

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) No.6815/2019 and CM No. 28489/2019**

Judgment reserved on :26.07.2019

Date of decision :29.08. 2019

VARUNARJUN TRUST & ANRPetitioners
Through: Mr.Naveen R. Nath, Adv with
Mrs.Lalita Mohan Bhat,
Advocates

versus

UNION OF INDIA & ANR. Respondents
Through: Mr. Abhay Prakash Sahay,
CGSC for UOI.
Mr.Vikas Singh, Sr. Advocate
with Mr.T.Singhdev, Ms.Puja
Sarkar Advocates for MCI.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The petitioner vide the present petition seeks the quashing of the impugned order of the respondents bearing no.MCI-34(41)(R-81)/2019-Med./206776 of BOG- MCI dated 31.05.2019, in as much as the same refuses to grant renewal permission to the petitioner college from admitting 150 students for MBBS Course in the Petitioner's Medical College for the academic session 2019-20 with consequential direction to the respondent No.2, to issue the renewal of letter of permission for admission of 4th Batch of 150 MBBS students at Varunarjun Medical College & Rohilkhand Hospital for the academic year 2019-2020 under Section 10 (A) of Indian Medical Council Act, 1956 and further seeks that the authorities be directed to provide from the NEET list

for admission of 4th Batch of 150 MBBS students at Varunarjun Medical College & Rohilkhand Hospital for the academic year 2019-2020 under IMC Act, 1956.

2. The respondents arrayed to the present petition are the Union of India, through its Secretary, Ministry of Health & Family Welfare as the respondent No.1 and the Board of Governors in supersession of Medical Council of India as the respondent No.2.

3. It has been submitted by the petitioners that the Varunarjun Trust, the petitioner No.1, was established with one of its objects to establish and maintain Medical Institutions and Medical Colleges and thus the petitioner No.2 Varunarjun Medical College & Rohilkhand Hospital a private unaided medical college was established by the petitioner No.1 Trust and has been conducting medical courses after being permitted by the Medical Council of India, the Central Government and the concerned University from the academic session 2016-17. It has been submitted by the petitioner that the petitioner No.2 college was issued a letter of permission for the period of one year with an annual intake of 150 students of the MBBS Course for the academic year 2016-17 under Section 10(A) of the Indian Medical Council Act, 1956 but that petitioner No.2 was not permitted renewal of permission for the academic sessions 2017-18 and 2018-19 due to an error of judgment by the Oversight Committee of the Medical Council of India.

4. The petitioners have submitted that the petitioner No.2 college was inspected by the assessors of the Medical Council of India pointing out certain deficiencies in teaching and clinical material on

3/4.1.2019. The deficiencies noted in the first inspection conducted on 3/4.1.2019 as put forth by the respondent No.2 are indicated to be a deficiency of faculty of 40/17%, residents of 56.06% (37/66) with deficiency of Bed occupancy of 64.87% apart from six other gross deficiencies.

5. The petitioners have submitted that the assessment report dated 5.2.2019 that the Medical Council of India sent to the petitioners put forth the deficiencies as being :

- “ 1. Reading room for Residents and PGs not available in Library.*
- 2. Biometric devices yet to be installed in college.*
- 3. Normal delivery and Minor Surgery- Nil.*
- 4. Bed Occupancy is 64.87%.*
- 5. Defibrillators not available in ENT, Ophthalmology, Orthopedic, Emergency & septic OT.*
- 6. No patient on clean & septic, eclampsia beds (Labour room).*
- 7. AERB approval for 800 mA & CT under process of renewal.*
- 8. Deficiency of Faculty 40.17%. (47/117).*
- 9. Deficiency of Residents 56.06% (37/66).*
- 10. Other deficiencies pointed out in the assessment report.”*

6. The communication dated 5.2.2019 issued by the respondent No.2 to the petitioners *inter alia* drew the attention of the petitioners to Regulation 8(3)(1)(b) of the Establishment of Medical College Regulation (Amendment), 2010 (PartII), dated 16.4.2010 as further amended on 18.3.2016 which reads to the effect:

“8(3)(1)....

