

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO.4319 OF 2018**

Vedantaa Institute of Academic
Excellence Pvt.Ltd and Anr .. Petitioners

Versus

Union of India and ors .. Respondents

...
Mr.V.M.Thorat with Pooja V. Thorat, Mr.Anukul Seth i/b
Mr.M.V. Thorat, Advocate for the petitioner.

Mr.R.A.Rodrigues with Mr.Dushyant Kumar, Advocate for
respondent no.1 Union of India.

Mr.Ganesh K. Gole for respondent no.2.

**CORAM: B.R. GAVAI &
SMT.BHARATI H.DANGRE,JJ.**

DATED : 20th APRIL 2018

JUDGMENT (Per Gavai, J)

1 Rule. Rule made returnable forthwith.

2 By consent of the parties, heard finally. Heard
Mr.V.M. Thorat learned counsel appearing for the petitioner
and Shri Gole, learned counsel appearing for respondent no.2

Tilak

- Medical Council of India. Mr.Thorat, learned counsel appearing for the petitioner, at the outset, submitted that petitioner is not pressing for the challenge to the validity of Clause 8(3)(1)(a) of the Establishment of the Medical College Regulations 1999 (hereinafter referred to as 'the said Regulations') and restrict the claim in the petition only for a direction to the respondent no.2 to carry out the fresh inspection of the petitioner's Medical college.

3 The petition arises out of the peculiar facts and circumstances. The petitioner has been granted permission for starting a Medical College in a Rural and Tribal area of Palghar District for the Academic Session 2017-18 by an order dated 31/5/2017. The said letter of permission issued by the Central Government grants permission in favour of the petitioner for opening a medical college for a period of one year. The permission is to be renewed on yearly basis subject to verification of achievement of annual targets indicated in the scheme submitted by the petitioner. The said order sets out that the renewal of permission will continue till such time

the infrastructure and expansion of hospital facilities is completed as per the norms of Medical Council of India.

4 As per the Regulations framed by the Medical Council of India, it is imperative for every college to make an application to it prior to period of six months of the starting of the next academic session. Accordingly, the petitioner has made an application to the respondent - Medical Council of India. In pursuance to the application, the inspection came to be carried out by the team of Medical Council of India.

5 On the basis of the inspection being carried, the Medical Council of India has addressed a communication to the respondent no.1 - Union of India on 21st November 2017, thereby recommending to the Union of India to invoke Regulation 8(3)(1)(a) of the said Regulation and disapprove the application of the petitioner under Section 10-A of the Indian Medical Council Act, 1956 (hereinafter referred to as 'the said Act') for renewal of permission of MBBS course for second batch for the Academic Year 2018-19. In pursuance

to the communication received by the Medical Council of India, the Union of India has addressed a communication to the petitioner on 7th December 2017, calling upon the petitioner to remain present before it for hearing with the requisite information. Accordingly, the petitioner attended the hearing and also submitted its detailed reply to the Union of India on 6th January 2018. The reply is accompanied by all relevant documents in support of the petitioners' case with regard to either there being no deficiencies as pointed out by Medical Council of India or with regard to removal of deficiencies. The petitioner has also been granted hearing subsequent to the said notice.

6 The petitioner has approached this Court on the basis of an apprehension that if the respondent no.2 does not carry out a fresh inspection so as to get itself satisfied with regard to the removal or non-existence of deficiencies and submit a fresh report to the respondent no.1 - Union of India, on the basis of the earlier report submitted by the respondent no.2 Medical Council of India, the respondent no.1 may pass

an adverse order rejecting the application for renewal for the Academic Year 2018-19. In this premises, the petitioners have approached this Court, praying for a direction to the Respondent - Medical Council of India to carry out fresh inspection prior to 30th April 2018 and submit a report with regard to the non-existence of deficiencies/removal of deficiencies to the Union of India so that Union of India would consider the factual situation.

7 Mr.Thorat, learned counsel appearing on behalf of the petitioner submits that the perusal of Section 10-A of the said Act itself contemplates that wherever any deficiencies are noticed, an opportunity should be given to the Medical College to rectify the same. It is submitted that after rectification, it is necessary that a fresh inspection should be carried out so that the Medical Council of India can get satisfied as to whether really deficiencies exists or not.

The learned counsel firstly submits that the Regulation 8(3)(1)(a) of the said Regulation is not applicable

to the petitioner inasmuch as the petitioner is seeking renewal for admission to the second batch and the said regulation is applicable for admission to the third batch.

The learned counsel further submits that the deficiencies which were noticed by the Inspection team of the Medical Council of India are not in existence. He submits that during that period, there was cyclone in the area and the Meteorological Department had given warnings to the residents not to move out of their houses. He submits that in spite of that eventuality, the perusal of the inspection report itself would reveal that during the course of the day, hundreds of OPD patients had visited the hospital and number of occupants of the beds in the hospital was also substantial. However, the Inspection team only took into consideration the bed occupancy at 10.00 a.m. Learned counsel further submits that the inspection team has taken into consideration the faculty which had signed the register prior to 11.00 a.m. It is submitted that the Inspection report itself would reveal that large number of faculty members have signed after 11.30

a.m. Even in this situation, they have been shown as 'not teaching', and they have been treated as not being part of the faculty, thus showing a vast deficiency of 84.05% insofar Faculty is concerned and 87.25% insofar as Resident doctors are concerned. Learned counsel, therefore, submits that if fresh inspection is carried out by the Medical Council of India, the factual situation would come to light, which will enable the respondent no.1 Union of India to decide the issue objectively.

