

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2019

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.7087 of 2019
& W.M.P.Nos.7801, 7804 and 7808 of 2019

Mahatma Gandhi Medical College and
Research Institute
rep. by its Chairman,
Pondy-Cuddalore Main Road,
Pillaiyarkuppam,
Pondicherry-607 402. ... Petitioner

Vs.

1. The Government of India,
rep. by its Secretary,
Ministry of Health and Family Welfare,
Nirman Bhavan, Maulana Azad Road,
New Delhi-110 011.
2. The Board of Governors,
In supersession of the Medical Council of India,
Pocket-14, Sector-8, Dwarka,
Phase-1, New Delhi-110 077.
3. Directorate General of Health Services
rep. by its Director General,
Nirman Bhavan, Maulana Azad Road,
New Delhi-110 011. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the second respondent in order dated 22.02.2019 in Ref.No.MCI-258(22)/2018-Med./179453 and order dated 28.02.2019 in Ref.No.MCI-258(22)/2018-Med./183969, quash the same and consequently direct the second respondent to approve the application dated 04.04.2018 submitted by the petitioner for surrender and conversion of PG Diploma seats into PG Degree seats from the Academic Year 2019-20.

* * *

For Petitioner :Mr.P.S.Raman, Senior Counsel
for Mr.Abishek Jenasenan

For Respondents:Mr.Rabu Manohar,
Central Govt. Senior Counsel for RR 1 & 3
Mr.V.P.Raman,
Standing Counsel for R2

O R D E R

The petitioner is a deemed to be University declared by the Government of India vide notification dated 04.08.2008 issued under Section 3 of the University Grants Commission Act, 1956. Seeking to quash the order of the second respondent dated 22.02.2019 in Ref.No.MCI-258(22)/2018-Med./179453 and order dated 28.02.2019 in Ref.No.MCI-258(22)/2018-Med./183969, and consequently to direct the second respondent to approve the application dated 04.04.2018 submitted by the petitioner for surrender and conversion of PG Diploma seats into PG Degree seats from the Academic Year 2019-20, the petitioner instituted this writ petition.

2. The petitioner institution has been offering both Undergraduate and Postgraduate Medical Courses. Once the Medical College is recognised for grant of M.B.B.S. Medical qualification, based on the recommendation of the Medical Council of India (in short, "the MCI"), it also becomes entitled to apply for permission/recognition for imparting medical education in Post Graduate (in short, "PG") Medical Courses. After M.B.B.S., higher PG Medical Courses are in the category of PG Diploma Courses and PG Degree Courses. The duration of the PG Diploma is two years, whereas, it is three years for a PG Degree Course. To obtain permission from the Central Government for commencing any PG Medical Course, each college has to submit an application under Section 10A of the Indian Medical Council Act, 1956 (in short, "the MCI Act").

3. The petitioner institution also had applied for PG Medical Diploma as well as PG Degree Courses and had been granted permission for all such PG Medical Courses by the Central Government. Subsequently, the petitioner institution was also granted permission and recognition by the Central Government to start various PG Medical Courses falling in both the categories, namely, PG Degree Courses and PG Diploma Courses. Besides the permission/recognition granted to the petitioner for a number of PG Degree Courses, the petitioner institution was also recognized to offer PG Diploma Courses in 10 different PG specialities with a total intake of 14 seats.

4. The M.B.B.S. Medical Graduates have been preferring PG Medical Degree Courses of three years duration than PG Diploma courses of two years duration and therefore, certain number of seats in PG Diploma Courses remain vacant for want of students and such a trend has been increasing year after year and the MCI also deliberated upon this concern. As the Diploma Medical Courses were going waste without takers, in view of the fact that seats in PG Medical Diploma Courses remain vacant year after year and the minimum standards prescribed by the MCI to offer PG Diploma and PG Degree Courses in the specialties were more or less the same except for certain minor variations, the PG Medical Education Committee in the MCI had taken a decision to permit the Medical Colleges to convert their PG Medical Diploma seats to PG Medical Degree seats by making suitable application to MCI/Central Government.

5. The MCI also on 29.03.2017 decided to permit the Medical Colleges to surrender their seats in PG Diploma Courses and convert the same to PG Medical Degree seats. The objective sought to be achieved was to ensure that the infrastructure and other facilities towards the PG Diploma Medical seats is not allowed to go waste and if the same is converted into PG Medical Degree seats, it will serve the public purpose.

