

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) No.6798/2019 and CM Nos. 28450/2019 &**
34373/2019

Judgment reserved on : 07.08.2019

Date of decision : 27.08.2019

VENKATESHWARA INSTITUTE OF MEDICAL SCIENCES

..... Petitioner

Through: Mr. J.S. Bhasin & Mr.Nishant
Shokeen, Advocates

versus

BOARD OF GOVERNORS & ORS

..... Respondents

Through: Mr. Rajesh GognaCGSC for R-
1

Mr.Anil Mittal & Ms. Komal
Aggarwal, Advocates for R-2

Mr.Vikas Singh, Sr. Advocate
with Mr. T. Singhdev, Ms. Puja
Sarkar, Ms. Arunima Pal, Mr.
Tarun Verma and Mr.Abhijit
Chakravarty, Advocates for
MCI.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The petitioner vide the present petition seeks the following prayers:

“(i) issue an appropriate writ, order or direction in the nature of certiorari for setting aside/quashing the decision of the Respondent No. 1-BOG in Supersession of the MCI vide letter

No. MCI-34(41)(R- 78)/2019/120551 dated 31.05.2019 (received by the Petitioner on 04.06.2019) recommending disapproval of the scheme of the Petitioner for grant of 3rd Renewal of Permission for Admission of 4th Batch of 150 MBBS Students u/s 10A of the IMC Act, 1956 for the Academic Session 2019-20;

(ii) issue an appropriate writ, order or direction in the nature of certiorari for setting aside/quashing the Inspection Report dated 13.05.2019 conducted by the Assessment Team of the Respondent No.2- DGME, State of U.P. as the same is mala-fide and in violation of the law laid down by the Hon'ble Supreme Court in the case of Royal Medical Trust vs. Union of India, (2015) 10 SCC 19;

(iii) issue an appropriate writ, order or direction in the nature of mandamus for directing the Respondent No. 1-BOG of MCI to issue Letter of Permission (LOP) to the Petitioner-Institute after considering the Surprise Compliance Verification Assessment Report dated 03.05.2019 of their own Assessors of MCI for grant of 3rd Renewal of Permission for Admission of 4th Batch of 150 Students u/s 10A of the IMC Act, 1956 for the Academic Session 2019-20;

(iv) pass such other order(s) as this Hon'ble Court may deem fit and proper in the interest of justice.

2. Several contentions have been raised on behalf of the petitioner assailing the impugned decision of the respondent No.1, the Board of Governors in supersession of the Medical Council of India dated 31.5.2019 whereby the scheme of the petitioner for grant of the third renewal of permission for MBBS course for the 4th Batch (150 seats) under Section 10A of the Indian Medical Council Act, 1956 for the academic year 2019-20 was declined contending to the effect:

that no adequate hearing was granted by the Hearing Committee, no specific reasoned/speaking order was passed and no substantial deficiencies had been found in the compliance verification assessment and that thus in the subsequent inspection conducted on 13.5.2019 by the DGME, the respondent No.2 after the respondent No.1, the Board of Governors in supersession of Medical Council of India, had carried out the surprise compliance verification on 3.5.2019 with the assessment of the MCI having been found nil deficiencies identical to faculty strength of 123, residents 70, 379 bed occupancy and had also found that all the deficiencies had been rectified by the petitioner institute;

that the second inspection having been conducted on 13.5.2019 by the respondent No.2, i.e., the Directorate of Medical Education, Government of U.P., Lucknow, had no authority in law to conduct the same and;

that the representation/explanation dated 28.5.2019 submitted by the petitioner in relation to the stated surprise compliance verification assessment on 13.5.2019 having not been considered by the respondent No.1, the Board of Governors in supersession of Medical Council of India.