(b) Colleges in the stage from III & IV renewal (i.e. Admission of Fourth & Fifth batch)

If it is observed during any inspection of the institute that the deficiency of teaching faculty and/or Residents is more than 20% and/or bed occupancy is <65%, compliance of rectification of deficiencies from such an institute will not be considered for renewal of permission in that Academic year."

and it was thus informed that the deficiencies of Teaching Faculty & Residents are more than 20% and thus the petitioners were called upon to Show Cause as to why Regulation 8(3)(1)(b) of the Establishment of Medical College Regulation (Amendment), 2010 (Part II), dated 16th April, 2010 and amended on 18th March, 2016 should not be applied and the petitioners were thus called upon to give their explanation/point wise compliance in support of the rectification of the deficiency noted by the Board of Governors in supersession of Medical Council of India along with documentary evidence and a demand draft of Rs.3.54 lakhs (including GST) in favour of the Secretary, Medical Council of India payable at New Delhi.

7. The petitioner submits that it sent its point-wise clarification in relation to the deficiencies pointed out by the Medical Council of India team vide letter dated 25.2.2019 to the effect:

***“ BOARD OF GOVERNORS
IN SUPERSESSION OF MEDICAL COUNCIL OF INDIA***

Date: 05.02.2019

No. MCI-34(41)(R-81)/2018-Med./170329

To

*The Dean/ Principal,
Varunaijun Medical College
& Rohilkhand Hospital
Banthra, Shahjahanpur,*

Uttar Pradesh.

Email: varunariuntrust@gmail.com

Sub.: -Renewal of permission for MBBS course for 4th batch (150 seats) of Varunarjun Medical College & Rohilkhand Hospital, Uttar Pradesh under Mahatma Jyotiba Phule Rohilkhand University u/s IOA of the IMC Act, 1956 for the academic year 2019-20.

Sir/ Madam,

I am directed to inform you that an assessment of the physical and other teaching facilities available for renewal of permission for MBBS course 4th batch (150 seats) of Varunarjun Medical College & Rohilkhand Hospital, Uttar Pradesh under Mahatma Jyotiba Phule Rohilkhand University u/s IOA of the IMC Act, 1956 for the academic year 2019-20 was carried out by the Council Assessors on 3rd & 4th January, 2019. The assessment report (3rd & 4th January, 2019) alongwith summary/observations of the Consultant (Undergraduate) was considered by the Board of Governors and noted as under:-

“ 11. Reading room for Residents and PGs not available in Library.

12. Biometric devices yet to be installed in college.

13. Normal delivery and Minor Surgery - Nil.

14. Bed Occupancy is 64.87%.

15. Defibrillators not available in ENT, Ophthalmology, Orthopedic, Emergency & septic OT.

16. No patient on clean & septic, eclampsia beds (Labour room).

17. AERB approval for 800mA & CT under process of renewal.

18. Deficiency of Faculty 40.17%. (47/117).

19. Deficiency of Residents 56.06% (37/66).

20. Other deficiencies pointed out in the assessment report.”

I am further directed to invite your kind attention to the Regulation 8(3)(l)(b) of the Establishment of Medical College Regulation (Amendment), 2010 (Part II), dated 16th April, 2010 and amended on 18th March, 2016 which reads as under:-

“8(3)(1).

(b) Colleges in the stage from III & IV renewal (i.e.

Admission of fourth and fifth batch)

If it is observed during any inspection of the institute that the deficiency of teaching faculty and/ or Residents is more than 20% and. Or bed occupancy is < 65%, compliance of rectification of deficiencies from such an institute will not be considered for renewal of permission in that Academic year."

Since, the deficiencies of Teaching Faculty & residents are more than 20% and bed occupancy is <65%, you are hereby called Show Cause notice as to why regulation 8(3)(l)(b) of the Establishment of Medical College regulation (Amendment), 2010 (Part II), dated 16th April, 2010 and amended on 18th March, 2016 should not be applied.

