

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 7650 OF 2017

Pravara Institute of Medical Sciences
(Deemed University's)
Rural Medical College at Loni,
Tq. Rahata, District Ahmednagar
Through its Dean
Ramchandra Goyal,
Age 61 years, Occu. Service,
R/o Loni, Tq. Rahata,
District Ahmednagar.

.. Petitioner

Versus

1. The Union of India
Through the Under Secretary for
Ministry of Health and Family Welfare
Nirman Bhavan, New Delhi.
 2. The Medical Council of India
Pocket 14, Sector 8, Dwarka
Phase 1, New Delhi
Through its Secretary.
 3. Directorate General of Health Services
Government of India,
Nirman Bhavan, Maulana Azad Road,
New Delhi 110 108.
- .. Respondents

Shri V. D. Hon, Senior Counsel i/by Shri Ashwin V. Hon,
Advocate for the Petitioner.

Shri S. B. Deshpande, Asstt. S. G. for Respondent Nos. 1 and 3.

Shri S. K. Kadam, Advocate for the Respondent No. 2.

**WITH
CIVIL APPLICATION NO. 8232 OF 2017
IN
WRIT PETITION NO. 7650 OF 2017**

Vaidyakiya Karmachari Sanghatana
Ahmednagar through its Vice President
A. R. Garge and another .. Applicants.

Versus

1. Pravara Institute of Medical Sciences
Through its Dean Ramchandra Goyal,
and others .. Respondents

Shri L. V. Sangeet, Advocate for Applicants.
Shri V. D. Hon, Senior Counsel i/by Shri Ashwin V. Hon,
Advocate for the Respondent No. 1.
Shri S. B. Deshpande, Asstt. S. G. for Respondent Nos. 2 and 4.
Shri S. K. Kadam, Advocate for the Respondent No. 3.

**CORAM : ANOOP V. MOHTA AND
SUNIL K. KOTWAL, JJ.
DATE : 04 TH JULY, 2017.**

ORAL JUDGMENT (*Per Anoop V. Mohta, J.*) :-

. Rule. Rule made returnable forthwith. Heard finally by consent of learned counsel appearing for parties.

02. The petitioner is a recognized institution/Medical College, who is imparting graduate and post graduate courses in various faculties of health sciences since 1984 with basic intake capacity of 125 students per year. Considering the material and infrastructure and the requirement of the locality, petitioner's

application for additional 75 seats for the year 2016-2017 was considered favourably. The petitioner, therefore, was able to admit 200 students for the academic year 2016-2017. However, the respondents by impugned resolution No. 15 dated 04.11.2016 issued by Medical Council of India ("MCI") and communication dated 31.05.2017 issued by the Union of India, Ministry of Health and Family Welfare, New Delhi ("UOI") reduced intake capacity by 75 seats and restricted it to 125 seats for academic year 2017-2018. Therefore, present petition is filed on 08.06.2017.

03. In view of the urgency expressed, the following order is passed by this Court on 14.06.2017.

2. Learned Assistant Solicitor General, appearing for respondent Nos.1 and 3 made statement that, in view of the fact that, as per the Notification submitting the detailed seats /numbers of the respective institutions and as the petitioner has been restricted to grant permission upto 125 seats, though last year it was 200 seats, therefore, to avoid further complications and in the interest of all, including the students at large, there will be an endorsement to be made in the column of petitioner that the petitioner's claim / litigation is pending in High Court for increasing of 75 seats. This statement, at this stage, is sufficient to take care of the apprehension and submission so made by the learned Senior Counsel appearing for the petitioner to avoid any complications.

3. We are inclined to observe that, the petitioner, referring to the deficiencies as already filed/ made representation on

24.03.2017 and the same is not yet decided but, taken decision to reduce the seats from 200 to 125, though all infrastructure facilities and the requisite permissions from all other concerned authorities are part of record. Same infrastructure facilities and permission ought to have been taken note of to grant the seat numbers as prayed i.e. 200, the deficiencies / lacunae, as contended, are not of substantial nature & curable as explained in the representation.