3. The respondent No.1, the Board of Governors in supersession of the Medical Council of India, vehemently opposed the prayer made by the petitioner with the contentions raised on behalf of the respondent No.1 *inter alia* stating to the effect that on the date of first inspection that had to be conducted on 29.5.2018 the college did not permit the MCI an inspection as it was not prepared for the same and that the second inspection was conducted on 25.11.2018 by the Superintendent of Police, Amroha under the orders of the Hon'ble High Court of Allahabad as directed vide order dated 8.8.2018 when it was found there was no patient in the OPD, most of the departments and

laboratories were empty and the students informed about lack of faculty, residents, support staff, patients and infrastructure.

4. The respondent No.1 has further submitted that it sought an explanation on 19.12.2018 from the petitioner to which the petitioner submitted a reply on 24.12.2018 wherein in the first hearing granted on 8.1.2019, it was decided to conduct an inspection of the medical college and as there were complaints received against the medical college on 7.1.2019, 23.1.2019 the **third inspection was conducted on 21-22.1.2019 and the respondent No.1 found the deficiency of faculty 18.8.%, residents 16.66.%, bed occupancy 30% apart from 21 other gross deficiencies.** The respondent No.1 further submits that it sought an explanation on 26.2.2019 whereafter it sent a reminder on 4.4.2019 and the compliance was submitted on 8.4.2019.

5. The respondent No.1 submits that it further conducted an inspection on 3.5.2019 and found conflicting reports dated 25.9.2018, 25.11.2018 and 21/22.01.2019 vis-à-vis 3.5.2019 and thus the respondent No.1 requested the respondent No.2 the DGME, U.P., to inspect the medical college vide letter dated 10.5.2019 & 13.5.2019 **and the 5th inspection was conducted by the DGME, U.P. when it found the deficiency of faculty 83.7% & residents 65.16%, bed occupancy 19.2% apart from 6 other gross deficiencies.**

6. The respondent No.1 further submits that it received complaints against the petitioner college on 13.5.2019 and the hearing was granted to the petitioners on 28.5.2019 in which the explanations submitted by the petitioner vide letter dated 28.5.2019 were considered whereafter it was decided not to recommend renewal of

permission to admit 4th batch of MBBS students for the academic year 2019-20 which disapproval was made on 31.5.2019. The respondent No.1 has further submitted that as per Section 10A(7)(c) to (g) of the Indian Medical Council Act, 1956, the MCI for the purpose of ascertaining infrastructure, clinical material, faculty, residents and other physical facilities available in a medical college for approving or disapproving an application could take into account the factors even if it meant looking into the inspection report of the State Government and that the MCI is not in any manner precluded from calling upon the State Government so as to assist it in ascertaining the correct/authentic position when there was suspicion raised due to conflicting reports.

7. The respondent No.1 has further submitted that as the respondent No.1, the Board of Governors in supersession of the Medical Council of India agreed with the findings of the Hearing Committee / assessment there was no requirement to give any separate reason for disapproving the application of the petitioner and it was submitted on behalf of the respondent No.1 that the deficiencies pointed out of deficiency of faculty 83.7% & residents 65.16%, bed occupancy 19.2% and 24 other deficiencies pointed out through the assessment made on 13.5.2019, were sufficient to negate the grant of any approval of the scheme of the petitioner for renewal of permission for admission of the 4th batch of 150 MBBS students to the petitioner institute.

8. It is essential to observe that as submitted on behalf of the respondent no.1, W.P.(C) No. 25995/2018 as filed by the six students of the petitioner institute is pending before the Hon'ble Division

Bench of the High Court at Allahabad and as per the website of the Hon'ble High Court of Allahabad is now listed vide order dated 21.8.2019 for the date 11.9.2019. The proceedings of the date 21.8.2019 in the said matter read to the effect:

“ Rejoinder affidavit filed today is taken on record.

We are apprised at the bar that the respondent-Medical College has preferred a writ petition before the Delhi High Court challenging the order of the Medical Council of India refusing to grant further permission to run the course in Session 2019-2020.

As prayed list on 11.09.2019.”

