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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 23.05.2018

Date of Decision: 28.05.2018

+ **WP (C) No.5006/2018**

**DR.JAGAT NARAIN SUBHARTI CHARITABLE TRUST
& ANR.** Petitioners

Through: Mr.Guru Krishna Kumar, Sr.
Adv. with Mr.Vivek Singh,
Mr.Amitabh Sinha
&Mr.Swastik Dalai, Advs.

Versus

UNION OF INDIA AND ANR. Respondents

Through: Mr.Aman Nandrajog, Adv. for
applicant in & C.M. No.
No.20812/2018.
Mr.Vikas Singh, Sr. Adv. with
Mr.T. Singhdev, Ms.Puja
Sarkar & Ms.Biakthansangi
Das, Advs. for R-2.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

JUDGMENT

REKHA PALLI, J.

1. Vide the present petition, the Petitioner No. 1/Trust and Petitioner No. 2/College have impugned the order dated 20.04.2018, whereby the Respondent No. 1/Union of India has, on the basis of the recommendations dated 20.03.2018 made by the Respondent No. 2/Medical Council of India (MCI), disapproved the Petitioners' application/scheme seeking renewal of permission for admission of the third batch of 150 students for the MBBS course at the Petitioner No. 2/College, for the academic session 2018-19. The Petitioners have also

sought a direction to the Respondent No. 2/MCI, to conduct an inspection of the Petitioner No. 2/College, to verify its fulfilment of the eligibility criteria for the second renewal of the aforesaid permission for the academic session 2018-19 and, thereafter, send its recommendations based on the said inspection to the Respondent No. 1/Union of India for taking a fresh decision on the grant of permission to the Petitioners.

2. The brief facts as emerge from the record are that the Petitioner No. 1, a public charitable trust established on 12.08.2002, had applied to the Respondent No. 1 in the year 2012, for grant of permission to start a medical college at Dehradun. It is the Petitioners' case that their initial application seeking establishment of a college was returned on wholly frivolous grounds and, therefore, they submitted a fresh scheme seeking grant of permission for the academic session 2014-15, which subsequent application was also rejected without any inspection. The Petitioners then submitted a fresh application dated 30.08.2014 for grant of permission for the year 2015-16, pursuant where to it was asked by the Respondent No. 2 to submit certain documents. On the basis of the documents furnished by the Petitioners, the Respondent No. 2's Assessor conducted a surprise inspection of the Petitioner No. 2/College on 23.01.2015, which was followed by a compliance verification inspection on 30.04.2015, whereafter the Petitioners' scheme was once again disapproved.

3. In the petition, great pains have been taken to elaborate that even though the Petitioners were fulfilling the norms, the Respondent No. 2 for mala fide reasons, did not grant permission to the Petitioners for successive academic years

only on frivolous grounds. It is further contended that, pursuant to the orders of the Oversight Committee, the Petitioner No. 2 was finally issued a Letter of Permission for 150 MBBS seats for the academic session 2016-17 on 26.09.2016. It is further stated that, faced with the same situation for the academic session 2017-18, when the Respondents had once again denied the renewal of permission to the Petitioners on wholly arbitrary grounds, the Petitioners were compelled to approach the Supreme Court by way of a writ petition being *WP (C) No. 513/2017*, wherein the Court vide its order dated 30.08.2017, while quashing the decision of the Respondent No. 1 disapproving the Petitioner's scheme, had directed the Respondents to permit the Petitioner No. 2/College to admit 150 MBBS students for the academic year 2017-18.

4. It is contended that, in compliance of the Supreme Court's order dated 30.08.2017, the Respondent No. 2 vide its letter dated 05.09.2017 asked the Petitioner No. 2/College to give its readiness and willingness to be assessed by the Respondent No. 2 for the renewal of permission for the next academic session 2018-19. It is the Petitioners' case that, since they had been granted a Letter of Permission for the academic year 2017-18 only on 30.08.2017, on the basis of their year-wise time bound target, according to which Petitioner No. 2/College was expected to be ready for inspection for the third batch of 150 students only by December 2017, the Petitioners while furnishing the requisite forms along with supporting documents, requested the Respondent No. 2 to carry out an

assessment of the Petitioner No. 2/College for the third renewal only after 30.11.2017.