In view of the above, the Board of Governors decided to seek your explanation/ point-wise compliance with documentary evidence with one hard copy & soft copy (in MS Word format) in support of claim of rectification of the deficiency noted by the Board of Governors should reach the Council Offices within 30 (thirty) days alongwith a demand draft worth Rs. 3.54 lakhs (including GST) in favour of The Secretary, Medical Council of India payable at New Delhi from the date of issue of this letter.

A copy of the assessment report is enclosed herewith.

Yours faithfully

Sd/-

(S. Savitha)

Assistant Secretary

X.....X.....X.....X.....X.....X

RR No.VAMC&RH/MCI/ 757 /2019

Date: 25.Feb.2019

To

*The Secretary General Medical Council of India
Pocket-14, Sector-8 Dwarka,*

Phase - 1, New Delhi -110077

RENEWAL OF PERMISSION FOR MBBS COURSE FOR 4TH BATCH (150 SEATS) OF VARUN ARJUN MEDICAL COLLEGE & ROHILKHAND HOSPITAL, SHAHJAHANPUR, (U.P.) UNDER MAHATMA JYOTIBA PHULE ROHILKHAN UNIVERSITY U/S 10A OF THE IMC ACT, 1956 FOR THE ACADEMIC YEAR 2019-20

Sir,

1. Please refer your letter No. MCI-34(41) [R-81]/2018-Med./170329 dated 05-Feb.-2019.

2. One hard copy and one soft copy in MS word in pan drive and CD of our explanation / point wise compliance with documentary evidences are forwarded herewith for your perusal and kind consideration please.

3. An Oriental Bank of Commerce draft No. 048113 dated 22-Feb.-2019 of Rs. 3.54000/- (Three lakhs Fifty Four Thousands only) in favour of The Secretary General Medical Council of India is also enclosed with this letter.

COMPLAINCE REPORT FOR ASSESSMENT DONE ON 03&04 JAN. 2019 FOR RENEWAL OF PERMISSION FOR MBBS COURSE FOR 4TH BATCH (150 SEATS) OF VARUN ARJUN MEDICAL COLLEGE & ROHILKHAND HOSPITAL, SHAHJAHANPUR (UP)

<i>Sl.No.</i>	<i>Observations/ Deficiency by MCI assessors on 03 & 04Jan.2019</i>	<i>Submission college/Compliance by</i>
<i>1.</i>	<i>Reading room for residents and PGs not available in Library.</i>	<i>There is no provision of reading room for residents and PG students as per MCI guidelines "Minimum Standard Requirements for the Medical College for 150 Admissions Annually Regulation</i>

		1999" amended from time to time, Para A. 1.4 page 5 to 6 (photocopy attached)- Annexure-I . A reading room for faculty is available. Presently, we do not have PG Course. However, Reading room for residents and PG have been created.
2.	Biometric devices yet to be installed in college.	Biometric machine has been received recently and representative from MCI authorised agency is awaited to install.
3.	Normal delivery and Minor surgery- Nil.	Deliveries are taken on 24 hours basis. On the day of inspection there was one caesarean. Day before inspection there were 02 deliveries. Minor operations on the day of inspection were Eleven. Kindly see page No.14 (Photo copy attached Annexure-2) of assessment report.
4.	Bed Occupancy is 64.87%	The bed occupancy on the day of inspection was 74.87% as per clinical material provided to assessors. Photocopy attached Annexure- 3 (A). This was in spite of 50% faculty members being on winter vacations, Severe cold wave was going on in entire North India during assessment days. Schools were closed till 10 Jan 2019. The days of assessment (03-04 Jan.2019) had severe cold and dense fog with <10 mtr visibility. Photo copies of ward registers enclosed