6. The petitioner institution also had applied on 30.03.2017 for surrender of the PG Diploma seats in those ten different PG Specialties with a total intake of 14 seats and for conversion of the same into PG Degree seats under Section 10A of the MCI Act. This would be in addition to the PG Medical Degree seats, which the petitioner college had already been permitted. Immediately, the petitioner institution submitted various applications on 30.03.2017 to the first respondent stating clearly that they wish to surrender the PG Diploma seats and requested the first respondent to de-notify the permission granted for the diploma seats and grant equivalent additional seats in the PG Degree courses in the same specialty in lieu of the surrendered Diploma seats. The request made by the petitioner institution for surrender of these PG Diploma seats and their conversion into PG Degree seats was made for the Academic Year 2018-2019. As the last date for making the application for such conversion and grant of permission is 15.04.2017 for the Academic Year 2018-2019, the petitioner made the application on 30.03.2017.

7. The said applications were forwarded by the Central Government to the MCI vide letter dated 17.04.2017 for necessary action. The MCI, in turn, wrote a letter dated 25.05.2017 to the petitioner to approach the Central Government for discontinuation of the PG Diploma seats and obtain appropriate orders. Based on the same, the Central Government also wrote a

letter to the petitioner requesting to indicate from which year the admission to the PG Diploma Courses will be stopped by the petitioner institution. On receipt of the same, the petitioner wrote the letter dated 23.06.2017 requesting to de-notify the recognition granted in respect of the 10 PG Diploma Courses and made it clear that the petitioner institution will stop admission in the PG Diploma courses from the Academic Year 2018-2019 and on such surrender of the PG Diploma seats for the Academic Year 2018-19, the petitioner college had become entitled for grant of permission for increase in the PG Degree seats.

8. As there was no response from the respondents, the petitioner had sent several representations on 09.10.2017, 04.12.2017 and 26.12.2017 requesting that the surrender of PG Diploma seats may be de-notified immediately so that the application for corresponding increase in the PG Degree seats could be considered for the Academic Year 2018-19. Thereafter, in consideration of the request made by the petitioner, the first respondent issued a notification dated 04.01.2018 amending the first schedule to the MCI Act to the effect that the PG Medical Diplomas offered by the petitioner institution will be a recognized medical qualification only in respect of the students admitted upto the Academic Year 2017-18. In other words, the Central Government de-notified the PG Diploma courses, however, with a delay of more than eight months. Immediately thereafter, the petitioner sent a communication about the applications that were already submitted on 30.03.2017 for surrendering of the PG Diploma seats and conversion into the additional PG Medical Degree Courses seats of equal number in the same speciality and also enclosed the notification issued by the Central Government de-notifying the PG Diploma seats.

9. Though the petitioner had strictly followed all the instructions issued by the respondents, the PG Committee of the MCI had taken a decision not to approve the request of the petitioner, since the de-notification was issued by the Central Government after the last date for receipt of applications under Section 10-A of the MCI Act.

10. It is also pointed out that the Oversight Committee appointed by the Hon'ble Apex Court had expressed its anxiety/displeasure while observing that on the one hand the petitioner College was not given permission for increase in PG Degree seats equivalent to the PG Diploma seats surrendered and duly de-notified by the Central Government by Notification dated 04.01.2018 and on the other hand, on account of the said de-notification and surrender of the PG Diploma seats, the petitioner College, which earlier had 14 Diploma seats, stood deprived from giving admission to 14 students for the Academic

Year 2018-19. The Oversight Committee appointed by the Hon'ble Supreme Court had also indicated this to the MCI as well as the Ministry of Health, Government of India. On 19.02.2018, the Oversight Committee had written to the MCI explaining the plight of the petitioner institution, where, the petitioner could neither admit the students in PG Diploma nor in PG Degree courses for the equivalent number of seats during the Academic Year 2018-19 and sought for clarification from the MCI in this matter. However, on 07.03.2018, the MCI had proposed a solution that the petitioner should have applied well within the time from the Central Government to obtain the de-notification of the PG Diploma seats and apply to MCI for conversion of surrendered the PG Diploma seats into PG Degree seats within the time framed under Section 10A of the MCI Act.