5. What transpires from the record is that the Respondent No. 2, while declining the Petitioners' aforesaid request, conducted a surprise inspection of the Petitioner No. 2/College on 11.10.2017. It is the common case of the parties that on 11.10.2017, since the Petitioner No. 2/College was not ready for inspection, it requested the assessors of MCI not to carry out any inspection. However, the Respondent No. 2, while contending that no inspection was conducted on 11.10.2017 due to the Petitioners' refusal to allow the same, claim to have taken certain photographs of the Petitioner No. 2/College, which pictures according to the Respondent No. 2 show that the Petitioner No. 2/College was not at all fulfilling the prescribed mandatory criteria for the renewal of permission.

6. It further transpires that on 11.10.2017 itself, on which date no inspection was carried out, the Petitioners had requested the Respondent No. 2's Assessor not to carry out any inspection of the Petitioner No. 2/College till 30.11.2017. Thereafter on 01.12.2017, the Petitioner sent a request letter to the Respondent No. 1 to carry out the requisite inspection for grant of permission for admission of the third batch of 150 students in the MBBS course for the academic session 2018-19.

7. Since the Petitioners neither received any reply from the Respondent No. 2, nor any inspection was carried out, they approached the Oversight Committee appointed by the Supreme Court. The Oversight Committee vide its letter dated 06.12.2017 forwarded the Petitioners' representation to the

Respondent No. 2 with a direction to give a suitable reply to the Petitioners under intimation to the Oversight Committee within two weeks. On 22.12.2017, the Petitioners received a letter from the Respondent No. 2, informing them that their representation had been considered by the Executive Committee of the Respondent No. 2 in its meeting held on 14.12.2017, and its decisions had been forwarded to the Oversight Committee for approval of the same.

8. The Petitioners claim that, while they were waiting for a decision of the Respondent No. 2 on their representation seeking inspection, they received a communication dated 30.01.2018 from the Respondent No. 1, informing them that the Respondent No. 2 had on 06.01.2018 recommended disapproval of their scheme/application for renewal of permission for the third batch of the MBBS course and, therefore, in accordance with the provisions of Section 10A(4) of the Indian Medical Council Act, the Petitioners were directed to appear for a personal hearing before the Respondent No. 1 on 05.02.2018. The Petitioners claim that on 05.02.2018, not only were the complete facts explained to the Hearing Committee but they also submitted a written representation to the Respondent No. 1. It is the further case of the Petitioners that, while they were awaiting the final decision of Respondent No. 1 pursuant to the hearing granted to them on 05.02.2018, a copy of a letter dated 13.02.2018 written by Respondent No. 2/MCI to the Oversight Committee was received by them, from which letter they learnt that the Respondent No. 2/MCI had rejected their scheme for renewal of permission, on the ground that, since the Petitioners did not

allow inspection on 11.10.2017, no request for extension of time for assessment could be entertained by the Respondent No. 2/MCI.

9. Having received the aforementioned letter, the Petitioners did not make any representation at that stage and, after waiting for almost 1½ months for the final decision of the Respondent No. 1/Union of India, approached this Court by way of a writ petition being *WP(C) No. 2453/2018*, impugning the Respondent No. 2's recommendation dated 06.01.2018. When the aforesaid writ petition came up for hearing before this Court on 20.03.2018, this Court after considering the admitted position that a final decision was yet to be taken by the Respondent No. 1, disposed of the writ petition with directions to the Respondent No. 1 to decide the Petitioners' pending application by passing a reasoned and speaking order within a period of ten days. It appears that since no action was taken by the Respondent No. 1 in the time granted to them, the Petitioners' filed a Contempt Petition before this Court and it is only then that the Respondent No. 1 finally passed the impugned order dated 20.04.2018, denying renewal of permission to the Petitioners.