		<i>as Annexure - 3 (B).</i>
5	<i>Defibrillators not available in ENT, Ophthalmology, Orthopaedic, Emergency & septic OT.</i>	<i>Defibrillators have been provided to ENT, Ophthalmology, Orthopaedics, Emergency and septic OTs.</i>
6	<i>No patient on clean & septic, eclampsia beds (Labour Room)</i>	<i>It is observation and Not part of MSR.</i>
7	<i>AERB approval for 800 mA & CT under process of renewal.</i>	<i>AERB renewal for 800mA wef 24-03-2018 and CT machine wef 17-04- 2018 are attached- Annexure- 4 (A &B)</i>
8	<i>Deficiency of Faculty 40.17% (47/117)</i>	<i>Few faculty members who presented Faculty few minutes late and were not counted.</i> <i>These faculty members were (47/117) late due to ongoing winter vacations, severe cold and dense fog during assessment days. Intimation of winter vacation was given to MCI vide our letter No. VAMC&IRH/Wi.Vac/601/2018 dated 17 Dec.2018, VAMC&RH/VC/346/218 dated 26 Oct.2018, VAMC&RH/VAC/610/2018 dated 22 Dec2018 (Photocopies attached - Annexure- 5 (A,B,C) The attendance sheet of late presenters with their signatures, time and date along with</i>

		declaration forms were handed over to assessors. Leave applications of those who were on sanctioned leave have also been submitted to assessors. Therefore, there is no deficiency. Photo copies of attendance sheet of late present faculty is attached as Annexure- 6(A).
9	Residents 56.06 & (37/66)	Few residents presented late and were not counted. These residents who presented late due to ongoing winter. vacations, night duty; severe cold, and dense fog and PG NEET Examination scheduled on 06 Jan 2019. Intimation of winter vacation was given to MCI vide our letter No. VAMC&RH/Wi.Vac/601/2018 dated 17 Dec.2018, VAMC&RH/VAC/346/2018 dated 26 Oct.2018, VAMC&RH/VAC/610/2018 dated 22.12.2018 (Photo Copies attached - Annexure- 5(A.B.C)) The attendance sheet of late presenters with their signatures, time and date along with declaration forms were handed over to assessors. Leave applications of those who were on sanctioned leave have also been submitted to assessors. Therefore, there is no deficiency. Photo copies of attendance sheet of late present Residents is attached as Annexure - 6 (B).

10.	<i>Other deficiencies pointed out in the assessment report.</i>	<i>NIL</i>
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and thus the petitioners sought to contend that there were no deficiencies whatsoever.

8. The further inspection i.e., the compliance verification report was carried out by the team of Board of Governors in supersession of Medical Council of India on 5.4.2019 and it was submitted on behalf of the petitioners that there were virtually no deficiencies that remained in as much as the deficiency of teaching faculty was shown 116/117 (0.86%) and the deficiency of resident doctors was nil with 66/66 (Nil %) being present.

9. The respondent No.2, i.e., the Board of Governors in supersession of Medical Council of India, however, submitted that the deficiencies in relation to the non-functioning of the Biometric devices which have been installed continued to exist. The petitioners submit that the last date for the Medical Council of India to send its recommendation to the Central Government i.e., in the instant case, to the Board of Governors in supersession of Medical Council of India was 30.4.2019 and for the approval to be accorded qua receipt of applications for increase of admission capacity was 31.5.2019 in terms of the verdict of the Hon’ble Supreme Court in ***Ashish Ranjan v. Union of India***; (2016) 11 SCC 225 with the schedule being to the effect:

<i>Sl.No.</i>	<i>Stage of Processing</i>	<i>Last Date</i>
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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.

10. The petitioners submit that an anonymous complaint was received by the Board of Governors in supersession of the Medical Council of India on 2.5.2019 copy of which was not provided to the petitioner and it has been submitted on behalf of the petitioners that the same had for the first time been placed on record through the counter affidavit of the respondent No.2 with the present proceedings.

11. The said complaint, copy of which has been placed on record with the counter affidavit of the respondent No.2 is an anonymous complaint by a parent who stated to the effect:

“ It is hereby requested that I am a guardian whose son is studying MBBS course in Varun arjun Medical College and Rohilkhand Hospital, Banthara, Shahjahanpur, and I was present on the day when the inspection was conducted at the said college on 05.04.2019 which was faulty. Sir, these people were aware of the inspection one day before since the information was leaked by the MCI. These people have sent buses in various areas of villages around to hire patients for the purpose of inspection who all are fake. The important thing to note herein is that the Assessors Team never inspected the entire Hospital and there were just sitting in the Dean/Principal office and talking to the management.

