

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2019

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.5210 of 2019
and W.M.P.No.5922 and 5924 of 2019

Sree Balaji Medical College & Hospital
Rep. by its Dean,
No.7, Works Road,
Chrompet,
Chennai-600 044.

.. Petitioner

Vs.

1. Government of India
Through its Secretary,
Ministry of Health and Family Welfare,
Nirman Bhawan,
New Delhi-11.

2. Medical Council of India,
Pocket 14, Sector-8,
Dwaraka Phase-1,
New Delhi-110 077.

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the second respondent dated 11.02.2019 made in No.MCI-282(22)/10(A)/2018-Med/173113 and quash the same and consequently direct the second respondent to issue a Letter of Permission based on the recommendation recorded in the minutes of meeting dated 02.08.2018 in agenda Nos.94 to 102 for increase in intake of the post graduate courses as per the proposal submitted by the petitioner college dated 05.04.2018.

For Petitioner : Mr.G.Masilamani, Senior Counsel
for Mr.K.Kumareshbabu

For Respondents: Mr.B.Rabu Manohar
Senior Central Govt. Panel Counsel for R1

Mr.V.P.Raman,
Standing Counsel for R2

O R D E R

The writ petition is filed seeking to quash the order of the second respondent dated 11.02.2019 made in No.MCI-282(22)/10(A)/2018-Med/173113 and to direct the second respondent to issue a Letter of Permission based on the recommendation recorded in the minutes of meeting dated 02.08.2018 in agenda Nos.94 to 102 for increase in intake of the post graduate courses as per the proposal submitted by the petitioner college dated 05.04.2018.

2. The petitioner is the Medical College and Hospital, which was originally established in the year 2003 and from the year 2003-2004, has been running the college successfully for M.B.B.S. Course and also was accorded Post Graduate Courses in nine subjects. The college has applied for increase in the intake of students in the Post Graduate Medical Education. The college also claims that it had satisfied the minimum requirement prescribed for the Graduate Training and additional requirement for a Post Graduate Training as per the Regulations of the Medical Council of India (in short, "MCI").

3. While Clause 11.1 of the Post-Graduate Medical Education Regulations, 2000 (in short, "2000 Regulations") provides the strength of staff for each of the units, Clause 11.2 prescribes minimum requirements for a Post Graduate Institution, which postulates that the college should satisfy the minimum requirements for Under Graduate training and additional requirements for a Post Graduate Training. Clause 11.3 deals with the bed strength in clinical departments and Clause 11.4 provides for Out Patient Departments. Clause 11.5 relates to the laboratory facilities, while Clause 11.6 deals with adequate number of equipments. Clause 12 deals with the Teacher-Student ratio.

4. Section 10-A of the Indian Medical Council Act, 1956 (in short, "the 1956 Act") envisages increase of seats, which would be granted only after physical verification of faculty, resident, clinical material and infrastructural facilities, etc. Hence, the petitioner college, pursuant to the public notice issued by the first respondent, calling for applications from the eligible colleges for increase in intake for the Post Graduate Courses, submitted proposal along with the documents in support of its proposal and the petitioner College had sought for grant of permission for increase in the admission capacity with respect to the nine post graduate courses reiterating that it had applied with the infrastructural, teaching and other requirements, which are already existing. In fact, the college had stated that the infrastructural and other facilities in the college are far in excess of the minimum requirements, as prescribed by the MCI.

5. Pursuant to the proposal submitted, the second respondent had conducted a surprise inspection on 25.06.2018 with respect to the five specialties, namely, Respiratory Medicine, Anesthesiology, Radio Diagnosis, Orthopaedics and General Surgery by five different team of Inspectors of the second respondent. Again, on the next day, i.e., on 26.06.2018, another team of Inspectors of the second respondent conducted a surprise inspection for the remaining four specialties, namely, General Medicine, Dermatology/Venerology/Leprosy, Paediatrics & Obstetrics and Gynaecology. The Inspecting Teams did not find any deficiency in the instructional or infrastructural facilities.

