

HON'BLE SRI JUSTICE SANJAY KUMAR
AND
HON'BLE SRI JUSTICE P.KESHAHA RAO

WRIT PETITION NO.11076 OF 2019

ORDER

1. The Medical Council of India stood superseded by a Board of Governors, *vide* the Ordinances titled 'Board of Governors in supersession of Medical Council of India' promulgated by the Central Government in September, 2018 and January, 2019. In consequence, the said Board of Governors (BoG) stood vested with the power to grant renewal of annual permission to colleges imparting medical education, which were yet to be given formal recognition by the Central Government under Section 10A of the Indian Medical Council Act, 1956 (*for brevity*, 'the Act of 1956').

2. Presently, the action of the BoG in refusing renewal of permission to Maheshwara Medical College & Hospital, Chitkul Village, Patancheru, Medak District, for MBBS Course 4th Batch, during the academic year 2019-20, is called in question.

3. Alleti Shrunitha Educational Society, Patancheru, Medak District, established Maheshwara Medical College & Hospital at Chitkul Village, Patancheru, Medak District (*hereinafter*, 'the College'), in the year 2016. It was granted approval to admit 150 students in the first batch of MBBS course during the academic year 2016-17. The approval was renewed for the academic year 2017-18 and the College was permitted a second batch intake of 150 students in the first year of MBBS course during that year. Kaloji Narayanarao University of Health Sciences, Warangal, granted affiliation to the College and renewed the same for the academic year 2017-18. However, there was no renewal of permission for the academic year 2018-19 as deficiencies were found. The College was therefore not permitted to admit any students during that academic year.

4. Renewal of permission was again sought by the College for the academic year 2019-20. Thereupon, the BoG directed inspection of the College on 12.12.2018 and 13.12.2018. Three major deficiencies, amongst others, were pointed out in the resulting Inspection Report by the Assessors, *viz.*, (1) shortage in teaching faculty of 6.83% (8 out of 117), (2) shortage of resident doctors of 6.06% (4 out of 66), and (3) bed occupancy was only 61.05% on the day of assessment. The College thereupon submitted letter dated 17.12.2018 to the BoG claiming that there were no actual deficiencies, as noted by the Assessors, and requesting renewal of permission for its 4th batch (150 MBBS seats) for the academic year 2019-20. The BoG called for an explanation/point-wise compliance with documentary evidence in support of the College's claim of rectification of the noted deficiencies, *vide* email dated 31.01.2019. By letter dated 27.02.2019, the College submitted its point-wise detailed report along with documentary evidence.

5. Thereupon, the BoG ordered another inspection of the College on 27.04.2019. However, the BoG's Assessors submitted Report dated 27.04.2019 again pointing out two deficiencies – (1) shortage in teaching faculty of 11.96% (14 out of 117) and (2) the bed occupancy was only 66.09% on the day of assessment. The College submitted its objections, *vide* letters dated 29.04.2019 and 09.05.2019, claiming that there were no deficiencies. According to it, the Assessors had not verified all the Wards, the Central Lab, Radiology, Casualty and Labour Room etc., and if they had done so, the bed occupancy would have been 336, much more than the 75% required by the norms. As regards the deficiency in teaching faculty, the College claimed that it had organised a sports festival from 24.04.2019 to 27.04.2019 and that was the reason why some of the

academic staff were on leave. Further, as the day of the inspection was a Saturday, some of the senior faculty were stated to have been on leave. Details were given of nine such faculty members.

6. On 11.05.2019, the BoG addressed an e-mail to the College informing it that it had decided to disapprove renewal of permission for admitting the 4th Batch of MBBS students in the academic year 2019-20. However, in terms of Section 10A (4) of the Act of 1956, as a reasonable opportunity of hearing had to be granted prior to such disapproval, the College was directed to appear through its authorised representative before the Hearing Committee on 17.05.2019 and furnish its explanation as to why its application for renewal of permission for the academic year 2019-20 should not be rejected. The College appeared before the Hearing Committee on the said date through its authorised representative and asserted that there were no deficiencies either in the teaching faculty or in bed occupancy. The College also submitted representations dated 11.05.2019, 20.05.2019 and 31.05.2019 to the same effect and sought renewal of permission for the academic year 2019-20.

