

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

WRIT PETITION NO. 8129 OF 2017

Godavari Foundation's
Dr. Ulhas Patil Medical College &
Hospital, Jalgaon Khurd, Jalgaon,
Through its Dean
Dr Narayan Sadashiv Arvikar,
Age 60 years, Occu. Dean,
R/o. As above.

Petitioner...

Versus

1. Medical Council of India,
Through its Secretary,
Pocket-14, Sector8,
Dwarka-1, New Delhi-110 077.
2. The Chairman of
Hon'ble Supreme Court Mandated
Oversight Committee,
On Medical Council of India,
2nd Floor, Academic Block,
National Institute of Health and
Family Welfare, Munirka,
New Delhi-110 067.
3. Union of India,
Through Under Secretary,
Ministry of Health and Family Welfare,
Department of Health and Family Welfare,
New Delhi – 110 011.
4. The Commissioner,
CET Cell, Mumbai.

Respondents...

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Mr V. J. Dixit, Sr. Advocate i/b Mr L. V. Sangit, Adv. for the petitioner
Mr S. K. Kadam, Advocate for respondent No. 1
Mr Bhushan Kulkarni, Advocate for respondent No. 3
Mr M. D. Narwadkar, Advocate for respondent No. 4
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**CORAM : R. M. BORDE &
A. M. DHAVALA, JJ.**

DATE : 28TH JULY, 2017.

ORAL JUDGMENT (Per R. M. Borde, J.) :-

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties and taken up for final disposal at admission stage.

2. The petitioner is objecting to the Show-Cause Notice issued by the Medical Council of India dated 26.05.2017, calling upon the petitioner-institution to show cause as to why the action of de-recognition of the Medical College operated by the petitioner-institution shall not be taken. The petitioner also prays for issuance of directions to the Medical Council of India to accept the compliance report tendered in pursuance to the interim orders passed by this Court in the instant petition and grant renewal of permission for the 3rd batch with increase in undergraduate intake of the students from 100 to 150. The petitioner is also seeking directions to the Central Government to grant permission for the increased intake of students for undergraduate courses. In view of the deeming provisions of

Section 10-A(5) of the Indian Medical Council Act, 1956 (herein after shall be referred to as “IMC Act, 1956”), the petitioner claims that the college has entitlement to admit 150 students for undergraduate medical course for the academic year 2017-18.

3. The petitioner-foundation is operating Dr. Ulhas Patil Medical College & Hospital since April 2008 at Jalgaon. A letter of permission was accorded by the Government of India for establishment of a new medical college on 29.09.2008. The Medical Council of India, in view of communication dated 05.02.2013, granted recognition/approval for the award of MBBS degree granted by the Maharashtra University of Health Sciences, Nashik, Maharashtra, considering the annual intake capacity of the students quantified at 100. A notification came to be issued by the Central Government in exercise of powers conferred under sub-section (2) of Section 11 of the IMC Act, 1956 recognizing the medical qualification granted by Maharashtra University of Health Sciences, Nashik in respect of students trained at Dr. Ulhas Patil Medical College, Jalgaon with annual intake of 100 students per year after December-2012. The petitioner requested for increasing the intake of the students from 100 to 150 during the academic year 2015-16 and considering the request made by the petitioner-Institution, a letter of permission

was issued by the Government of India on 02.06.2015, permitting increased intake of MBBS seats from 100 to 150 from academic year 2015-16 u/s 10(A) of the IMC Act, 1956. It is recorded in the letter of permission that, the permission is accorded initially for a period of one year and will be renewed on yearly basis subject to the verification of the achievement of annual targets as indicated in the scheme and revalidation of performance Bank Guarantee. This process of renewal of permission will continue till such time the infrastructures and expansion of hospital facilities are completed as per norms of Medical Council of India. It is further recorded in the letter that, next batch of students shall not be admitted unless renewal of permission is granted by the Central Government. It further transpires that, during the next academic year i.e. 2016-17, the increased intake allotted to the college operated by the petitioner-institution was maintained in view of the letter of permission issued by Central Government on 31.12.2015. It is recorded in the letter of permission that the same would be valid for one year for admitting only one batch of students against increased intake i.e. from 100-150 during the academic session 2016-17 and next batch of students in MBBS course against increased intake shall be admitted only after issuance of permission by Central Government. It is recorded in the letter that admissions made in violation of the above conditions

would be treated as irregular and action will be initiated under IMC Act, 1956 and regulations framed thereunder.

