

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **WP (C) 6926/2019 & CM APPL.28799/2019**

Judgment reserved on :20.08.2019
Date of decision : 26.08.2019

Sindhudurg Shikshan Prasarak Mandal Petitioner

Through: Through: Mr. J.P. Sengh, Sr.
Advocate with Mr. Om
Prakash, Ms. Manisha Mehta,
Mr. Shashi Pratap Singh, Mr.
R.L. Sinha & Ms. Pallavi
Nagar, Advocates.

versus

**BOARD OF GOVERNORS IN SUPERSESSION OF
MEDICAL COUNCIL OF INDIA AND ANR..... Respondents**

Through: Mr. Vikas Singh, Sr. Advocate
with Mr. T. Singhdev, Ms. Puja
Sarkar, Ms. Biakthan Sanghi,
Mr. Tarun, Ms. Arunima Pal &
Mr. Abhijeet, Advocates for
MCI.
Mr. Vivek Gotal, CGSC for
UOI.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The petitioner seeks the quashing of order contained in letter no.MCI-34(41)(F-30)/2019-Med/20090 dated 30.05.2019 by which

the respondent disapproved the scheme of the petitioner for establishment of a new college of 150 MBBS students for the academic session 2019-20 and seeks the directions to the respondent to issue a letter of permission for the petitioner's college with 150 MBBS students annual intake for academic session 2019-20.

2. The petitioner Sindhudurg Shikshan Prasarak Mandal, District Sindhudurg, Maharashtra is a registered charitable institute vide registration no. Maharashtra/800/Sindhudurg dated 05.11.1993 and is stated to have started the 300 bedded hospital and medical college claimed to have infrastructure to teach and train 150 MBBS students annually and submits that it is continuously providing health care facilities to the needy and to those who cannot afford the same and an Essentiality Certificate for establishing the medical college with the annual capacity of 150 MBBS seats is indicated to have been issued by the Government of Maharashtra on 23.05.2018.

3. The Consent of Affiliation was issued to the petitioner by the Maharashtra University of Health Science at Nashik on 30.06.2018 for the proposed college with the intake capacity of 150 seats to be established for Post Harkul Budruk, Tal. Kankavli, District Sindhudurg, Maharashtra subject to grant of permission by the Government of India, Ministry of Health and Family Welfare, New Delhi under Section 10A by the Indian Medical Council Act, 1956 (IMC Act, 1956). The note on the said Consent of Affiliation categorically reads to the effect:

“No students shall be admitted by the college, unless final permission is obtained from the Government of India,

G.R. from State Govt. and First Time Affiliation from MUHS u/s 65 (6) of MUHS Act 1998."

4. The petitioner on 04.07.2019 submitted its application with all requisite enclosures to the Ministry of Health and Family Welfare with the requisite costs of assessment to the Secretary, Ministry of Health and Family Welfare, Government of India for the grant of the letter of permission under Section 10A of the IMC Act, 1956 for establishment of the medical college for the academic year 2019-20.

5. The assessment report of the assessment conducted by the Council Assessor on 04-05.12.2018 along with summary/observations of the member of the Undergraduate Expert Group was considered by the Board of Governors noting to the effect:

"No gross deficiency noted in the report.

However, there was mismatch of statement provided in Form A I of assessment report and the findings reported in the Assessment Form II on the day of Assessment for the following:-

1. Daily OFD-709

2. OT- 4+2 cases [Form A shows 6 +12 surgeries on average.)

3. No deliveries (Form A shows 1-3 deliveries on average)

4. No Histopath - (Form A shows 5 Histopath on average)

5. Only 03 Cytopath samples.

6. In Ophthalmology OFD, Refraction room has been shown but no apparatus available, No apparatus in dark room.

7. In Pediatric, Child Welfare Clinic, Immunization Clinic, Child Rehabilitation Clinic have been shown but are reported to be non-functional."

6. As a consequence thereof, the Medical Council of India vide its letter dated 18.01.2019 sought an explanation/ pointwise compliance

with documentary evidence in support of the claim of rectification of the deficiencies noted by the Board of Governors from the college authorities within 30 days and on receipt of compliance from the college authority, the compliance verification assessment of the petitioner was carried out by the Council Assessor on 16.04.2019.

