

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

WRIT PETITION NO.3037 OF 2018

Dr. Ulhas Patil medical College &
Hospital, Jalgaon
through its Dean,
Dr. Narayan Sadashiv Arvikar,
Age: 62 years, Occu. Dean,
R/o. NH-6, Jalgaon Bhusawal Road,
Jalgaon - 425 309 (Maharashtra) Petitioner.

Versus

1. Union of India
through Secretary,
Ministry of Health & Family Welfare
(Development of Health & Family Welfare)
Nirman Bhawan, New Delhi - 110 011.
2. Medical Council of India
through its Secretary,
Pocket - 14, Sector-8,
Dwarka, Phase-I,
New Delhi - 110 077.Respondents.

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Mr. V.J. Dixit, Sr. counsel i/b. Mr. L.V. Sangit, Advocate for the
Petitioner.
Mr. S.B. Deshpande, ASG for respondent No.1.
Mr. S.K. Kadam, Advocate for Respondent No.2.

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**CORAM : R.M.BORDE &
K.K.SONAWANE, JJ.**

Reserved on : 03.5.2018.

Pronounced on : 06.06.2018.

JUDGMENT (Per: R.M Borde, J)

1. Heard.
2. Rule. With the consent of the parties, petition is taken up for final disposal at admission stage.
3. The petitioner Dr. Ulhas Patil Medical College and Medical Hospital, Jalgaon has approached this Court, praying for quashment of the public notice/decision dated 28.02.2016, so far as it relates to petitioner institution, issued by respondent no.1 refusing to accord permission in favour of the petitioner to start post graduate medical courses in furtherance of its application tendered for the academic year 2018-19. The petitioner-medical college and Hospital was established in the year 2008 by the Godavari Foundation. Godavari Foundation is a registered trust and is also registered as a society under the Societies Registration Act. The Foundation is rendering services in education, medical, religious and social projects. The petitioner-college was permitted on 29.09.2008 to establish a new medical college. The Medical Council of India granted approval in favour of the college to conduct MBBS degree course under control of Maharashtra University of Health Sciences, Nashik, prescribing the annual intake capacity of the students quantified at 100. In

the academic year 2015-16, the intake capacity of students of the petitioner-college has been increased from 100 to 150 seats. The petitioner-college, with a view to start new postgraduate courses, tendered an application to MCI and in furtherance thereof, inspection was carried out by the Medical Council of India and certain deficiencies were pointed out. The petitioner-college tendered its compliance report in the year 2016. Thereafter, from time to time, on several occasion, the assessment verification was carried out by MCI, with a view to permit the petitioner-college to conduct postgraduate courses. Certain deficiencies were pointed out and those also, according to petitioner were removed. The Executive Committee meeting of the respondent no.2-Medical Council of India was held on 23.05.2017 and on consideration of the compliance verification assessment report, it was decided to apply Clause 8(3)(1)(c) of the Establishment of Medical College Regulation Amendment, 2010 and a notice was served on petitioner-college, calling upon it to show cause as to why the recommendation for withdrawal of recognition of the courses run by the institute should not be made along with a direction of stoppage of admission in permitted postgraduate courses. According to the petitioner, a compliance report was submitted by the petitioner-college on 26.06.2017 and thereafter again compliance verification

assessment was conducted on 05.09.2017. The petitioner-college was communicated a decision as regards revocation of Clause 8(3)(1)(c) by the respondent. It is further contended that on 23/24.11.2017, the respondent no.2 conducted assessment of physical and other teaching facilities provided by the college and some deficiencies were pointed out. A show cause notice came to be issued to the petitioner-college under Section 11(2) of the Indian Medical Council Act, 1956 (for short, 'IMC Act'). The petitioner-college tendered its reply on 05.01.2018. The petitioner-college was extended opportunity of hearing on 09.01.2018. The petitioner tendered yet another reply on the same day. It is the contention of the petitioner that on 18.01.2018, further assessment was conducted and deficiency of only 2.75% in respect of teaching facility and deficiency of 3.22% in respect of resident Doctor was noticed. Respondent no.2, in the meanwhile, by communication dated 27.02.2018 revoked Clause 8(3)(1)(c) and forwarded favourable recommendation for conducting postgraduate courses in 8 subjects by the petitioner-medical college on 23.03.2018. In spite of recommendation by respondent no.2, the application of the petitioner was not considered for grant of L.O.P. (Letter of Permission) for starting new postgraduate courses though respondent no.2 itself approved the proposal of the petitioner. The Oversight

Committee appointed under the directions of the Supreme Court did not accept the recommendations of the MCI and proceeded to recommend rejection of the proposal. The petitioner-college challenged the decision of the Oversight Committee of not recommending the college for conducting the new postgraduate courses by presenting a Writ Petition (Civil) No.186/2018 to the Supreme Court of India. The Supreme Court of India, refused to entertain the petition and considering the request made by the petitioner, permitted withdrawal of Writ Petition with liberty to question the impugned decision before the High Court. The petitioner has thus approached this Court, seeking quashment of the decision rendered by the Oversight Committee as well as the respondent no.1-Union of India and also seeking directions to respondents to permit the petitioner-college to admit the students for new postgraduate degree course.