8 Shri Gole, learned counsel appearing on behalf of the respondent no.2 on the contrary submits that perusal of Regulation 8(3)(1)(a) which is applicable for admissions upto II Renewal, would reflect that if a deficiency of teaching faculty/residents is more than 30% and the bed occupancy is less than 50%, then the Medical Council of India has no other option but to recommend to the Union of India, not to consider the case of a Medical college for grant of renewal/permission. It is submitted that since the deficiency in the case of the petitioner is much more than what is

provided under the said Regulation, Medical Council of India has rightly recommended to the Union of India not to grant a renewal permission for the academic session 2018-19. Mr. Gole further relies on the order passed by Their Lordships of the Apex Court in *Medical Council of India Vs. Global Health Research and Management Institute & ors in SLP 8396 of 2018 dated 16th April 2018*, in support of the submission that the Hon'ble Apex Court has set aside the order of the Rajasthan High Court by which it had directed the inspection to be carried out by Medical Council of India under 8(3)(1)(b) of the said Regulation.

9 For appreciating the rival submissions, it would be relevant to refer to relevant part of Section 10-A of the said Act.

10A. Permission for establishment of new medical college, new course of study. (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 a 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 the 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.

(4) The Central Government may, after considering the scheme and the recommendations of the Council under sub-section (3) and after obtaining, where necessary, such other particulars as may be considered necessary by it from the person or college concerned, and having regard to the factors referred to in sub-section (7), either approve (with such conditions, if any, as it may consider necessary) or disapprove the scheme and any such approval shall be a permission under sub-section (1): Provided that no scheme shall be disapproved by the Central Government except after giving the person or college concerned a reasonable opportunity of being heard: Provided further that nothing in this sub-section shall prevent any person or medical college whose scheme has not been approved by the Central Government to submit a fresh scheme and the provisions of this section shall apply to such scheme, as if such scheme has been submitted for the first time under sub-section (2).

10 Perusal of sub-section (1) of Section 10-A would thus reveal that no person shall establish a medical college except with the previous permission of the Central Government obtained in accordance with the provisions of the said section. Sub-section(2) of Section 10-A thereof reveals that every person or medical college is required to

submit to the Central Government for the purpose of obtaining permission under sub-section (1), a scheme which has to be in such form and contain such particulars and be preferred in such manner as prescribed. Sub-section (3) of the said section would be the most relevant. On receipt of the scheme by the Council under sub-section (2), the Council is entitled to obtain such other particulars as deemed necessary by it, from a person of the Medical College concerned. Clause (a) of sub-section 3 of Section 10-A would reveal that if in the opinion of Medical Council of India, the scheme is defective and does not contain any necessary particulars, it is required to give a reasonable opportunity to the person or the college concerned for making a written representation. It would also reveal that it shall be open to such person or Medical College to rectify the defect if any specified by the Council. Clause (b) of Sub-section (3) would reveal that the Medical Council of India is empowered to consider the scheme having regard to the factors referred to in sub-section (7), and submit the scheme together with its recommendation thereon to the Central Government. Sub-section (4) of Section 10-A

enables the Central Government either to approve or disapprove the scheme. The first proviso thereto, however, provides that no scheme shall be disapproved by the Central Government, except after giving the person or college concerned a reasonable opportunity of being heard. No doubt that while considering the matter of approval or disapproval, the Central Government is required to take into consideration the factors enumerated in sub-section (7) of the said section. However, it will not be relevant for us to consider the said sub-section, inasmuch we are not in the present matter concerned with the question as to whether the factors which are required to be taken into consideration are satisfied by the petitioner or not. That is a matter which will have to be taken into consideration by the Central Government.

It is not in dispute that in view of the directions issued by the Hon'ble Apex Court, the aforesaid provisions which are applicable for opening a College are also made applicable for renewal of the permission for every Academic

year. Not only this, it would reveal that the said regulations themselves have been amended vide notification dated 8th February 2016 so as to bring them in tune with the directions of The Hon'ble Apex Court. It will also be relevant to refer to clause 8(3)(1) of the said Regulation.

(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 convey the deficiencies to the applicant and provide him an opportunity and time to rectify the deficiencies. (Emphasis supplied)

11 It will further be relevant to refer to clause 8(3)(1)(a) of the said regulation.

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

It is is observed during any regular inspection of the institute that the deficiency of teaching faculty and/or Residents is more than 30% and/or bed occupancy is < 60%, such an institute will not be considered for renewal of permission in that Academic year.