7. As per the impugned order, the college authorities did not allow the assessor to verify the teaching facilities and residents stating that there was no gross deficiency of faculty and residents doctors in the last inspection held on 04-05.12.2018. The competent authority considered it appropriate to carry out another Compliance Verification Assessment of the petitioner, which was thus carried out on 03.05.2019, in which, the Board of Governors considered the Compliance Verification Assessment Report dated 03.05.2019 with the summary/observations of the member of the Undergraduate Expert Group appointed by the BoG and noted the following deficiencies:

<i>“1. Deficiency of Faculty</i>	<i>36.9%</i>
<i>2. Deficiency of Residents</i>	<i>45.6%”</i>

8. The petitioner's institute was thus granted a hearing on 17.05.2019 in terms of Section 10A (4) of the IMC Act, 1056 in the Council Office to present the case of the institute in view of the deficiencies and the Hearing Committee after considering the submission/compliance furnished by the college observed to the effect:

“The Hearing Committee expressed its displeasure to the college authorities for not allowing the MCI assessors to verify teaching faculty and residents on 16th April, 2019 and noted that the college merely given undertaking

stating that the Faculty and Residents who were present in the first assessment are still continuing.

The explanation offered by the college authorities stating that the assessment that was carried out on 3rd May, 2019 was in violation of the MCI regulations as it followed within two days of a holiday (1st of May 2019 - Maharashtra Day / Labour Day). The Hearing Committee however, was not satisfied with this explanation, since as per Regulations in Clause 8(3)(l)(d) the assessment was not carried out at least 2 days before and 2 days after an important religious festival / holiday declared by the Central/State Govt. 1st of May 2019 - Maharashtra Day / Labour Day is not an important religious festival.

The explanation offered by the college authorities regarding the Faculty deficiency of 36.9% and Resident deficiency of 45.6% noted by the Assessors on verification of compliance on 3rd May, 2019 was found unsatisfactory.

Hence, the Hearing Committee recommended not to grant Letter of Permission for establishment of new medical college at Sindhudurg, Maharashtra u/s 10A of the IMC Act, 1956, for 150 MBBS seats for the academic session 2019-20."

and thus accepting the recommendation of Hearing Committee, the Board of Governors in supersession of the Medical Council of India disapproved the scheme for establishment of a new medical college by Sindhudurg Shikshan Prasarak Mandal, Sindhudurg, Maharashtra under Section 10A of the IMC Act, 1956 for the academic year 2019-20 stating however to the effect that the petitioner was free to apply afresh for the next academic session strictly as per provision of IMC Act, 1956 and Regulations framed thereunder.

9. The petitioner is aggrieved by the factum that the respondent chose to conduct an inspection on 03.05.2019 in violation of the

Regulation 8 (3)(1)(d) of the Medical Council of India Establishment of Medical College Regulations, 1999 in as much as the assessment was carried out on 03.05.2019 and was within two days after the holiday i.e. 01.05.2019- Maharashtra Day/ Labour Day.

10. Regulation 8 (3)(1)(d) of the Medical Council of India Establishment of Medical College Regulations, 1999 reads to the effect:

“(d) Colleges which are found to have employed teachers with faked/forged documents:

If it is observed that any institute is found to have employed a teacher with faked/ forged documents and have submitted the Declaration Form of such a teacher, such an institute will not be considered for renewal of permission/ recognition for award of M.B.B.S. degree/ processing the applications for postgraduate courses for two Academic Years- i.e. that Academic Year and the next Academic Year also.

However, the office of the Council shall ensure that such inspections are not carried out at least 3 days before upto 3 days after important religious and festival holidays declared by the Central/ State Govt.

(2) The recognition so granted to an Undergraduate Course for award of MBBS degree shall be for a maximum period of 5 years, upon which it shall have to be renewed.

(3) The procedure for ‘Renewal’ of recognition shall be same as applicable for the award of recognition.

(4) Failure to seek timely renewal of recognition as required in sub-clause (a) supra shall invariable result in

stoppage of admissions to the concerned Undergraduate Course of MBBS at the said institute.”