4. An affidavit in reply has been presented on behalf of respondent no.2-MCI controverted the contentions raised in the petition. Apart from the aspects dealing with the merits of the contentions, according to MCI, the request of the petitioner does not deserve to be considered in view of the statutory time schedule prescribed under the regulations for forwarding recommendations to the Government of India.

5. Section 10A of the IMC Act provides that Every person is obliged to seek prior permission from the Central Government for establishing any medical college or starting any higher course of study or for increase of its annual intake capacity. Section 10A of the IMC Act is reproduced herein below:-

"SECTION 10A OF THE INDIAN MEDICAL COUNCIL ACT, 1956

10A.*(1) Notwithstanding anything contained in this Act or any other law for the time being in force:-*

(a) no person shall establish a medical college;

or

(b) no medical college shall —

(i) open a new or higher course of study or training (including a post-graduate course of study or training) which would enable a student of such course or training to qualify himself for the award of any recognised medical qualification; or

(ii) increase its admission capacity in any course of study or training (including a post-graduate course of study or training).

except with the previous permission of the Central Government obtained in accordance with the provisions of this section.

Explanation 1.—For the purposes of this section, “person” includes any University or a trust but does not include the Central Government.

Explanation 2.—For the purposes of this section, “admission capacity”, in relation to any course of study or training (including post-graduate course of study or training) in medical college, means the maximum number of students that may be fixed by the Council from time to time for being admitted to such course or training.

(2) (a) Every person or medical college shall, for purpose of obtaining permission under sub-section (1), submit to the Central Government a scheme in accordance with the provisions of clause (b) and the Central Government shall refer the scheme to the Council for its recommendations.

(b) The scheme referred to in clause (a) shall be in such form and contain such particulars and be preferred in such manner and be accompanied with such fee as may be prescribed.

(3) On receipt of a scheme by the Council under sub-section (2), the Council may obtain such other particulars as may be considered necessary by it from the person or the medical college concerned, and thereafter, it may—

(a) if the scheme is defective and does not contain any necessary particulars, give a reasonable opportunity to the person or college concerned for making a written representation and it shall be open to such person or medical college to rectify the defects, if any, specified by the Council;

(b) consider the scheme, having regard to the factors referred to in sub-section (7), and submit the scheme together with its recommendations thereon to the Central Government....."

6. With a view to effectively implement the provisions of Section 10A, the Medical Council of India, with the approval of the Central Government, notified the regulations framed under Section 10A read with Section 33 of the IMC Act, providing for the detailed procedures to be followed and the criteria to be fulfilled for making application to the Central Government for grant of permission for establishing a new higher courses of study or training or increase in intake capacity in the existing medical college. The regulations were revised from time to time. Clause 8(3) of the Regulations is relevant for consideration, which is recorded as below:-

"8. GRANT OF PERMISSION:

(1)....

(3)

(1) The permission to establish a medical college and admit students may be granted initially for a period of one year and may be renewed on yearly basis subject to verification of the achievements of annual targets. It shall be the responsibility of the person to apply to the Medical Council of India for purpose of renewal six months prior to the expiry of the initial permission. This process of renewal of permission will continue till such time the establishment of the medical college and expansion of the hospital facilities are completed and a formal recognition of the medical college is granted. Further admissions shall not be made at any stage unless the requirements of the Council are fulfilled. The Central Government may at any stage

convey the deficiencies to the applicant and provide him an opportunity and time to rectify the deficiencies.

PROVIDED that in respect of

(a) Colleges in the stage of Letter of Permission upto II renewal (i.e. Admission of third batch):

If it is observed during any inspection/assessment of the institute that the deficiency of teaching faculty and/or Residents is more than 30% and/or bed occupancy is < 50% (45% in North Eash, Hilly terrain, etc.), compliance of rectification of deficiencies from such an institute will not be considered for issue of Letter of Permission (LOP)/ renewal of permission in that Academic Year.