10. Aggrieved by the impugned order dated 20.04.2018, the Petitioners had initially approached the Supreme Court by way of a writ petition being *WP (C) No. 425/2008*, which was withdrawn on 07.05.2018 with liberty to approach this Court. It is in these circumstances, the Petitioners have filed the present petition seeking the following reliefs:-

“(i) Issue a writ, order or direction in the nature of Certiorari for setting aside/quashing the order dated 20.04/2018 passed vide letter no.U-

12012/702/2015-mei [fts.3073174] denying the renewal of the permission for admission of third batch of 150 MBBS students at petitioner no.2 for the academic year 2018-19.

(ii) Issue of writ, order or direction in the nature of mandamus for directing the respondent no.2-MCI to conduct the inspection of the petitioner college to verify the fulfilment of the eligibility criteria for the second renewal of the permission to admit students in the academic session 2018-19 and send its recommendations to the respondent no.1 and direct the respondent no.1 to take a decision on the grant of permission within a time bound schedule.

(iii) Issue a writ, order or direction in the nature of mandamus to the Respondent No.1 for renewal of permission of admission of 3rd Batch of 150 MBBS students for the academic year 2018-19 in Petitioner Institute;

(iv) Issue a writ, order or direction in the nature of mandamus thereby constituting another team of independent Assessors who are not working or are under the administrative control of the Respondents for conducting the inspection of the Petitioner College separately and direct both the teams to submit their reports to this Hon'ble court for judicial scrutiny.

(v) issue any other appropriate writ, order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

11. Arguing for the Petitioners, Mr. Guru Krishna Kumar, learned Senior Counsel, has raised three basic submissions. At the outset, he contends that the action of the Respondents is wholly mala fide as the Respondent No. 2, despite being aware of the fact that the Letter of Permission for the academic year 2017-18 had been granted to the Petitioners only on 30.08.2017, due to which circumstance the Petitioner No.

2/College could not be expected to be ready for inspection for the next academic year 2018-19 within such a short time, had deliberately visited the premises of the Petitioners for carrying out the inspection on 11.10.2017, and that too without even rejecting the Petitioner's specific request to carry out the inspection after 30.11.2017. Mr. Kumar has taken great pains to refer to the details of the proceedings leading to grant of permissions to the Petitioners for the earlier academic years, in support of his contention that the Respondent No. 2 had deliberately ignored the genuine and reasonable request of the Petitioners for postponing the inspection.

12. The second submission of Mr. Kumar is that in any event, it is the Respondent No. 2's own admitted case that no inspection was carried out and, therefore, it cannot be allowed to rely on the photographs claimed to have been taken by its Assessors on 11.10.2017. He submits that, once it is an admitted case that no inspection was actually carried out on 11.10.2017, there is no reason as to why the Respondent No. 2, which has been carrying out inspections even on subsequent dates, did not actually carry out an inspection of the Petitioner No. 2/College on any date after 01.12.2017. He contends that, once it is the Respondent No. 2's case that no inspection was carried out, it could not in the same breathe contend that the permission could not be granted due to alleged deficiencies found in the Petitioner No. 2/College. He submits that in case the Respondent No. 2 had found any deficiencies, it was incumbent upon the Respondent No. 2 to provide an opportunity to the Petitioners to remove the said deficiencies in accordance with the procedure laid down in Section 10A of the

Indian Medical Council Act. He thus contends that since the deficiencies noted in the impugned order, are the main reasons for non-renewal of permission to the Petitioners, for which admittedly no opportunity was ever given to the Petitioners to rectify the same, the impugned order is liable to be set aside on this ground alone.