9. The respondent No.1 has vehemently contended that the petitioner has resorted to forum shopping by institution of the present petition in this Court in as much as the petitioner is situated at Amroha, in the State of U.P., in which State the Civil Writ Petition No. 25995/2018 is pending before the Hon'ble Division Bench of the Allahabad High Court as filed by the six students of the petitioner institute filed on 23.8.2018 which was filed much before the institution of the present petition in 2019, wherein the prayers made by the students therein were to the effect:

“ i.A writ, order or direction in the nature of writ of mandamus commanding the respondent no. 1,2 3,4,5,6,7 & 9 to immediately and forthwith make arrangement for the transfer of students/petitioners to medical colleges recognized by the State Government.

ii. A writ, order or direction to the respondent no.8 restraining him from forcing the students/petitioners from paying exorbitant fees including penalty in default of not having deposited the fee on day to day increasing basis from Rs.500/- to Rs.2000/- per day failure to deposit the same by 31 July, 2018.

iii. A writ, order or direction to the respondent no.8 restraining them from cancelling the registration of the students/petitioners and after the due date re-registration would be done only on the payment of Rs.50,000/- in pursuance of letter issued by them dated 25.06.2018.

iv. A writ, order or direction to the respondent no. 1, 2 3, 4, 5, 6, 7 & 9 to immediately and forthwith initiate penal proceedings against respondent no.8 including cancellation of the registration of the medical colleges owned by respondent No.8.

v Any, further writ, order or direction as the Hon'ble Court may deem fit and proper to secure the ends of justice.

vi An order awarding the cost of the petition to the petitioners."

10. It has thus been submitted by the respondent No.1 in as much as the Hon'ble Division Bench of the Allahabad High Court is seized of the matter and the proceedings in the instant case before this Court ought not to be continued in as much as the matter before the Hon'ble High Court at Allahabad is virtually in relation to the very same aspect of the availability of infrastructure, clinical material and Laboratories, faculty, residents and other physical facilities for continuing the

teaching and training of the only batch of admitted MBBS students i.e. the batch of 2016-17.

11. It has further been submitted on behalf of the respondent No.1, the Board of Governors in supersession of the Medical Council of India that the inspection which was conducted on 25.11.2018 of the Superintendent of Police, Amroha, was also on the directions of the Hon'ble High Court of Allahabad and the inspection report dated 25.11.2018 conducted therein was thus forwarded to the MCI pursuant to order dated 14.3.2019 in the said writ petition, i.e., W.P. No. 25995/2018 and that the subsequent assessment including the inspection conducted by the respondent No.2, the DGME, U.P. emanate from the proceedings pending before the Hon'ble Division bench of the Hon'ble High Court at Allahabad and that the petitioner had indulged in forum shopping by institution of the present petition in this Court. The respondent No.1 has further submitted that the entire cause of action relating to the various inspections took place in the State of U.P. and the all the parties are available in the State of U.P. and that the respondent No.1 is also duly represented before the Hon'ble High Court at Allahabad.

12. It was thus submitted on behalf of the respondent No.1, the Board of Governors in supersession of Medical Council of India that the ambit of Section 10 of the CPC, 1908 as amended was wholly applicable in the instant case in as much as the matter in issue in the present petition is directly and substantially in issue in a previously instituted petition before the Allahabad High Court which was however refuted on behalf of the petitioner.

13. It is essential to observe that vide order dated 8.8.2018 in WP(C) No. 25995/2018, the Hon'ble Division Bench of the Hon'ble High Court at Allahabad had observed to the effect:

“ Heard learned counsel for the petitioners, Sri Sanjay Kumar Om, learned counsel representing respondent nos.1,4 & 7, Sri Gynendra Srivastava, learned Standing Counsel representing respondent nos.2,6 & 10, Sri Mahendra Pratap, learned counsel representing respondent no.3, Sri Avanish Mishra, learned counsel representing respondent no.5 and Sri Rijwan AliAkhtar, learned counsel representing respondent no.9 who has accepted notice.