6. While so, the second respondent had conducted another surprise inspection on 24.07.2018, which is after a month from the previous inspection conducted. A copy of the inspection reports were also given to the petitioner college, as per the requirement of the second respondent. While the petitioner College was waiting for the positive response from the second respondent, a notice dated 07.09.2018 was issued calling upon the petitioner College to appear before the Post Graduate Committee on 18.09.2018 to explain certain "discrepancies" observed by the said Committee in its meeting held on 06.09.2018.

7. The Dean of the petitioner College also had clarified with necessary documentary evidence the "discrepancies" pointed out by the second respondent. The Petitioner College had fully complied with all the requirements for the increase in Post Graduate Medical seats and in fact, Post Graduate Committee after its second inspection had recommended for grant of permission to the petitioner College for the increased intake in all the nine Post Graduate Courses. It was only the formal orders from the second respondent was awaited.

8. That being the position, an e-mail from the second respondent dated 21.12.2018 was received by the petitioner College calling upon the petitioner to attend a hearing on 28.12.2018 pursuant to the proposal submitted by the petitioner College. The said notice also intimated the petitioner that the second respondent was superseded by the Board of Governors by virtue the Ordinance promulgated on 26.09.2018 and it is only the Board of Governors, which had to grant the permission finally to approve or disapprove the proposal of the College seeking permission. The said notice sent by e-mail also repeated the queries raised by the second respondent in its notice dated 07.09.2018.

9. The "discrepancy" was with respect to the bed occupancy on the one hand and fresh daily admissions on the other hand.

The impugned order also pointed out only certain discrepancies and not deficiencies, as required by the MCI. Despite the clarification being given by the petitioner College, the impugned communication dated 11.02.2019 from the second respondent was issued disapproving the proposal of the petitioner College for all the Post Graduate Courses, inter alia, relying on the decision of the Hearing Committee. The petitioner contended that the said impugned notice did not refer to the data, which was made available to the MCI with regard to the bed occupancy and also fresh daily admissions.

10. Now the question that arises for consideration is with respect to the "discrepancies" that arose between the first inspection report and the second inspection report.

11. The reasons attributed by the second respondent in rejecting the proposal of the petitioner College are on the ground that (i) there are discrepancies between the two assessment reports with regard to IPD figures ; (ii) Gross differences in the figures related to Day Care Operations in two Departments ; (iii) Absence of commensurate increase in the workload in surgical departments ; and (iv) Due to erroneous depiction of Surgery IPD figures, which raises doubt about the workload. The said impugned order is attacked by the petitioner on the ground that it is imaginary, unsustainable in law and deserves to be quashed.

12. Heard the learned Senior Counsel appearing on behalf of the petitioner, the learned Senior panel Counsel appearing on behalf of the first respondent and the learned Standing Counsel appearing on behalf of the second respondent and perused the materials placed before this Court.

13. Admittedly, there is no deficiency in any of the infrastructural, teaching and other requirements prescribed by the MCI for grant of permission to increase the intake capacity of the students in Post Graduate Medical Courses. According to the petitioner, there were two sets of inspections by the second respondent and requisite data and details were made available by the petitioner College to the said inspecting teams in relation to every relevant work including the bed occupancy and fresh daily admissions. The Table 1 contained in the impugned order discusses the discrepancies with respect to the IPD Figure. A perusal of the said table discloses that on 25.06.2018, the petitioner College has informed the Inspection Team that there were 45993 patients for M.S. (Orthopedics) for the year 1 (2015), while for the same period, i.e., year 1 (2015), they have given said figure as 8108 to the second inspection team on 24.07.2018. Likewise, for the other six departments also there were discrepancies between the data provided to the two

inspections teams for the years 2015 to 2017. This is the discrepancy pointed out by the MCI. If the said figures entered in the two inspection reports given by two different teams on two different dates relate only to the IPD Figure, it should be uniform and there cannot be any error and difference between the two.