4. In the interest of justice, we are inclined to grant the time and by keeping this matter on 27.06.2017 at 2.30 p.m. for final hearing. The reply to be filed by respondents on or before 23.06.2017 and copy be supplied to the counsel for the petitioner. The parties to file short synopsis, submissions and copies of judgments in advance.

04. Respondent No. 2/MCI has filed a detailed affidavit in reply dated 27.06.2017 opposing all the prayers by placing on record the regulations, judgments and orders of the Supreme Court, in view of time schedule so fixed by the Supreme Court in such matters. The submission is also about the scope and power of judicial review and passing of such interim order and/or any order, after 31st May, 2017. Respondent Nos. 1 and 3/UOI by affidavit dated 04.07.2017 resisted prayers on similar contentions and relied on judgment and order dated 18.01.2016 in Writ Petition (Civil) No. 76 of 2015 (**Ashish Ranjan and others Vs. Union of India and others**).

05. In the present case, UOI on 30.06.2016 granted permission to the petitioner to increase MBBS seats from 125 to 200 from academic year 2016-2017 U/Sec. 10(A) of the Indian Medical Council Act, 1956 (for short 'Act'). On 08.07.2016 it is communicated by the MCI to all Deans and Principals of Medical Colleges, the steps to be followed while taking assessment of physical and other teaching facilities. The relevant clause 2 is reproduced as under :

"2. Clinical material (OPD, IPD and List of surgeries) will be verified by the assessor at 10 A.M. and 2 P.M. on the day of assessment. In case of afternoon clinic, the assessor should be informed about the timing and attendance be taken accordingly."

06. Pursuance to communication dated 09.07.2016, on 14.07.2016 the petitioner submitted renewal application along with the documents to MCI for IInd batch. A team of MCI visited the petitioner college for renewal of permission of IInd batch of 200 seats for the academic session 2017-2018. A report is prepared. The summery of assessment is as under :

Summary of Assessment :

Rural Medical College, Loni, Ahmednagar
(College Name) is run by
Government/**Trust**/Society/Company

The college has got LOP from GOI/MCI with
intake of 200 seats for last academic year
2016-17 (Letter enclosed).

Type of assessment **1st Renewal**

PG Courses : Yes (Except Biochemistry, Dermatology, Psychiatry & TB Chest)

Deficiency of the infrastructure of college and hospital if any : Pl. mention category wise;

Deficiency of clinical material If any : Pl mention category wise;

Deficiency of teaching staff if any :
Shortage of teaching faculty is 3.96%

Deficiency of resident doctors is 3.53%

Any other Remarks :

a) No Ba meal and only 1 IVP are conducted on the day of Assessment (27/09/16),

b) Data provided by the Institute are verified by the Assessor at 12.00 to 1.00 p.m.

07. Admittedly, there was no reference to the deficiency of clinical material, which includes less OPD attendance at the time of inspection in the summary assessment, which was the basic case of respondents, while passing the following impugned order/communication by MCI (Resolution No. 15).

(1) "OPD attendance is 1217 (on day of assessment) as against minimum requirement of 2000. Other deficiencies as pointed in the assessment letter".

In view of this, it is held unilaterally that, the petitioner failed to meet the qualification/criteria as provided under Regulation No. 3(6)(A)(ii) pertaining to minimum OPD strength not less than

2000 per day. The Executive Committee of MCI recommended not to renew the permission for IInd batch to increase the intake capacity from 125 to 200 students to the petitioner's college.

08. Respondent No. 1 based upon the same, by communication dated 31.05.2017 has maintained the above decision and restricted the permission to 125 seats by reducing 75 seats for this academic year.

09. There is no issue that, on the day and time at about 2.00 p.m. when inspection took place the attendance so recorded was 1217. The working hours as fixed from 9.00 a.m. to 5.00 p.m. (OPD timings) as per the assessment form dated 28.09.2016 (to increase intake capacity from 125 seats to 200 seats). The OPD attendance (at the end of OPD timing) was 2349 average of last twelve months of the petitioner's institution. The action was taken based upon first day inspection at 2.00 p.m. (27/28th September, 2016). No notice was given of any inspection though the petitioner has afternoon clinic (Clause 2).

