



\$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 1976/2015, CM APPL. 32025/2015 & CM APPL. 47983/2016**

GOPESH MEHROTRA AND ORS

..... Petitioner

Through: None.

versus

UOI AND ORS

..... Respondent

Through: Ms. Monika Arora, Mr. Subhrodeep Saha, Mr. Kushal, Advocates for Delhi University
Mr. Kirtiman Singh with Mr. Waize Ali Noor, Ms. Vidhi Jain and Ms. Shreya V. Mehra, Advocates for UOI
Mr. Sameer Vashisht, ASC, Civil, GNCTD with Ms. Harshita Nathrani, Mr. Vanshay Kaul, Mr. Aman Singh, Advocates
Mr. Santosh Kumar and Mr. Kushagra Aman, Advocates
Mr. Mohinder J.S. Rupal, Advocate with Mr. Hardik Rupal and Ms. Pragati Keshri, Advocates for University of Delhi.
Mr. RK Tarun, Respondent in person with Ms. Aditi Shivadhatri and Capt. Ms. Subedita Rani

45

+ **W.P.(C) 2390/2015 & CM APPL. 4285/2015**

UNIVERSITY COLLEGE OF MEDICAL SCIENCES

Signature Not Verified

Signed By: MAHIMA
SHARMA
Signing Date: 22.02.2024
11:22:27

W.P.(C) 1976/2015 and connected items

Page 1 of 21



KARAMCHARI UNION & ANR

..... Petitioner

Through: Mr. A.K. Singla, Senior Advocate
with Mr. Akshit Sachdeva, Advocate
versus

UNION OF INDIA & ORS

..... Respondent

Through: Ms. Monika Arora, Mr. Subhrodeep
Saha, Mr. Kushal, Advocates for
Delhi University
Mr. Kirtiman Singh with Mr. Waize
Ali Noor, Ms. Vidhi Jain and Ms.
Shreya V. Mehra, Advocates for UOI
Mr. Sameer Vashisht, ASC, Civil,
GNCTD with Ms. Harshita Nathrani,
Mr. Vanshay Kaul, Mr. Aman Singh,
Advocates
Mr. Santosh Kumar and Mr.
Kushagra Aman, Advocates
Mr. Mohinder J.S. Rupal, Advocate
with Mr. Hardik Rupal and Ms.
Pragati Keshri, Advocates for
University of Delhi.
Mr. RK Tarun, Respondent in person
with Ms. Aditi Shivadhatri and Capt.
Ms. Subedita Rani

46

+ W.P.(C) 10642/2016, CM APPL. 41716/2016, CM APPL.
34237/2017, CM APPL. 25982/2018 & CM APPL. 980/2024

UCMS TEACHERS ASSOCIATION

..... Petitioner

Through: Mr. A.K. Singla, Senior Advocate
with Mr. Akshit Sachdeva, Advocate.
Mr. Santosh Kumar, Mr. Kushagra
Aman, Mr. Adithya Ramni,
Advocates for UCMS



versus

UNION OF INDIA & ORS

..... Respondent

Through: Ms. Monika Arora, Mr. Subhrodeep Saha, Mr. Kushal, Advocates for Delhi University
 Mr. Kirtiman Singh CGSC with Mr. Waize Ali Noor, Ms. Vidhi Jain and Ms. Shreya V. Mehra, Advocates for UOI.
 Mr. Sameer Vashisht, ASC, Civil, GNCTD with Ms. Harshita Nathrani, Mr. Vanshay Kaul, Mr. Aman Singh, Advocates
 Mr. Rajesh Gogna, CGSC, UOI with Ms. Priya Singh, Advocate
 Mr. Mohinder J.S. Rupal, Advocate with Mr. Hardik Rupal and Ms. Pragati Keshri, Advocates for University of Delhi.
 Mr. RK Tarun, Respondent in person with Ms. Aditi Shivadhatri and Capt. Ms. Subedita Rani

