

\$~1

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **Letters Patent Appeal No. 340/2018**

Date of decision: 19th July, 2018

JAGAT NARAIN SUBHARTI CHARITABLE TRUST AND ANR.

..... Appellants

Through: Mr. Guru Krishan Kumar, Sr. Advocate
with Mr. Vivek Singh, Advocate.

Mr. Aman Nandrajog, Mr. Sumeer Sodhi and Mr.
Siddharth Sharma, Advocates.

versus

UNION OF INDIA AND ANR

..... Respondents

Through: Bhagvan Swarup Shukla, CGSC with
Kamaldeep, Advocate for R-1/UOI.

Mr. Vikas Singh, Sr. Advocate with Mr. T.
Singhdev, Ms. Puja Sarkar and Mr. Tarun Verma,
Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL):

Present intra-Court appeal under Chapter-X of the Letters Patent Act impugns judgment dated 28th May, 2018 dismissing Writ Petition (C) No. 5006/2018.

2. In the writ petition filed, the appellants before us, Dr. Jagat Narain Subharti Charitable Trust and Shridev Suman Subharti Medical College, had prayed for 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.”

3. Union of India, Ministry of Health & Family Welfare (Central Government, for short) and Medical Council of India are Respondent Nos. 1 and 2 in the present appeal. Respondents have been authorized and empowered to grant permission to establish and renew permission for accreditation of medical colleges, under and as per the Indian Medical Council Act, 1956 (Act, for short), and Establishment of Medical College Regulations, 1999 (Regulations, for short).

4. Facts in brief are:-

4.1. Dr. Jagat Narain Subharti Charitable Trust, has established Shridev Suman Subharti Medical College, Dehradun, Uttarakhand.

4.2. Applications filed by the appellants for grant of permission to start medical college from the academic sessions 2013-14, 2014-15 and 2015-16 were declined and rejected for various reasons, which we need not elaborate for the present decision.

4.3. Appellants' request for permission/approval for the academic session 2016-17 was initially denied by the Medical Council of India, but subsequently granted on the directions of the Oversight Committee constituted by the Supreme Court, vide formal letter of permission dated 26th September, 2016 for intake of 150 students.

4.4. Subsequently, Medical Council of India vide communication dated 15th January, 2017 had written to the Central Government to revoke the permission. Consequent thereto the Director General of Health Services had afforded personal hearing to the appellants on 17th January, 2017.

4.5. Having failed to receive intimation from the competent authority, the appellants had filed writ petition (C) No. 513/2017 before the Supreme Court. In the meanwhile by communication-cum order dated 14th August, 2017 of the

Central Government, the appellants were debarred from admitting students for the academic sessions 2017-18 and 2018-19.

4.6. Supreme Court vide judgment dated 30th August, 2017 revoked the decision of the Central Government dated 14th August, 2017 and the appellants were permitted to admit up to 150 students till 5th September, 2017 for the academic session 2017-18. We shall subsequently refer to the relevant paragraphs of the said judgment on the question of college inspection.

4.7. In view of the said judgment, Medical Council Of India wrote letter dated 5th September, 2017 to the appellants' to apply in terms of Regulation 8 (3) (1) of the Regulations for renewal of permission for admission of 3rd batch of 150 MBBS students for the academic session 2018-19. Appellants were required to make their application by 15th September, 2017. We shall subsequently refer to the contents of this letter.

4.8. Thereupon on 15th September, 2017, the appellants had applied for grant and renewal of permission for admission of 3rd batch of 150 MBBS students for the academic session 2018-2019.

4.9. Appellants simultaneously by letter dated 15th September, 2017 had requested the Medical Council of India to conduct their assessment after 30th November, 2017. We shall subsequently quote a portion of the statement made by the appellants in this letter.