4. The petitioner submits that, during the next academic session 2017-18, a proposal was tendered by the college for renewal of permission on 15.07.2016. The MCI conducted Pre-PG assessment and pointed out certain deficiencies in its report. The petitioner contends that, those deficiencies were removed and compliance report has already been tendered. There was a second assessment of the compliance verification carried out on 17.11.2016. In the said report also, certain deficiencies were noticed and those were informed to the petitioner-institution. The petitioner contends that, such of those deficiencies pointed out in the second assessment compliance verification report were also removed, however, in spite of removal of deficiencies, a Show-Cause Notice came to be issued on 26.05.2017 by MCI calling upon the petitioner-institution to show-cause as to why the action of de-recognition of the institute shall not be initiated. The petitioner approached this Court initially objecting to the Show-cause Notice issued by the Medical Council of India. While entertaining the petition, the Division Bench of this Court by an order dt. 23.06.2017, permitted the petitioner to file reply to the show-cause notice within a period of one week and also instructed

the respondents not to take any coercive steps based on the Show-cause Notice dt. 26.05.2017. The petitioner contends that, a reply to the show-cause notice has already been tendered in view of the liberty granted by this Court to the petitioner. It is the contention of the petitioner that, Medical Council of India has not communicated anything further and neither the Central Government has transmitted any communication to the petitioner in response to the proposal tendered by the institution seeking renewal of the increased intake permitted for the undergraduate course for the academic year 2017-18. The petitioner contends that, during preceding two years, the institution was permitted to admit 150 students, however, during the current academic year, in the brochure published by the admission authority the intake of the college is recorded as 100 instead of 150. It is contended that, the petitioner institution is entitled to admit 150 students since there is no adverse order as yet issued by the Central Government. It is further contended that, in view of the provisions of Section 10-A(5) of the IMC Act, 1956, it shall be construed that the College is deemed to have been accorded permission to admit 150 students i.e. the Central Government shall be deemed to have permitted the increased intake of the students as was permitted during the preceding years.

5. In response to the notice issued by this Court on 23.06.2017, the Central Government has not presented any reply. Though the Central Government was expected to present the reply, even after grant of several adjournments, the reply is not forthcoming. We do not appreciate the inaction of the Central Government to file reply in the matter specifying stand of Central Government. It is in fact the responsibility of the Central Government to tender reply to the contentions raised in the petition and explain as to why no steps have been taken in response to the proposal tendered by the institution seeking sanction for increased intake of the students. It ought to have been considered that the matter relates to grant of admission to the students and the orders are required to be passed in time bound manner, however, because of the laxity on the part of the Central Government, confusion is created not only for the petitioner but also from amongst the students community who are desirous of taking admission for the medical courses.

6. The MCI has presented affidavit-in-reply and has stated therein that the medical college operated by the petitioner-institution has failed to maintain the minimum infrastructure, teaching faculty, clinical material and other physical facilities due to which the Medical Council of India invoked Regulation 8(3)(1)(c) of the

Establishment of Medical College Regulations, 1999 and issued a Show-cause Notice vide letter dt. 26.05.2017 to the petitioner-college directing it to explain as to why the Council should not proceed for withdrawal of the recognition of courses conducted by the medical college at undergraduate as well as postgraduate level which are already recognized under Section 11(2) of the IMC Act, 1956 along with direction of stoppage of admissions in permitted postgraduate courses. It is further stated that, the deficiencies were pointed out in the inspection reports dated 06-07/06.2016, 17.11.2016, 11.01.2017 & 03.05.2017, which according to Medical Council of India, were grave in nature and same could not be brushed aside in the larger public interest and also in the interest of the students community. It is further stated that, the Medical Council of India has conducted Pre-PG assessment of the petitioner-medical college so as to ascertain the facilities and has pointed out the deficiencies after conducting inspection on the dates as specified above and had also forwarded recommendation to the Central Government not to grant renewal of the permission for the admission of 3rd batch of MBBS students against the increased intake i.e. from 100 to 150 for the academic session 2017-18. It does appear that, on receipt of the recommendations from Medical Council of India on 31.01.2017, the Central Government called upon the petitioner-college to explain as