- 1. Doctors available in the hospital 40-50. The number of patients admitted in 50-60 and OPD is 300-350.*
- 2. The following doctors Dr. Madhu Singhal, Dr. Rajnesh, Dr. Anup, Dr. Sarvender were debarred by the Ethical Committee is still continuing their office and they are still receiving salary.*
- 3. I hereby request you to put inquiry in the inspection done by MCI as the future of the students are at risk.*
- 4. College and Hospital is just running in papers but the reality is that it is not even complete in the ground level.*
- 5. I request that the matter is thoroughly inquired into and appropriate action be taken.*
- 6. MCI team did the head counting and the attendance at 3 p.m.*
- 7. No documents were checked properly and the patients file was also not checked.*
- 8. Inspection was only done for formality.”*

12. The petitioners submit that vide letter dated 13.5.2019, the respondent No.2, i.e., the Board of Governors in supersession of Medical Council of India, wrote a letter to the Principal Secretary, Medical Education, Department of Health & Family Welfare, Government of Uttar Pradesh, Lucknow and the Director General, Medical Education & Training, Lucknow, State of Uttar Pradesh requesting therein to the effect that the assessors of the Council had carried out the compliance verification assessment of the college on 5.4.2019 and as per the report there were no deficiencies in the college, it however in the meantime had received an anonymous complaint from the parents of the students of the petitioner No.2

college against the said college requested for urgent comments in the matter within three days from the date of issuance of the letter dated 13.5.2019 with a request having been made therein that since the matter pertained to Section 10A of the IMC Act, 1956, and was thus urgent the matter be processed in a time bound manner and was thus urgent.

13. The petitioners thus submit that instead of providing urgent comments within three days a team constituted by the DGME, conducted a surprise inspection of the petitioners' college after eleven days i.e. on 25.5.2019 which was conducted by the members of the Director General of Medical Education (DGME), Lucknow whereupon the experts did not find any deficiency in the infrastructure facilities and curriculum nor in material facilities and residents which thus belied the anonymous complaint.

14. The petitioners submit that the petitioners medical college was called for an alleged opportunity of hearing in terms of Section 10(A)(4) on 28.5.2019 before the Board of Governors in supersession of the Medical Council of India, on the basis of the anonymous complaint and that the petitioner submitted that their existed no deficiency as prescribed in the law and the rules framed thereunder and requested for renewal of permission for conducting MBBS course for 150 students of the petitioners college for the academic year 2019-20 and that the petitioners sent a letter dated 28.5.2019.

15. The petitioners submitted that they received a communication dated 25.5.2019 from the respondent No.2 wherein it was stated that the compliance verification assessment report dated 5.4.2019 along

with the summary observations of the Member of the Undergraduate Group appointed by the Board of Governors in supersession of the Medical Council of India, was considered by the Board of Governors in supersession of the Medical Council of India, and it noted that the Biometric devices were installed but not activated. The respondent No.2 also informed the petitioner that after the compliance verification assessment dated 5.4.2019, the council office received a complaint against the petitioner No.2 college and thus it called upon the petitioners to come for the personal hearing on 28.5.2019 before it along with the documentary evidence in support. The petitioners submit that the respondent No.2 without communicating the outcome of the hearing granted on 28.5.2019 sent two Inspectors from the Medical Council of India again on 30.5.2019 to again inspect the petitioners' medical college for the fourth time for the academic session 2019-2020 which the petitioner submits was illegal, malafide and unjust as per the prevalent law and that the Dean of the Medical College informed the Inspectors that the Medical College had already declared summer vacations from 27th of May 2019 and the same had also been informed to the BOG-MCI and as such expressed their non-readiness for the inspection.

