

#47

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 01.08.2018.

W.P.(C) 6656/2018

LORD BUDDHA EDUCATIONAL SOCIETY & ANR.... Petitioners

versus

UNION OF INDIA & ANR

... Respondents

Advocates who appeared in this case:

For the Petitioners : Mr. Arun Bhardwaj, Senior Advocate with Mr. J.S. Bhasin and Mr. Nishant Shokeen, Advocates

For the Respondents : Mr. Vikas Singh, Senior Advocate with Mr. T. Singhdev, Ms. Puja Sarkar, Ms. Amandeep Kaur and Ms. Biakthan Sangi Das, Advocates for MCI

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

SIDDHARTH MRIDUL, J (ORAL)

1. The present petition under Article 226 of the Constitution of India seeks enforcement of specific directions issued by the Hon'ble Supreme Court of India in W.P. (C) 776/2017, titled as "*Lord Buddha Educational Society & Anr Vs. Union of Inda & Anr*" by directing the respondent No.2/Medical Council of India (for short 'MCI') to point out the deficiencies that exist in the petitioner institution and thereafter grant liberty to them to remove the same within a specified timeframe.
2. The genesis of the present petition lies in a decision of the Ministry of Health and Family Welfare, Government of India dated 14.08.2017,

directing the petitioner institution not to admit students in the MBBS course for the academic years 2017-18 and 2018-19.

3. Aggrieved by the afore-stated decision of the Ministry, the petitioner institution instituted a writ petition before the Hon'ble Supreme Court of India being W.P. (C) 776/2017.
4. The Hon'ble Supreme Court of India disposed of the aforesaid petition vide its order dated 13.11.2017, in the following terms:

“Having heard learned counsel for the parties and keeping in view the recent decisions of this Court in *Royal Medical Trust and Anr. vs. Union of India and Anr.*, *Annai Medical College & Hospital and Anr. vs. Union of India and Anr.*, and *Medical Council of India vs. Ananta Charitable Educational Society and Ors.*, it is directed that MCI shall allow the students admitted in the petitioner-institute on the basis of conditional LOP for academic year 2016-17 to continue their studies. MCI shall send a team for inspection of the petitioner-institute as per schedule for the academic year 2018-19. The application filed by the institution for academic year 2017-18 for renewal shall be treated as an application for academic year 2018-19. If deficiencies are noted by the Inspection Team, the same shall be brought to the notice of the institution, and it shall be granted liberty to remove the same within a specified time. Thereafter, the matter shall be placed before the Executive Committee of MCI. If any deficiency is still required to be removed, the same shall be removed by the institution within specified time, and if the institution is a compliant institution, the request for confirmation of LOP for the academic year 2016-17 and renewal of permission for the academic year 2018-19 may be dealt with appropriately.

The Ministry shall take a final decision within one month of the receipt of the recommendation from the MCI by taking assistance of the Hearing Committee as

constituted by the Constitution Bench of this Court in Amma Chandravati Educational and Charitable Trust and Ors. Vs. Union of India and Anr. or other directions in the said decision and in according with law.

We further direct that until the final decision is taken by the Ministry and communicated to the institution, the Bank Guarantee offered by the institution in the sum of Rs. 2 crores shall not be encashed by MCI but the institution shall keep the same alive. If the bank Guarantee has already been encashed by MCI in the meantime, the amount shall be refunded to the institution, which shall furnish a fresh bank Guarantee has already been encashed by MCI in the meantime, the amount shall be refunded to the institution, which shall furnish a fresh Bank Guarantee in the like amount to the MCI within two weeks from the date of receipt of the amount.

Mr. Gaurav Sharma, learned counsel for the MCI would submit that the petitioners will be required to pay the inspection fee if it is not paid, for the inspection to be conducted in terms of this order for considering confirmation of LOP for academic year 2016-2017 and renewal application for academic year 2018-19.

In the event, this final decision of the competent Authority of the Central Government is adverse to the institution, it will be open to the institution to take recourse to such remedies as may be permissible in law.

We further make it clear that the respondent no.2 shall treat the renewal application submitted by the institution for academic year 2017-18, as having been made for academic year 2018-19 and process the same in accordance with law with promptitude.

The writ petition and I.A. No.82637 of 2017 are disposed of in the above terms, with no order as to costs.”

5. A perusal of the directions issued by the Hon’ble Supreme Court of India clearly and unequivocally reflect the manner in which the application filed on behalf of the petitioner institution, seeking renewal

of permission for the academic year 2018-19 was required to be treated.

