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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 23.10.2019

+ **LPA 624/2019 & CM No.42459/2019 (for stay)**

GOURI DEVI INSTITUTE OF MEDICAL SCIENCE
& HOSPITAL Appellant

Through: Mr.Vivek Sarin, Adv.

versus

UNION OF INDIA & ANR Respondents
Through: Mr.Rajesh Gogna, Adv. for R-1/UOI.
Mr.Vikas Singh, Sr. Adv. with Mr.T.
Singhdev, Adv., Mr.Tarun Verma,
Adv., Ms.Puja Sarkar, Adv.,
Mr.Arunima Pal, Adv. &
Ms.Biakthansanghi Das, Adv. for R-
2/MCI.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT

D.N. PATEL, CHIEF JUSTICE (ORAL)

1. This Letters Patent Appeal has been preferred by the original petitioner whose writ petition i.e. WP(C) No.6898/2019, was dismissed by the learned Single Judge vide judgment and order dated 30th August, 2019 (Annexure A-1 to the memo of this LPA) whereby the prayer of this appellant (original petitioner), for quashing and setting aside the impugned order dated 18th May, 2019 passed by the

respondent no.2-the Board of Governors in supersession of Medical Council of India (Annexure A-7 to the memo of this LPA) was not accepted by the said Board. As the original petition was dismissed, the original petitioner has preferred the present Letters Patent Appeal.

2. Having heard counsel for both the sides and looking to the facts and circumstances of the case, it appears that this appellant is running an Institution imparting medical education from the year 2016-17. The first batch of students was allowed to be admitted for the academic year 2016-17 whereas for the academic year 2017-2018 and for the academic year 2018-2019, no students were allowed by the Medical Council of India to be admitted with this appellant-Institution. The intake capacity of the appellant-Institution was 150. The first batch of the students has reached the fourth academic year.

3. It appears from the facts of the case that the Medical Council of India (MCI) has carried out inspection of this institution on 26th/27th November, 2018 for the academic year 2019-2020 and another inspection was also carried out on 8th April, 2019.

4. It appears from the facts of the case that there are several deficiencies found out with this appellant-Institution. Originally, there were fourteen deficiencies pointed out by the respondents and they are as under:-

- “1. Out of UG accommodation for 360, accommodation available for 210, deficient by 150. For Residents 100% deficiency of accommodation.
2. Residential quarters for non-teaching staff 100% deficient.
3. Audiometry and speech therapy-not available.

4. Pantry and store room not in use for all clinical wards.
5. Bed Occupancy is 30.5%).
6. Normal deliveries and Caesarian - Nil.
7. Ba & IVP-Nil in OPD.
8. USG machines not available in causality.
9. Bed occupancy in septic labour room and eclampsia room is nil.
10. In Path, Museum mounted specimen only 40 against 300 (260 short) un-mounted only 30, against 150 (120 short).
11. No cold chain equipment, no accommodation in RHTC.
12. Deficiency of Faculty by 51% (67/117).
13. Deficiency of Resident by 100%) (66/66).
14. Other deficiencies as pointed out in the assessment report.”

5. Thereafter, again the inspection was carried out on 8th April, 2019 and there were three deficiencies pointed out to the appellant which are as under:-

- "1. Faculty Deficiency of 18.8%
2. Residents Deficiency of 21.2%
3. Bed occupancy - 74.8%."

6. Thereafter opportunity of being heard was given to the appellant and later on an order dated 18th May, 2019 (Annexure A-7 to the memo of this LPA) was passed by the respondents and the appellant was not granted permission for renewal of fourth batch (150 MBBS students) for the academic year 2019-2020.

7. The appellant challenged the aforesaid decision of the MCI dated 18th May, 2019 (Annexure A-7 to the memo of this LPA) on various grounds including the ground that different are the parameters of the respondents for different medical colleges. The appellant has

not waived his fundamental rights and the deficiencies which are pointed out are in fact miscalculated deficiencies which is mainly on the strength of 450 students and not on the basis of 150 students.