4.10. On 11th October, 2017, a team appointed by Medical Council of India had visited the appellant hospital for assessment of physical and other teaching facilities. However, they were not permitted and allowed to conduct inspection. Relevant portion of the inspection report is reads:-

“ We, the undersigned assessors reached Shridev Suman Subhati Medical college, Dehradun, Uttarakhand at 9.40 am on 11/10/2017, for the Assessment of the physical and

the other teaching facilities available for renewal of permission of 3rd Batch (150 MBBS Seats) of the above college as per the reference cited above.

The Principal Dr. Rajesh Misra was not available, we met the officiating Principal Dr. Debarata Roy who informed us that the Principal is on leave. We then handed him the official communication for Assessment from MCI which he received and signed. He then informed us that the college does not want the assessment to be undertaken today by us. They have given us an undertaking citing reasons for their reluctance for today's assessment.

Please find enclosed the following:

1. Photographs of the hospital taken by our mobiles which shows near empty OPDs giving the hospital a vacant look. (Soft (Pen drive) and hard copies enclosed).
2. Official communications received by us from MCI and received and signed by the Dean.
3. Letter from Principal(Officiating) denying us to carry out the assessment today.

Leave application of Principal Dr. Rajesh Misra dated 6/10/2017”

4.11. Appellants' by letter dated 11th October, 2017 addressed to the Secretary of the Medical Council of India had referred to their earlier letter dated 15th September, 2017 and reiterated that they were not prepared for assessment, and that assessment/inspection should be done after 30th November, 2017.

4.12. On 1st December, 2017 appellants' wrote another letter to the Joint Secretary of the Medical Council of India stating that after receipt of letter dated 5th September, 2017, appellants had started process of re-enforcing the college resources in terms of infrastructure, teaching and other facilities to achieve the minimum standard requirement and annual target.

4.13. Executive Committee of the Council in its meeting held on 14th December, 2017 decided not to recommend grant/renewal of permission for the 3rd batch of

150 students for the academic year 2018-19. This decision was in view of denial of assessment by college authorities and photographs taken by the inspection team, showing nearly empty OPD's and the vacant look of the hospital. Correspondence exchanged, letter of officiating principal and leave application of the principal were noticed and considered. Decision of the Executive Committee was communicated to the appellants vide letter dated 22nd December, 2017.

4.14. Decision of the Executive Committee was approved by the Oversight Committee on 3rd January, 2018 and the Central Government was informed by letter dated 6th January, 2018.

4.15. The appellants' were granted personal hearing in the Ministry of Health and Family Welfare on 5th February, 2018 in terms of Section 10A(4) of the Act.

4.16. Hearing Committee after considering the submissions/compliances furnished and other material on record observed that appellant hospital was not ready for inspection. They agreed with the Medical Council of India's disapproval for grant/renewal of permission.

4.17. The Central Government vide order dated 20th April, 2018 rejected the argument of the appellants that inspection should have been deferred since the principal was not available. It was observed that the appellant college had not ceased to function for 15 days when the principal was travelling abroad. Management should have made arrangements for an officiating principal. Further the appellant college could not rely on the year wise time bound programme as to dictate when the 2nd renewal inspection should be carried out. Central Government, on due consideration accepted and agreed with the recommendation of the Medical Council of India, Oversight Committee and Hearing Committee. Prayer for renewal of permission for admission of the 3rd batch of 150 MBBS students for the academic session 2018-2019 was rejected.

5. We may now refer to the contentions raised by the appellants' before us. Referring to the target year-wise time bound programme it was submitted that the appellants' had to make additions to examination hall-cum-auditorium, lecture theatre of 180 capacity, central library of 600 square meters, purchase additional books etc. by the end of December, 2017-18. Therefore, the appellants were justified in requesting the Medical Council of India to undertake assessment and inspection after 30th November, 2017. The respondents' were unreasonable and irrational when they rejected the request for inspection after 30th November, 2017. The appellants' were compelled to file Writ Petition (C) No. 2453/2018 in the High Court as the Central Government had failed to pass any order in spite of their repeated requests, after the negative report of Medical Council of India vide communication dated 6th January, 2018. Our attention was drawn to order of the Supreme Court whereby the appellants' were granted approval/renewal for the second batch and the finding that the appellant had made full compliance. Reference was also made to the impugned decision and observations of the single Judge that there was some justification in the appellants' request to the Medical Council of India to postpone the inspection.