11. According to the petitioner, the application was made as early as on 30.03.2017, which is immediately after the decision was taken by the MCI for surrender of the PG Diploma seats and converting it into PG Degree seats. As the college could not admit students for the Academic Year 2018-19 in PG Diploma Course, it not only caused loss to the institution, but also disappointed the students who aspire to qualify themselves for PG Diploma. The petitioner having followed all the directions issued by the MCI and also submitted the application well before the cut off date prescribed under Section 10A of the MCI Act had to suffer for no fault of theirs.

12. It is pertinent to note that the Oversight Committee, while approving the decision of the MCI, had only instructed to wait till amendment notification is issued and the notification was issued on 12.07.2018, which is only a formal amendment notification on Clause 3(8) of the PG Regulations 2000 titled "The Opening of a New or Higher Course of Study or Training (including Post-Graduate Course of Study or Training) and Increase of Admission Capacity in any Course of Study or Training (including a Postgraduate Course of Study or Training) Regulations, 2000.

13. In the light of the above facts, despite the recommendation made by the MCI on 12.06.2018 and also the approval of the Oversight Committee on 27.06.2018, the petitioner institution had to forgo their PG Diploma seats, as they had already surrendered the same to get a equal number of PG Degree seats.

14. In the interregnum, there was a supersession of MCI with the Board of Governors and the said Board of Governors had decided that those applications submitted by the Medical Colleges before the issuance of the above mentioned amendment on 12.07.2018 cannot be considered.

15. It is the complaint of the petitioner that the decision taken by the second respondent that the application of the college for the conversion cannot be considered, as it was applied before the amendment notification was issued, is arbitrary as the College had only followed the instructions given by the MCI. The personal hearing given to the petitioner on 28.12.2018 was also of no use. Because the petitioner had already been deprived of the admission to PG Diploma or PG Degree Course, by way of abundant caution had applied for additional intake of PG Degree Course seats in lieu of the PG Diploma Course as early as on 04.04.2018 for the Academic Year 2019-2020, which is also well-ahead of the time.

16. It is the further case of the petitioner that a large number of Medical Colleges, who had not even submitted their applications under Section 10A of the MCI Act for conversion of PG Diploma seats to equal number of PG Degree seats prior to 15.04.2018, were granted permission to increase PG Medical Degree Course seats capacity from the Academic Year 2019-20. While so, there was an order issued by the second respondent approving the other colleges for surrender of PG Diploma seats and conversion into PG Degree seats on 28.02.2019, whereas, surprisingly, the petitioner College's name is not there, as the petitioner College's application for surrender of PG Diploma seats and conversion of the same into equal number of PG Degree seats was rejected.

17. Now challenging the said order dated 22.02.2019, which had rejected the application of the petitioner on the ground that the seats had been surrendered by the petitioner prior to the amendment notification dated 12.07.2018 and the order dated 28.02.2019 issued by the second respondent approving the other Medical Colleges for surrender of PG Diploma seats and conversion of equal number of PG Degree seats, the petitioner is before this Court.

18. The primary reason stated by the second respondent to reject the application submitted by the petitioner for sanction of the additional intake of PG Degree courses seats in lieu of surrender of PG Diploma Course is that the de-notification for the surrender of PG Diploma seats was issued by the Central Government on 04.01.2018, which is prior to the amendment notification dated 12.07.2018.

19. The above referred sequence of events would go to prove that the petitioner college was not considered for the Academic Year 2018-2019, because of the delay caused by the Central Government in issuing the de-notification regarding the PG Diploma seats. Nevertheless, the petitioner had applied well ahead of the time following all directions issued by the

respondents and submitted the application for the Academic Year 2019-20. The MCI also had recommended the case of the petitioner and the Oversight Committee appointed by the Hon'ble Supreme Court also had approved the recommendation. The second respondent in terms of the MCI's amendment notification dated 12.07.2018 had issued a public notice on 18.03.2019. The said public notice stated that the Board of Governors in supersession of the MCI had brought to the notice of the Ministry that due to variety of reasons, some Diploma Courses, which were de-notified earlier could not be converted to degree seats by the Board of Governors, MCI. As a consequence of non-conversion of Diploma seats, there will be a depletion of PG seats during the counseling for the Academic Year 2019-20. In view of the foregoing, the Ministry had considered re-notifying the Diploma seats, which were not converted into degree seats in respect of certain colleges for the inclusion in the counseling for the Academic Year 2019-20. To the shock and surprise of the petitioner, their college was not included in the list.