8. We have heard the counsel for both sides at length and looking to the deficiencies pointed out by the Medical Council of India, the requirement as per MCI are as under:-

Designation	LOP (1 st Batch)	1 st Renewal (2 nd Batch)	2 nd Renewal (3 rd Batch)	3 rd Renewal (4 th Batch)	4 th Renewal (5 th Batch)	Recognition
Faculty Total	65	94	100	117	132	132
Resident Total	45	47	49	66	80	80

9. As per the appellant, they are already having several faculty members and resident doctors and they are as under:-

	1 st year	2 nd year	3 rd year	4 th year	5 th year	Current staff as per R2
	LOP	1 st renewal	2 nd renewal	3 rd renewal	4 th renewal	
Faculty	65	94	100	117	132	96
Residents	46	47	47	66	80	52

10. We have perused the requirement as pointed out by the MCI and also looking to the provisions of Section 10A of the Indian Medical Council Act, 1956 especially Section 10(2)(a) to be read with Section 10(7) of the Indian Medical Council Act, 1956, and also looking to the fact that this appellant has to present a composite

scheme for all the years before the respondent/Medical Council of India year after year, the students are going in the next year of study, hence, if the first batch has reached to the fourth year, all the faculty members are required with this appellant. It cannot be said that the faculty members who are present in the first academic year, are in proportionate with 150 students and, therefore, no additional faculty members are required. It ought to be kept in mind that year after year in the study of MBBS course, more subjects are required to be taught. Consequently, for the clinical subjects, there is a requirement of laboratory and other requirements for which also more faculty members for the next academic years are also required and hence always composite requirements are to be given by this appellant for the faculty members as well as for the resident doctors. Hence, the contention raised by the counsel for the appellant (original petitioner) that the requirement should be calculated of the faculty members and residents only on the basis of the 150 students, is not accepted by this Court. If the first batch has reached to fourth year, then all the faculty members and residents as pointed out by the Medical Council of India, ought to have been employed by this appellant. Thus, the requirement of the faculty members and residents cannot be calculated only on the basis of 150 students but it ought to be calculated on the basis of all the years requirement, the faculty members and residents must be available. This aspect of the matter has been properly appreciated by the Medical Council of India while passing an order dated 18th May, 2019 (Annexure A 7) as well as this aspect has been properly appreciated by the learned Single Judge

while deciding writ petition preferred by the appellant i.e. WP(C) No.6898/2019 vide judgment and order dated 30th August, 2019. The submission sought to be canvassed by Mr.Sarin is essentially, that, as no intake of students was permitted for the academic years 2017-18 & 2018-19, the academic year 2019-20 should be treated as the second batch and not the fourth batch. We are unable to agree. In advancing this submission, the he ignores two facts, viz. that (i) the batch of students admitted in 2016-17 are in its fourth year in 2019-20, and (ii) the approval granted to the appellant, in 2016-17, was to a scheme, and not to a batch. This scheme was composite, covering five years, and required incremental enhancement of facilities and equipment. The appellant having failed to comply, no fault can be found with the decision of the MCI.

12. We are in full agreement with the reasons given by the learned Single Judge in the judgment and order dated 30th August, 2019. We see no reason to take any other view than what has been taken by the learned Single Judge and there is no substance in the appeal and the same is dismissed.

13. Even otherwise also, the cut-off date for the academic year 2019-20 for getting such type of permission, has also been over. The said cut-off date is 30th May, 2019 as per the decision rendered by the Hon'ble Supreme Court in ***Ashish Ranjan & Ors. v. Union of India & Ors., (2016) 11 SCC 225*** in the tables incorporated at pages 226-227, 227-228 and 228-229 of the decision as under :

***“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**

<i>Sl. Nos.</i>	<i>Stage of processing</i>	<i>Last date</i>
<i>1.</i>	<i>Receipt of applications by the Central Government.</i>	<i>Between 15th June to 7th July (both days inclusive) of any year</i>
<i>2.</i>	<i>Forwarding application by the Central Government to the Medical Council of India.</i>	<i>By 15th July</i>
<i>3.</i>	<i>Technical scrutiny, assessment and recommendations for letter of permission by the Medical Council of India.</i>	<i>By 15th December</i>
<i>4.</i>	<i>Receipt of reply/compliance from the applicant by the Central Government and for personal hearing thereto, if any, and forwarding of compliance by the Central Government to the Medical Council of India.</i>	<i>Two months from receipt of recommendation from MCI but not beyond 31st January</i>

5.	<i>Final recommendations for the letter of permission by the Medical Council of India.</i>	<i>By 30th April</i>
6.	<i>Issue of letter of permission by the Central Government.</i>	<i>By 31st May</i>

Note 1. – In case of renewal of permission, the applicants shall submit the application to the Medical Council of India by 15th July.