14. However, the explanation offered even before the Board of Governors and also by the learned Senior Counsel for the petitioner before this Court is that the first inspection team asked for the total bed occupancy for a particular year, whereas, the second inspection team visited on 24.07.2018 asked for the total admissions. To put it otherwise, explicitly, if 10 patients admitted on day 1 and 10 patients admitted on day 2, the patients on day 1 will be added along with the patients admitted on the day 2 and totally there were 20 patients on day 2. If 5 patients were discharged on day 2 and 20 admitted on day 3, the number of IPD on day 3 will be 35 and the total number of IPD on all the three days will be $10+10+20=40$. Hence, based on such method adopted by the petitioner College, the IPD figures were given to the first inspection team on 25.06.2018. However, the number of patients admitted on all these three days will be 35 only, which was given to the second inspection team on 24.07.2018.

15. Therefore, it was explained that the figures shown were total bed occupancy and total daily admissions. However, the explanation offered by the petitioner College for the discrepancy in figures in respect of the two reports was rejected on the ground that the institution is more than 15 years old and submission made by it does not explain the discrepancy properly. Similarly, gross differences were also noted in the figures related to Day Care Operation in two subjects, i.e., M.S. (Orthopedics) and M.S. (Obstetrics & Gynaecology). The Table 2 noted the discrepancies in Day Care Operations, wherein also, while the first inspection team was told that there were 390 and 823 Day Care Operations were conducted respectively for the year 2015 in the said said Departments, the second team was informed that there were 289 and 1876 patients for the same period for the said Departments. Likewise, there were discrepancies for the years 2016 and 2017 as well.

16. At this juncture, it is relevant to note that the Board of Governors decided to disapprove the application for all the nine Post Graduate Broad Specialty Courses on the following reasons also :

".....

c. Absence of commensurate increase in the

workload in surgical departments and unsatisfactory explanation given by the college authorities as observed by the Hearing Committee.

d. Anesthesiology workload is related to the surgical workload and erroneous depiction of Surgery IPD figures raises a doubt about workload shown in Anesthesiology department. Same holds true for Radiology, which is investigative branch and erroneous IPD figures in the clinical disciplines raises a doubt about workload shown in Radiology dept. Therefore, the BOG decided that the application for increase in the seats for PG degree course in these subjects also be disapproved."

17. The impugned order says that the Board of Governors have considered the recommendations of the Hearing Committee and decided to disapprove the application for increase in intake of seats in the petitioner College under Section 10(A) of the 1956 Act for the Academic Year 2019-2020.

18. Learned counsel for the MCI submitted that the Central Government is required to refer every application to the MCI for its recommendations when a college makes an application for starting a higher course or for increase in its annual intake capacity. On receipt of the application by the MCI, the Council may obtain such particulars as may be considered necessary by it from the Medical College concerned and thereafter, either it may make a recommendation for its approval or disapproval. The Central Government may after considering the recommendation of the MCI may either approve with such conditions as it may consider necessary or disapprove the scheme.

19. Admittedly, the MCI was superseded by the Board of Governors to exercise the powers and functions of the Council under the 1956 Act. The Board of Governors independently grant permission for establishment of new medical colleges or increase in the annual intake capacity in any course referred to in Section 10A of the 1956 Act. The Status Note on the petitioner College for increase of seats in various courses for the Academic Year 2019-2020, dated 26.02.2019 was furnished by the second respondent, wherein also, it was decided to recommend to the Central Government to issue Letter of Permission for increase of seats in the petitioner College, as applied for. In the said Status Report, it is mentioned that there were several items of the petitioner College under consideration of Post Graduate Committee in the meeting and in one of the reports, namely, of General Medicine, the Assessor had observed a number of irregularities in the admitted patients. It was also observed that many non-genuine cases were admitted. It was also stated that the patients were admitted in General Wards of Medicine

Department without any report or investigation. The Status Report further stated that the remarks of the Post Graduate Committee cast a doubt on the genuineness of clinical material presented during the assessment in other subjects as well, which although not repeated may exist. Hence, the sanction was deferred for the petitioner College.