6. In the first place, the MCI was directed to consider the application filed on behalf of the petitioner institution, seeking renewal of permission for the academic year 2018-19. The MCI was further directed to conduct an inspection and thereafter, apprise the petitioner institution of the deficiencies noted by the inspection team. It was specifically directed that, subsequent thereto, the petitioner institution would be granted liberty to remove the deficiencies within a specified timeframe. Thereafter, the matter was directed to be placed before the Executive Committee of the MCI. If deficiencies still persisted, the petitioner institution was granted permission to remove them, within a specified time, and if the petitioner institution complied therewith, their request for conditional Letter of Permission (LOP) for the academic year 2016-17 and renewal of permission for the academic year 2018-19 was directed to be dealt with appropriately.
7. It was further directed that, the Ministry would take a final decision, within a month of the receipt of the recommendation from the MCI by taking assistance of the Hearing Committee, constituted by the Constitution Bench of the Hon'ble Supreme Court of India in W.P.(C) 408/2017, titled as '***Amma Chandravati Educational and Charitable Trust & Ors. Vs. UOI & Anr***' or other directions in the said decision and in accordance with law.
8. It is further observed that, the MCI was also directed to treat the renewal of permission application for the academic year 2018-19,

submitted by the petitioner institution, in accordance with law, with promptitude.

9. Before proceeding further, it would be relevant to observe that, the present proceeding seeks a writ in the nature of Certiorari, to quash the decision of the Ministry, taken vide letter No.U.12012/20/2018-ME-I[FTS.3150193] dated 31.05.2018, on the recommendations of the MCI, to not renew the permission for admission of third batch of 150 MBBS students at the petitioner institution for the academic year 2018-19. Further, it also seeks quashing of the decision of the Executive Committee of the MCI dated 24.03.2018, on account of its being in violation of the directions of the Hon'ble Supreme Court of India, as above-elaborated.
10. The bone of contention between the parties in the present round of proceedings is in relation to the scope, ambit and implementation of the directions issued by the Hon'ble Supreme Court of India vide order dated 13.11.2017.
11. The material dates and facts as are relevant for the effective adjudication of the present writ petition are briefly adumbrated as follows:
 - (i) The petitioner institution was granted letter of permission by the Ministry for the academic year 2016-17 for admitting a batch of 150 students to MBBS course. Renewal of permission for admitting 150 MBBS students for the academic year 2017-18 was, however, declined.

- (ii) The petitioner institution aggrieved thereby, was constrained to approach the Hon'ble Supreme Court of India by filing a writ petition being W.P. (C) 776/2017, which as afore-mentioned, was disposed of vide order dated 13.11.2017.
- (iii) Subsequent thereto, an inspection was conducted by the Assessors of MCI on 5th-6th December, 2017. The report of the inspection team, which is annexed to the present petition as Annexure P-18 reveals that, deficiencies were noticed as detailed therein.
- (iv) However, it is an admitted position that, pursuant thereto, the petitioner institution was not granted liberty to remove the deficiencies as noticed by the MCI.
- (v) The Executive Committee of the MCI in its meeting held on 14.12.2017, after considering the assessment report dated 5th-6th December, 2017, recommended to the Ministry vide its letter No.MCI-34(41)(R-73)/2017-Med./166009 dated 06.01.2018 to invoke Clause 8 (3)(1)(a) of the Establishment of Medical College Regulations, 1999 (hereinafter referred to as the 'subject Regulations') and thereby, disapprove the application filed on behalf of the petitioner institution. The said decision of the Executive Committee of the MCI was approved by the oversight committee on 03.01.2018. Pursuant thereto, the Ministry vide its communication dated 30.01.2018, invited the petitioner institution for a hearing on 05.02.2018.

- (vi) Vide its communication dated 12.02.2018, the Ministry directed the MCI to review the scheme in the light of documents submitted by the medical colleges and further directed them to make recommendations with respect to the conditional permission for the academic year 2016-17 in relation *to inter alia*, the petitioner institution.
- (vii) A sub-committee of the MCI in its meeting held on 21.02.2018, sought an opinion of the oversight committee, in relation to whether compliance verification assessment was required to be carried out in relation to the petitioner institution and the matter was placed before the oversight committee vide letter No.MCI-34(41)(R-73)/2017-Med/175494 dated 23.02.2018 issued by the MCI, for an appropriate decision.
- (viii) In the meantime, aggrieved by the decision of the Executive Committee of the MCI dated 06.01.2018, the petitioner institution instituted W.P. (C) 2022/2018, before this Court which was disposed of vide order dated 06.03.2018, with the following directions:

Learned counsel for the petitioners submits that after the respondent No.2 had issued the impugned order dated 06.01.2018 recommending disapproval of the renewal of permission to the petitioner, respondent No.1 had granted a hearing to the petitioner on 05.02.2018 and upon hearing the petitioners, the respondent No.1 had remitted the matter back to respondent No.2 with a request to review the application of the petitioner.