47

+ W.P.(C) 10648/2016. CM APPL. 41738/2016, CM APPL. 34233/2017, CM APPL. 25980/2018 & CM APPL. 993/2024

UNIVERSITY COLLEGE OF MEDICAL SCIENCES
 KARAMCHARI UNION Petitioner

Through: Mr. A.K. Singla, Senior Advocate with Mr. Akshit Sachdeva, Advocate.
 Mr. Santosh Kumar, Mr. Kushagra Aman, Mr. Adithya Ramni, Advocates for UCMS

versus



UNION OF INDIA & ORS

..... Respondent

Through: Ms. Monika Arora, Mr. Subhrodeep Saha, Mr. Kushal, Advocates for Delhi University
 Mr. Kirtiman Singh CGSC with Mr. Waize Ali Noor, Ms. Vidhi Jain and Ms. Shreya V. Mehra, Advocates for UOI.
 Mr. Sameer Vashisht, ASC, Civil, GNCTD with Ms. Harshita Nathrani, Mr. Vanshay Kaul, Mr. Aman Singh, Advocates
 Mr. Rajesh Gogna, CGSC, UOI with Ms. Priya Singh, Advocate
 Mr. Mohinder J.S. Rupal, Advocate with Mr. Hardik Rupal and Ms. Pragati Keshri, Advocates for University of Delhi.
 Mr. RK Tarun, Respondent in person with Ms. Aditi Shivadhatri and Capt. Ms. Subedita Rani

%

Reserved on: 19th January, 2024
 Date of Decision: 19th February, 2024

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA
J U D G M E N T

MANMEET PRITAM SINGH ARORA, J:

1. The present writ petitions have been filed as Public Interest Litigation ('PIL') by associations consisting of teaching and non-teaching staff of the University College of Medical Sciences (UCMS) challenging various orders passed by Respondent Nos. 1 to 4 to implement the Union Cabinet's



decision dated 25th August, 2005 ('Cabinet Decision'), wherein Government of India decided to bring University College of Medical Sciences Block and Guru Tegh Bahadur Hospital Complex ('UCMSB-GTBH') under the unified control of Government of NCT of Delhi ('GNCTD').

2. The Cabinet Decision was passed to find a solution to the chronic problem of dual administrative control of University of Delhi ('DU' or 'University') and GNCTD over the UCMSB-GTBH. The adverse effects of the dual control have been judicially noticed by the Division Bench of this Court as far back on 31st May 2002, in its judgment passed in W.P. (C) No. 4072/1997 titled as *Supreme Court Young Advocates Forum vs. UOI* wherein this Court recorded that there exists administrative mismanagement in UCMSB-GTBH which has led to poor medical services being provided to the citizens.

3. The Cabinet Decision was taken in consequence of the directions issued by the Division Bench in its judgment dated 31st May 2002 to find an administrative solution. The Cabinet Decision though dated 25th August, 2005 remained unimplemented by Respondent Nos. 1 to 4 until the year 2014. Subsequently, in pursuance to further proceedings for implementation initiated before this Court including contempt proceedings, the concerned Respondents prodded by this Court took steps to give effect to the said Cabinet Decision between the year 2014 and 2016; and finally, GNCTD issued an order dated 30th September, 2016 ('Impugned Order') calling upon DU to hand over the complete administrative and financial control of UCMS [to GNCTD] with effect from 01st December, 2016.

4. In the aforesaid backdrop, the Petitioners filed the present petition in the year 2016 opposing the takeover of UCMS by GNCTD. The grounds of



challenge and opposition to the said takeover is the perceived apprehension that the promotions, inter-se seniority, service conditions and timely payment of salaries of the staff working at UCMS will be adversely affected due to the said takeover. The Petitioners are desirous that the control of UCMS should be retained by DU and not handed over to GNCTD. Though there is no specific relief for setting aside the Cabinet Decision in the contested writ petitions, however, in effect the Petitioners are challenging the said decision; as the GNCTD's [impugned] order dated 30th September, 2016 is in furtherance of the said Cabinet Decision.