11. During the course of submissions that were made on behalf of either side, it was submitted on behalf of the MCI that in as much as after the inspection which the petitioner did not permit to be conducted on 16.04.2019, the assessment was carried out on 03.05.2019, thus it is the verification which is conducted on 03.05.2019, which is to be considered, it brought forth deficiencies of faculty of 36.9% and deficiency of residents of 45.6%. The petitioner submits that the same was only due to the factum that the inspection was conducted on 03.05.2019 i.e. two days after the important religious festival of May Day observed in the State of Maharashtra.

12. The petitioner submits that it had communicated its list of holidays for the month of April, 2019 to the Secretary General of the Board of Governors vide its letter dated 12.04.2019 to the effect:

*“To
The Secretary General,
Board of Governors,
In Supersession of Medical Council of India
New Delhi-110077
India.*

Subject: Requesting you to consider list of holidays for the month April 2019 at SSPM Medical College & Lifetime Hospital, Padve, Sindhudurg, Maharashtra.

Respected Sir,

On the account of national holidays on 13th April 2019 (Shree Ramnavami), 17th APRIL 2019 (Mahaveer Jayanthi) and 19th APRIL 2019 (Good Friday), our college will remain closed. Further on the 23rd APRIL 2019, in Sindhudurg constituency Lok Sabha election

voting will be held. So in the view of election college will remain closed on 23rd APRIL 2019.

<i>S. No.</i>	<i>Date of holiday</i>	<i>Holiday declared in SSPM</i>
<i>1.</i>	<i>13th APRIL 2019, (SATURDAY)</i>	<i>SHREE RAMNAWMI</i>
<i>2.</i>	<i>17th APRIL 2019 (WEDNESDAY)</i>	<i>MAHAVEER JAYANTHI</i>
<i>3.</i>	<i>19th APRIL 2019, (FRIDAY)</i>	<i>GOOD FRIDAY</i>
<i>4.</i>	<i>23th APRIL 2019, (TUESDAY)</i>	<i>ACTUAL VOTING DAY IN SINDHUDURG DISTRICT (LOK SABHA)</i>

As the teaching & non-teaching stall members have to travel along distance in this hilly area district for casting their valuable vote on 23rd April 2019. We are likely to sanction leave for them on 22nd April 2019 for the same. In the view of above said holidays in SSPM Medical College and lifetime Hospital, Padve, Sindhudurg, Maharashtra, kindly consider our holidays up to 23rd April 2019 & Please do the needful.”

13. Public holidays notified by the General Administration Department of the Government of Maharashtra shows the Maharashtra Day i.e. 1st May, 2019 to be a public holiday and was notified as a public holiday under section 25 of the Negotiable Instruments Act, 1881.

14. The petitioner submits that vide the letter dated 08.05.2019 in relation to the compliance MCI inspection held on 03.05.2019, the petitioner wrote to the Board of Governors in super session of the MCI to the effect:

“With reference to above subject compliance MCI inspection was held on 3rd May 2019, which falls on 2nd day of state government declared holiday on 1st MAY 2019 in the view of Maharashtra day (gazette enclosed). Further which inspection was carried out in contradiction to the Clause 8(3)(1)(d) (MCI Regulations 1999, page No, 20, Copy enclosed).

However, the inspection was held during summer vacation period declared by the Maharashtra University of Health Sciences, Nasik between 17th April 2019 and 23rd MAY 2019 (Vide order Letter No.MUHS/R/XA/6157/2018, Circular No-47 dated 05/07/2018- Copy enclosed)

In the view of above points we were unable to fulfil 100% faculty and residents on the day of inspection i.e. 3rd MAY 2019. We therefore requesting you to consider our points sympathetically and issue the Letter of Permission for the academic year 2019-20 in the good faith of Society.”

and thus the petitioner submits that apart from the factum that the inspection was conducted two days after 01.05.2019, a public holiday declared by the State Government of Maharashtra, apart from the same, the inspection had been held during the summer vacation declared by the Maharashtra University of Health Science from 07.04.2019 to 23.05.2019, as a consequence of which, the petitioner had not been able to fulfil the 100% faculty and residents on the date of the inspection i.e. 03.05.2019.