10. It is necessary to take note of OPD attendance average of the year. In the present case, it was 2349. The one day inspection note was taken as foundation to reduce the seats without assigning any specific reason. The learned counsel appearing for parties read and referred provisions of law, rules

and regulations including relevant clauses. There is nothing on record to show and/or suggest that such one day figure is sufficient to take such drastic action. There is no clause pointed out whereby it was informed to every one concerned that one day visit itself is sufficient to take such drastic action without giving any opportunity and/or hearing. There is nothing on record to point out that OPD period of 9.00 a.m. to 5.00 p.m. is not compulsory and/or mandatory. The departmental action revolving around the one day less OPD attendance is unjustifiable, unacceptable and contrary to their own regulations. The policy they have declared from time to time, whereby it is necessary for all the authorities to note the average attendance of OPD of the year. It is unacceptable that on the day and time of inspection, attendance of OPD should be 2000 and above. The practical part of life in rural area just cannot be overlooked, when prescribed OPD period is from 9.00 a.m. to 5.00 p.m. The submission is that they are bound by the assessors guidelines, whereby inspection period is fixed to 9.00 a.m. to 2.00 p.m., specifically for the year 2017-2018 is also unacceptable in view of Clause 2 so reproduced above. It is specifically mentioned in case of afternoon OPD, the assessor should be informed about the timings and the attendance should be recorded accordingly. There is nothing on record to show that MCI authority/committee/inspection team followed this procedure, as the petitioner has afternoon clinic. Even

otherwise, the reply is silent to the extent that the figure of one day of inspection so recorded should be treated as average attendance of the year. This in no way, to hold that, respondents have no power and authority to take such surprise inspection and record the proceedings. They are under obligation to do it, but the point which required to be considered in the present case is what opportunity they have given before passing impugned orders, based upon the less one day OPD attendance.

11. Respondents have filed their reply. Reference is made to the provisions of the Act and the regulations. It is clear even from the correspondences which are part of record that they have not granted any opportunity to the petitioner at any point of time. The MCI's submission is that, they are not under obligation to grant hearing and give opportunity even though they have noted the deficiencies, which in the given case may be removable and/or curable. They have forwarded recommendation based upon this to UOI. We have noted, even from the averments so made on record by respondents/UOI, and/or its committee, had also not given any opportunity and/or hearing to the petitioner inspite of the fact that, the petitioner immediately on 24th March, 2017 submitted its representation/reply to the MCI and provided all the explanation and the details including the OPD attendance from 10.00 a.m. to 5.00 p.m. It is specifically mentioned that, on the day of inspection at 10.00 a.m. OPD

attendance was 1217, at 2.00 p.m. it was 2059 and at 5.00 p.m. it was 2369 (closure of OPD) time. The prayer was also made to grant the intake capacity as prayed for academic year 2017-2018. The copy was also forwarded to respondent No. 1/UOI. Admittedly for want of specific provision, as contended, respondents have not given any hearing to the petitioner, not even considered the explanation on facts. The respondent No. 1/UOI has accepted the unilateral recommendation given by MCI and passed the order hurriedly on 31.05.2017, as all are under obligation to complete the formalities from their respective side as per the order passed by the Supreme Court.

12. The judgments so cited and referred by learned counsel appearing for respondents, no way laid down the law that the expert body are not required to follow the basic principles of natural justice and no opportunity is required to be given to the concerned person against whom they want to take action on the basis of said one day inspection of OPD attendance. The Apex Court in **Royal Medical Trust (Registered) and another Vs. Union of India and another** [(2015) 10 SCC 19] has recorded as under :

31. The MCI and the Central Government have been vested with monitoring powers under Section 10A and the Regulations. It is expected of these authorities to discharge their functions well within the statutory confines as well as in conformity with the

Schedule to the Regulations. If there is inaction on their part or non-observance of the time Schedule, it is bound to have adverse effect on all concerned. The affidavit filed on behalf of the Union of India shows that though the number of seats had risen, obviously because of permissions granted for establishment of new colleges, because of disapproval of renewal cases the resultant effect was net loss in terms of number of seats available for the academic year. It thus not only caused loss of opportunity to the students' community but at the same time caused loss to the society in terms of less number of doctors being available. The MCI and the Central Government must therefore show due diligence right from the day when the applications are received. The Schedule giving various stages and time limits must accommodate every possible eventuality and at the same time must comply with the requirements of observance of natural justice at various levels. In our view the Schedule must ideally take care of :

(A) Initial assessment of the application at the first level should comprise of checking necessary requirements such as essentiality certificate, consent for affiliation and physical features like land and hospital requirement. If an applicant fails to fulfill these requirements, the application on the face of it, would be incomplete and be rejected. Those who fulfill the basic requirements would be considered at the next stage.