20. Admittedly, the IPD figures and the discrepancy in the Day Care Operation figures were the "discrepancies" pointed out as it caused a genuine doubt that the petitioner College had falsified the records. But when it is pointed out to the learned Senior Counsel for the petitioner College, it is his explanation that the first Inspection Team had asked for only the IPD data, namely, bed occupancy, while the Second Inspection Team, who visited on 25.07.2018, had asked for the total daily admissions. As there were gross difference in the figures provided, it raised a doubt about the data provided by the petitioner College. As it was explained by the learned Senior Counsel for the petitioner College, the bed occupancy of the whole year is calculated to arrive at the figure of bed occupancy in a particular Department for the entire 365 days of an year, whereas, it is a fresh admission, which is the actual number of patients who got admitted alone, though not continued to occupy the bed for days or months together. Therefore, there cannot be any discrepancy in the figures furnished by the College and it is only the difference between the bed occupancy and the total admissions.

21. The learned Senior Counsel also pointed that the inspections teams only sought for the data, which the petitioner College had furnished and if the second respondent entertains doubt about the falsification, they could have very well verified the records, which were available in the college at the time of inspection and put their initials and seals. It is only based on the directions of the inspection teams, the data that were furnished by the petitioner College, whereupon, the "discrepancies" found out. Admittedly, the petitioner College had already got its approval and it has complied with the requirements of MCI. When it sought for additional intake of PG students, it is alleged that there is prescribed norms for it.

22. When this Court put a specific question as to whether the second respondent has got any method or norm based on which, the IPD and total daily admissions are computed, on instructions, the learned Standing Counsel for the second respondent/MCI stated that there is no specific formula for the same. It is also stated that there is no specific norms. As stated earlier, clause 11.3 of the 2000 Regulations deals with the bed strength in clinical departments, which merely says that a department to be recognised for training of post-graduate

students shall have at least 60 beds each of General Medicine, General Surgery, Obstetrics and Gynecology and 30 beds each for others specialties for Degree and Diploma courses and 20 beds each in case of Super Specialty courses. The petitioner, having applied for increase in intake of Post Graduate students, had already complied with the MCI norms of students for Post Graduate Courses. Excepting the above, there is no specific ratio mentioning about the number of beds for number of PG student. In the absence of verification of the original records by the inspection teams, it will not lie in the mouth of the MCI that the records are falsified. It is also not the case of the second respondent that the petitioner College refused to furnish the original records. It cannot take away the valuable rights of the petitioner College for no fault of theirs.

23. The learned Senior Counsel appearing for the petitioner College relied upon the judgment of the Apex Court in *Al-Karim Educational Trust and State of Bihar*, (1996) 8 SCC 330, to contend that when the affiliation is being withheld unreasonably or the decision is being prolonged for one reason or the other, the Court without diluting the importance of fulfilling the essential prerequisite set by the MCI, can exercise the jurisdiction, inter alia, on the following reasons :

"(h) It is impractical to insist, for a foolproof or absolute adherence to all requirements without regard to their importance or relevance, for the purpose of imparting education, in a practical way, especially because the Institution has begun to function, students admitted to the Institution have taken the examination and the fate of a good many number of students should not hang in the balance in an unending or everlasting manner.

(i) In the final analysis, the question to be posed is whether there exists the minimal and satisfactory requirements to keep the matter going, and not whether better arrangements that will render the set-up more efficient and more satisfactory, should be insisted as "a wooden" rule.

(j) It may be that there are some minor deficiencies here and there which call for rectification. Time can certainly set right such matters. What is required is a total, practical, overall view in the light of the latest tabular statement filed along with the affidavit dated 4-9-1995. Material placed before the court goes to show that there has been 'substantial' though not literal compliance with the deficiencies pointed out in the latest report dated 28-6-1995.

(k) Lapse of time and the turn of events call for urgent action and any delay on that score will entail

untold hardship to the students and the Institution."

24. In the case on hand, it is the claim of the petitioner College that it had applied for the additional intake of PG students only on the strength of the fact that it has already complied with the norms of MCI. In the absence of any specific or special rules for additional intake of students, the second respondent cannot deny the approval on discrepancies, when the said "discrepancies" were also explained by the petitioner College and they are mere discrepancies and not deficiency. In the absence of any deficiency, the disapproval of the second respondent cannot be sustained.