15. As per the Notification No.PHD.1118/C.R.191/Dest-29 issued by the Government of Maharashtra, the public holidays for the year 2019 are as under:-

<i>Sr.No.</i>	<i>Holiday</i>	<i>Date</i>	<i>Saka Date</i>	<i>Day</i>
1.	<i>Republic Day</i>	<i>26th January 2019</i>	<i>6 Magh, 1940</i>	<i>Saturday</i>
2.	<i>Chhatrapati Shivaji Maharaj Jayanti</i>	<i>19th February 2019</i>	<i>30 Magh, 1940</i>	<i>Tuesday</i>
3.	<i>Mahashivratri</i>	<i>4th March 2019</i>	<i>13 Phalguna, 1940</i>	<i>Monday</i>
4.	<i>Holi (Second Day)</i>	<i>21st March 2019</i>	<i>30 Phalguna, 1940</i>	<i>Thursday</i>
5.	<i>Gudhi Padwa</i>	<i>6th April 2019</i>	<i>16 Chaitra, 1941</i>	<i>Saturday</i>
6.	<i>Ram Navmi</i>	<i>13th April 2019</i>	<i>23 Chaitra, 1941</i>	<i>Saturday</i>
7.	<i>Mahavir Jayanti</i>	<i>17th April 2019</i>	<i>27 Chaitra, 2019</i>	<i>Wednesday</i>
8.	<i>Good Friday</i>	<i>19th April 2019</i>	<i>29 Chaitra, 1941</i>	<i>Friday</i>
9.	<i>Maharashtra Din</i>	<i>1st May 2019</i>	<i>11 Vaishakha, 1941</i>	<i>Wednesday</i>
10.	<i>Buddha Pournima</i>	<i>18th May 2019</i>	<i>28 Vaishakha, 1941</i>	<i>Saturday</i>
11.	<i>Ramzan0Id (Id-Ul-Fitr) (Shawal-1)</i>	<i>5th June 2019</i>	<i>15 Jeshtha, 1941</i>	<i>Wednesday</i>
12.	<i>Bakri ID (Id-Uz-Zuha)</i>	<i>12th August 2019</i>	<i>21 Shravana, 1941</i>	<i>Monday</i>
13.	<i>Independence Day</i>	<i>15th August 2019</i>	<i>24 Shravana, 1941</i>	<i>Thursday</i>

14.	<i>Parsi New Year (Shahenshahi)</i>	<i>17th August 2019</i>	<i>26 Shravana, 1941</i>	<i>Saturday</i>
15.	<i>Ganesh Chaturthi</i>	<i>2nd September 2019</i>	<i>11 Bhadra, 1941</i>	<i>Monday</i>
16.	<i>Moharum</i>	<i>10th September 2019</i>	<i>19 Bhadra, 1941</i>	<i>Tuesday</i>
17.	<i>Mahatma Gandhi Jayanti</i>	<i>2nd October 2019</i>	<i>10 Ashvina 1941</i>	<i>Wednesday</i>
18.	<i>Dasara</i>	<i>8th October 2019</i>	<i>16 Ashvina, 1941</i>	<i>Tuesday</i>
19.	<i>Diwali (Bali Pratipada)</i>	<i>28th October 2019</i>	<i>6 Kartika, 1941</i>	<i>Monday</i>
20	<i>Guru Nanak Jayanti</i>	<i>12th November 2019</i>	<i>21 Kartika, 1941</i>	<i>Tuesday</i>
21	<i>Christmas</i>	<i>25th December 2019</i>	<i>4 Pausha, 1941</i>	<i>Wednesday</i>

16. The petitioner has further submitted that the as per the letter dated 15.04.2019 issued by the Government of Maharashtra it was to celebrate the 1st of May, 2019, i.e. the Maharashtra Day in the following manner:-

“The Maharashtra State is completing 59 years to its formation as state on 1 May 2019 on this occasion the state has decided to conduct various program throughout the state as described in column ‘A’ all the concerned are required to implement it accordingly.