(B) Inspection should then be conducted by the Inspectors of the MCI. By very nature such inspection must have an element of surprise. Therefore sufficient time of about three to four months ought to be given to the MCI to cause inspection at any time and such inspection should normally be undertaken

latest by January. Surprise Inspection would ensure that the required facilities and infrastructure are always in place and not borrowed or put in temporarily.

(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.

32. As against the Schedule brought in by Notification dated 21.09.2012, the draft Schedules submitted by Mr. Vikas Singh, learned Senior Advocate appearing for the MCI do make provisions for stage wise

consideration and set time limits therefor. They also provide for hearing by the Central Government under Section 10A(4) and compliance verification assessment by the MCI. We accept the submission of Mr. Vikas Singh that the draft Schedules suggested and placed by the MCI will now take care of all foreseeable situations and ensure availability of opportunity at all possible stages. In our view the draft Schedule so submitted by the MCI be given proper statutory status.

The respondents should have given reasonable opportunity to the petitioner. They should have decided the reply/representation within the time prescribed promptly. Admittedly they have not followed even the basic provisions, so referred above in time.

13. After inspection, summary assessment given by the MCI team dated 27/28th September, 2016. We have noted that basic deficiencies are removable/curable. The deficiency with regard to teaching staff shortage of teaching faculty was of 3.96%. The deficiency of residential doctor as noted was 3.53%. There is no issue that in view of Medical Council of India (Establishment of Medical College) Regulation 1999 as amended upto January 2017 Clause 8 (which deals with grant of permission), [Clause 3(c)] that if the deficiency of faculty and residential doctor is more than 10%, such institution will not be considered for processing application. This also means, if deficiency is less than 10%, in a given facts and circumstances, such deficiency of below 4% like in the present case, ought not to have been the foundation for

reduction of 75 seats. The impugned resolutions only reflect the basic deficiency of average attendance of OPD and vaguely referred to the report, which we have just dealt with. The summery assessment after the inspection and as the team has not recorded anything about shortage of OPD attendance as deficiency, which goes to the root of taking such drastic action, the signature of dean even on such report on the day, is no way sufficient to deny the claim of petitioner. The case of respondents of taking such drastic action of reduction of seats without following the basic procedure of their own rules and regulations apart from that breach of principles of natural justice, is illegal.

14. Observance of principles of natural justice is not a straitjacket formula, when it comes to the question of academic and standard of education, the Court would not like to interfere with the deficiencies and/or lacunas, which goes to the root of the matter while running such courses. But in the present case, as noted above, on merit itself, no case is made out by respondents based upon the report revolving around the deficiencies of less OPD attendance. Summary assessment report nowhere deals with the same. The deficiencies so recorded above are less than 10%. The same is removable and/or of not major in nature.

15. There is nothing on record to show that, there are no infrastructure/facilities and/or equipments and/or machinery

available. Even otherwise, the permission has been granted to the institution for 125 seats. The reduction of 75 seats for this year on above factual data and material is impermissible .

16. The judgment so read and relied by the parties binds every one. The orders and directions so given, therefore, we have also kept in mind while proceeding further in the matter. The factual background read and referred in those Supreme Court judgments are distinguishable. Even otherwise facts of this case are required to be noted for deciding and taking any final decision. The scope and power of High Court including judicial review in such matters is settled. But on facts and circumstances, if case is made out, the power of High Court may not be restricted by over looking the basic illegality so committed by the respondents before taking action in question. The basic principles of natural justice are required to be followed by all the concerned before initiating and/or taking such action. The deficiencies, if are of major in nature, there is no scope and power of the Court to interfere with the fact finding report submitted by the concerned authority. The situation, however, need to be tested, if case is made out that the authorities have breached the regulations, misread and misinterpreted the relevant provisions and clauses. But as the case is made out and hence in the interest of students at large of the locality and in the interest of justice, we are interfering with the impugned decisions.