Today, learned counsel for the petitioner submits that for the present, he would be satisfied, if a direction is given to

respondent No.2 to review the case of the petitioner in a time bound manner. He submits that keeping in view the deadline as laid down under the Regulations and the decision of the Supreme Court, grave prejudice would be caused in case, the respondents do not take a timely decision.

Learned counsel for the respondents, who appear on advance notice, assure the Court that the decision on the review of the petitioner's application will be taken by respondent No.2 within 5 weeks in accordance with the Regulations as also the contents of letter dated 13.02.2018. written by respondent No.1 to respondent No.2.

The present petition is accordingly disposed of binding respondent No.2 to the statement to decide the petitioner's application within 5 weeks.

Needless to say that the present order, has been passed without prejudice to the rights and contentions of both the parties.

In case, the petitioners are still aggrieved by any order passed by the respondents, they may take legal recourse as permissible under law."

- (ix) The oversight committee vide its letter dated 08.03.2018, opined as follows:

"In view of the provision of Regulation 8(3)(1)(a) of the Establishment of Medical College Regulations, 1999 referred above, wherein it is provided that "compliance of rectification of deficiencies from such an institute will not be considered for renewal of permission in that Academic year", it is not permissible in law for the Council to consider the compliance/representation submitted by the College."

- (x) In pursuance thereof, the Executive Committee of the MCI vide its order dated 24.03.2018, reiterated its earlier decision recommending disapproval of the renewal application of the

petitioner institution for the academic year 2018-19. Aggrieved by the action of the official respondents rejecting the petitioner institution's application, the latter, once again, approached this Court by filing W.P. (C) 4897/2018.

- (xi) This Court vide its order dated 08.05.2018, disposed of the said WP (C) 4897/2018 with the following directions:

“Vide the present petition, the petitioners/Institutes have sought quashing of the decision dated 24th March, 2018 passed by respondent no.2, recommending disapproval of the petitioners' application to respondent no.1 for renewal/permission of the third batch of MBBS course (150 seats) for the Academic Year 2018-19. The petitioners have also sought issuance of direction to respondent no.2, to accept the Scheme of the petitioners as submitted for renewal of permission in respect of the aforesaid batch and if necessary grant an opportunity to furnish compliance verification and, therefore, issue a letter of permission.

At this stage, learned counsel for the petitioners submits that vide order dated 6th March, 2018, this Court had recorded the undertaking of respondent no.2/MCI to decide the petitioners' pending application and forward the same to respondent no.1 within five weeks. He submits that till date, the respondent no.1 has not informed the petitioners about any decision of respondent no.2.

Ms. Arora, who appears on advance notice for the respondent no.1 submits that within ten days of receipt of the recommendations from respondent no.2, the respondent no.1 will pass a final order deciding the petitioners' pending application.

On the other hand, Mr. T. Singhdev, learned counsel for respondent no.2, submits that its recommendations in respect of the petitioners' application have already been sent to respondent no.1 on 13th April, 2018 itself.

In view of the categorical statement made by learned counsel for the respondent no.2 that the recommendations have already been forwarded on 13th April, 2018, the respondent no.1 is directed to take a final decision on the petitioners' application within ten days from today.

It is made clear that in case the respondent no.1 is still not in possession of recommendations made by respondent no.2 vide its order dated 13th April, 2018, respondent no.1 would be at liberty to seek immediately a fresh copy of the same from respondent no.2.

Needless to say that the said final decision taken by respondent no.1, will be communicated to the petitioner who will be free to take legal recourse as permissible under law.

The petition and pending applications are disposed of in the aforesaid terms."

(xii) The Ministry, predicated on the recommendations of the MCI, as elaborated hereinabove, decided to disapprove the scheme of the petitioner institution and declined to renew the permission for admission of a third batch of 150 MBBS students for the academic year 2018-19 vide the impugned letter dated 31.05.2018.

(xiii) Aggrieved, *inter alia*, by the impugned letter, the petitioner has been constrained to file the present petition on 18.06.2018.