5. It is noted at the outset that there is no representation in W.P. (C) No. 1976/2015 and the matter has been contested by the Petitioners in W.P.(C) No. 2390/2015, W.P.(C) 10642/2016 and W.P.(C) 10648/2016.

Arguments of counsel for the Petitioners and Respondent No. 4

6. Learned Senior Counsel for the Petitioners stated that he is relying upon the record of W.P.(C) 10642/2016 to address his arguments. He stated that Petitioners seek quashing of the Impugned Order dated 30th September 2016 passed by Respondent No. 3, GNCTD proposing to take over the administrative control of UCMS. He stated that the Petitioner is aggrieved by the Cabinet Decision dated 25th August, 2005 and in C.M. No. 34237/2017 seeks a direction to Respondent No.1 i.e., Ministry of Human Resources Development ('MHRD') and Respondent No. 2 i.e., Ministry of Health and Family Welfare ('MoHFW') to place a fresh proposal, for re-consideration of the de-affiliation of UCMS from the University, before the Union Cabinet.

6.1. He stated that the tenor of Respondent No. 3, GNCTD's Impugned Order is not in consonance with the judgment dated 31st May, 2002 passed



by this Court in W.P.(C) 4072/1997 or the proceedings taken before Supreme Court in S.L.P.(C) 1621/2003 ('SLP'). He relied upon the contents of the affidavit filed by Respondent No. 4, DU dated 07th February 2006 before the Supreme Court to contend that Respondent No.4, DU had opposed the Cabinet Decision dated 25th August, 2005 before the Supreme Court. He stated that a perusal of the orders passed in SLP before the Supreme Court give rise to an obvious inference that the Cabinet Decision did not find favour with the Supreme Court.

He, however, fairly concedes that the aforesaid SLP was dismissed by the Supreme Court vide order dated 24th November, 2006 without in any manner interfering in the Cabinet Decision; despite the objections filed and reservations expressed by Respondent No. 4, DU.

6.2. He stated that Respondent No. 3, GNCTD's Impugned Order while dealing with terms of employment of teaching and non-teaching staff disregards the service conditions agreed to and prescribed by Respondent No. 4, DU for the staff. He stated that the reasoning of Respondent No. 1, MHRD in agreeing to transfer the UCMSB to GNCTD on the basis that 'Health' is primarily a state subject failed to take into account that 'Education' is on the concurrent list. He stated that since working of the UCMSB-GTBH Complex is education oriented, the administrative control should have been retained by DU under the aegis of Union of India.

6.3. He stated that the DU Executive Council's ('EC') resolution dated 09th January, 2015 cannot be read as the decision of the University. He stated that the said resolution merely reports and records the texts of Respondent No. 1, MHRD's letter dated 09th October, 2014 and Respondent No. 4, DU's reply dated 25th November, 2014. He stated that however, the



EC did not pass any independent resolution on 09th January, 2015. He stated that the said EC resolution is in disregard of the Visitor's note dated 13th April, 2007 as well as University's affidavit dated 07th February, 2006 filed before the Supreme Court.

6.4. He stated that the Petitioners have serious concerns with respect to the timely payment of salaries of all teaching and non-teaching staff and all other expenses of the college being met by Respondent No. 3, GNCTD. He stated that the correspondence on record exchanged between Respondent Nos. 1 to 4, preceding the issuance of the Impugned Order dated 30th September, 2016 show that Respondent No. 3, GNCTD is unwilling to bear the said costs/expenses and expects Union of India through University Grant Commission ('UGC') to continue to bear the said costs/expenses even after the take-over. In this regard, he specifically relied upon the correspondence dated 21st July, 2016 issued by Respondent No. 3, GNCTD to Respondent No. 1, MHRD.

6.5. He stated that after the filing of the present writ petition the EC of the University by its resolution dated 15th July, 2017 has appealed to Union of India to re-consider its Cabinet Decision. He further relied upon the contents of CM APPL. 980/2024 and more specifically, the resolution of EC dated 15th December, 2023 accepting the relocation plan of UCMS along with a proposal to allot land at Rohini.