17. We are no way saying and/or doubting the power of expert body, but at the same stroke the law and the judgments so cited itself refer and make it obligatory for the concerned authorities to act and take timely steps in accordance with law. So that the institution should be in a position to remove the deficiencies and/or defect if any so that requisite permission/approval can be granted within the prescribed time. In the present case, the respondents, as recorded above relied upon the report dated 27/28th September, 2016, but have not granted any opportunity to the petitioner and/or asked for any clarification and/or granted time to remove the deficiencies, if any, that resulted into filing of present writ petition before commencement of session. Both the respondents have filed reply and for the first time submitted and/or supported their report, which includes the factual averments and data. The scope of writ petition is very limited, when it comes to decide the disputed question of facts. But having noted the illegality and breach of basic principles of law and as sufficient case is made out, we are inclined to interfere with the decision so taken by respondents.

18. The Supreme Court judgments so referred and the time schedule so fixed need to be followed by all the concerned. The Supreme Court in many judgments has even provided time schedule for completion of admission process for I year MBBS course. Now, therefore, schedule for online counseling (Allotment

Process) for NEET all India quota UG (MBBS/BDS) Seats 2017 is already announced. The registration, choice for filling and indicative seats is commenced from tomorrow i. e. 05.07.2017 and it will be open upto 5.00 p.m. of 11th July, 2017. Ultimately after process, there will be two rounds. The allotment of colleges will be finalized by 16th August, 2017. Petitioner institution's name pursuant to orders passed by this Court dated 14.06.2017 appeared in the list, though with the endorsement about the pending litigation for increase of 75 seats. There will be no disturbance to the further process. The students of the locality concerned will be in a position to apply and provide the option. The further consequential process will be followed by all.

19. The contention of respondents that even if case is made out still the reliefs so prayed should be at the most granted for next academic year 2018-2019 is unacceptable, for the above reasons. The delayed orders are against the law, therefore, no premium required to be given for such wrongs. The facts of **D. Y. Patil Medical College Vs. Medical Council of India and another** [(2015) 10 SCC 51] are distinct and distinguishable. The case is made out to invoke writ jurisdiction under Article 226 of the Constitution of India. Therefore, we are inclined to dispose of present petition finally by passing following order.

ORDER

- A. The writ petition is allowed in terms of prayer clause "B" which reads as under :
- "B) Issue a writ of certiorari or writ in the nature of certiorari to quash and set aside the Resolution No. 15 dated 04.11.2016 passed by the Executive committee of the Medical Council of India, New Delhi and the communication dated 31.05.2017 of the Under Secretary, Government of India, Ministry of Health and Family Welfare, New Delhi."
- B. The respondent/UOI and/or its agency/Committee is directed to issue approval to 200 students (125 + 75) as intake capacity for I year MBBS course for the academic year 2017-2018. The endorsement against the petitioner institution on the website be removed.
- C. As order is passed in open Court, the concerned parties including concerned respondents to take necessary steps to avoid further delay in the matter. The parties to take steps accordingly.
- D. Rule is made absolute accordingly. No costs.
- E. Parties to act on authenticate copy of this judgment.

20. The intervention application is taken out by employees of the petitioner/institution to intervene in the matter and place certain facts on record against the management. Considering the reasons so given above, we are not inclined to interfere with the present intervention application at the instance of the employees. However, it is made clear that, respondents or intervenors are at liberty to take an appropriate proceedings and/or action against the institution by following due procedure of law. Civil application is therefore, rejected with no costs.

21. The learned counsel appearing for respondent Nos. 1 and 3/UOI and respondent No. 2/MCI seek stay of this judgment, which is pronounced in open Court. Considering the facts and circumstances so referred above including our order dated 14.06.2017, to avoid further delay and complications, we are not inclined to halt any further process. Therefore, oral submission to stay the judgment and its effect is rejected.

Sd/-

[SUNIL K. KOTWAL, J.]

Sd/-

[ANOOP V. MOHTA, J.]