In addition to the normal mode of service, the petitioners will also take steps by dasti notices, for which steps may be taken within 48 hours, whereupon office will handover dasti notices within next 48 hours. Thereafter the petitioner may serve respondent-Institution within next four days and an affidavit of service may be filed on or before the next date fixed.

Put up in the additional cause list on 23.08.2018.

The petitioners claim to be the students of M.B.B.S. Course in the respondent no.8-Institution having been admitted for the Academic Session 2016-17. Thus, they have already completed two years of their education in the said course.

The grievance of the petitioners is that the respondent-Institution does not possess the basic minimum infrastructure in terms of human resource and otherwise required for imparting education for a highly professional course. It is also their case the management of the respondent-Institution is threatening the petitioners that if they raise any voice against the set-up of the Institution their future would be put to jeopardy and that they will have to face dire consequences and would

deliberately be declared unsuccessful. The petitioners have also vaguely expressed their apprehension about threat to their life and property. Such averments are made in paragraph nos. 27, 28 and 35.

In view of the above averments, we require the Superintendent of Police, District-Amroha to ensure that the petitioners are provided adequate security in terms of their life and property provided that there is any apprehension, as alleged by the petitioners, for which the Superintendent of Police, Amroha will get an internal enquiry conducted.”

14. The proceedings of the date 14.3.2019 before the Hon’ble Division Bench of the Hon’ble High Court at Allahabad referring to the proceedings dated 8.8.2018 observed to the effect:

“Sri Pashant Mathur, Additional Chief Standing counsel, has placed an enquiry report of Superintendent of Police, District Amroha, dated 25th November, 2018, which had been conducted pursuant to order dated 8.8.2018. There are certain photographs also along with the report and other supporting materials.

In our considered opinion, all these materials should be forwarded to the Medical Council of India, forthwith by Secretary, Ministry of Medical Education. Thereafter the Medical Council of India will proceed accordingly, as per Rules, Regulations and the Statutory provisions to deal with such issues. The report is returned to Mr.Prashant Mathur for forwarding it, as observed above.

Insofar as reliefs claimed by the petitioners are concerned, let this matter be listed on 27th March, 2019 before the appropriate Court to

enable the learned Counsel for the respondents to fully prepare with the matter as according to Mr.Khanna, learned Senior Counsel, 24 hours were less to prepare the entire material.

Copy of this order be provided to Sri Prashant Mathur, free of cost, within 48 hours, for necessary compliance.”

15. The proceedings of the date 27.3.2019 of the Hon’ble Division Bench of the Hon’ble High Court at Allahabad read to the effect:

“ Learned counsel appearing on behalf of Medical Council of India submits that he wants some time to ascertain what steps have been taken by the Medical Council of India after receiving the report referred under the order dated 14th March, 2019.

Learned counsel appearing on behalf of respondent no. 8 University submits that the institution has satisfied the deficiencies as pointed out by the inspecting team of the Medical Council of India and necessary report in that regard has also been sent to the competent authority of the Medical Council of India.

He also wants some time to ascertain what further steps have been taken by the Medical Council of India.

Let this petition for writ be listed on 10th April, 2019.”

16. The proceedings of the date 10.4.2019 in the said Writ Petition (C) No. 25995/2018 are to the effect:

“ Sri Avanish Mishra, Learned counsel for the Medical Council of India has filed a short counter affidavit in compliance to the order dated 27.3.2019. Copy of the same has been served on the learned counsel for the petitioner today itself.

Sri Anurag Khanna, learned Senior Advocate appearing for the respondent no.8 has requested that a copy of the short counter affidavit of

Medical Council of India may be provided to the College and also to all other respondents so that each of the respondents may get an opportunity to come up with the stand whether to support or deny the contents of the short counter affidavit of the Medical Council of India. Sri Avanish Mishra, learned counsel for the Medical Council of India states that he shall provide copy of the short counter affidavit to all the respondents within 24 hours. Learned counsel for the parties, if they wish to file reply, may do so within a week.”