(A) *The flag hosting program shall be held at 8 am exactly in Mumbai Divisional offices, District HQ, Sub Divisional HQ, Tahasil Offices etc. No any Govt./ Semi Govt. program shall be arrange during 7.15 am to 9 am so that maximum number of people can attend this major function. If any institution or offices are interested to conduct flag hosting program they can do so on or after 9 am or before 7.15 am.*

(B) *The Police Parade, Home Guard, Fire Brigade Parade shall be conducted during flag hosting program at Mumbai Divisional offices, District HQ.*

(C) *The arrangement of lighting shall also be decorated on all Divisional & District HQ and also on Govt. Offices.*

(D) *The cultural program should be held usually at Mumbai Divisional offices, District HQ. However the object of the program is to remember the martyr or patriotism. Entertainment should not be there in such a program. The necessary measurement shall be taken up by cultural department in this regard.*

(E) *The morning procession shall also be conducted at all Divisional offices, District HQ, Sub Divisional Office.*

(2) *The IG shall arrange common parade program by consulting with District Collector, Divisional Commissioner and the officer of the squad which often take part in parade.*

(3) *All the Divisional Commissioner and the Collector shall manage the program at their respective HQ place with consideration of concerned people. The concerned guardian minister shall complete the flag hosting at District and Divisional Level. However the minister and minister for state shall perform flag hosting at below mentioned District and Divisional HQ and Collector shall perform flag hosting at Buldhana District HQ.*

Sr. No. District/ Divisional H.Q. Ministers who perform flag hosting

<i>Sr.</i>	<i>District/</i>	<i>Ministers who perform flag</i>
------------	------------------	-----------------------------------

No.	Divisional H.Q.	hosting
1.	Vardha	Prakash Mehata, Minister
2.	Aurangabad	Divakar Ravate, Minister
3.	Bandara	Mahadev Jankar, Minister
4.	Konkan Division HQ Navi Mumbai	Vidya Thakur, Minister
5.	Kolhapur	Sadashiv Khot, Minister

(4) The MLA will perform flag hosting program at Tahasil Offices as per Govt. of Maharashtra GR. No. CER.1015/901/30 dt. 22/04/2015.

(5) If by any unavoidable circumstances the Minister and people representative fails to reach the program then Divisional Commissioner and Collector and District HQ and Tahasildar at Tahasil will perform the flag hosting program with utmost caution.

(6) All the concerned are thereby informed due to the implementation of code of conduct.

A) The regular place of flag hosting cannot be change.

B) The stage prepare for Maharashtra Day program cannot be use as political stage.

C) The speech of the Guardian Minister shall only related to historical background, work of historical person etc. and they shall not use any political agenda in speech. The speech shall only describe the sacrifice of martyr and national interest.

7) On 1 may 2019 in all public and Govt. buildings/place (Rural area also) important historical fort (e.f. Raigad, Shivnery, Purandar, Pratapgad, Chandrapur etc.) the Indian Tri colour must be hosted.

8) The rules regarding flag hosting given in Govt. GR. FLG- 1019/30 dated 20/03/1991, KR.FLG-1091/(2)/ 30 dt. 05/12/1991, Circular no. FLG 1098/343/30 dt. 11/03/1998 shall be strictly followed. The precaution should be taken that flag is in good condition and shall be down by sunset. The preparation of the program shall also be conducted.

- 9) *The national anthem of Jan Gan Man shall be sing while saluting the flag. Everyone should not communicate during that time. The band prepared for salute program shall be operated before and after the salute parade.*
- 10) *On 1 May 2019 in the evening the program shall be arranged at Brhinmumbai Choupati, Nare Park, Bandra (E), Govt. Employees.”*

17. The contention raised on behalf of the respondent is however to the effect that the 1st of May, 2019 does not fall within the ambit of a religious holiday nor within the ambit of the festival holiday and thus does not fall within the ambit of an important religious nor an important festival holiday.

18. **However, the factum that the State Government has declared the 1st of May, 2019 a public holiday cannot be ignored and thus cannot be termed to be a non-important holiday.**

19. The petitioner places reliance on the meaning of the word ‘festival’ as depicted in the Oxford English Reference Dictionary to the effect:

“Festival /’festiv(a)l/n. & adj. • 1. a day or period of celebration, religious or secular. 2. a concentrated series of concerts, plays, etc., held regularly in a town etc. (Bath Festival). • attrib. adj. of or concerning a festival. [earlier as adj.: ME f. OF f. med. L festivalis (as FESTIVE)].”

to submit that the 1st of May i.e. Maharashtra Day would fall within the ambit of a festival.