16. The copy of that letter dated 24.5.2019 sent by the Principal and the Dean of the petitioner No.2 college to the Secretary General, Board of Governors in supersession of the Medical Council of India, i.e., the respondent No.2 as on the record as Annexure P-18 indicates that the petitioners' college had declared the summer vacations from 27.5.2019 to 29.6.2019. The petitioners submit that this submission

made in the writ petition has also not been denied by the respondent No.2, the information having been sent by the petitioners to the respondent No.2 of its summer vacations from 27.5.2019 to 29.6.2019. The petitioners submit that vide communication dated 24.5.2019 a notice was also issued by the petitioner No.2 college to the effect that that the faculty members could avail of summer vacations for 13 days with prefixing or suffixing Sundays and holidays any time from 27.5.2019 to 29.6.2019 and the HODs were requested to plan vacations of their departments in such a way that 50% members were available during the summer vacation period.

17. The petitioners submitted that though there is no provision under the Medical Council of India that any inspection is conducted by the DGME, the petitioner No.2 college was again inspected on 25.5.2019 in view of the receipt of the anonymous complaint by the respondent No.2, copy of which was stated to have never been provided to the petitioner. The petitioners submit that even in this surprise inspection conducted by a three-member assessment team, they found no deficiencies in the Medical College and that the inspection carried out by the DGME was on the same format as provided by the Board of Governors in supersession of Medical Council of India, consequently no deficiencies as alleged in the anonymous complaint received by the Board of Governors in supersession of Medical Council of India, were found in the petitioner No.2 college.

18. The petitioners submit that on 28.5.2019 in the personal hearing the compliance verification report dated 5.4.2019 having found no

deficiencies and the DGME surprise inspection report dated 25.5.2019 indicating that there were no deficiencies found by the Medical Council of India nor by the DGME team were submitted by the petitioner and thus the petitioners have contended that the subsequent inspection conducted on 30.5.2019 by the Assessors of the respondent No.2, i.e., Board of Governors in supersession of Medical Council of India, was illegal and malafide and that two assessors were sent despite the factum that as per the Assessors Guide, three assessors were required to assess a 150 students intake.

19. The respondent No.2 has submitted to the effect that the petitioner No.2 college did not permit the inspection to be conducted on 30.5.2019 and that the inspection which was conducted on 30.5.2019 had been conducted after considering the explanation dated 28.5.2019 sent by the petitioners as well as the complaint dated 2.5.2019.

20. The petitioners submit that as the petitioner No.2 college had declared summer vacations, the petitioners handed over a letter to those two persons, that due to the ensuing summer vacations they were not in a position to get the inspection conducted by those two persons who after receiving the letter neither urged that they seek to inspect the college and instead went away along with the said letter and the annexures attached to the said letter were—

- *Compliance Inspection Report dated 5.4.2019 in which no deficiency was found by the Board of Governors in supersession of Medical Council of India;*

- *DGME Surprise Inspection Report dated 25.5.2019 with no deficiency found by the DGME Team;*
- *MCI hearing notice and the reply dated 28.5.2019 and;*
- *a copy of the summer vacation notice*

21. The petitioners submit that no hearing whatsoever was granted by the Board of Governors in supersession of Medical Council of India, under Section 10A(4) of the Indian Medical Council Act, 1956 and the impugned order dated 31.5.2019 was issued by the respondent No.2, deciding not to renew the permission for admission of fourth Batch of first year 150 MBBS students of the petitioner college. It is further submitted by the petitioners that the impugned order dated 31.5.2019 is mala fide and contrary to the law.

