

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.3403 of 2020

Dr.MGR Educational and Research Institute,
Rep. by its Registrar,
ACS Medical College & Hospital,
Noombal Village,
Velappanchavadi,
Chennai-600 077.

...Petitioner

Vs.

1. Union of India,
rep. by its Secretary,
Ministry of Health & Family Welfare,
Nirman Bhavan,
New Delhi.
2. The Ministry of Human Resources Development,
(Department of Higher Education),
rep. by its Secretary,
Shastri Bhavan, New Delhi.
3. Medical Council of India,
rep. by its Asst. Secretary,
Pocket 14, Sector 8,
Dwaraka, Phase-I,
New Delhi-110075.

...Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, seeking Writ of Certiorarified Mandamus, calling for the records of the 3rd respondent in his proceedings No.MCI-37(1)(UG) (1-27)/2019-Med./163290 dated 11.11.2019 and quash the same as illegal and consequently direct the 3rd respondent to consider the petitioner application dated 06.07.2018 for increase of intake capacity from 150 to 250 in MBBS Course for the academic session 2020-21 by inspecting the petitioner institute in accordance with Section 10(A) of Indian Medical Council Act, 1956 and the notifications issued by 2nd respondent by its proceedings in No.F.10-9/2007/U.3(A) dated 23.05.2013 and 25.09.2014 and pass further orders.

For Petitioner : Mr.R.Shivakumar
For Respondent : Mr. G.Karthikeyan, for RR1 & 2
Assistant Solicitor General.
Mr.V.P.Raman,forR3.

O R D E R

This Writ Petition has been filed challenging the impugned proceedings issued by the 3rd respondent dated 11.11.2019 and for a consequential direction to the 3rd respondent to consider the application submitted by the petitioner College for increase of intake capacity from 150 students to 250 students in the MBBS course for the academic year 2020-21.

2. The case of the petitioner is that they got a letter of permission (LOP) from the first respondent on 04.07.2008 for admission of the first batch of students in MBBS Course during the academic year 2008-2009. The petitioner was permitted an intake of 150 students. During the next year viz., academic year 2009-10, another fresh batch of 150 students were admitted. The Medical Council of India (MCI) conducted an inspection and found that the petitioner had admitted fresh batch of students for the academic year 2009-2010 without any authority and therefore the Medical Council of India made a communication to the first respondent to keep in abeyance the renewal of permission to admit the second batch of students in the College. Subsequently, the Medical Council of India decided to recall the recommendation that was made earlier for the renewal of the permission for admission for the second batch of MBBS students for the academic year 2009-10. This was communicated by the Medical Council of India to the first respondent. This was mainly done since the college was not brought within the ambit of Deemed to be Univeristy, at that point of time. The first respondent also by a communication dated 10.08.2009 informed the petitioner that a decision has been taken not to renew permission to admit any fresh batch of students for the academic year 2009-10.

3. The above communication made by the first respondent became the subject matter of challenge in W.P.No.1959 etc., of 2014 and the said writ petition was disposed of by issuing certain directions on 14.07.2014. This was challenged by the Medical Council of India and a Division Bench of this Court in Writ Appeal Nos.1078 to 1080 of 2014 disposed of the appeal by an order dated 13.08.2014 by directing the Medical Council of India to pass appropriate orders on merits.

4. The Medical Council of India took this order on appeal before the Hon'ble Supreme Court and the Hon'ble Supreme Court passed final orders on 11.02.2015. The Hon'ble Supreme Court while considering the merits of the case, found that the petitioner had admitted students to the second batch of the MBBS course in the academic year 2009-10 in complete defiance of the directions given by the Medical Council of India and the Central Government. However, the Hon'ble Supreme Court took into consideration the interest of the students who had by then undergone the entire course and therefore passed an order in such a way that it struck a balance between the competing interests. The relevant portions in the order is extracted hereunder:

"53. Therefore, since this issue has been debated and discussed from various points of view, and to strike a balance between competing interests, we are of the opinion that:

(1) A student admitted by the Institution in the academic year 2009-10 should be required to once again undergo the final examination - this time under the auspices of a State Health University located outside the State of Tamil Nadu, preferably Rajiv Gandhi University of Health Sciences, Bengaluru. The examination should be held within three months from today. The Institute will bear the expenses for conducting the said examination.

(2) The Institute /State Health University/Rajiv Gandhi University of Health Sciences shall intimate to the Medical Council of India the proposed date of examination and the Medical Council of India shall appoint examiners to oversee the conduct of such examination. The Institute will bear the expenses for conducting the said examination.

(3) If a student qualifies in the said examination, he/she may be allowed to begin his/her internship programme and on successful completion thereof, an MBBS degree shall be awarded by the Institute, subject to the final decision in Viplov Sharma's case. If a student does not qualify in that examination, he or she may be given another chance to qualify after a gap of six months in a similar examination conducted under the auspices of a recognized University (but not Deemed to be University) located outside the State of Tamil Nadu. The Institute will bear the expenses for conducting the said examination.

(4) The MHRD and the MH&FW should put their house in order and ensure better and more effective

coordination with each other as well as the MCI and the UGC.