13. The issue that arises for consideration in the present proceedings is within a narrow compass and is limited to the determination of the issue as to whether the directions of the Hon'ble Supreme Court of India, as contained in the order dated 13.11.2017 whereby, the MCI was directed to bring the deficiencies noticed in the assessment report of the

inspection team to the notice of the petitioner institution and further directed to grant the latter liberty to remove the same, are in any manner diluted by the Clause 8 (3)(1)(a) of the subject Regulations, as urged on behalf of the MCI.

14. In this behalf, in the first instance, it would be profitable to extract the subject Regulations:

“8(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.

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

(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 East, 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.”

15. From a plain reading of the above, it is evident that:

- a. A medical college is required to seek the permission of MCI to establish itself and admit students, which may be granted initially for a period of one year.
- b. An application for seeking renewal of permission should be made to the MCI at least six months prior to the date of expiry of initial permission.
- c. The MCI and Central Government are statutorily obligated to intimate the result of the inspections, conducted by the Assessors of MCI, to the medical colleges and provide them with sufficient time to rectify the deficiencies/shortcomings noticed therein.
- d. Renewal of permission may be granted annually, subject to verification of compliance of the requirements of MCI.
- e. In the event, the deficiencies/shortcomings as notified by the MCI are not rectified, within sufficient time and the requirements of the MCI are not fulfilled; no further permission for admission of students to the medical college shall be granted.

16. Mr. Arun Bhardwaj, learned Senior Counsel appearing on behalf of the petitioner would urge that, pursuant to the inspection conducted by the MCI, the latter failed to invite

their attention to the deficiencies noticed by the inspection team and further failed to grant them time to remove the same.

17. Mr. Vikas Singh, learned Senior Counsel appearing on behalf of the MCI, predicated on the stipulations contained in the subject Regulations would canvass that, in view of the large scale deficiencies found in the inspection report, the MCI was within its rights to not grant an opportunity to the petitioner institution to rectify the deficiencies.

18. In order to buttress this submission, Mr. Vikas Singh, learned Senior Counsel would invite my attention to the following decisions and in particular to paragraph 31 of *Royal Medical Trust and Anr. vs. Union of India and Anr.* reported as (2015) 10 SCC 19.

(a) *Medical Council of India vs. Vedantaa Institute of Academic Excellence Pvt. Ltd. and Ors.* reported as AIR 2018 SC 2642.

(b) *Medical Council of India vs. Malla Reddy Institute of Medical Sciences & Ors.* in Civil Appeal 4812/2016 arising out of SLP(C) No. 31535/2015.

19. For the sake of completeness, para 31 of ***Royal Medical Trust (supra)*** is reproduced hereinunder:

“The MCI and the Central Government have been vested with monitoring powers under Section 10A and the Regulations. It is expected of these authorities to discharge their functions

well within the statutory confines as well as in conformity with the Schedule to the Regulations. If there is inaction on their part or non-observance of the time Schedule, it is bound to have adverse effect on all concerned. The affidavit filed on behalf of the Union of India shows that though the number of seats had risen, obviously because of permissions granted for establishment of new colleges, because of disapproval of renewal cases the resultant effect was net loss in terms of number of seats available for the academic year. It thus not only caused loss of opportunity to the students' community but at the same time caused loss to the society in terms of less number of doctors being available. The MCI and the Central Government must therefore show due diligence right from the day when the applications are received. The Schedule giving various stages and time limits must accommodate every possible eventuality and at the same time must comply with the requirements of observance of natural justice at various levels. In our view the Schedule must ideally take care of :

(A) Initial assessment of the application at the first level should comprise of checking necessary requirements such as essentiality certificate, consent for affiliation and physical features like land and hospital requirement. If an applicant fails to fulfill these requirements, the application on the face of it, would be incomplete and be rejected. Those who fulfill the basic requirements would be considered at the next stage.

(B) Inspection should then be conducted by the Inspectors of the MCI. By very nature such inspection must have an element of surprise. Therefore sufficient time of about three to four months ought to be given to the MCI to cause inspection at any time and such inspection should normally be undertaken latest by January. Surprise Inspection would ensure that the required facilities and infrastructure are always in place and not borrowed or put in temporarily.

(C) Intimation of the result or outcome of the inspection would then be communicated. If the infrastructure and facilities are in order, the concerned Medical College should be given requisite permission/renewal. However if there are any deficiencies or shortcomings, the MCI must, after

pointing out the deficiencies, grant to the college concerned sufficient time to report compliance.