7. At this stage, Alleti Shrunitha Educational Society; the College; and Dr.V.Krishna Rao, Secretary of the society/Director of the College, filed this writ petition. It was their claim that without passing an order, the BoG straightaway showed the College on its website as not having been permitted for the academic year 2019-20. It may however be noted that the BoG passed a reasoned order refusing renewal of permission to the College, *vide* letter dated 30.05.2019. The prayer in the writ petition is to declare as illegal the action of the BoG in rejecting renewal of permission to the College for MBBS 4th Batch during the academic year 2019-20 and consequently, to permit admissions for the said academic year by granting

renewal of permission. By way of their interim prayer, the petitioners seek a direction to the authorities, including the BoG, to permit admissions into the College for the academic year 2019-20 by treating it as a validly permitted/approved institution.

8. Apropos the alleged deficiencies in bed occupancy and teaching faculty, the petitioners reiterated in the writ affidavit what they had stated in their letters dated 29.04.2019 and 09.05.2019. According to them, assessment of bed occupancy could not be undertaken on one day and it had to be assessed over a period of any randomly selected three months. They relied upon case law in support of this plea. They also relied upon the amended regulations issued by the BoG on 04.02.2019, which stipulated that an institution with faculty deficiency of more than 20% would not be considered for renewal. It is on this basis that they assailed the action of the BoG in denying them renewal of permission.

9. The BoG filed its counter-affidavit through its Law Officer. Therein, he stated that the College had failed to fulfil the requirements as to minimum infrastructure, teaching faculty, resident/clinical material and other facilities. According to him, the deficiencies pointed out in the Inspection Reports dated 12/13.12.2018 and 27.04.2019 were grave in nature and could not be brushed aside either in larger public interest or in the interest of the student community. This was cited as the basis for the refusal to grant renewal of permission to the College for admission of the 4th Batch of 150 MBBS students during the academic year 2019-20. He asserted that the decision in this regard was communicated to the petitioners, *vide* letter dated 30.05.2019, after the Hearing Committee constituted by the BoG afforded them an opportunity of hearing on 17.05.2019. He pointed out that independent Assessors who were

Professors in Government Medical Colleges from outside the State of Telangana had carried out the inspections and submitted their findings, which formed the basis for this decision. He stressed upon the importance of carrying out inspection of medical colleges by expert teams to ascertain the presence of requisite infrastructure and facilities. As the last date for renewal of permission for the academic year 2019-20 was 31.05.2019, he asserted that the BoG could neither reconsider its decision nor carry out any fresh inspection. He pointed out that the Supreme Court had directed strict adherence to the time schedule for processing admissions to medical courses in the country and asserted that the BoG was bound thereby and could not deviate from the norms settled by the highest Court in the land. Reference was made to the relevant regulations and on the strength thereof, the Law Officer claimed that there was no illegality in the decision of the BoG. He pointed out various aspects in relation to the alleged deficiencies detected during the inspections, and prayed for dismissal of the writ petition.

10. In the rejoinder filed to the aforestated counter-affidavit, Dr.V.Krishna Rao, the third petitioner, stated that the alleged deficiencies pointed out in the assessment reports were not at all grave and would not be a hindrance to the public at large or the student community. He claimed that the deficiencies, even if accepted, were curable in nature and could not have been the basis for rejection of permission. On facts, he claimed that the deficiencies pointed out in the assessment report had been duly rectified. He contended that the last date for grant of renewal of permission, viz., 31.05.2019, was not sacrosanct and claimed that the Supreme Court had held in various cases that the said timeline could not be used to deny an institution when no fault could be attributed to it. He

claimed that the College had the required infrastructural facilities for grant of permission.

11. Perusal of the letter of rejection dated 30.05.2019 addressed by the BoG to the College reflects the following salient points: The initial inspection on 12/13.12.2018 highlighted as many as 12 deficiencies, including the bed occupancy at 61.95% and faculty deficiency at 6.83%. The second inspection on 27.04.2019 demonstrated that two deficiencies remained – (1) faculty deficiency, which had increased to 11.96% and (2) the bed occupancy, which had improved marginally and stood at 66%. The Hearing Committee, which afforded a hearing to the College on 17.05.2019, recorded its observations to the effect that the explanation offered by the College with regard to the deficiency of faculty being due to their involvement in a sports festival was unsatisfactory. Similarly, the explanation with regard to low bed occupancy on the ground that the Assessors had only considered patients admitted till 10.00 AM and did not consider patients who were either in the corridors or who had gone for laboratory investigations was also found unsatisfactory, as the compliance verification assessment report dated 27.04.2019 showed that only 271 out of 410 beds were occupied at 10.00 AM and there was no evidence that the patients had gone for investigations. The Hearing Committee's recommendation was therefore not to grant renewal of permission to the College for admission of the 4th Batch of MBBS students during the academic year 2019-20. Accepting this recommendation, the BoG decided not to renew permission and directed the College not to admit any students in MBBS Course during the said academic year. Liberty was however given to it to apply afresh for the next academic year as per the due procedure.