20. Undoubtedly, as observed hereinabove, the Maharashtra Day being a public holiday declared by the State Government with

celebrations provided therefor would essentially have to fall within the ambit of an important festival holiday, within the ambit of Section 8(3)(1)(d) of the Medical Council of India Establishment of Medical College Regulations, 1999.

21. However, the contentions that have been raised on behalf of the respondent cannot be overlooked despite the factum that it is held herein that the 1st of May for the State of Maharashtra being a State public holiday with festivity organized on the said day by the State of Maharashtra itself as per the letter referred to on behalf of the petitioner indicating that the festivities had been so organized so that maximum number of people participate in the same, nevertheless, the factum that the report of the inspection brought forth a deficiency of faculty of 36.9% and a deficiency of residents of 45.6%, cannot be overlooked and the same have essentially to be read and considered in the light of the contentions raised on behalf of the respondent that the assessment being conducted on **16.04.2019** and **03.05.2019**, on which **there was no important religious festival held as declared either by the Central Government or State Government** and on account of the same, the patients admitted in the various Wards, ICUs, Labour Rooms, admitted for various minor/ major operations could not have been simply discharged and sent back home irrespective of their medical condition and ailment and that thus, the contentions of the petitioner to state that due to the festival of Mahavir Jayanti on 17.04.2019 and Maharashtra Day on 01.05.2019, the faculty members and residents who work as doctors in the attached hospitals could be permitted to either neglect the patients admitted in the hospital or

report late to the medical college, make it apparent that the deficiencies observed on 03.05.2019 in the petitioner's institute cannot be overlooked.

22. The contentions raised on behalf of the respondent to the effect that the residents and faculty who discharge important functions in the treatment of patients in the hospital attached to the petitioner medical college cannot be on leave have essentially to be accepted.

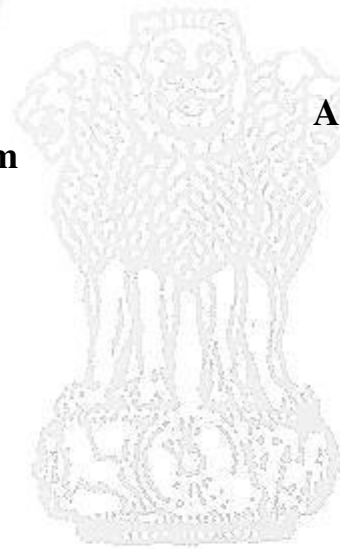
23. In the circumstances, though undoubtedly, the inspections were conducted on 16.04.2019 i.e. one day before the Mahavir Jayanti, a public holiday declared by the State of Maharashtra and on 03.05.2019 i.e. two days after the 1st of May, 2019, which would both fall within the ambit of an important religious and festival holidays respectively in terms of Section 8(3)(1)(d) of the Medical Council of India Establishment of Medical College Regulations, 1999, nevertheless, the factum that the petitioner's college is yet to be established and was at the stage of establishment for the academic session 2019-20 and did not have a batch of students studying, the contention as raised on behalf of the respondent to the effect that there was thus no question of summer vacations being granted when there was no teaching or training commenced has essentially to be accepted and that summer vacations have to be for the students and that the faculty and residents who work as doctors in the hospital cannot claim to be a summer vacation to the detriment of the patients in the hospital has essentially to be accepted taking into account the welfare and well being of patients and taking the same into account, the deficiencies of 36.9% of the faculty and deficiency of residents to the tune of 45.6% on the

basis of Compliance Verification Report made **on 03.05.2019 i.e. two days after** 01.05.2019, on which date itself there was no important festival or holiday, cannot be ignored and in the circumstances, the impugned order passed by the respondent disapproving the scheme for establishment of a new medical college as sought by the petitioner for the academic session 2019-20 under Section 10A of the IMC Act, 1956 cannot be faulted with.

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

ANU MALHOTRA, J.

AUGUST 26th, 2019/vm



सत्यमेव जयते