(b) Colleges in the stage from III & IV renewal (i.e. Admission of fourth & fifth batch)

If it is observed during any inspection of the institute that the deficiency of teaching faculty and/or Residents is more than 20% and/or bed occupancy is < 65 %, compliance of rectification of deficiencies from such an institute will not be considered for renewal of permission in that Academic Year.

(c) Colleges which are already recognized for award of M.B.B.S. degree and/or running Postgraduate Courses:

If it is observed during any inspection of the institute that the deficiency of teaching faculty and/or Residents is more than 10% and/or bed occupancy is < 70%, compliance of rectification of deficiency from such an institute will not be considered for issue of renewal of permission in that Academic year and further such an institute will not be considered for processing applications for Postgraduate

*courses in that Academic Year and will be issued show cause notices as to why the recommendations for withdrawal of recognition of the courses run by that institute should not be made for undergraduate and Postgraduate courses which are recognized u/s 11(2) of the IMC Act, 1956 along with direction of stoppage of admissions in permitted Postgraduate courses.
....."*

7. The Hon'ble Supreme Court in the matter of **Ashish Ranjan & Ors. Vs. Union of India & Ors.** in Writ Petition (Civil) No.76/2015 along with Writ Petition Nos.314 and 328 of 2015 by an order dated 18.01.2016, has approved the notifications issued by the Medical Council of the India with previous sanction of the Central Government thereby amending "Establishment of Medical College Regulations, 1999". The amended Regulations provide for schedule for receipt of application for establishment of new medical colleges, renewal of permission and processing of application by the Central Government and the MCI, so also for permitting increase in admission capacity as well as the time schedule for receipt of applications of postgraduate (Broad Specialty) courses/increase of admission capacity and processing of application by the Central Government and the MCI. The time schedule provided in respect of postgraduate courses approved by the Supreme Court is as recorded below:-

"TIME SCHEDULE FOR RECEIPT OF THE APPLICATIONS OF postgraduate (BROAD SPECIALITY) COURSES/INCREASE OF ADMISSION CAPASITY AND PROCESSING OF THE APPLICATIONS BY THE CENTRAL GOVERNMENT AND MEDICAL COUNCIL OF INDIA

<i>S. NO.</i>	<i>Stage of processing</i>	<i>Last Date</i>
<i>1</i>	<i>Receipt of applications by the Central Government</i>	<i>Between 15th March to 7th April (both days inclusive of any year)</i>
<i>2</i>	<i>Forwarding application by the Central Government to Medical Council of India</i>	<i>By 15th April</i>
<i>3</i>	<i>Technical scrutiny, assessment and Recommendations of Letter of Permission by the Medical Council of India</i>	<i>By 30th September</i>
<i>4</i>	<i>Receipt of reply/compliance from the applicant by the Central Government and for personal hearing thereto, if any and forwarding of compliance by the Central Government to the Medical Council of India.</i>	<i>Two months from receipt of recommendation from MCI but not beyond 15th November</i>
<i>5</i>	<i>Final recommendations for the Letter of Permission by the Medical Council of India.</i>	<i>By 31st January</i>
<i>6</i>	<i>Issue of Letter of Permission by the Central Government.</i>	<i>By 28th February</i>

8. The Central Government has also framed the Regulations to further amend the "Post Gradual Medical Education Regulations, 2000" which were also placed before the Hon'ble Supreme Court and were approved. The time schedule for completion of Admission process for postgraduate (Broad Specialty) medical courses for all India quota and State quota have been provided under the Regulations, which reads thus:-

S. NO.	Schedule for admission	Broad Specialty	
		All India quota	State quota
1	Conduct of Entrance Examination	Month of December	Month of January
2	Declaration of result of the qualifying Exam/Entrance Exam.	By 15th of January	By 15th of February
3	1st round of counselling / admission	Between 12th March to 24 March	Between 4th April to 15th April
4	Last date for joining/reporting the allotted college and the course.	By 3rd April	By 22nd April
5	2nd round of counselling / admission for Vacancies	Between 23rd April to 30 April	Between 11th May to 20th May
6	Last date of joining for the 2nd round of counselling / admission.	By 10th May	By 27th May
7	Commencement of the academic session/term	1st May	1st May
8	Last date up to which students can be admitted/joined against vacancies arising due to any reason	-	By 31st May