6.6. He stated that growth and efficiency of both UCMS and GTBH has suffered serious setbacks due to the current impasse of its administrative control. He stated that the infrastructure is seriously lacking and both institutes are in dire need of infusion of funds. He relied upon the Relocation Plan filed before the EC of DU at its meeting dated 15th December, 2023 to



highlight the lack of infrastructure and pressing need of expansion.

7. Ms. Monika Arora, learned counsel for Respondent No. 4, DU stated that University supports the stand of the Petitioners. She stated that the University has serious concerns about paucity of funds with Respondent No. 3, GNCTD. She stated that the annual expenditure of UCMS for 2023-24 is Rs. 280 crores whereas the budgetary allocation made by GNCTD in the last few financial years has been wholly inadequate. She stated that the current budgetary allocation by GNCTD is not sufficient for payment of salaries of the teaching and non-teaching staff at the college. She stated that University has perused the affidavit filed by GNCTD on 18th January, 2024 and is not satisfied with the budgetary allocation of Rs. 250 crores stated therein.

7.1. She stated that twelve (12) other colleges funded by Respondent No. 3, GNCTD are financially distressed and embroiled in litigation due to the non-payment of salaries to its teaching and non-teaching staff. She stated with respect to the said colleges Respondent No. 3, GNCTD has written a letter to Union of India to take-over the said colleges. She stated that Respondent No. 3, GNCTD has been unable to provide funds to UCMS in past nineteen (19) years despite the Cabinet Decision of 2005.

7.2. She, therefore, submitted that the writ petitions be kept pending and the present impasse be referred to Lieutenant Governor ('LG') to have a meeting with representatives of GNCTD, DU and MoHFW for mutually resolving the concerns of UCMS, its teaching and non-teaching staff with respect to their service conditions and the process of denotification of UCMS from the University (if needed).

Arguments of counsel for the Respondent No. 1, MHRD; Respondent No. 2, MoHFW and Respondent No. 3, GNCTD



8. Mr. Kirtiman Singh, learned standing counsel for Respondent No. 1, MHRD and Respondent No. 2, MoHFW stated that MoHFW is of the considered view that since 'Health' is primarily a state subject it would be appropriate for GNCTD to takeover UCMS and run both the college and the hospital i.e., GTBH. He stated that the Cabinet Decision has been accepted by MoHFW and necessary instructions for implementation of the decision have been issued vide order dated 03rd October, 2016. He stated that Respondent Nos. 1 and 2 stand by the Cabinet Decision and there is no requirement of re-consideration as sought to be contended by the Petitioners and Respondent No. 4, DU.

9. Mr. Sameer Vashisht, learned Additional Standing Counsel for GNCTD stated that an additional affidavit dated 18th January, 2024 has been filed by the Joint Secretary, Department of Health and Family Welfare Department stating that GNCTD shall abide by the Cabinet Decision and the Impugned Order dated 30th September, 2016 passed by the LG. He stated that adequate budgetary provision for takeover of UCMS has been in existence since 2015-2016. He stated that as per GNCTD's estimate an amount of Rs. 250 crores is necessary for the budgetary allocation of UCMS and the said amount will be infused initially. He stated that in this affidavit the Joint Secretary has undertaken that budget will not be as issue for the take-over of UCMS. He stated that if additional amount over and above Rs. 250 crores are required to run UCMS and GTBH, GNCTD undertakes that the necessary funds are available and will be provided. He stated that due to the stay order dated 16th November, 2016 passed in these writ proceedings, GNCTD has been unable to give effect to LG's order dated 30th September, 2016. He states that it is for this reason that no funds could be infused in the



past in UCMS. He states that with the filing of additional affidavit dated 18th January, 2024, the concerns on payment of salaries raised by the Petitioners stand allayed and are therefore, unjustified. He states that the earlier letters written by GNCTD to MHRD, prior to 30th September, 2016 cease to have effect.