6. Having considered the contentions we do not find any justification and good cause to interfere with the final directions and findings of the learned single Judge. The appellants' were well aware and conscious of the fact that they had to apply for approval/renewal for admission of the 3rd batch for the academic session 2018-19. To achieve and secure approval, the appellants had to meet and satisfy the statutory requirements of doctors, faculty, residents, and meet the parameters of physical infrastructure, OPD attendance and bed occupancy etc.

7. The appellants' had not sought and applied for renewal/approval for the 3rd batch for the academic session 2018-19. Pursuant to the judgment of the Supreme Court dated 30th August, 2017, to give an opportunity to the appellants, Medical Council of India by communication dated 5th September, 2017 had required the appellants' to apply by furnishing standard application assessment form and declaration forms of the faculty and residents. This letter had made reference to Regulation 8, which we shall be quoting subsequently, and stated that permission for renewal would require examination and satisfaction in terms of infrastructure, teaching and other facilities including requisite hostel facilities for boys and girls, staff, provision for extra beds and corresponding infrastructure in the existing hospital as provided in the time bound action plan. These aspects would be assessed by the assessors. The appellants' were required to furnish declaration from the teaching faculty and residents personally working with the appellant college along with necessary enclosures by each teacher and resident mentioned in the declaration form. Copy of documents required from faculty and residents were stated and mentioned. Dean/Principal was to sign the declaration form after he had satisfied himself about the correctness and veracity of the contents of the declaration.

8. The appellants in their letter dated 15th September, 2017 had accepted their difficulty in complying with the statutory conditions. They had written:-

“A few of the faculty members and residents had expressed their desire to resign before we got the permission of the Central Government on 31.08.2017, because they were worried about their future and career. We are trying to convince them to stay back as the Central Government has granted us the permission

to admit second batch of student in the academic session 2017-2018. However, we are not sure whether they will like to continue or not. In case they prefer to/insist on resigning from their posts, new Faculty members/Residents will be recruited immediately.”

The aforesaid letter effectively accepts that the appellants did not have necessary infrastructure in place and were not in a position to meet essential statutory conditions for renewal. They had stated that faculty members and residents had expressed desire to resign in the absence of permission/renewal for they were worried about their future and career. In case of any resignation, new faculty member/resident would be immediately recruited. Appellants had stated that they would be speeding up efforts to be ready for inspection for the 3rd batch after fulfilling the criteria in terms of infrastructure, faculty and clinical material to meet the requirements of the rules. It was likely that these would be met by 30th November, 2017 and not earlier.

9. What is most disturbing and unacceptable is the conduct of the appellants when the inspection team had visited the hospital/college on 11th October, 2017. On the said date, the inspection team was not permitted and allowed to carry out the inspection. We have already reproduced contents of the report dated 11th October, 2017, given by the inspection team. The report refers to the photographs taken by mobile phone, which showed nearly empty OPD's, giving the hospital a vacant look. This, conduct and grave lapse, and as rightly held by the single Judge was unacceptable and would merit and justify rejection of the application for renewal of permission to the 3rd batch for the academic session 2018-19.

