

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 3529/2015

1. Mahatma Gandhi Institute of Medical Sciences,
through its Dean, Post Sewagram
District Wardha 442 102.
2. The Kasturba Health Society,
Through its Secretary,
A Registered Trust having its Office at Sewagram
Wardha.

PETITIONERS

.....VERSUS.....

1. Union of India,
Through Ministry of Health and Family Welfare,
through its Secretary, Nirman Bhawan,
New Delhi.
2. Medical Council of India,
through its Secretary,
Pocket 14, Sector 8, Dwarka Phase 1,
New Delhi 110 077

RESPONDENTS

Shri Sunil V. Manohar, Senior Advocate with Shri A.A. Choube and Shri Y.N. Sambre, counsel for the petitioners.

Shri Ulhas M. Aurangabadkar, Assistant Solicitor General of India for the respondent no.1.

Shri Rahul M. Bhangde, counsel for the respondent no.2.

CORAM : A. S. CHANDURKAR AND PUSHPA V. GANEDIWALA, JJ.

DATE : 04TH JANUARY, 2022.

ORAL JUDGMENT (PER : A.S. CHANDURKAR, J.)

The petitioner no.2-Society which is registered under the Societies Registration Act, 1860 runs the petitioner no.1-Institution which

imparts medical education. In the academic year 2012-13 the intake capacity of the said Institution was increased from 65 to 100. Subsequently in the academic year 2013-14 permission with intake capacity was granted for 100 seats. In the subsequent academic year 2014-15 such renewal for the increased intake capacity of 100 students was not granted and hence the petitioners had filed Writ Petition No.4052 of 2014. Ad-interim relief was granted in favour of the petitioners. However, as inspection for the academic year 2015-16 was conducted that writ petition came to be subsequently withdrawn keeping the points raised open. For the academic year 2015-16 similar permission was sought and a summary assessment was accordingly made by the respondent no.2-Medical Council of India. As per this summary assessment two deficiencies with regard to Senior Residents and Mounted Specimens in the Anatomy Department were pointed out. The petitioners made a representation in that regard. On the deficiencies being pointed out, it is the case of the petitioners that the same were duly removed. Though inspection was carried out on 10.03.2015 nothing further was heard by the petitioners. It is only when the list of dis-approved colleges was published that the petitioners on 13.06.2015 got knowledge about the disapproval for renewal of the increased intake capacity. Being aggrieved, the petitioners have filed the present writ petition challenging the non-renewal of the increased intake capacity.

2. Shri Sunil Manohar, learned Senior Advocate for the petitioners submitted that the disapproval indicated for non-renewal of the increased intake capacity was by ignoring relevant factual aspects. The deficiencies as pointed out were hardly relevant and were of minor nature which did not warrant the withholding such approval for renewal. Inviting attention to the communication dated 22.12.2014 issued by the respondent no.2-Council it was submitted that the following deficiencies were pointed out therein:

“The Executive Committee of the Council considered the Council Assessors report (21st & 22nd November, 2014) and noted the following.-

- 1. Senior Resident deficiency is 73%.*
- 2. In Anatomy museum, mounted specimens are only 93.*
- 3. Other deficiencies as pointed out in the assessment report.”*

Pursuant to the aforesaid deficiencies being pointed out necessary steps were taken to remove them. As regards the shortage in the teaching staff was concerned, it was submitted that as per the regulations framed by the Medical Council of India titled as ‘Requirements to be fulfilled by the Applicant Colleges for obtaining Letter of Intent and Letter of Permission for Establishment of the new Medical Colleges and Year Renewals under Section 10-A of the Indian Medical Council Act, 1956” no deficiency in

that regard existed. Attention was invited to the manner in which the ratio of Senior Resident and Junior Resident was required to be taken in a combined manner. On that basis it was urged that when the combined ratio of Senior Residents and Junior Residents was taken there was no deficiency whatsoever. Attention was then invited to the minutes of Executive Meeting held on 02.03.2015 and especially Item 47 pertaining to the petitioner no.1-Institution. This report showed shortage of residents at 20.9% which was again incorrect. With regard to deficiency no.2 the number of mounted specimens were increased from 93 to 125 and this aspect was communicated to the respondent no.2 on 21.01.2015. It was thus submitted that the deficiencies as alleged were the outcome of non-application of mind by the respondent no.2 as well as non-consideration of the relevant material which was available with the Medical Council of India. Moreover the minutes of Executive Meeting indicate that material for which no notice was given was taken into consideration while refusing approval. Reliance was placed on the decision in *Pravara Institute of Medical Sciences (Deemed University's) Rural Medical College, Loni Versus Union of India & Others* [2018(1) **Mh.L.J. 732**] to urge that deficiencies of minor nature were liable to be ignored.