9. The Supreme Court has time and again reiterated its mandate in respect of adherence to the time schedule provided for recommendation of the courses as well as completion of the admission process of the medical courses. Considering the Regulations as referred to above, the decision taken by respondent No.1 to refuse to grant proposal for according approval to conduct new postgraduate courses for the academic

year 2018-19 is justified and we do not find any error committed by either the Oversight Committee or the Union of India in turning down the request made by the petitioner. Apart from this aspect, the decision of the Oversight Committee not accepting the recommendation of the Medical Council of the India also does appear to be in consonance with Regulation 8(3)(1)(c) of the Establishment of the Medical College Regulations, 1999. It is not a matter of dispute that the petitioner medical college vide letter dated 13.12.2016 submitted its compliance and reply to the show cause notice issued earlier claiming to have rectified all the deficiencies. In order to verify the claim of the petitioner, compliance verification assessment of the medical college was conducted on 11.01.2017. The compliance verification assessment report along with previous assessment report was placed before the Executive Committee of MCI in its meeting held on 23.05.2017, whereupon the Executive Committee found deficiencies in the petitioner medical college including the shortage of residents at 10.07%. In view of noticing deficiencies more than 10%, the Executive Committee decided to continue to apply Regulation 8(3) of the Regulations 1999. It was decided not to consider the case of the petitioner-college for the process of grant of permission for the postgraduate or under graduate courses for the academic year 2017-18. The Committee further

decided to issue show cause notice to the petitioner-college under Regulation 8(3)(1)(c) of the Regulations of 1999. The said decision of the Executive Committee was communicated to the Government of India. The Council has also issued show cause notice to the petitioner-medical college calling upon the college to show cause as to why the recommendations for withdrawal of recognition of the college course run by the institute should not be made for under graduate and postgraduate courses along with a direction for stoppage of admission in permitted postgraduate courses. The medical college tendered its reply on 16.02.2017 along with compliance. In the meanwhile, the medical college vide its letter dated 06.04.2017 submitted application/scheme for starting postgraduate courses in 12 specialties for the academic year 2018-19. The council, however, in view of invocation of Regulation 8(3)(1)(c) of the Establishment of the Medical College Regulations, 1999 decided to put the scheme on hold, till the time the Regulation is not revoked. It is clarified in the affidavit tendered by the MCI, the decision of the Council to invoke Regulation 8(3)(1)(c) was reiterated on 23.05.2017 as well as on 08.08.2017. On consideration of the compliance verification assessment report along with previous assessment report, the Executive Council of MCI in its meeting held on 19.09.2017, decided to revoke

Regulation 8(3)(1)(c) and to process the application under Section 10A in respect of MBBS as well as postgraduate courses pending before the Council. The Council, thereafter proceeded to consider the application and submitted its favourable recommendations to the Central Government and decided to carry out physical assessment of the petitioner-college for assessing the availability of the infrastructure and physical facilities at the medical college for starting 12 postgraduate medical courses. It is further pointed out that the physical assessment of the petitioner medical college was carried out on 25.09.2017 for consideration of proposal to start 12 postgraduate courses. The assessment report dated 25.09.2017 was placed before the postgraduate Committee in its meeting dated 28.09.2017. The postgraduate Committee of the Council after considering the assessor's report dated 25.09.2017 found serious deficiencies relating to infrastructure, teaching faculty and other physical facilities in the petitioner-medical college. In view of the deficiencies, it was decided to recommend the Central Government to disapprove the scheme/application of the petitioner-medical college for starting 12 postgraduate medical courses for the academic year 2018-19. The decision of the postgraduate Committee was communicated to the Oversight Committee for approval and the Oversight Committee vide letter

dated 29.09.2017 approved the decision of the postgraduate Committee. The petitioner-medical college submitted its compliances in respect of 12 postgraduate medical courses on 03.10.2017. The Council again carried out the compliance verification assessment of the medical college in the month of November-December, 2017. In the meanwhile, an inspection for renewal of permission for admitting fresh batch of students to MBBS course against the increased intake from 100 to 150 was carried out by the Council, where-after, the inspection report was considered by the Executive Committee of the Council and the Executive Committee in view of the deficiency of bed occupancy being less than 70%, decided again to apply Regulation 8(3)(1)(c) and it was decided not to consider the institute for processing of applications for postgraduate courses for the academic year 2018-19. Again the compliance verification assessment was carried out and the report thereof was considered by the Executive Committee. In the said meeting on 22.01.2018, it was decided to revoke Regulation 8(3)(1)(c). As the Executive Committee of the Council decided to revoke Regulation 8(3)(1)(c), the applications in respect of 12 postgraduate courses were placed before the postgraduate Committee and the said Committee decided to grant permission to the petitioner-medical college for starting postgraduate

courses and accordingly the Oversight Committee was communicated the decision of approval by the postgraduate Medical Education Committee. The Oversight Committee, however, refused to accept the decision of the postgraduate Medical Education Committee. It would be worthwhile to refer the communication issued by Secretary, Oversight Committee on 19.02.2018 calling certain information from the Medical Council of India. The information called for from the Committee by the Oversight Committee on various aspect is as specified below:-