10. Supreme Court in paragraphs 14 and 16 of the judgment dated 30th August, 2017 in the writ petition filed by the appellants, had observed:-

“14. This decision, however, will not be an impediment for the MCI and the competent authority to inspect the college as and when deemed fit and, if any deficiency is found after giving opportunity to the petitioner-college, to proceed against the college in accordance with law. That arrangement will subserve the ends of justice and also ensure larger public interest. For, the compliant medical college, having capacity to admit up to 150 students for the MBBS course in the academic session 2017-18, will not have to face the situation of its 150 seats remaining unutilized entailing in denial of opportunity to 150 aspiring students who are desirous of pursuing medical course but are unable to take admission in other medical colleges in order of their merit.

xxx

16. Considering the fact that the admission process for the academic session 2017-18 is still in progress and the last date fixed for counseling is 31st August, 2017, we are inclined to issue directions to all concerned to permit the petitioner-college to admit up to 150 students until 05.09.2017 to the MBBS course for the academic session 2017-18, with liberty to MCI and the competent authority to inspect the petitioner-college and if any deficiency is noticed, to proceed against the petitioner-college in accordance with law.”

Thus, it was clear that Medical Council of India and the Competent Authority could inspect the appellant college as and when they deemed fit and on any deficiency being noticed the authority was required to proceed against the appellants in accordance with law. This, the Supreme Court had

observed, would sub-serve the ends of justice and ensure larger public interest. Time for counselling, etc. was extended for the academic session 2017-18 as litigation had remained pending in the Supreme Court and was decided vide order dated 30th August, 2017. Failure and refusal to permit inspection on 11th October, 2017 was wrong and contrary to the observations of the Supreme Court and the law.

11. Supreme Court in ***Madha Medical College and Research Institution Though its Managing Director versus Union of India and Another***, (2017) 15 SCC 791, with reference to the importance of inspection has held:-

“17. While considering the above submissions, we must make it clear at the outset that we are not impressed with the argument that MCI is prohibited from conducting a second or subsequent inspection. The purpose of inspection by an expert team of assessors is to verify whether a medical college has the requisite infrastructure and facilities including faculty, residents as well as clinical and non-clinical material. The basic purpose of inspection is to verify whether the college possesses the wherewithal and resources to provide quality legal education consistent with the statutory regulations which hold the field. The powers of MCI cannot be constricted by prohibiting it from carrying out another inspection, even it were to come close on the heels of an earlier inspection. As an expert statutory body, MCI may have legitimate reasons for seeking a reverification of the observations contained in a prior inspection. There may be reasons to doubt the genuineness of the picture which has been made out by the college during the course of an inspection. MCI may have prima facie reasons, to believe that the actual possession of resources and infrastructure is

at variance with what was portrayed before its team of assessors. MCI has been conferred with statutory powers to protect the cause of medical education. MCI is a custodian of public interest and acts in trust for the welfare of society. Access to medical care requires the presence of qualified health professionals. Verification of the conditions which prevail in medical colleges is central to the role discharged by MCI. Hence, it would be manifestly contrary to public interest to restrict the powers of MCI to carry out a fresh inspection even though in its considered decision, such an inspection is necessary. This court cannot sit in judgment over the wisdom of an expert body and we find no basis to hold in law that there is a prohibition in carrying out a fresh inspection. In the absence of a statutory interdict, the court will not read such a restriction into the powers of MCI. In these circumstances, we find no merit in the submission.”

Thus Medical Council of India as a statutory body and being a custodian of public interest is empowered to carry out inspections even if it comes close to the heels of an earlier inspection. Court(s) cannot sit in judgment over the wisdom of an expert body as to when and what time they should conduct inspection. In fact, failure to conduct inspection and undertake assessment would be unacceptable.

12. Supreme Court in ***Royal Medical Trust versus Union of India***, (2015) 10 SCC 19 had referred to Regulation 8 and right, duty and obligation of Medical Council of India to carry out inspections. Inspection, by its very nature must have an element of surprise as this ensures that the required facility and infrastructure are always in place and not borrowed or put up temporarily. This judgment also highlights that time lines fixed for compliance should be adhered to and followed.

13. Learned Senior Advocate appearing for the appellants had drawn our attention to paragraph 33 of the aforesaid judgment and submitted that the Central Government was statutorily empowered to modify the schedule and hence, in the facts of the present case, the Central Government would have directed fresh inspection. This argument for the reasons stated below must be rejected.