22. The respondent No.2 has further submitted that in terms of Clause 8 Sub clause 3 sub clause (1) and the proviso thereto of the Regulations as amended on 4.2.2019 which provides that *inspection for the purposes of grant of permission for Establishment of New Medical College or Renewal of Permission/Recognition of existing Medical College shall not be conducted at least two days before and two days after important religious and festival holidays declared by the Central/State Government*, it is apparent that there were no important religious or important holidays declared by the State or the Central Government on 30.5.2019 when the Medical Council of India assessors had gone to conduct the inspection and were denied permission for the same which the petitioners could not have denied. The respondent No.2 has submitted that the patients admitted in various wards, ICUs, Labour Rooms, admitted for major/minor operations could not have been

discharged and sent home irrespective of their ailments. It has further been submitted on behalf of the respondent No.2 that the faculty/residents work as doctors in the attached hospital and could not be also permitted to neglect the patients admitted in the hospital and that the persons get common ailments and regular/minor surgical operations conducted during holidays.

23. The respondent no.2 has placed reliance on the following verdicts of the Hon'ble Supreme Court and this Court:

- ***Sri Venkateshwara University & Anr. V. Union of India & Anr:*** 2017 SCC Online SC 1034— para 16;
- ***Madha Medical College & Research Institute V. Union of India & Anr:*** 2017 SCC Online SC 1078— para 20;
- ***Dr. Jagat Narain Subharti Charitable Trust & Anr. V. Union of India & Anr:*** W.P.(C) No. 5006/2018 decided on 28.5.2018, paragraphs 21-24 (Delhi High Court);
- ***Dr. Jagat Narain Subharti Charitable Trust & Anr. V. Union of India & Anr:*** LPA No. 340/2018 decided on 19.7.2018, paragraphs 9-12 and (Delhi High Court);
- ***Dr. Jagat Narain Subharti Charitable Trust & Anr. V. Union of India & Anr:*** SLP (C) No. 22414/2018 decided on 12.10.2018 ,

to contend to the effect that it has been laid down by the Hon'ble Supreme Court to the effect that *the purpose of the inspection by an expert team of assessors is to verify whether a medical college possesses the requisite infrastructure and facilities including faculty, residents, clinical, non clinical material and the wherewithal/resources to provide for highest quality of medical education in consonance with the Statutory Regulations. The power of assessment cannot be constricted by prohibiting the assessors from*

carrying out an assessment when the expert Statutory Authority may have legitimate reasons for seeking verification. The assessment of conditions prevailing in a medical college is central to the role discharged by the MCI thus it would be contrary to public interest to restrict the MCI from carrying out assessments when in its wisdom an assessment ought to be carried out. It is further contended on behalf of the respondent No.2 that the Hon'ble Supreme Court had also held that it cannot sit in judgment over the wisdom of an expert body and that there is no prohibition in law to carry out an assessment in the Statutory Scheme.

24. The respondent No.2 has further placed reliance on the Regulations on Graduate Medical Education, 1997 to contend to the effect that the contention of the petitioners that there has to be teaching on 120 days of 8 hours each and that the medical college is thus free to regulate its holidays, is entirely misleading. It is further submitted on behalf of the respondent No.2, i.e., the Board of Governors in supersession of Medical Council of India, placing reliance on the terms of Chapter-1, Clause 2(18) of the Regulations on Graduate Medical Education, 1997 to state it prescribes **that the vacation period in 1 calendar year should not exceed 1 month in the MBBS course and that the same shall include all holidays of all nature** and that thus if medical colleges are free to declare summer holidays as per their will then there shall be a break in the continuity as well as the adequate number of teaching days required for the MBBS curriculum.

25. The respondent No.2 has further submitted that in its meeting held on 21.8.2014 vide item 24 of the Minutes of the Meeting of the Executive Committee of the Medical Council of India, deliberated on the unacceptable leave during the inspection of medical colleges to the effect:

24. Regarding specifying the type of acceptable leave during inspection of medical colleges.

Read: the matter with regard to regarding specifying the type of acceptable leave during inspection of medical colleges.

The Executive Committee of the Council considered the report of the Sub-Committee dt. 17.4.2014 as constituted by the Executive Committee at its meeting held on 14th March, 2014 and decided to accept the report with the following amendments:-

(1) The faculty who is on leave due to following reasons would be accepted:

(a) For attending International/ National conferences organized by the respective International/National Associations or Societies;

(b) For attending any work assigned by Medical Council of India, either at headquarters or for assessment of a medical college;

(c) For conducting examination of the concerned subject in a medical college in a Central/State University;

(d) For attending Courts.