(5) The MCI, the MH&FW, the UGC and the MHRD should take a joint inspection of the facilities in the College within a period of two months from today to ascertain and determine whether the College should be allowed to admit students in the academic year 2015-16 and whether it provides necessary facilities as required by law and the regulations.

(6) Costs of Rs.5 crores deserve to be imposed on the Institute for blatantly violating the directions of the MCI and the MH&FW and creating a complete mess insofar as the students admitted to the 2nd batch of MBBS Course in the College in the academic year 2009-10 are concerned. The amount will be deposited by the Institute in the Registry of this Court within four weeks from today. The amount of Rs.5 crores so deposited towards costs shall not be recovered in any manner from any student or adjusted against the fees or provision of facilities for students of subsequent batches.

54. We direct accordingly and dispose of the appeals with these directions. A copy of this judgment and order be sent to the Secretary, Ministry of Human Resource Development, Government of India and the Secretary, University Grants Commission."

5. Pursuant to the above orders passed by the Hon'ble Supreme Court, the Medical Council of India again conducted an inspection to assess the physical and other infrastructural facilities including teaching faculty and non-teaching staffs. Consequent upon the inspection, Medical Council of India recommended to the Central Government for recognition of the MBBS Degree conducted by the college for the students admitted in the academic year 2009-10.

6. On the recommendation made by the Medical Council of India, the first respondent issued a notification dated 01.04.2016. The said notification is extracted hereunder:

"MBBS: This shall be a recognized medical qualification when granted by Dr.M.G.R.Educational & Research Institute (Deemed to be University), Chennai in respect of students being trained at ACS Medical College & Hospital, Chennai with annual intake of 150 MBBS students admitted in the academic year 2009-10 only."

7. It is also seen from records that the first respondent issued a notification on 25.09.2014 bringing the ACS Medical College and Hospital permanently under the ambit of the Deemed to be the University from the date of notification. Thereafter, the Medical Council of India conducted inspection on the request made by the petitioner for admitting students in the academic year 2016-17. The notification issued by the first respondent on 16.05.2016 is extracted hereunder:

"I am directed to MCI's letter No.MCI-34(41)(RG)/2015-Med/177569 dated 30.03.2016 on the subject mentioned above and to convey the approval of the Central Government for renewal of permission for admission of Fresh Batch of 150 MBBS students for the academic year 2016-17 at ACS Medical College & Hospital under Dr.M.G.R.Educational & Research Institute, Deemed University, Chennai,Tamil Nadu.

2. The permission is valid for one year and for admitting only one batch of 150 students during the academic session 2016-17. The next batch of 150 students in MBBS course will be admitted in the college only after permission of Central Government for renewal/recognition.

3. Admissions made in violation of the above condition will be treated as irregular and action will be initiated under IMC Act & Regulations made thereunder.

4. Discrepancies, if any, may be immediately brought to the notice of MCI and the Central/State Government."

8. After the issuance of the notification by the first respondent, the petitioner admitted a fresh batch of 150 students during the academic year 2016-17. It is seen from records that the permission is extended every year up to academic year 2020-21.

9. The petitioner College at this stage made an application on 06.07.2018 seeking for permission to increase the intake from 150 to 250 students. This request made by the petitioner College was rejected by the Medical Council of India through the impugned proceedings dated 11.11.2019, mainly on the ground that, the 2016 batch from the petitioner College has still not been recognized and therefore the petitioner cannot be allowed to increase the intake from academic year 2020-21. Aggrieved by the same, the present writ petition has been filed before this Court.

10. The learned counsel for the petitioner submitted that the impugned proceedings of the third respondent reads as if the petitioner Institution is running without any recognition. The

learned counsel in order to substantiate his submissions brought to the notice of this Court the renewal of permission that has been granted from the year 2016 onwards every year. The learned counsel further submitted that the third respondent did not properly appreciate the scope of Section 10(A) of the Medical Council Act, which specifically provides for considering the increase in intake and therefore the third respondent was not right in rejecting the permission sought for by the petitioner in spite of the petitioner Institution possessing necessary infrastructure facility and fulfilling all the other requirements under the regulations.

11. The third respondent has filed a counter affidavit.

12. Mr.V.P.Raman, learned counsel appearing on behalf of the third respondent submitted that the recognition granted to the MBBS students admitted in the academic year 2008-09 and 2009-10 should be treated as a stand alone case since at that point of time, the issue with regard to whether the status of Deemed to be University itself was under question. Ultimately, taking into consideration the interest of the students who have completed the course, recognition was granted only for those 150 students.

13. In order to substantiate his submission, the learned counsel brought to the attention of this Court the notification published by the first respondent on 01.10.2013 and 01.04.2016.

14. Mr.V.P.Raman, further brought to the notice of this Court the notification dated 25.09.2014, through which the petitioner College was brought within the ambit of Dr.M.G.R Educational and Research Institute, Deemed to be University. The learned counsel submitted that only after this notification, a fresh inspection was conducted by the Medical Council of India and a recommendation was made to the Central Government to grant letter of permission to the petitioner under Section 10(A) of the Indian Medical Council Act, 1956, for admitting a fresh batch of 150 MBBS students for the academic year 2016-17.