14. Regulation 8(3)(1) reads as under:-

“(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 of 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 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.

Note: In above clause “six months” shall be substituted by “as per latest time schedule”

PROVIDED that in respect of

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

If it 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. ”

15. “Six months” in above clause was substituted by “as per the latest time schedule” with effect from 14th June, 2016. The applicable schedule effective from 14th July, 2016 reads as under:-

“*The above SCHEDULE has been substituted with the following:

TIME SCHEDULE FOR RECEIPT OF APPLICATIONS FOR ESTABLISHMENT OF NEW MEDICAL COLLEGE/RENEWAL OF PERMISSION AND PROCESSING OF THE APPLICATIONS BY THE CENTRAL GOVERNMENT AND THE MEDICAL COUNCIL OF INDIA.

S No.	Stage of processing	Last Date
1.	Receipt of applications by the Central Government	Between 15 th June to 7 th July (both days inclusive) of any year
2.	Forwarding application by the Central Government to Medical Council of India	By 15 th July
3.	Technical Scrutiny, assessment and Recommendations for Letter of Permission by the Medical Council of India	By 15 th December
4.	Receipt of reply/compliance from the applicant by the central	Two months from receipt of

	Government and for personal hearing thereto, if any and forwarding compliance by the Central Govt. to the Medical Council of India.	recommendation from MCI but not beyond 31 st January.
5.	Final recommendations for the letter of permission by the Medical Council of India	By 30 th April
6.	Issue of Letter of Permission by the Central Government	By 31 st May

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

(emphasis supplied)

As per the said schedule, the last date for receipt of application by the Central Government is 7th July of any year. Central Government is to forward applications to the Medical Council of India by 15th July. In case of renewal, application is to be filed by 15th July. Medical Council of India is to thereafter carry out and undertake technical scrutiny and assessment and submit their recommendation by 15th December, each year. We had earlier reproduced paragraphs 14 and 16 of the order passed by the Supreme Court for the academic year 2017-18. Medical Council of India could have carried out inspection at any time even in respect of the academic year 2017-18. Further, notwithstanding litigation for the earlier academic year, the appellants were aware and conscious of the norms and conditions required to be satisfied for the approval for the new or 3rd batch of 150 students for academic session 2018-19. The appellants should have been ready in all respects. Thus the contention, predicated on the judgment for

the academic session 2017-18 and, therefore, time for upgradation should have been granted and inspection should have been postponed beyond 30th November, 2017 is fallacious and should be rejected.

16. Similarly, reliance placed by the appellants on year-wise targeted programme with reference to the additional infrastructure facilities, which the appellants had to provide by December, 2017-18, during the period of second renewal, according to us, is an afterthought and pretence. This plea was not taken by the appellants' in their letter dated 15th September, 2017 quoted above. Inspection was denied and not permitted by the appellants as necessary infrastructure was not in place. Year wise targeted programme that had required additional and new facilities to be set up and completed by December, 2017-18, and was not and could not have been the ground to deny and not permit inspection. The inspection team would have examined the existing facilities and duly take note of year-wise targeted programme.

17. In view of appellants' conduct in not permitting and allowing inspection on 11th October, 2017 and other aspects and facts noticed above, we hold the respondents were justified and correct in denying renewal/ permission for admission of 3rd batch of 150 MBBS students for the academic year 2018-19.

18. Manish Verma, Trustee of Sri Sri 1008 Narayan Swami Charitable Trust has filed application for impleadment, C.M. No. 26058/2018, asserting that the appellants are not the owner of 20 acres of land. We need not go into said controversy in the present case in view of our findings recorded above. We clarify that we have not given any observations on findings on the *inter se* disputes between the appellants and the applicant in CM No. 26058/2018.

19. In view of the aforesaid discussion we do not find any merit in the present appeal and the same is dismissed with no order as to costs.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

JULY 19, 2018
MR/NA