13. The third and final submission of Mr. Kumar is that, even though the Respondent No. 2 has sought to justify its action in conducting an inspection on 11.10.2017 on the ground that the time schedule set out in the Regulations has to be stringently followed, in terms of which Regulations the inspection had to be carried out by 15.12.2017, if Respondent No. 2 had acted fairly it could and should have carried out an inspection after 30.11.2017. He submits that while taking the aforesaid plea, the Respondent No. 2 has deliberately ignored the fact that the said time schedule is not to be read in such a rigid manner as is sought to be done by the Respondents. He submits that Respondent No. 1 always has a discretion to modify the schedule in the facts of a case, subject to the rider that the admissions have to be carried out before 31.08.2018.

14. Mr. Kumar has placed reliance on the decisions of the Supreme Court in *Royal Medical Trust v. Union of India* [(2015) 10 SCC 19] and *Medical Council of India v. Madhu Singh* [(2002) 7 SCC 258], as also a judgment dated 23.03.2018 of this Court passed in *Nimra Educational Society and Anr. v. Union of India and Anr.* [WP(C) No. 2916/2018], to contend that the time schedule can be suitably modified and there is no bar to the intermediate steps as long as the sanctity of the deadline for carrying out admissions (i.e. 31.08.2018) is

maintained. Mr. Kumar submits that the Respondent No. 2, in contending that the time schedule must be strictly adhered to, has deliberately applied the said time-schedule to the Petitioner No. 2/College in a rigid manner, by purposely overlooking the fact that the Petitioners were granted a Letter of Permission for the second batch of 150 MBBS seats only on 31.08.2017, which was way beyond the last date of 31.05.2017 prescribed in the schedule for the same. He, thus, contends that once the date for the grant of Letter of Permission has been shifted in the case of the Petitioners from 31.05.2017 to 31.08.2017, the Respondent No. 2 ought to have acceded to the request of the Petitioners for conducting an inspection on a subsequent date after 30.11.2017.

15. On the other hand, Mr. Vikas Singh, learned Senior Counsel for the Respondent No. 2, vehemently opposes the petition and submits that the permission granted to the Petitioners both for the years 2016-17 and 2017-18 by the Supreme Court, in itself was erroneous. He submits that the Petitioners have misled the Supreme Court, which is evident from the fact that the Supreme Court's order dated 30.08.2017 was based on the presumption that the Petitioners had been declared as owners of the land on which the Petitioner No. 2/College is situated, which presumption according to him was erroneous. In support of his contention that the Supreme Court's reliance on the aforesaid presumption was erroneous, Mr. Singh also places reliance on an application being *CM No. 20812/2018* filed by Sh. Manish Verma seeking impleadment in the matter on the ground that it is he, and not the Petitioners, who is the owner of the land on which the Petitioner No.

2/College is situated. He, therefore, contends that the very permission granted to the Petitioner No. 2/College for the last two years is also liable to be recalled.

16. Mr. Singh further submits that the Respondent No. 2 functions under a fixed time schedule prescribed under the Regulations and, therefore, it is under a bounden duty to carry out the inspections in accordance with the prescribed schedule. He submits that the Respondent No. 2 cannot and does not accept the request of any college to postpone the dates of inspection and, thus, contends that the Respondent No. 2 was fully justified in visiting the Petitioner No. 2/College for inspection on 11.10.2017.

17. Mr. Singh further submits that, once the Petitioner No. 2/College had refused inspection, it cannot at all question the impugned order especially when the Assessors on visual observation of the Petitioner No. 2/College, had found major deficiencies which do not at all warrant renewal of permission to a running college like the Petitioner No. 2, which is supposed to be ready with the infrastructure. He submits that the Respondent No. 2, being a statutory authority, cannot recommend renewal of permission to such colleges which do not even have the basic facilities, and cannot at all recommend grant of permission to such running colleges which do not even meet the eligibility criteria prescribed for the same under the Indian Medical Council Act and the regulations framed thereunder.