15. The learned counsel also brought to the notice of this Court the concerned regulations of the year 2000, which deals among other things also with the increase of the capacity in any course of study or training. The relevant portion of the Regulations is extracted hereunder:

"3.QUALIFYING CRITERIA:

The medical college/institution shall qualify to apply for increasing the number of admission in MBBS/PG Diploma/Degree/Higher Speciality Course in the existing medical college /institution if the following conditions are fulfilled :-

(1) A Medical College/Medical Institution shall be entitled to make an application to increase the admission capacity for MBBS/PG Diploma/PG Degree/Higher Speciality Courses, once the concerned qualification against the sanctioned intake has been granted recognition under section 11 (2) of the Act and included in the first schedule of the Act....”

16. The learned counsel submitted that this regulation specifically provides that an Institution is entitled to make an application to increase the admission capacity only when the concerned qualification against the sanctioned intake has been granted recognition under Section 11(2) of the Act and included in the first schedule of the Act.

17. The learned counsel further brought to the notice of this Court, Section 11 of the Medical Council of India Act and submitted that the recognition under Section 11(2) of the Act will be given only on the completion of the entire course by the first batch of students entering into any Institution and the same is included in the first schedule of the Act. By inviting to the attention of this Court to Section 11(2) of the Act, the learned counsel submitted that what has been granted to the petitioner Institution is only extension of permission every year from 2016 onwards and the actual recognition will be considered only on the completion of the first batch which will take place during the academic year 2020-21. The petitioner Institution will have to make an application and an inspection will be conducted by the Medical Council of India and only on the satisfaction of the norms, such a recognition will ultimately be granted to the petitioner. Only after such a recognition is granted, the petitioner will be entitled to be considered for the increased intake under Section 10(A) of the Act.

18. This Court has carefully considered the submissions made on either side and the materials available on record.

19. This Court does not want to dwell deep into the facts of the present case since it has been substantially extracted supra in detail and the available materials clearly point out to the fact that the status of Deemed to be University got clarified only after notification was issued by the first respondent on 25.09.2014 and thereby ACS Medical College and Hospital, Chennai, was brought under the ambit of Dr.M.G.R Educational and Research Institute, Deemed to be University.

20. As rightly contended by the learned counsel for the Medical Council of India, the recognition that was given to the students admitted during the academic year 2009-10 is a stand

alone recognition, which was given pursuant to the orders passed by the Hon'ble Supreme Court in the interest of those students.

21. The Medical Council of India conducted an inspection in the year 2016 and satisfied itself with regard to the requirements of the College and recommended to the Central Government to grant Letter of Permission to the petitioner Institution under Section 10(A) of the Indian Medical Council Act 1956, for admitting a fresh batch of 150 students for the academic year 2016-17. On such recommendation, the first respondent also granted permission through proceedings dated 16.05.2016.

22. It is clear from the renewal letters that are issued every year that the permission is extended for each year right from 2017 onwards. This renewal of permission granted by the Medical Council of India cannot be treated to be a recognition for the purpose of Section 11 of the Medical Council of India Act.

23. A careful reading of the Section 11(2) of the Act, clearly indicates that such a recognition will be considered only where the institution ultimately gets included for the first schedule of the Act. This stage is reached only after the first batch of students reach the final year and at that point of time, an inspection is conducted by the Medical Council of India to satisfy itself with regard to the infrastructural facility, availability of faculty etc., and thereafter such a recognition is granted by the Medical Council of India. The extension of permission that is granted every year cannot be taken to be a recognition as contemplated under Section 11 of the Act.

24. An Institution will be entitled for increase in the admission capacity for a particular course only after a recognition is granted by the Central Government on the recommendation made by the Medical Council of India under Section 11(2) of the Act and the same is clear from Regulation 3 of Regulations 2000.

25. In view of the above discussion, this Court does not find any ground to interfere with the impugned proceedings of the third respondent dated 11.11.2019. The permission sought for by the petitioner was premature and the Act and regulations does not permit any institution to increase the intake of the students until the recognition is granted under Section 11 of the Act. The petitioner Institution will have to make necessary application before the third respondent to enable the third respondent to conduct an inspection and satisfy themselves as to whether the institution fulfills all the requirements and

thereafter the third respondent will forward the recommendation to the first respondent, which has to ultimately grant the recognition. This can happen only at the end of academic year 2020-21.

26. As and when such recognition is granted by the first respondent, the petitioner will thereafter be entitled to increase the intake of students.

27. This writ petition is disposed of accordingly. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. Union of India,
rep. by its Secretary,
Ministry of Health & Family Welfare,
Nirman Bhavan, New Delhi.
2. The Ministry of Human Resources Development,
(Department of Higher Education),
rep. by its Secretary,
Shastri Bhavan, New Delhi.
3. Medical Council of India,
rep. by its Asst. Secretary,
Pocket 14, Sector 8,
Dwaraka, Phase-I,
New Delhi-110075.

+1cc to Mr.V.P.Raman, Advocate in Sr.29581

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EV(CO)
RV(16/10/2020)