12 A conjoint reading of the aforesaid provisions of the said Act and the Regulations framed thereunder would reveal that if any deficiencies are noticed by either the Medical Council of India or the Central Government, an opportunity is required to be given to the person or college to rectify the same. Not only this, but the perusal of sub-section (4) of section 10-A would also reveal that if a negative order is to be passed by the Central Government, it has to be preceded by the observance of principles of natural justice. Perusal of clause 8(3)(1) would reveal that the permission to establish a medical college and admit a student has to be initially granted for a period of one year and it may be renewed on yearly basis subject to verification of the achievements of annual targets. The said regulation casts a responsibility on the person to apply 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. It further provides that further admission shall not be made at any stage unless the requirements of the Council are fulfilled. It is further pertinent to note that the said regulation also provides that the Central Government may at any stage convey the deficiencies to the applicant and provide him an opportunity and time to rectify the deficiencies.

In so far as reliance placed on clause 8(3)(1)(a) of the Regulations is concerned, we are of the considered view that the said clause would not be applicable to the case of the petitioner. Perusal thereof would reveal that it is applicable to admission of third batch. However, in the present case, we are concerned with the first renewal for admission to the second batch. In any case, we are of the considered view that the parent statute itself provides for giving of an opportunity to rectify the deficiencies which are pointed out by the Medical Council of India.

13 In the present case, it is a different matter as to whether really the deficiencies exists or not. The manner in which the inspection is carried out itself speaks volumes. The perusal of the inspection report itself would reveal that though bed occupancy is shown 01% at 10 a.m, but it is shown as 45.30% on random verification done on that date. It is difficult to appreciate this anomaly in the reports. The OPD attendance shown at 2.00 p.m as 703, whereas the casualty attendance is shown as 30 and the number of admissions is shown as 39. If the number of admissions is 39, then as to how the bed occupancy is 01%, is a million dollar question.

14 Insofar as the faculty and resident doctors are concerned, the relevant page of the report is at page 35. The very beginning of the said clause 3.5.15 shows that the only faculty/residence who have signed the attendance sheet before 11.00 am on the first day of assessment should have verified. It provides that no verification of declaration form should be done for the faculty/resident doctors coming after

11.00 am of the first day of assessment. It can thus be seen that though the faculty for all the subjects is available, the faculty has been considered to be 87% deficient only on the ground that they have signed after 11.30 a.m. The petitioner has placed voluminous documents on record to show that they are having sufficient number of faculties as well as resident doctors. We are only given two aforesaid instances to show as to in what manner the inspection has been carried out by the inspection team.

15 We are of the considered view that when the parent statute as well as regulation 8(3)(1) themselves provide for an opportunity to the college to remove the deficiencies, and to rectify them, the respondent no.2 could not have unilaterally sent a negative recommendation without giving an opportunity to the petitioner to rectify the defects and without submitting a fresh report after carrying out the inspection.

16 We are therefore, of the considered view that approach adopted by the respondent no.2 is not in accordance with the scheme as framed under the Act and the Regulation.

17 No doubt that Shri Gole has heavily relied on the order passed by their Lordships of the Apex Court in the case of the Medical Council of India Vs. Global Health Research and Management Institute (supra). However, in the said case, what was challenged before Their Lordships of the Apex Court was an ad-interim order passed by the Rajasthan High Court directing the petitioner to carry out the provisional compliance inspection of the respondent Medical College in view of Regulation 8(3)(1)(b) of the Establishment of Medical College Regulation 1999. We are not aware about the facts which fell for consideration before their Lordships. In the present case, we have taken a considered view that Regulation 8(3)(1)(a) will not be applicable to the present case. In any case, we are not passing an ad-interim order, but deciding the petition on its own merits. We are of the

considered view that the inspection which was carried out was not carried in a proper manner. Apart from that, the petitioner had also brought on record the natural calamity that had taken place during the relevant period. The material placed on record would reveal that due to the cyclone, the Meteorological Department had given warnings to the residents of the area not to move out of their houses. The material placed on record would reveal that the said cyclone had also resulted a heavy damage in the area. It is further to be noted that the Medical College is situated in the rural and tribal area of the State.

18 Taking into consideration all these aspects of the matter, we are of the considered view that the petitioner is atleast entitled to get the re-inspection by the Medical Council of India so as to verify as to whether the deficiencies which were noticed in the earlier report, really exist or not and as to whether the deficiencies have been rectified or not. In that view of the matter, we are inclined to allow the petition.

19 Respondent no.2 is therefore, directed to inspect Medical College of the petitioner afresh and submit a fresh report to the respondent no.1 Union of India as to whether the deficiencies as pointed out in the earlier report exists or not and and the deficiencies as noticed in the earlier report are rectified or not.

20 The same shall be done prior to 30th April 2018, which is the date prescribed as per the directions of the Hon'ble Supreme Court.

21 At this stage, Mr.Gole, learned counsel for the respondent no.2 prays for stay of the order for a period of four weeks from today.

 Taking into consideration that the dead line as fixed by their Lordships of the Apex Court is 30th April 2018, we are not inclined to grant the said prayer. Prayer is rejected.

(SMT.BHARATI H. DANGRE,J)

(B.R.GAVAI,J)