18. Mr. Singh also places reliance on three decisions of the Supreme Court, namely *Madha Medical College and Research Instt. Thr. its Managing Director v. Union of India*

& Anr. [2017 SCC OnLine SC 1078], Shri Venkateshwara University Through its Registrar & Anr. v. Union of India & Anr. [WP(C) No. 445/2017] and Ashish Rajan & Ors. v. Union of India & Ors. [(2016) 11 SCC 225], in support of his contention that the powers of the Respondent No. 2/MCI cannot be constricted to prohibit it from carrying out inspections as and when it deems fit, and when the concerned Institution does not allow the team of the Respondent No. 2 or its Assessors to carry out an inspection, the grant of a Letter of Permission would be wholly unwarranted.

19. Mr. Singh further contends that in any event, the time for inspection having already lapsed, no further inspection can be carried out at this stage and the Petitioners can therefore only file an application seeking recognition for the next academic year. By placing reliance on *Royal Medical Trust (supra)*, and *Ashish Ranjan & Ors. (supra)*, he contends that the Supreme Court has repeatedly held that all the stakeholders must follow the schedule in letter and spirit and not make any deviation therefrom whatsoever.

20. Before dealing with the rival contentions of the parties, it would be appropriate to refer to the time schedule as set out vide notification dated 14.01.2016 published in the Gazette of India. It would also be appropriate to refer to paragraph 3(1) of the Medical Council of India Establishment of Medical College Regulations, 1999, which reads as under:-

“TIME SCHEDULE FOR RECEIPT OF APPLICATIONS FOR ESTABLISHMENT OF NEW MEDICAL COLLEGES/RENEWAL OF PERMISSION AND PROCESSING OF THE APPLICATIONS BY THE

CENTRAL GOVERNMENT AND THE MEDICAL COUNCIL OF INDIA

<i>Sl.No.</i>	<i>State of processing</i>	<i>Last Date</i>
1.	<i>Receipt of applications by the Central Government.</i>	<i>Between 15th June to 7th July (both days inclusive) of any year.</i>
2.	<i>Forwarding application by the Central Government to Medical Council of India.</i>	<i>By 15th July.</i>
3.	<i>Technical Scrutiny, assessment and Recommendations for Letter of Permission by the Medical Council of India</i>	<i>By 15th December</i>
4.	<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 Govt. To the Medical Council of India.</i>	<i>Two months from receipt of recommendation from MCI but not beyond 31st January.</i>
5.	<i>Final recommendations for the letter of permission by the Medical Council of India.</i>	<i>By 30th April.</i>
6.	<i>Issue of Letter of Permission by the Central Government.</i>	<i>By 31st May.</i>

Note:- In case of renewal of permission, the applicants shall submit the application to the Medical Council of India by 15th July.

**in terms of Notification published on 14.01.2016 in the Gazette of India.”*

“(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.”

21. Having heard the learned Senior Counsels for the parties, I have given my thoughtful consideration to their rival contentions. The first and foremost fact which emerges from the record as also the submissions of the parties is that, the Petitioner No. 2/College was granted renewal of permission to admit the second batch of 150 MBBS students for the academic year 2017-18 only on 31.08.2017, by which date the time prescribed for receipt of fresh applications (which was otherwise 15.05.2017) had already expired. Parties are also ad-idem that as per the prescribed time schedule, the inspection by the Assessors of the Respondent No. 2/MCI has to be carried out before 15.12.2017. The MCI has contended that, keeping in view the prescribed time schedule and the limited period available with it to carry out inspections of a number of colleges across the country, it had vide its letter dated 15.09.2017 informed the Petitioner No. 2 that it would inspect its premises on 11.10.2017. On the other hand, it is the Petitioners' contention that, in view of the delayed grant of permission to it for the year 2017-18, they were fully justified in requesting the Respondent No. 2/MCI to reschedule its proposed inspection so as to carry out the same on a date after 30.11.2017, by which date the Petitioner No. 2 expected that it would have the requisite infrastructure for seeking the second renewal of permission for admitting the third batch of 150 students for the MBBS course. It is Mr. Singh's contention that it was not open

for the Petitioner No. 2/College to insist that the inspection must be carried out at any particular time. It has been further contended that even otherwise, keeping in view the fact that the Petitioner No. 2 was a running college already having admitted two batches of 150 students each in 2016-17 and 2017-18 respectively and was, therefore, expected to already have the requisite infrastructure, it was open for the Respondent No. 2 to carry out an inspection of the Petitioner No. 2/College at any time to ensure that it has the necessary infrastructure to maintain the prescribed educational standards.