25. At this juncture, learned counsel for the second respondent contended that even if the impugned order deferring the approval for intake of additional number of PG students is set aside, a positive direction of Mandamus cannot be granted by this Court.

26. The learned Standing Counsel for the second respondent also placed reliance on the decision of the Supreme Court in Medical Council of India V. State of H.P., (2000) 5 SCC 63, wherein, the Apex Court upon considering the fact that the deficiencies pointed out by the MCI have been removed and the permission was also granted and the classes commenced, held that the High Court, in the facts and circumstances of the case, ought to have remitted the matter to the MCI or the Union of India for reconsideration.

27. In view of the foregoing discussion, the impugned order of the second respondent dated 11.02.2019 is set aside and the writ petition is allowed. Since the refusal is based only on the discrepancies, the matter is remitted back to the respondents/MCI/Central Government for reconsideration to grant permission, if otherwise, the petitioner College is entitled for the proposal already submitted, for the Academic Year 2020-2021. There will be no order as to costs. Consequently, connected miscellaneous petitions are closed.

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Assistant Registrar(CS IV)
//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government of India,
Ministry of Health and Family Welfare,
Nirman Bhawan,
New Delhi-11.

2. Medical Council of India,
Pocket 14, Sector-8,
Dwaraka Phase-1,
New Delhi-110 077.

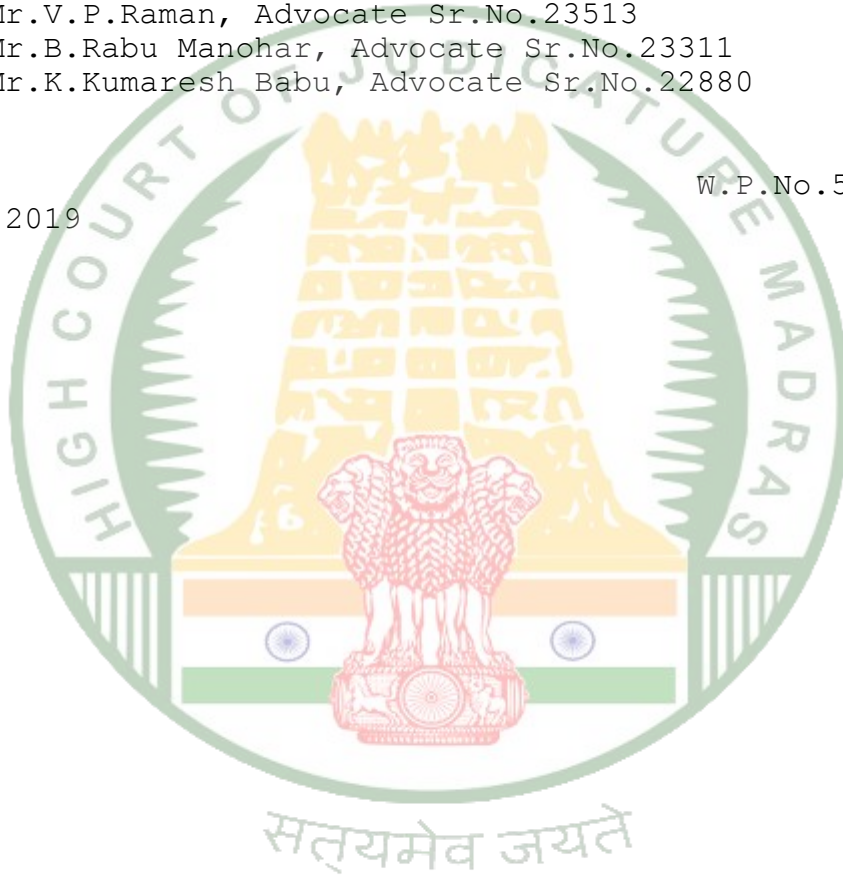
+1 cc to Mr.V.P.Raman, Advocate Sr.No.23513

+1 cc to Mr.B.Rabu Manohar, Advocate Sr.No.23311

+1 cc to Mr.K.Kumaresh Babu, Advocate Sr.No.22880

W.P.No.5210 of 2019

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