12. Heard Mr.L.Ravi Chander, learned senior counsel appearing for Mr.Tarun G. Reddy, learned counsel for the petitioners, and Ms.Gorantla Sri Ranga Pujitha, learned counsel for the BoG.

13. Mr.L.Ravi Chander, learned senior counsel, would contend that as per the Assessment Form in Part-A-I to be furnished by the College, the bed occupancy was to be assessed on a daily average for the last three randomly selected months by the College itself and such assessment showed that the bed occupancy stood at 77%, i.e., more than the required 75%. He would therefore assert that it was not open to the BoG to rely upon the bed occupancy of a single day. He would place reliance on the decision in ADITYA EDUCATIONAL SOCIETY V/ s. THE UNION OF INDIA¹ in this regard. He would also rely upon the representation dated 09.05.2019 of the College indicating the deficiency of faculty since December, 2016 and assert that it was always well within the limit as the amended regulations permitted such deficiency to go up to 20%. He would contend that the cut-off date, viz., the 31st of May of the calendar year, is not sacred and that in a deserving case, it would be open to this Court to direct renewal even after the said date.

14. *Per contra*, Ms.Gorantla Sri Ranga Pujitha, learned counsel, would point out that in terms of the amended regulations which have to be satisfied by applicant colleges for obtaining permission and yearly renewals under Section 10A of the Act of 1956, the bed occupancy for the 4th Batch of MBBS students is stipulated at 75% and teaching faculty is required to be 117. In the light of the scheme obtaining under the said regulations, she would point out that the deficiencies found in the first inspection report dated 12/13.12.2018, both with regard to bed

¹ (2014) SC ONLINE AP 14 = AIR 2014 (NOC 350) 125

occupancy as well as faculty deficiency, persisted even during the second inspection, leading to the adverse report dated 27.04.2019 and the ultimate refusal of renewal.

15. We may now consider the statutory setting. Section 10A of the Act of 1956 deals with 'Permission for establishment of new medical college, new course of study etc.'. A medical college, for the purpose of obtaining permission, has to submit to the Central Government a scheme in accordance with the provisions of Section 10A(1)(b) and such scheme has to be referred to the Medical Council of India for its recommendations. Section 10A(2)(b) provides that the scheme should be in such form and contain such particulars and be preferred in such manner and be accompanied with such fees as may be prescribed. Section 10A(4) authorises the Central Government, after considering the scheme submitted by a medical college under Clause 10A(1)(b) and the recommendation of the Medical Council of India (now, the BoG), to either approve or disapprove such scheme. The provision also makes it clear that the Central Government is entitled to impose such conditions, as it may consider necessary, even if it approves the scheme. The first proviso to sub-section (4) prescribes that no scheme should be disapproved by the Central Government except after giving the college concerned a reasonable opportunity of being heard.

16. Section 33 of the Act of 1956 authorises the Medical Council of India to make regulations, with the previous sanction of the Central Government, to carry out the purposes of the said Act. In exercise of this power, the 'Medical Council of India Establishment of Medical College Regulations, 1999' (for brevity, 'the Regulations of 1999'), were promulgated on 30.07.1999 and were amended thereafter from time to

time. Regulation 8 of these Regulations deals with 'grant of permission'. Regulation 8(3)(1) states that 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 a yearly basis subject to verification of the achievement of annual targets. The process of renewal has to 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 by the Central Government. The regulation also provides that admissions should not be made at any stage unless the requirements of the Medical Council are fulfilled. Further, the Central Government is authorized at any stage to convey the deficiencies to the applicant and provide opportunity and time to rectify the deficiencies.

17. Regulation 8(3)(1)(b), titled 'Colleges in the stage from III renewal (i.e. Admission of fourth batch) till recognition of the institute for award of MBBS degree', earlier provided that if it is observed during any regular inspection of the institute that the deficiency of teaching faculty and/or residents is more than 20% and/or bed occupancy is < 70%, such an institute would not be considered for renewal of permission in that academic year. As per the schedule appended to the Regulations of 1999, titled 'Time schedule for receipt of applications for establishment of new medical colleges/renewal of permission and processing of the applications by the Central Government and the Medical Council of India', receipt of such applications is slated between 15th June and 7th July (both days inclusive) of any year and issuance of the letter of permission by the Central Government has to be by 31st May of that year. For renewal of permission, applicants are required to submit their applications to the

Medical Council of India by 15th July. This time schedule was brought into force on 14.01.2016.