TIME SCHEDULE FOR RECEIPT OF APPLICATIONS FOR INCREASE OF ADMISSION CAPACITY IN MBBS COURSE/RENEWAL OF PERMISSION FOR INCREASE OF SEATS AND PROCESSING OF THE APPLICATIONS BY THE CENTRAL GOVERNMENT AND THE MEDICAL COUNCIL OF INDIA

Sl. No.	Stage of processing	Last date
1.	Receipt of applications by the Central Government.	Between 15 th June to 7 th July (both days inclusive) of any year
2.	Forwarding application by the Central Government to the Medical Council of India.	By 15 th July
3.	Technical scrutiny,	By 15 th

	assessment and recommendations of letter of permission by the Medical Council of India.	December
4.	Receipt of reply/compliance from the applicant by the Central Government and for personal hearing thereto, if any, and forwarding of compliance by the Central Government to the Medical Council of India.	Two months from receipt of recommendation from MCI but not beyond 31 st January
5.	Final recommendations for the letter of permission by the Medical Council of India.	By 30 th April
6.	Issue of letter of permission by the Central Government.	By 31 st May

Note 1.—In case of renewal of permission, the applicants shall submit the application to the Medical Council of India by 15th July.

TIME SCHEDULE FOR COMPLETION OF THE ADMISSION PROCESS FOR FIRST MBBS COURSE

<i>Sl. Nos.</i>	<i>Schedule for admission</i>	<i>Seats to be filled up by the Central Government through the All India Entrance Examination</i>	<i>Seats to be filled up by the State Government /Institution</i>
<i>1.</i>	<i>Conduct of entrance examination</i>	<i>Between 1st to 7th May</i>	<i>Between 10th to 17th May</i>
<i>2.</i>	<i>Declaration of the result of the qualifying exam/entrance exam</i>	<i>By 1st June</i>	<i>By 1st June</i>
<i>3.</i>	<i>1st round of counselling/ admission</i>	<i>To be over by 25th June</i>	<i>Between 6th July to 15th July</i>
<i>4.</i>	<i>Last date for joining the allotted college and the course.</i>	<i>By 5th July</i>	<i>By 22nd July</i>
<i>5.</i>	<i>2nd round of counselling/ admission for</i>	<i>Between 23rd July to 30th July</i>	<i>Between 10th to 22nd August</i>

	<i>vacancies.</i>		
6.	<i>Last date of joining for the 2nd round of counselling/ admission</i>	<i>By 9th August</i>	<i>By 28th August</i>
7.	<i>Commencement of academic session/term</i>	<i>1st of August</i>	<i>1st of August</i>
8.	<i>Last date up to which students can be admitted/ joined against vacancies arising due to any reason</i>		<i>By 31st August</i>

Note 1. – All India quota seats remaining vacant after last date for joining i.e. 9th August will be deemed to be converted into State quota.

2. Institute/college/courses permitted after 31st May will not be considered for admission/allotment of seats for current academic year.

3. In any circumstances, last date of admission/joining will not be extended after 31st August. ”

14. Both the cut-off date for granting permission which is 31st May, 2019, have gone and for admission of the students i.e. 31st August, 2019 has also gone. The prayer in the writ petition of the petitioner, as also the communication dated 18th May, 2019 impugned in the writ

petition, are specific to the academic year 2019-2020. The writ petition has, therefore, effectively been rendered infructuous. Hence also, we see no reason to entertain this Letters Patent Appeal. Hence, there is no substance in the in the LPA which is hereby dismissed.

CM No. 42459/2019 (for stay)

1. In view of the dismissal of the appeal, this application also stands dismissed.

THE CHIEF JUSTICE, J

C.HARI SHANKAR, J

OCTOBER 23, 2019/aa