Analysis and findings

10. This Court has considered the submissions of the parties and perused the record.

11. It is noted at the outset that for sake of convenience, counsel for the parties have addressed arguments with reference to the paper book in W.P.(C) No. 10642/2016. The parties have stated that the issue arising for consideration is common in all the petitions. Therefore, all references to the parties and the orders are made with respect to the pleadings and documents filed in W.P.(C) No. 10642/2016.

12. The dismal existing state of affairs at UCMS and GTB have been summarised by UCMS itself in its Re-location Plan placed before the EC of Respondent No. 4, DU on 15th December, 2023. The relevant extract of the said document reads as under:

“Problems arising out of dual administration of UCMS-GTBH complex:
Since UCMS is controlled by DU and GTBH by GNCTD, it poses significant problems and obstacles in smooth functioning of UCMS. While planning the UCMS-GTBH complex a 3-tier arrangement was envisaged, with a Campus Committee, chaired by Principal UCMS with MS as member, to plan and develop UCMS-GTBH complex at local level. At the second level a Coordination Committee, to be chaired by Principal Secretary Health (the then Delhi administration and now Govt. of NCT Delhi). Third level Apex Committee was to be chaired by Lt. Governor of Delhi with Vice Chancellor of DU as member. The mechanism of dual control of UCMS & GTBH has evidently not succeeded. This is evident in many ways:

- 1. The mechanism of multiple committees to resolve the issues arising out of dual control has not worked as these committees have never***



met, except in the initial years.

2. *Even the efforts of the Supreme Court of India to intervene and bring DU and GNCTD to a workable solution have not been successful* (petitions filed by Supreme Court Young Advocates Forum in 1997 and 2003).

As a result UCMS and GTBH has worked as two separate institutions in one complex. In 53 years of its existence UCMS has missed many development deadlines and opportunities. Even the basic infrastructural requirements are not met. Some of these are listed below:

1. *The increase in infrastructure requirements of UCMS-GTB Hospital Complex due to increase in UG and PG intake on account of implementation of OBC and EWS reservation have not been met.* As a result, the UG intake could not be increased to 250 and is restricted to 170 every year.
2. *Expansion of Lecture Theatres and Demonstration Rooms required to manage increased intake of UG and PG admissions have not taken place.*
3. *MRI machine has not been provided despite being a minimum requirement for MD radiology courses. Even though fund was made available by UGC, MRI machine could not be purchased.*
4. *Japanese Grant (1992), to upgrade the infrastructure of UCMS was not utilised due to lack of coordination.*
5. *Funds for development of super-speciality block for starting DM/ MCh courses at UCMS through the Pradhan Mantri Swasthya Suraksha Yojana (PMSSY) have not been utilized, leading to lack of advanced care.*
6. *Faculty Block and Auditorium have not been developed.*
7. *Hostel facilities have not been augmented.*
8. *Playground, which is an essential requirement for a medical college, has been taken away by GNCTD.*
9. *The creation of many essential departments (Physical Medicine and Rehabilitation, emergency medicine) have not taken place.*
10. *Operating capacity in various departments is far below the current requirements. As a result not only quality patient care is suffering, but also training of MD/MS students.*

These are some of the glaring examples. Day-to-day issues have been stumbling block in delivering quality medical education as well as patient care. That is the reason for significant attrition of promising faculty from UCMS.

The medical college can function only if all the norms of National Medical



Commission (erstwhile Medical Council of India) are adhered to and infrastructure development, commensurate with changing needs and requirements. This will also ensure rapid growth of the entire medical college-hospital complex.

Despite our best of efforts, the vision of Hon'ble Prime Minister and focus of GOI to expand quality medical education and base of tertiary care could not be realised.

We seek your intervention to resolve this long pending issue and make the only maintained Medical College of DU to prosper and contribute to medical education, research and quality tertiary health care."