18. It is in terms of the aforesaid statutory scheme that Regulation 8(3)(1) of the Regulations of 1999 vested the Medical Council of India, now, the BoG, with the power to renew annual permission for a medical college to admit students on a year to year basis till such college is granted formal recognition by the Central Government. The requirements of the BoG are necessarily to be fulfilled for grant of such renewal.

19. In terms of the 'Assessor's Guide for Undergraduate Assessment for the academic year 2019-20', issued by the erstwhile Medical Council of India, the medical college staff strength, faculty and resident data should be carefully calculated and entered in Assessment Form (A-II). The Guide also prescribes that clinical material information is very important and Assessors are required to ask the institution to submit daily average clinical data of the last 12 months and the clinical data of the first day of assessment. Bed occupancy is to be verified at 10.00 AM whereas OPD, Laboratory and Radiological investigation data etc. are to be verified at 2.00 PM on the first day of assessment. The Guide further provides that verification of teaching faculty and resident doctors is to be done on the first day of assessment preferably, and as far as possible, within college hours and not beyond closing hours. Teachers are required to be present for physical verification for all the days of assessment and only teachers who are present in the medical college premises during the period of assessment are to be counted. Any teacher who is not present for attendance before 11.00 AM on the first day of assessment is not to be included in the list of faculty of the college. The only exception is in the case of a teacher, who is present on the first day of assessment, but is

not able to produce all original documents. Such a teacher is permitted to furnish them before 11.00 AM on the second day of assessment and is permitted to be included in the faculty list.

20. We find that the BoG's assessors meticulously adhered to the Guide and the procedure prescribed therein. The Assessment Form in Part- A-II (2019-20) to be filled in by the Assessors is placed on record. Clause 2.1 onwards in this form deals with 'Teaching Hospital' and Clause 2.6, dealing with Clinical Material (random verification to be done by the Assessor), stipulates that bed occupancy percentage should be taken at 10.00 AM on the first day. Clause 3.15, pertaining to details of faculty/residents not counted/ accepted, stipulates that only faculty/residents who signed the attendance sheet before 11.00 AM on the first day of assessment should be verified. It further states that no verification of declaration forms should be done for the faculty/residents coming after 11.00 AM on the first day of assessment. The Assessment Form in Part-A-III (2019-20) stipulates, under Clause 5 thereof, that bed occupancy percentage at 10.00 AM on the first day of assessment is to be recorded by the Assessors along with their remarks. Similarly, details of the faculty/residents who signed the attendance sheet before 11.00 AM on the first day of assessment should be verified under Clause 7 thereof. The remarks column permits Assessors to record the reasons for not considering any faculty member or resident.

21. While so, Notification dated 04.02.2019 was issued by the BoG amending Regulation 8(3)(1)(b) of the Regulations of 1999. Thereunder, in respect of Colleges in the stage of III & IV renewal (i.e. admission of fourth & fifth batch), it is provided that if, during any inspection of the institute, the deficiency of teaching faculty and/or residents is found to be

more than 20% and/or bed occupancy is less than 65%, compliance of rectification of deficiencies from such an institute would not be considered for renewal of permission in that academic year. Before applying the above clause, a show-cause notice has to be issued to the institute seeking an explanation as to why the punitive provisions contained in the clause should not be applied against it and the same should be disposed of, after granting an opportunity of hearing, by way of a reasoned order.

22. This amended regulation is pressed into service by Mr.L.Ravi Chander, learned senior counsel, in support of his contention that as the College fulfilled these parameters, the compliance verification report dated 27.04.2019 ought to have been in terms of the amended provisions, but the authorities proceeded on the strength of the unamended provisions. Seemingly attractive at first blush, we find this argument to be ultimately specious. No doubt, as per the amended Regulation 8(3)(1)(b) in so far as a college admitting its 4th Batch of students is concerned, it is now provided that if the deficiency of teaching faculty and/or residents is found during any regular inspection to be more than 20% and/or bed occupancy is less than 65%, compliance of rectification of deficiencies from such an institute would not be considered for renewal of permission in that academic year. However, it may be noted that the aforestated amendment only postulates that if the deficiency in the teaching faculty exceeds 20% or bed occupancy falls below 65%, the compliance report submitted by such a college in relation to rectification of deficiencies would not even be considered. We are of the considered opinion that the amendment does not lend itself to the interpretation that as a matter of course, every college is permitted to have a teaching faculty deficiency of upto 20% or reduction in bed occupancy upto 65%. Such an

