

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.4050 of 2019

Dr. D.Y.Patil Medical College Hospital
& Research Centre

... Petitioner

v/s.

Union of India & ors.

... Respondents

Mr. Shrihary Aney, Sr. Advocate I/b. Mr.Mandar M.Goswami for the petitioner.

Mr. Mandar Limaye for respondents 1,4 and 5.

Mr. Ganesh K. Gole for respondents 2 and 3.

**CORAM: B.R. GAVAI &
DAMA SESHADRI NAIDU, JJ**

23rd APRIL 2019.

ORAL JUDGMENT (PER DAMA SESHADRI NAIDU, J).

Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2. The petitioner is a medical college with a Hospital and a Research Center attached to it. It is a deemed-to-be University, claiming to have been graded by UGC as Category-I. Established in 1996-97, now the petitioner has

an intake of 250 seats in MBBS, 194 in Post Graduate Degree (MD/MS), and 18 in MCH/DM (Super Specialty Courses).

3. Many students, it seems, complained that the PG Diploma would not much advance their career. So they wanted the petitioner Management to have more PG Degree seats in the place of PG Diploma seats. As a result, the College Management resolved to surrender the diploma seats for 2018-19 and secure in their place more PG Degree seats.

4. But eventually, the MCI has rejected the petitioner's request to convert the PG Diploma seats to PG Degree seats. The rejection was on the ground that the PG Diploma seats were denotified belatedly. Aggrieved, the petitioner has filed this writ petition.

5. Heard Mr. Shrihary Aney, the learned Senior Counsel for the petitioner, Mr. Mandar Limaye, the learned Counsel for respondents 1, 4 and 5, and Mr. Ganesh Gole, the learned Standing Counsel for respondents 2 and 3.

6. As we have already set at above, acting on the students' request, the College resolved to surrender PG Diploma seats and seek an equal number of PG Degree seats, by way of conversion. Thus, as per earlier resolution, the

petitioner-College, on 3rd April 2017, applied to 4th and 5th respondents, that is Government of India, to surrender the PG Diploma seats and to have PG Degree seats instead. The petitioner claims that the Government received its representation on 5th April 2017. After a month, the 4th respondent forwarded the petitioner's request to the Medical Council of India (MCI).

7. Pending the MCI's consideration, on 25th October 2017 the College surrendered the PG Diploma seats, in anticipation. But on 21st November 2017, the 4th respondent required the petitioner to supply a copy of Recognition, a notification earlier issued for Diploma courses. Besides affirming that it had already supplied that copy, the petitioner, in any event, submitted another copy on 24th November 2017. Thereafter, the 4th respondent, on 8th December 2017, denotified 12 PG Diploma seats for the academic year 2017-18. Yet that authority, despite the petitioner's request, did not create a corresponding number of seats in the PG Degree courses.

8. Given the denotification issued by the 4th respondent withdrawing the 12 PG Diploma courses, the petitioner, through letter dated 9th December 2017, requested the Director General of Health Services, Ministry of Health and Family Welfare, New Delhi, the Competent Authority, not to fill the seats

for the PG Diploma courses in 12 subjects (24 seats).

9. Later, on 13th December 2017, the petitioner informed the 3rd respondent about the denotification, besides requesting that authority to grant permission to the College to have a corresponding number of the PG Degree seats by way of conversion.

10. As the record reveals, on 28th December 2017 the MCI's Post Graduate Medical Education Committee considered the letter, dated 21st November 2017, received from the 4th respondent, along with another communication, dated 13th December 2017. As the petitioner contends, it has decided, in principle, to allow the petitioner to convert the PG Diploma seats to PG Degree seats, for the AY 2018-19 in these disciplines: MD (Anesthesia), MD (Radiodiagnosis); and MS(Orthopedics).