17. Vide order dated 24.4.2019, the matter was renotified for the date 8.5.2019 before the Hon’ble Division Bench of the Hon’ble High Court at Allahabad and on 8.5.2019 it was observed as under:

“ Counter affidavit, filed today on behalf of respondent no.8, is taken on record.

Heard Shri Bharat Kishore Srivastava, learned counsel for the appellants, Shri Anurag Khanna, learned Senior Counsel, assisted by Shri Mohit Singh, learned counsel for respondent no.8- Venkateshwara Institute of Medical Sciences, Shri Avanish Mishra, learned counsel for respondent no.5 and Shri Prashant Mathur, learned Additional Chief Standing Counsel for respondent no.10.

There is an illness slip of Shri Sanjay Kumar Om, learned counsel for Union of India-respondent no.1.

Shri Anurag Khanna, learned Senior Counsel informs the Court that after the last order of the Court on 27.03.2019, the Medical Council of India has conducted an inspection of the premises of respondent no.8- Institute on 03.05.2019.

Shri Avanish Mishra, who represents respondent no.5, states that he is not aware of any such

inspection, even though, he states that he has spoken to the Law Officer of the Medical Council of India only yesterday.

Shri Prashant Mathur, learned Additional Chief Standing Counsel informs that the Superintendent of Police has also inspected the premises and submitted his report and the same was required to be forwarded to the Medical Council of India by the Secretary, Medical Education, State of U.P.

Shri Avanish Mishra submits that the report of the Superintendent of Police was received in the Medical Council of India and has been placed before the Board of Governors on 23.04.2019 and the Board of Governors has taken a decision to take appropriate action under section 10-A of the Indian Medical Council Act, 1956.

So far as the inspection of 03.05.2019 is concerned, Shri Mishra prays for and is granted a week's time to file supplementary affidavit.

Shri Prashant Mathur, learned Additional Chief Standing Counsel shall also file a supplementary affidavit bringing on record the report of the Superintendent of Police. Union of India may also file its counter affidavit by 16.5.2019, if it so desires."

18. The proceedings on 4.7.2019 in the said case read to the effect:

" Sri Bharat Kishore Srivastava, learned counsel for the petitioners, seeks leave of the Court to withdraw his memo of appearance. One of the petitioners is present in the Court.

Leave is granted. Sri Bharat Kishore Srivastava, learned Advocate, is permitted to withdraw his memo of appearance.

His name be not shown as counsel for the petitioner when the matter is listed again.

He has handed over the record to the petitioner in the Court.

Respondent no.5 has filed a counter affidavit. It is taken on record.

List this case on 11.7.2019.”

19. The proceedings dated 11.7.2019 read to the effect:

“ List revised.

As prayed, list this matter in the next cause list showing the name of Mr.Krishna Pratap Kaushik, Advocate, as counsel for petitioner.

20. As already observed, the matter is now pending for the date 11.9.2019 before the Hon’ble Division Bench of the Hon’ble High Court at Allahabad.

21. Taking the aspect into account as reflected in proceedings dated 8.8.2018 and 14.3.2019 as well as the proceedings dated 21.8.2019 in W.P.(C) No. 25995/2018 before the Hon’ble Division Bench of the Hon’ble High Court at Allahabad in as much as vide order dated 14.3.2019, the Hon’ble Division Bench of the Hon’ble High Court at Allahabad having directed that all the materials in relation to the enquiry report dated 25.11.2018 and the Superintendent of Police Amroha be forwarded to the MCI by the Secretary, Ministry of Medical Education and thereafter the Medical Council of India would proceed accordingly, as per rules, regulations and the statutory provisions to deal with such issues, pursuant to which the respondent No.1 had taken into account the report of the Superintendent of Police, Amroha dated 25.11.2018 which revealed that at the time of the police inspection, the labs and most of the departments were empty and there