regards deficiencies and gave hearing on 03.02.2017. It further transpires that, on 03.05.2017, inspection was carried out by Medical Council of India and in pursuance thereof, a report was transmitted to the Central Government and in pursuance thereto a show-cause notice came to be issued on 26.05.2017. It further appears, on perusal of the communication annexed at page 124H to the petition transmitted by the Under Secretary to the Government of India to the Asstt. Solicitor General of India on dated __ July, 2017 that there are no recommendations made by Medical Council of India to the Ministry for approval or disapproval of the proposal for withdrawal of recognition for 2017-18 and in absence of the recommendations by the Medical Council of India, no letter was issued by the Ministry. The Central Government, it appears, has not taken any decision in absence of any recommendation from Medical Council of India and is expecting report from the Medical Council of India. The Medical Council of India is expected to communicate its opinion to the Central government so as to facilitate the Central Government to take appropriate decision in the matter. So far as aspect of issuance of show-cause notice for the purpose of de-recognition of the petitioner-medical college is concerned, as has been recorded above, the petitioner college has already tendered its reply and appropriate decision has to be taken in that regard by the concerned in

accordance with provisions of law. We leave the matter for the consideration of the respondents in that regard and it would be open for the respondents to take appropriate decision in observance of the procedure prescribed under the law.

7. So far as the grievance raised by the petitioner in respect of the failure of the respondents to permit the medical college to admit the students in accordance with the increased intake as permitted during preceding two years is concerned, the Central Government was expected to take appropriate decision in the matter within the time frame stipulated under the orders of the Supreme Court referred to in the communication dated ____ July, 2017 annexed at page 124H. The Central Government, however, has failed to take any decision in the matter. In the absence of any decision by the Central Government, it is not permissible for the college to admit the students presuming sanction of the additional intake. The petitioner institution has already been permitted to admit 100 students and such information has already been published in the brochure. There is no dual opinion that the petitioner-institution is entitled to admit 100 students, however, for permitting the increased intake of 50 students an appropriate permission needs to be accorded by the Central Government. The petitioner contends that, in view of provisions of

Section 10-A(5) of the IMC Act, 1956, it shall be deemed that the petitioner has been permitted to admit students considering increased intake permitted during preceding year. Sub-section (5) of Section 10-A of IMC Act, 1956 reads thus:

- (5) *Where, within a period of one year from the date of submission of the scheme to the Central Government under sub-section (2), no order passed by the Central Government has been communicated to the person or college submitting the scheme, such scheme shall be deemed to have been approved by the Central Government in the form in which it had been submitted, and accordingly, the permission of the Central Government required under sub-section (1) shall also be deemed to have been granted.*

8. It is the contention of the petitioner that, though the proposal for permitting the additional intake was tendered on 15.07.2016 and since no communication has been issued by the Central Government for a period of one year, in view of sub-section (5) of Section 10-A it shall be deemed that the scheme/proposal has been approved by the Central Government in the form in which it had been submitted and accordingly permission of the Central Government required under Sub-section (1) of section 10-A shall also be deemed to have been granted.

9. As has been recorded above, since the Central Government has not come out with any reply and since it is the Central Government which is the authority under the enactment to decide

the issue in respect of the increased intake, we deem it appropriate to leave this aspect for consideration of the Central Government. Learned Counsel Shri. Kadam appearing on behalf of the Medical Council of India states that, the argument of the petitioner relying upon sub-section (5) of Section 10-A of IMC Act, 1956 is not acceptable and the question of applicability of provisions relating to grant of the deemed permission is not attracted in the instant matter since the Central Government has called upon the Medical Council of India to tender its report in respect of removal of deficiencies by the petitioner-college. We are not impressed by the submissions made on behalf of Medical Council of India and according to us, it is incumbent upon the Central Government to communicate its decision and in the event of failure to pass an order and to communicate the same to the person or to the college submitting the scheme, such scheme shall be deemed to have been permitted by the Central Government in the form in which it had been submitted. It must be noted that, after tender of reply by the petitioner-institution, the Medical Council of India was directed by the Central Government to review its decision and communicate the same to the Central Government, however, the Medical Council of India has not communicated anything to the Central Government which probably impeded the decision making process of the Central Government. It

would be open for the Medical Council of India to communicate its opinion to the Central Government and it shall be communicated within shortest possible time frame.

10. In the circumstances, we direct the Central Government to take appropriate decision within a period of ten days from today. The entitlement of the petitioner to admit additional 50 students for undergraduate courses, would depend upon the decision of the Central Government in accordance with Section 10-A of the IMC Act, 1956. In the event of issuance of any adverse order, it would be open for the petitioner to avail of the alternate remedies available in law.

11. Rule is accordingly made absolute to the extent as specified above. There shall be no order as to costs.

[A. M. DHAVALE]
JUDGE

[R. M. BORDE]
JUDGE

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