"The Oversight Committee has desired that the following information may please be furnished to OC so that appropriate final decision could be taken in the matter:

- 1. Comments on the above mentioned five points;*
- 2 Data of previous years, after introduction of Clause 8(3)(1), about applicability of Clause 8(3)(1)(c) and action taken on PG applications and renewal of permissions of MBBS course in such cases;*
- 3. Once Clause 8(3)(1)(c) is invoked, time line for taking decision about revocation of Clause 8(3)(1)(c) or for recommendations for withdrawal of recognition of the courses run by that institute for undergraduate and postgraduate courses which are recognized u/s 11(2) of the IMC Act, 1956 along with direction of stoppage of admissions in permitted postgraduate courses;*
- 4. When 8(3)(1)(c) was in force (invoked) in April 2017, when College applied for starting of PG course in 12 subject, why the application for starting of PG course were considered;*

5. *Why Pre-PG assessment was not carried out, in 2017, before carrying out assessment for individual subjects (for consideration of application for starting PG course in 12 subjects for academic year 2018-19), which is required as per provisions of Regulations;*

6. *MCI may provide a copy of CVA report dated 05.09.2017 of Dr. Ulhas Patil Medical College & Hospital, Jalgaon, agenda note, decision of EC-MCI (by circulation, dated 19/20.09.2017) and the approval of recommendation the EC-MCI, by the OC.*

7. *MCI to provide a copy of Pre-PG assessment form in respect of Dr. Ulhas Patil Medical College & Hospital, Jalgaon, carried out on 5-6 June 2016 and a copy of blank Pre-PG form used in 2017, if different from the form used in 2016.*

8. *In view of the provisions of the Regulations and the judgment of Hon'ble Supreme Court, whether it is permissible for MCI to consider the applications of Dr. Ulhas Patil Medical College & Hospital, Jalgaon, for starting of PG courses in 2018-19 and renewal of permission for increase of MBBS capacity from 100 to 150 for academic year 2018-19 (when Clause 8(3) (1)(c) was invoked on 12.12.2017).*

9. *Whether MCI would like to re-consider its recommendation to issue LOP for starting PG course in 8 subjects and disapproval of application for 4 subjects in respect of applications submitted by Dr. Ulhas Patil Medical College & Hospital, Jalgaon.*

Please furnish point-wise reply.

This issue with the approval of the Oversight Committee."

10. In view of invocation of the Clause 8(3)(1)(c), it was impermissible for the MCI to consider the application for according approval for the new postgraduate courses. Regulation 8(3)(1)(c) specifically lays down that if it is observed during the inspection/assessment of the institute that the deficiency of the teaching faculty and/or residents is more than 10% and/or bed occupancy is more than 70% the compliance of rectification of deficiency from such an institute will not be considered for issue of renewal of permission in that academic year and further such an institute will not be considered for processing applications for postgraduate courses in that academic year and will be issued show cause notices as to why the recommendations for withdrawal of recognition of courses run by the institute should not be made for under graduate and postgraduate courses which are recognized under Section 11(2) of the IMC Act along with direction of stoppage of admissions in permitted postgraduate courses.

11. It is not a matter of dispute that Clause 8(3)(1)(c) was invoked by MCI and a notice was issued to the petitioner-medical college. In such circumstances, it was impermissible for MCI to consider the application for according permission for the new postgraduate courses in the relevant academic year i.e 2018-19.

Merely because in the meeting of the Executive Council, it was decided to revoke Clause 8(3)(1)(c), it was not permissible for MCI to consider the application for the relevant academic year. The view of the Oversight Committee as expressed in its communication referred to above appears to be correct and rational. Apart from this, considering the time frame provided in the matter of **Ashish Ranjan** (supra) and the Amended Regulations of 1999, it is not permissible at this stage to consider the request of the petitioner. It would be open for the petitioner to tender appropriate application in accordance with the procedure prescribed under the Regulation for the next academic year. No interference is called for in the writ petition. The Writ petition is devoid of substance and hence stands dismissed. Rule is discharged.

(K.K.SONAWANE, J)

(R.M.BORDE, J)