11. Later, on 24th January 2018, MCI's Post Graduate Medical Education Committee met once again and discussed the issue in detail. It eventually decided to refer the matter to the Committee and the Central Government. As the admissions for the academic year would soon come to an end, the petitioner addressed another letter, dated 1st March 2018, to the 3rd respondent. But the MCI, initially through its Minutes of Meeting,

dt.24.01.2018 and, later, through a formal communication by the Board of Governors on 28.02.2019, rejected the petitioner's request for converting the PG Diploma seats into PG Degree seats, on the premise that the denotification took place belatedly.

12. The petitioner has all along maintained that it requested the 4th respondent on 15th March 2017 to denotify the PG Diploma courses and sanction, by conversion, an equal number of PG Degree course seats. If there is any delay, according to the petitioner, it must have been administrative. For that, the petitioner college cannot be made to suffer. The College also contends that on one hand, the Government has denotified the surrendered PG Diploma seats but, on the other hand, it refused to increase the corresponding number of PG degree seats in the petitioner's College. It has thus unreasonably deprived the deserving students precious medical admissions, for no fault of the College.

13. For the Academic Year 2018-19, the last date to apply for conversion of seats was 15.04.2017; the petitioner did apply on 03.04.2017. Acting on the petitioner's request, the Central Government denotified the PG Diploma courses on 8th December 2017, with many months delay though. At any rate,

the petitioner continued to plead with both the Central Government and the MCI for the conversion of PG Diploma seats into PG Medical Degree seats. Even before the de-notification by the Central Government, the College surrendered the PG Diploma seats and asked the Competent Authority not to fill up those seats.

14. Yet, MCI, through its communication, dt.28.02.2019, refused the petitioner's request on a solitary ground: the petitioner ought to have the PG Diploma seats de-notified and applied to MCI for conversion within the time frame under Section 10A of the MCI Act.

15. At any rate, there is a parallel development. The administration in MCI was entrusted to a Board of Governors. And this Board of Governors has decided that the applications submitted by the Medical Colleges before amendment on 12.07.2018 cannot be considered. Thus, it has reasoned that the Central Government de-notified PG Diploma seats on 8th December 2017; that is, belatedly.

16. To recapitulate, we may observe that the only reason for rejection is that the surrender of the Diploma seats was before the amended notification. Under identical-fact situation, the High Court of Madras, per a learned Single

Judge, in *Mahatma Gandhi Medical College & Research Institute v. Government of India*¹, has observed that “when the petitioner had followed the procedure and the instructions given by the MCI and the Government of India, it cannot be found fault with. The delay in issuing the amendment notification only on 12.07.2018 cannot jeopardize the interest of the petitioner-College. Already the petitioner-College had suffered for having surrendered the Diploma Courses seats under the directions of MCI but could not admit students for 2018-19. Therefore, as a matter of abundant caution, for the Academic Year 2019-20.” It has also observed that the PG Diploma seats ought to have been re-notified as has been done in the cases of other colleges/institutions.

17. Then the High Court of Madras has noted that the counseling for the PG Courses “would begin on 25.03.2019 and lasts up to 25.05.2019. As already the petitioner made the application for the Academic Year 2019-20 as early as on 04.04.2018, the second respondent is directed to consider the prayer of the petitioner-College for conversion of PG Degree courses in lieu of the surrendered PG Diploma Courses or for inclusion the petitioner college in the list of colleges re-notified for the PG Diploma courses till such time conversion is made, as expeditiously as possible. The first respondent/Central
1Judgment, dated 5th April 2019

Government, upon receipt of the report of the second recommendation forthwith. Respondent shall take forward the aforesaid entire exercise shall be completed before the cut-off date.”

18. Persuasive as the judgment in *Mahatma Gandhi Medical College & Research Institute* is, we respectfully agree with the reasoning the High Court of Madras has accorded on the issue. As a result, we allow the writ petition directing as follows:

- (a) The Communications, dt.24.01.2018 and 28.02.2019 are set aside to the extent they affect the petitioner-College; and
- (b) The Board of Governors, MCI, shall consider the petitioner’s applications without regard to the timeline it earlier insisted on.

19. The rule is made absolute in the above terms.

(DAMA SESHADRI NAIDU, J)

(B.R.GAVAI, J)