(D) If compliance is reported and the applicant states that the deficiencies stand removed, the MCI must cause compliance verification. It is possible that such compliance could be accepted even without actual physical verification but that assessment be left entirely to the discretion of the MCI and the Central Government. In cases where actual physical verification is required, the MCI and the Central Government must cause such verification before the deadline.

(E) The result of such verification if positive in favour of the Medical College concerned, the applicant ought to be given requisite permission/renewal. But if the deficiencies still persist or had not been removed, the applicant will stand disentitled so far as that academic year is concerned”.

20. The learned Senior Counsel for the MCI would urge that, the principles enunciated in ***Royal Medical Trust***(*supra*) and in particular paragraph 31 thereof, are general in nature and had not been rendered after due consideration of the scope and ambit of the subject Regulations. Furthermore, it is asseverated by the learned Senior Counsel that the Hon’ble Supreme Court of India, whilst issuing directions vide its order dated 13.11.2017, permitted the MCI to process the petitioner institution’s application, in accordance with law, which would include the subject Regulations and, as such, the Hon’ble Supreme Court of India could not have intended to relieve the petitioner institution from the application thereof.

21. I find myself unable to agree with the submission made by the learned Senior Counsel appearing on behalf of the MCI.

22. A plain reading of the subject directions leaves no manner of doubt that, the MCI was directed to grant liberty to the petitioner institution to remove the deficiencies noticed by the inspection team, within a specified timeframe, before arriving at a final determination on their application seeking renewal of permission for the academic year 2018-19.
23. Although, the subject Regulations, as canvassed on behalf of the MCI were not specifically adverted to by the Hon'ble Supreme Court of India, whilst issuing directions on 30.11.2017 in WP(C) 776/2017; the MCI cannot be heard to say that the Hon'ble Supreme Court of India was unmindful of the scope and ambit of the subject Regulations when it issued the above directions. The directions in themselves are clear and unequivocal and do not permit of any dilution, let alone the caveat now sought to be introduced on behalf of the MCI, predicated on the subject Regulations.
24. In my view, the stand taken on behalf of the MCI that, since they are required to act in accordance with law, they were entitled to modify the express directions of the Hon'ble Supreme Court of India, in view of the stipulations contained in the subject Regulations, are erroneous and contrary to law and cannot be countenanced.
25. When the Hon'ble Supreme Court of India, vide the subject directions, required the MCI to act in a particular manner, the latter was required to act in that manner alone and no other. If the MCI was of the view that, the directions requiring them to grant liberty to the petitioner institution to remove deficiencies, ran contrary to the mandate of law, they were at

liberty to approach the Hon'ble Supreme Court of India seeking modification of the said directions, which admittedly has not been done.

26. In this behalf, it is also observed that, it is the MCI's case that, the petitioner institution has also failed to initiate appropriate proceedings against them for violating the express directions of the Hon'ble Supreme Court of India.

27. Be that as it may, in my considered view, the action of the MCI in interpreting the specific, express directions of the Hon'ble Supreme Court of India, in the manner in which they have done, is impermissible, although, it may not tantamount to contumacious conduct.

28. Even otherwise, the Hon'ble Supreme Court of India, whilst dealing with the issue of grant of permission to run medical courses, clearly directed in paragraph 31 of **Royal Medical Trust**(*supra*), that intimation of the result or outcome of the inspection be communicated to the medical college concerned and the latter be granted opportunity to remove the deficiencies or shortcomings noticed by the assessment committee. In other words, the MCI is required by legal jurisprudence on the subject to grant an opportunity to medical colleges to remove the deficiencies, and comply with the requirements of law, in that behalf.

29. In the present case, the opportunity for removal of deficiencies and reporting of compliance has admittedly not been granted.

30. In view of the foregoing discussion, the writ petition is allowed. The matter is remitted back to the MCI to grant the petitioner institution

reasonable time to report compliance after rectifying/removing the deficiencies noticed in the assessment report dated 5th-6th December, 2017, and thereafter take further steps on the petitioner's application for renewal permission for the academic year 2018-19, in accordance with the directions issued by the Hon'ble Supreme Court of India.

31. The impugned letter of the Ministry of Health and Family Welfare dated 31.05.2018, declining to renew the permission for admission of a third batch of 150 MBBS students for the academic year 2018-19 is therefore set aside and quashed.

32. The present petition is disposed of accordingly.

33. No order as to cost.

AUGUST 01, 2018
as/ns

SIDDHARTH MRIDUL
(JUDGE)