It was then pointed out that on 26.06.2015 this Court had passed an ad-interim order and had directed the respondent no.1 to

renew permission for 100 seats for the academic year 2015-16. This order however was challenged by the Medical Council of India before the Hon'ble Supreme Court which on 04.09.2015 stayed the interim order passed by this Court. However, in the meanwhile acting on the interim order passed by this Court 100 students were admitted and they thereafter continued taking education. Referring to the additional affidavit now placed on record it was submitted that all students who were then admitted in the academic year 2015-16 except one had completed their course and had passed the requisite examination. It was thus submitted in the light of aforesaid the order refusing to renew permission by the respondent no.2 be set aside.

3. Shri Ulhas Aurangabadkar, learned Assistant Solicitor General of India for the respondent no.1 submitted to the orders of the Court by agreeing that the matter is between the petitioners and the Medical Council of India. He submitted that on the basis of the ad-interim order passed on 26.06.2015 necessary permission was granted to the petitioner no.1 to admit students for 100 seats in the academic year 2015-16.

Shri Rahul Bhangde, learned counsel appearing for the respondent no.2 invited attention to the interim order passed by the Hon'ble Supreme Court on 04.09.2015 and thereafter the final order dated 16.12.2019 passed in those proceedings. He further supported the

impugned action by submitting that the deficiencies were pointed out after carrying out necessary inspection and there was no illegality in refusing to grant such permission as sought by the petitioners. He therefore submitted that no interference with the impugned action was called for.

4. We may note that after the ad-interim order dated 26.06.2015 was passed by this Court, the respondent no.2 granted necessary permission to the petitioners on 04.08.2015 to admit 100 students subject to outcome of the special leave petition filed before the Hon'ble Supreme Court. As stated above such admissions were thereafter made by the Institution and thereafter on 04.09.2015 the Hon'ble Supreme Court passed an interim order staying the effect and operation of the order dated 26.06.2015 passed by this Court. While deciding the special leave petition the interim order dated 04.09.2015 was continued with a request to this Court to decide the present proceedings expeditiously. Accordingly, we have heard the learned counsel for the parties and have perused the material on record.

It is seen that three deficiencies were pointed out in the communication dated 22.12.2014. The first deficiency pertains to Senior Resident at 73%. In this regard it may be noted that as per the guidelines

issued by the Medical Council of India the ratio of Senior Resident and Junior Resident has to be worked out by taking both the figures together. When such ratio is worked out as per the aforesaid guidelines there is no deficiency whatsoever. This fact was pointed out by the petitioners by the communication dated 31.12.2014. It is thus clear that as per Note 1(b) to the regulations of the Medical Council of India when the figures of Senior Resident and Junior Resident are taken together there is no deficiency whatsoever.

5. The second deficiency pointed out is with regard to mounted specimens in the Anatomy Museum being only 93. This deficiency was subsequently removed by increasing the number of mounted specimens to 125. This fact was also informed to the Medical Council of India on 31.12.2014. There is no other deficiency in the assessment report. It is thus clear that besides the aforesaid deficiencies, there was no other deficiency warranting non-renewal of the permission to admit students. In these facts therefore the respondent no.2 was not justified in refusing the permission for renewal as sought. The learned Senior Advocate for the petitioners is justified in relying upon the decision in *Pravara Institute of Medical Sciences (Deemed University's) Rural Medical College, Loni* (supra).

6. Besides the absence of any major deficiency we also find that with passage of time the students who were admitted pursuant to the interim orders dated 26.06.2015 have now completed their education. Though this aspect cannot be treated as a singular reason for validating the action of admitting 100 students, we are satisfied that the deficiencies pointed out and referred to above were duly cured and intimated to the Medical Council of India on 31.12.2014. The disapproval as indicated for the increased intake capacity is thus not sustainable.

7. In view of aforesaid, the name of the petitioner no.1-Institution from the list of dis-approved colleges for the academic year 2015-16 which appears at Serial Number 26 shall stand deleted. It is declared that the petitioner no.1-Institution was entitled for renewal of permission for increased intake capacity of 100 seats for the 4th Batch of M.B.B.S. Course for the academic year 2015-16.

8. Rule is made absolute in aforesaid terms. No costs.

(SMT. PUSHPA V. GANEDIWALA, J.)

(A.S. CHANDURKAR, J.)

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