were no patients in the OPD and they also reported that there was an overwriting in the OPD attendance register and about 70 students were present who informed that there was lack of teaching faculty, support staff and patients in the college and when further the report of the State Government having been called for in view of the CVA undertaken by the Council Assessors on 3.5.2019, which reported that there were no deficiencies reported, the copy of the assessment report dated 21-22.1.2019, the report of the Superintendent and CVA report dated 3.5.2019 were forwarded to the respondent No.1 and a letter dated 15.5.2019 was received by an e-mail from the Director General, Medical Education and Training, U.P. stating therein that under the instructions of the Principal Secretary, Medical Education, a three-member team headed by the Director, Govt. Institute of Medical Sciences, Greater Noida was entrusted the task of assessing the college and the assessment report dated 13.5.2019 reported several deficiencies to the effect:

“(a) Deficiency of teaching faculty -83.7%

(b) Deficiency of Resident doctors -65%

(c) Bed Occupancy - 19.2%”,

and that on 15.5.2019, the respondent No.1 received a letter dated 13.5.2019 from one Mr. Abhibjit Kumar of Sultanpur, New Delhi, stating to the effect:-

“(a) The college authorities had prior information, about both the inspections carried out by the MCI.

(b) The college authorities also had information about the name of the inspectors on both the occasions.

(c) As a result of the prior information, college authorities admitted fake patients and temporarily appointed staff, to fulfill statutory requirements.”,

and that initially when the DGME, U.P. inspected the college it was initially informed that there was a holiday but upon their insistence they were allowed to carry out the assessment and they reported that there was no college staff, teaching faculty, doctors and residents and most of the hospital was locked and on 20.05.2019, the Council received a representation from the college regarding impermissible and unauthorized permission by the Department of Medical Education, Government of U.P. in violation of the statutory scheme of the IMC Act, 1956 and the statutory regulations made thereunder which were self explanatory and in view of the unsatisfactory explanation that was offered by the college authorities regarding discrepancies and deficiencies detailed, the Hearing Committee decided not to grant renewal of permission for admission of the 4th Batch of 150 MBBS students for the academic session 2019-20 which was considered by the respondent No.1, the Board of Governors in supersession of the Medical Council of India, in its 18th meeting, held on 13.5.2019 and it also considered the representation dated 28.5.2019 of the college and the Board of Governors in supersession of the Medical Council of India approved the recommendation of the Hearing Committee not to grant the permission to the petitioner

institute for permission of admission of the 4th Batch of 150 MBBS students under Section 10A of the Indian Medical Council, Act, 1956 for the academic session 2019-2020 with directions to the petitioner not to admit any student in the MBBS course for the academic year 2019-2020 though it was also stated that the petitioner was free to apply for the next academic session as per the Indian Medical Council Act, 1956 and as per the regulations framed thereunder.

22. The contention of the petitioner that the DGME conducted the inspection on 13.5.2019 and that thus the MCI cannot take that inspection report into account cannot in any manner be accepted and the contention raised on behalf of the respondent No.1 that it is not in any manner precluded from calling upon the State Government so as to assist it in ascertaining the correct/authentic position when there was suspicion raised due to conflicting reports,- cannot be faulted with.

23. In view of the discrepancies that had been brought forth through the inspection conducted on 25.11.2018 and 13.5.2019 with faculty deficiency of 83.7% & residents 65.16%, bed occupancy 19.2% apart from 6 other gross deficiencies, which this Court cannot overlook, it is apparent that the prayer made by the petitioner seeking the setting aside of the impugned order of the respondent No.1, the Board of Governors in supersession of the Medical Council of India, dated 31.5.2019 deciding not to renew the permission for admission to the petitioner institute under Section 10A of the Indian Medical Council Act, 1956, for the academic year 2019-2020 cannot be faulted with. In view of the discrepancies that have been brought forth

through the inspection report adverted to by the respondent No.1, the Board of Governors in supersession of the Medical Council of India, it is needless to consider all other aspects raised on behalf of either side.

24. The petition and the accompanying applications are thus declined.

ANU MALHOTRA, J.

AUGUST 27, 2019/SV