interpretation would be counter-productive to the very purpose of having strict standards in relation to teaching faculty and bed occupancy. A medical college having deficiency in teaching faculty upto $1/5^{\text{th}}$ of the required number or low bed occupancy cannot be said to be a desirable standard. The amended regulation therefore has to be construed to mean that if the parameters therein are found established, the college is not to be given even an opportunity of trying to rectify its deficiencies and no more. In other cases, the discretion would be with the BoG, basing upon the findings of the Assessors and the Hearing Committee, to decide on a case to case basis as to whether permission for renewal should be granted or not.

23. We may note that ADITYA EDUCATIONAL SOCIETY¹ was a case pertaining to renewal of permission for the 4th Batch of MBBS students in a particular college during the academic year 2013-14. Significantly, the Assessment Form to be filled in by the Assessors, when they inspected the infrastructural/instructional facilities offered by the college, was altogether different from the one presently under consideration. Clause 2.6 therein relating to 'Clinical Material', unlike Clause 2.6 in the Assessment Form in the case on hand, required the Assessors to compute the daily average of bed occupancy over three randomly selected months. It was on this basis that the Court ultimately held that going by the bed occupancy only on the day of inspection was not justified. This three month average is no longer part of the exercise to be undertaken by the Assessors as per Part-A-II Form. Such information is only to be furnished by the college itself in its Assessment Form in Part-A-I for the benefit of the authorities. This decision is therefore of no avail to the petitioners.

24. We also find that the decision in JAGAT NARAIN SUBHARTI CHARITABLE TRUST V/ s. UNION OF INDIA² turned on the individual facts of that case, whereupon the Supreme Court opined that the deficiencies of faculty and bed occupancy could not be held against the college as its explanation for the same had already been found to be reasonable, sufficient and valid by the Oversight Committee constituted by the Court. It was in these circumstances that the Supreme Court directed relaxation of the cut-off date for according permission for establishment of a new college or renewal of the existing permission.

25. Be it noted that in ASHISH RANJAN V/ s. UNION OF INDIA³, the Supreme Court affirmed and upheld the time schedules fixed for various stages relating to establishment of colleges for imparting medical education. So far as issuance of a letter of permission is concerned, the cut off date is 31st of May of the calendar year.

26. Given the facts in the case on hand, we find that the College, which was earlier denied renewal of permission during the academic year 2018-19, failed to make good its shortcomings. Despite two inspections being carried out by the authorities in December, 2018 and April, 2019, serious deficiencies pertaining to teaching faculty and bed occupancy persisted. We find no grounds to infer that the BoG's Assessors did not abide by the prescribed procedure. They seem to have done so scrupulously. In so far as their findings are concerned, it is not within our province, while undertaking judicial review under Article 226 of the Constitution, to sit in appeal over such technical assessment of infrastructural/institutional deficiencies which would directly impact the quality of medical education that would be imparted by the College.

² (2017) 16 SCC 666

³ (2016) 11 SCC 225

Assessment of such parameters is not a judicially manageable issue, as has been observed by the Supreme Court time and again, and we therefore choose to refrain from venturing into this factual realm. (See MEDICAL COUNCIL OF INDIA V/ s. THE PRINCIPAL, KMCT MEDICAL COLLEGE⁴, MEDICAL COUNCIL OF INDIA V/ s. KALINGA INSTITUTE OF MEDICAL SCIENCES (KIMS)⁵, MEDICAL COUNCIL OF INDIA V/ s. CHAIRMAN, S.R.EDUCATIONAL AND CHARITABLE TRUST⁶). In such circumstances, we find no grounds to interfere with the decision of the BoG that the College should not be permitted to admit students in MBBS Course 4th Batch during the academic year 2019-20.

27. The writ petition is accordingly dismissed. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

JUSTICE SANJAY KUMAR

JUSTICE P.KESHAVA RAO

8th AUGUST, 2019

Note: C.C. today.
PGS

⁴ (2018) 9 SCC 766

⁵ (2016) 11 SCC 530

⁶ 2018 SCC OnLine SC 2276