20. When the application submitted by the petitioner dated 04.04.2018 for the Academic Year 2019-20 had already been considered and approved by the MCI as well as the Oversight Committee, the petitioner college also ought to have been included in the list, or at least, in the re-notified list, for which, re-notification of Diploma seats were made. In fact, the notice was also issued for the information of all candidates that the Diploma Courses, which were de-notified for conversion to Degree seats, but could not be converted into degree seats by the MCI have been re-notified by the Ministry. These re-notified seats will be taken up in the second round as per the rules and regulations of the MCI and court directions in All India PG Counselling 2019.

21. The learned counsel for the second respondent/MCI when confronted with the issue as to why the petitioner alone was not included in the list of colleges, which had been re-notified for Diploma courses, he had only stated that it is only due to surrender of seats before the issuance of the notification dated 12.07.2018.

22. 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 pursuant to the directions of MCI but could not admit students for 2018-19. Therefore, as a matter of abundant caution, for the Academic Year 2019-2020, the application was made as early as on 04.04.2018 for conversion of surrendered PG Diploma seats into degree seats.

23. It is also relevant to advert to the Public Notice No.MCI-23(1)/10(A)/2018-Med./184147, dated 18.02.2019. This Public Notice was issued by the Board of Governors in supersession of the MCI regarding increase of seats in PG Degree courses in lieu of surrender of the diploma courses seats. The Board of Governors have decided to allow the conversion of PG Diploma course seats into corresponding Degree seats prospectively, i.e., from the Academic Year 2019-20. The permission to convert the PG Diploma seats as to PG Degree seats is subject to affiliation of additional PG Degree seats from the concerned University. Therefore, when the Board of Governors (MCI), who have decided to allow the conversion, the petitioner having made their application well within time, should be given their degree course in lieu of the surrender of equal number of PG Diploma seats. The petitioner had already forgone the PG Diploma Seats, as their college has not been included in the re-notified list of colleges also. Therefore, it is not open to the Board of Governors (MCI) to deprive the legitimate entitlement of the petitioner's college.

24. The only reason for rejection is the surrender of the Diploma seats was prior to the amended notification, but the petitioner is entitled for conversion of Degree Course seats in lieu of the diploma course seats at least for the Academic Year 2019-20. The petitioner is neither re-notified in the list of PG Diploma course seats nor granted PG Degree course seats in lieu of the surrendered PG Diploma seats. The Board of Governors also have the independent power to grant accord for opening a higher course or increase in the admission capacity. Therefore, the petitioner cannot be deprived of its PG Diploma course seats without the same being converted into PG Degree course seats, or till such time reconversion of degree course is granted, the PG Diploma courses ought to have been re-notified as has been done in the cases of other colleges/institutions.

25. It is stated that the counseling for the PG Courses would begin on 25.03.2019 and lasts upto 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 Government, upon receipt of the report of the second respondent, shall take forward the recommendation forthwith. The aforesaid entire exercise shall be completed before the cut off date.

26. In view of the aforesaid discussion, the impugned orders need interference. Accordingly, the impugned order are set aside to the extent indicated above and this writ petition is allowed. There shall be no order as to costs. W.M.P.Nos.7804 and 7808 of 2019 are closed.

-s/d-

Assistant Registrar (CS-I)

True Copy

Sub-Assistant Registrar

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To

1. The Secretary,
Ministry of Health and Family Welfare,
Government of India,
Nirman Bhavan, Maulana Azad Road,
New Delhi-110 011.
 2. The Board of Governors,
Medical Council of India,
Pocket-14, Sector-8, Dwarka,
Phase-1, New Delhi-110 077.
 3. The Director General,
Directorate General of Health Services
Nirman Bhavan, Maulana Azad Road,
New Delhi-110 011.
- +2 Ccs to M/s.Abishek Jenasen, Advocate sr 33175.
+1 CC to Mr.V.P.Raman, Advocate sr 33565.
+1 CC to Mr.B.Rabumanohar, Advocate sr 33218.

सत्यमेव जयते

W.P.No.7087 of 2019

PPA (CO)
SP(10/04/2019)

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