Provided that appropriate documents certifying the same which are countersigned by the dean are furnished.

(2) The faculty who is on sanctioned Maternity leave would be accepted provided the appropriate leave sanction order issued by the sanctioning authority

and countersigned by the Dean is furnished with all necessary certificates.

and thus submitted that the vacations as sought to be claimed by the petitioner cannot fall within the ambit of the ‘ **acceptable leave**’ and thus the faculty could not have been on leave.

26. Inter alia, the respondent No.2 has submitted that vide its letter dated 14.6.2018, it had informed the petitioner No.2 college inter alia to the effect:

“

(4) The data generated by the Biometric System / Devices installed by the Medical Council of India at the medical colleges shall be considered in respect of the faculty / residents, therefore if there are any defects / malfunctioning of the Biometric System / Devices, it is the responsibility of the applicant college/Institution to contact the Medical Council of India immediately on the email address: dmmp@mciindia.org or phone number 011-25362032. However, along with the data collected from the . Biometric System / Devices, the faculty / residents shall also be verified during the physical assessment of the medical colleges .”

and it has thus been submitted on behalf of the respondent No.2 that it is incumbent upon the medical college to keep the Biometric devices functional in relation to which the petitioner has contended that the biometric devices had been installed but were to be made functional by the vendor of the respondent No.2 itself in relation to which the contention raised by the respondent No.2 is to the effect that despite the installation of the same from the year 2017 the contention of the

petitioner that it could not be made functional till 2019 cannot be accepted.

27. Reliance has inter alia been placed on behalf of the petitioner and the respondent No.2 on a catena of verdicts:

The verdicts relied upon on behalf of the Petitioner are:

- (a) ***Royal Medical Trust & Anr. V. Union of India & Anr.***; 2015 (10) SCC 19;
- (b) ***Kanachur Islamic Education Trust. V. Union of India.***; 2017 (15) SCC 702
- (c) ***Rajiv Memorial Academic Welfare Society & Anr. V. Union of India & Anr.***; 2016 (11) SCC 522
- (d) ***Glocal Medical College & Super Speciality Hospital & Research Centre. V. Union of India & Anr.***; 2017 (15) SCC 690
- (e) ***Dr. Jagat Narain Subharti Charitable Trust & Anr. V. Union of India & Ors.***; W.P.(C) No. 513/2017 (Supreme Court)
- (f) ***Gangajali Education Society V. Union of India & Ors.***; W.P.(C) No. 709/2017 (Supreme Court)
- (g) ***Mohinder Kumar V. Board of Governor in Supersession of MCI***; W.P.(C) No. 8438/2011 (Delhi High Court)

The verdicts relied upon by the respondent No.2 have already been referred to elsewhere herein above.

28. However, taking into account the factum that the petitioners chose not to permit the respondent No.2 and its assessors to conduct an inspection on 30.5.2019, coupled with the factum that the assessment inspection was sought to be conducted by the respondent No.2 in view of the receipt of the anonymous complaint by a guardian of a student coupled with also the factum that the requisite biometric device in order to ascertain the presence of faculty and residents had not been made functional by the petitioners till the date 30.5.2019, the

contention of the respondent No.2 that in the circumstances for the academic year 2019-20, it did not consider it appropriate to grant the permission to the petitioner to renewal for intake of 150 students for the fourth batch for the MBBS course as it was not considered appropriate in view of the lack of faculty and residents and lack of functional biometric devices despite the compliance verification reports on 5.4.2019 and 25.5.2019 being to the effect that there were no deficiencies in relation to which a complaint had been received from the parent of a student on 2.5.2019 making serious allegations in relation to the conduct of the inspection itself – cannot be faulted with.

29. In view thereof, it is not considered appropriate presently to consider the other contentions raised on behalf of either side in relation to other aspects.

30. In the circumstances, the petition and the accompanying application are declined.

ANU MALHOTRA, J.

AUGUST 29, 2019/sv