2016. Keeping in view the attending circumstances which were noticed on record, the order dated 07.06.2016 came to be passed.

[4]. It was argued by learned counsel for the petitioners that essentiality certificate was issued by State of Punjab to respondent No.6 on 15.02.2011 for establishing a medical college. On the recommendation of MCI, permission was accorded by State Government for the admission of first batch of 150 students for the year 2011-12. This permission was not accorded to the institution for the year 2012-13 and 2014-15 by the MCI, but under the orders of the Hon'ble Apex Court, the college was permitted to admit students on furnishing bank guarantee to the tune of Rs.10 crores with a stipulation that in the event of finding shortcomings in the applicant-respondent No.6-College by the MCI during inspection, the amount of bank guarantee shall be forfeited in favour of MCI. Thereafter, MCI conducted inspection and found grave irregularities. The amount of bank guarantee was forfeited by

invoking the said condition. For the year 2015-16 also no permission was accorded by MCI. The dispute was with regard to students who were admitted during year 2014-15 on the basis of undertaking given before the Hon'ble Apex Court and consequent upon furnishing bank guarantee. The bank guarantee already stood invoked in the event of finding grave irregularities by MCI.

[5]. This Court by relying upon essentiality certificate issued by State of Punjab obligated the State Government to act in accordance thereof with the permission of the Central Government. The order was passed in view of attending circumstances and in view of the fact that the bank guarantee already stood invoked as per stand taken by the parties before the Court.

[6]. Learned counsel for the applicant submitted that the petitioners did not disclose the true facts in respect of bank guarantee which was subject matter of pending litigation before the Hon'ble Apex Court. Learned counsel further submitted that the matter is still sub judice in Writ Petition (Civil) No.1128 of 2015 before the Hon'ble Apex Court. Learned counsel while admitting the fact that bank guarantee was invoked, but the same was maintained by MCI in its entirety and their counsel Mr. Tushar Mehta orally submitted before the Hon'ble Supreme Court to that effect.

[7]. The issue regarding recognition of applicant-respondent No.6 is pending before the Hon'ble Apex Court where MCI is one of the party. Learned counsel also submitted that petitioners have already resorted to contempt proceedings in relation to the order passed by this Court on 07.06.2016 and the order dated 07.06.2016 would in fact result in acceptance of the main relief in the writ petition. It was also pointed out by learned counsel for applicant-respondent No.6 that the conduct of MCI has been deprecated in case titled as **Modern Dental College and research Centre and others Vs. State of Madhya Pradesh and others, 2016(3) SCT 35** and Oversight Committee has been constituted headed by Hon'ble Mr. Justice R.M. Lodha (Former Chief Justice of India). The case of applicant-respondent No.6 is also pending consideration before the said committee. On the aforesaid factual details, the applicant seeks review of order dated 07.06.2016 passed by this Court.

[8]. On the other hand, learned counsel for the petitioners vehemently submitted that the application is highly misconceived inasmuch as that applicant-respondent No.6 did not file any reply to the writ petition even after number of adjournments. On 07.06.2016, the applicant did not appear despite the fact that the case was adjourned on 26.05.2016 to 07.06.2016 in the presence of the parties. The order was passed after hearing the parties present in Court. There is no error apparent on the record. Learned

counsel for the petitioners also submitted that no admissions were made by applicant-respondent No.6 for second academic session 2012-13 and third academic session 2013-14. Admissions were made for fifth academic session. The name of applicant-respondent No.6 was deleted from the prospectus issued by Punjab College regarding medical colleges in the State of Punjab and there was complete violation of essentiality certificate. Petitioners were admitted to fourth academic session i.e. 2014-15 under order dated 18.09.2014 which was clarified vide order dated 25.09.2014 passed in case titled as **Hind Charitable Trust Shekhar Hospital Pvt. Ltd. Vs Union of India and others.** In respect of violation of order dated 07.06.2016 passed by this Court, a contempt petition No.1456 of 2016 was filed.

[9]. Learned counsel for the petitioners also brought certain facts in respect of inspection conducted by the Department of Medical Education and Research, Punjab and notice dated 16.05.2016 issued to applicant-respondent No.6 in respect of cancellation of NOC/Essentiality Certificate issued to it. In the inspection so conducted on 18.07.2016, grave irregularities were noticed by Dr. Ashok Chanana, Associate Professor, Department of Forensic Medicine & Toxicology, Government Medical College, Amritsar. Accordingly, communication was made to the Director Medical Education and Research, Punjab SAS Nagar, Mohali on 26.07.2016. Thereafter on 03.08.2016, affidavit was filed and a

letter dated 01.08.2016 was addressed by the Directorate of Medical Education and Research, Punjab to MCI regarding creation of 98 MBBS seats in recognized medical colleges of State of Punjab for shifting of MBBS students of applicant-respondent No.6 (Batch 2014). It was also informed that they have already been shifted. Thereafter, no admissions were made except admissions made under orders of the Hon'ble Apex Court. A request was made to create 98 MBBS seats in recognized medical colleges of State of Punjab so as to meet the contingency.