(Emphasis supplied)

13. The adverse and detrimental effect of the aforesaid tussle of control between DU and GNCTD leading to lack of essential infrastructure has directly affected the quality of medical services at GTB. Recently, this Court in a [PIL] W.P. (C) 8548/2017 took judicial note of the fact that a critically injured patient could not be admitted to the GTB Hospital on 2nd January, 2024 due to non-availability of CT scan as well as ventilator; and after being turned away from other city hospitals as well, the said injured person unfortunately died the same night without receiving any medical care. The report of the said incident post investigation has been placed on record by GNCTD and it tells a heart rendering tale of death due to denial of medical facilities. The unavailability of the CT scan and its adverse effect on public health is a direct result of a uncalled-for tussle for administrative control over UCMS and GTB.

14. The pressing need for a unified administrative control of UCMSB-GTBH in public interest was recognised and adjudicated upon by the Division Bench in W.P.(C) No. 4072/1997 by its judgment dated 31st May, 2002. The Division Bench issued directions calling upon Union of India to take appropriate steps for unification of the administrative control in order to



provide solution to the problem of dual control by GNCTD and DU, which has led to malfunctioning of UCMSB-GTBH. The decision of the Division Bench was impugned before the Supreme Court in S.L.P.(C) No. 1621/2003.

15. During the pendency of the S.L.P., the Respondent No. 2, MoHFW placed a note dated 12th August, 2005 before the Cabinet and recommended that UCMS be taken over by GNCTD to enable the latter to run both the college as well as the hospital. In the said note, MoHFW traced the history of the tussle for administrative control and acknowledged that the duality of the control over the college and GTB hospital has resulted in day-to-day management problems. The Union Cabinet at its meeting held on 25th August, 2005 accepted the recommendation of MoHFW that GNCTD should takeover UCMS and run both the college as well as the GTB Hospital.

16. The aforesaid decision of the Union Cabinet was duly placed before the Supreme Court in the aforesaid S.L.P. and despite the reservations expressed by Respondent No. 4, DU against the proposal of GNCTD to take-over the control of the college in its affidavit dated 07th February, 2006 filed in S.L.P.; the said objections of DU were not accepted and the S.L.P. was dismissed vide order dated 24th November, 2006.

17. Aggrieved by the non-implementation of the Cabinet Decision dated 25th August, 2005, a PIL was filed before this Court i.e., W.P. (C) No. 5417/2014. During the pendency of the said petition Respondent No. 1, MHRD addressed a letter dated 1st October, 2014 to Respondent No. 4, DU calling upon the University to complete the formalities for implementation of the Cabinet Decision. Pursuant thereto, the EC of the University passed a resolution on 9th January, 2015 for handing over of UCMS to GNCTD in



compliance with the Cabinet Decision.

18. Separately, on 3rd August, 2015 Respondent No. 3, GNCTD as well passed an order for constituting a Committee for effective take-over of UCMS from the University.

19. The aforesaid letter dated 01st October, 2014 of MHRD and EC's resolution dated 09th January, 2015 were placed on record in W.P.(C) No. 5417/2014. In view of the said steps taken by the Respondents, the Division Bench by its judgment dated 18th February, 2015 issued a direction to both Respondent No. 3, GNCTD and Respondent No. 4, DU to complete the process of handing over/taking over of UCMS within six (6) months from the date of the said judgment.

In view of the EC's resolution dated 9th January, 2015, by a separate order dated 19th February, 2015, Division Bench of this Court dismissed another writ petition i.e., W.P.(C) 987/2015 filed by University College of Medical Sciences, Karamchari Union for implementation of the Cabinet's Decision.

20. Upon non-compliance of the aforesaid judgment dated 18th February, 2015 passed in W.P. (C) No. 5417/2014, a contempt petition was filed before this Court i.e., CONT. CAS (C) 739/2015, wherein the Court vide order dated 10th May, 2016 recorded its disapproval and gave the Respondents a final opportunity to report compliance within eight (8) weeks from the said order.

21. To avoid the wrath of the Court, the Respondents woke up from their slumber and initiated action for compliance. Firstly, the LG whilst acknowledging the significance of the issue related to the administration and functioning of UCMSB-GTBH, approved the proposal for take-over of



UCMS and its transfer to GNCTD vide order dated 21st September, 2016. Pursuant thereto, on 30th September, 2016, GNCTD issued the impugned order directing that UCMS shall stand transferred with effect from 1st December, 2016.