22. In my considered view, in light of the fact that the Petitioner No. 2 was granted recognition for the academic year 2017-18 only on 31.08.2017, there may have been some justification on the part of the Petitioners in requesting the Respondents to postpone the Petitioner No. 2's inspection. However, in my opinion, once the Respondent had not agreed to the said request and had actually come to inspect the Petitioner No. 2's premises on 11.10.2017 itself, the action of the Petitioners in refusing the said inspection was wholly without any justification and an adverse inference has to be drawn against the Petitioner No. 2/College, to the effect that it did not have the requisite infrastructure on 11.10.2017 not only for the 3rd Batch sought to be inducted in 2018-19, but perhaps also for the earlier two batches of students. Even otherwise, what I find a little intriguing is that the Petitioner No. 2, having refused an inspection on 11.10.2017 and despite being well aware that as per the regulations, no permission for admission of the 3rd batch could be granted to it till a proper inspection was carried out by the Respondent No. 2/MCI, merely wrote

one letter dated 01.12.2017 to the Respondent No. 1/Union of India requesting it to carry out the requisite inspection. The Petitioners took no further action to approach any of the Respondents or this Court seeking a direction to Respondent No. 2 to carry out an inspection. In view of the mandatory requirement of an inspection as noted above, it is in this petition that the Petitioner No. 2 has for the first time sought a direction to the Respondent No. 2/MCI to carry out the necessary inspection for examining its eligibility for grant of recognition for the 3rd batch of 150 MBBS students. Thus, I find merit in Mr. Singh's contention that the Petitioner was well aware that it did not have the requisite infrastructure and, therefore, did not make any genuine efforts to ensure that the Respondent No. 2 actually carries out the requisite inspection for the year 2018-19.

23. Thus, even though it has been strenuously contended on behalf of the Petitioners that the time schedule prescribed in the Regulations cannot be read in such a rigid manner and the last date for admission is still 3 months away, I find that the Supreme Court has repeatedly held that strict adherence to the time schedule is imperative. Furthermore, even if Mr. Kumar's contention were to be accepted, that this Court could exercise its discretion by directing the Respondent No. 2 to carry out an inspection of the Petitioner No. 2's premises at this stage, I find absolutely no reason to exercise my discretion in favour of the Petitioner. There is no reason as to why the Respondent No. 2 should be directed to carry out an inspection at this stage. In my view, the conduct of the Petitioners in not taking any steps to get an inspection of Petitioner No. 2's premises conducted by

the Respondent No. 2, and that too despite being aware of the fact that an inspection was mandatory for grant of recognition, disentitles the Petitioner to seek any such discretionary relief from this Court.

24. Even though, it has been vehemently contended on behalf of the Petitioners that the action of the Respondents, and particularly of Respondent No. 2 was *mala fide*, I have refrained from examining the aforesaid contention of the Petitioners, in view of my conclusion that in the facts of the present case, there is neither any justification nor would it be proper to direct the Respondent No. 2 to conduct an inspection at this belated stage, by ignoring the prescribed time schedule.

25. Before, I conclude, I may also note that, even though the learned Senior Counsel for the Respondents had vehemently contended that the grant of recognition to the Petitioner for the years 2016-17 and 2017-18 was also erroneous, in my opinion the said contention cannot be examined by this Court, in view of the admitted position that recognition for the aforesaid two years was granted to the Petitioner pursuant to the orders of the Apex Court. For the aforesaid reason, the application bearing *CM No. 20812/2018* seeking impleadment is also liable to be rejected.

26. For all the aforesaid reasons, I find absolutely no merit in the petition and the same alongwith pending applications is dismissed.

(REKHA PALLI)
JUDGE

MAY 28, 2018/aa