[10]. Learned counsel for the petitioners emphasized that the filing of the present application was in a direction to delay the shifting of the students and the MCI has also adopted a delaying tactics regarding shifting of the students. Learned counsel also highlighted that first batch of 2011-12 also faced delaying tactics adopted by the officials of Department of Medical Education and Research as well as Medical Council of India. The college also filed a Writ Petition No.6348 of 2016 which was dismissed on 07.04.2016. The College also filed SLP No.10129 of 2016 and no interim relief was granted, rather on 01.07.2016, the SLP was withdrawn. Writ Petition (Civil) No.273 of 2016 was filed by Swarn Salari challenging the letter dated 28.03.2016 issued by Medical Council of India. The said writ petition was listed for 29.08.2016 and the said writ petition has nothing to do with the present writ petition.

[11]. Learned counsel for the petitioners also highlighted the conduct of applicant-respondent No.6 by referring to order dated 29.05.2015 passed by the Delhi High Court in WP(Civil) No.4666 of 2015 and CM No.8445 of 2015 titled as **Chintpurni Medical College and Hospital Vs. Medical Council of India**, CWP No.1182 of 2015 and CM Nos.2078, 4127, 771 of 2015 titled as **Chintpurni Medial College and Hospital Vs. Medical Council of India.**

[12]. Learned counsel further highlighted that the factum of invoking bank guarantee in the sum of Rs.10 crores submitted by applicant-respondent No.6 came for consideration before the Delhi High Court in the aforesaid cases. Delhi High Court noticed that MCI had invoked the bank guarantee for a sum of Rs.10 crores submitted by applicant-respondent No.6. Supreme Court had permitted the various colleges including applicant-respondent No.6 college to grant admission for academic year 2014-15 subject to filing undertaking as detailed in earlier part of the order. The aforesaid permission was subject to filing undertaking that in case the undertaking was found to be incorrect, deposit made by institutions be forfeited as penalty.

[13]. Learned counsel for the MCI submitted before the Delhi High Court that bank guarantee had been accepted by the MCI pursuant to the direction issued by the Hon'ble Apex Court.

Learned counsel further submitted that it would be apposite if the

applicant-College approaches the Supreme Court with regard to any relief in respect of notification of bank guarantee. The bank guarantee was invoked strictly in terms of order dated 18.06.2014 passed by the Hon'ble Apex Court. In view of aforesaid, applicant-respondent No.6 who was petitioner before the Delhi High Court sought to withdraw the challenge to the decision of the execution committee of MCI to invoke/forfeit the bank guarantee submitted by the applicant-College with a liberty to approach the Hon'ble Apex Court.

[14]. The Court also noticed that on 21.05.2014, learned Solicitor General appearing for MCI had submitted that the college had persuaded the Punjab National Bank, Batala road Amritsar not to honour the bank guarantee furnished by the college on a false representation that the notification of bank guarantee has been stayed. The said submission was ultimately found to be false. Although MCI had already invoked the bank guarantee furnished by the applicant-College, the same has not been encashed by the concerned branch of Punjab National Bank. The bank apparently acted on the representation of applicant-respondent No.6 that notification of bank guarantee was stayed by the Delhi High Court which in fact, was a false submission. No stay was granted by the Delhi High Court in respect of notification of bank guarantee. The conduct of applicant-respondent No.6 was labeled as dishonest and accordingly deprecated. Such a conduct was *prima facie*

found to be contentious and was held to be sufficient for not giving any discretionary relief.

[15]. Learned counsel for applicant-respondent No.6 expressed deep remorse on behalf of respondent No.6 before the Court. The Court refrained from initiating any further action after observing in the aforesaid context. Liberty was given to applicant-respondent No.6 to approach the Hon'ble Apex Court for any relief regarding bank guarantee or waiver of penalty, if any. It was made clear that unless any specific order was passed by the Hon'ble Apex Court, MCI would be at liberty to encash the bank guarantee and also instituting any proceeding as may be advised against the bank for not honouring the commitment. Accordingly, applicant-respondent No.6 withdrew its challenge for notification of bank guarantee.

[16]. Before this Court, stress has been made on the submission made by Mr. Tushar Mehta, Advocate for the MCI that bank guarantee has not been encashed. A certificate issued by Punjab National Bank dated 16.08.2016 is being pressed to show that the bank guarantee issued in favour of MCI has not been encashed as on date. Obviously, the reason behind non-encashment of the bank guarantee was the stand of learned counsel for the MCI.

[17]. The scope of review application is not to pre-empt any ultimate decision, but in view of attending circumstances of the case more particularly the issue regarding notification of bank guarantee has already been decided by the Delhi High Court, this Court does not find any ambiguity in the order dated 07.06.2016 passed by this Court. Learned counsel for the contesting parties, of course tried to touch upon the merits of the case, but the same is not the scope of present review application. Facts have been noticed only for the purpose of disposal of the review application. Nothing expressed hereinabove, shall be construed to be an opinion on merits of the case. Review application is accordingly dismissed.

19.09.2016
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether Reasoned/Speaking Yes/No

Whether Reportable Yes/No