22. The aforementioned facts show that successive Court orders starting from 31st May, 2002, 24th October, 2006, 18th February, 2015, 19th February, 2015 and 10th May, 2016 as well as Cabinet Decision dated 25th August, 2005 have all unanimously acknowledged an urgent need for common administrative control of UCMS and GTBH. The correctness of the decision of Union of India to vest the common control in GNCTD though challenged/resisted in the said proceedings was not accepted by this Court and infact, consequential directions for immediate implementation of the Cabinet Decision dated 25th August, 2005 was repeatedly issued by the Court.

The impugned order dated 30th September, 2016 issued by GNCTD for take-over of UCMS is a consequential order for giving effect to the Cabinet Decision dated 25th August, 2005.

23. In the aforesaid facts, the present petitions i.e., W.P. (C) 10642/2016 and W.P. (C) 10648/2016 was filed on behalf of the associations comprising of teachers and staff respectively working at UCMS College seeking to challenge GNCTD's order dated 30th September, 2016 for taking over the College w.e.f. 1st December, 2016. The substratum of the challenge of the said Petitioner's is that they are opposed to the takeover of the UCMS College by GNCTD on apprehensions of promotions, service conditions and payments of salaries, etc. Though, the Petitioners have not impugned the Cabinet Decision dated 25th August, 2005, however, in CM No. 34237/2017,



the Petitioners seek a direction to the Union Cabinet for reconsideration of its decision with regards to de-affiliation of UCMS from DU. Pertinently, though Respondent No. 4, DU had passed an EC resolution dated 9th January, 2015 for implementation of the takeover and is bound by the same, it is tacitly supporting the Petitioners as is evident from their counter affidavit dated 14th February, 2017. In the counter affidavit, though, Respondent No. 4, DU admits that it is bound by the Cabinet Decision dated 25th August, 2005, it is resisting the take-over of UCMS by GNCTD.

24. We are of the considered opinion that firstly, this petition is barred by doctrine of estoppel¹ in view of the history of this matter, where successive directions have been issued by this Court for urgent unification of the administrative control of the College and the Hospital by GNCTD. Though there is no direct challenge to the Cabinet Decision dated 25th August 2005, the Petitioners have stalled the implementation of the said decision in these proceedings and the consequence is that the public interest has suffered due to the duality of control leading to declining and poor medical services at the Hospital. Secondly, neither the Petitioners nor Respondent No. 4, DU have made out any grounds for seeking a direction as prayed for in the writ petition and CM No. 34237/2017.

25. Notwithstanding, that the Cabinet Decision was not interfered by the Supreme Court in SLP (C) No. 1621/2003 and directed to be implemented by this Court judgement passed in W.P. (C) No. 5417/2014, even otherwise, it is settled law that a Cabinet Decisions are not lightly interfered with by the Constitutional Court in the absence there being any material brought to the notice of the Court while assailing the said decision as being

¹ K.K. Modi v. K.N. Modi, (1998) 3 SCC 573



unconstitutional or arbitrary in nature or contrary to law. In the facts of this case, there is no such challenge laid to the Cabinet Decision and the basis of resisting the takeover by the Petitioners and the Delhi University is merely the apprehension of conflict of promotions, seniority upon merger of the employees of the College and the Hospital and related service condition. In the opinion of this Court, the said grounds taken in the petition and argued before this Court cannot be the basis for interference of this Court under Article 226 of the Constitution of India in the Cabinet Decision dated 25th August, 2005.

26. The Petitioners and Respondent No. 4, DU have expressed apprehension about lack of funds/budget with GNCTD to meet the requirements of UCMS. In this regard, the Petitioners referred to the communications dated 21th July, 2016, 10th August, 2016, 14th September, 2016 and 6th December, 2016 exchanged between GNCTD, MHRD and UGC with respect to finances required by GNCTD for payment of salaries of the teachers and staff at UCMS.

27. However, Respondent No. 3, GNCTD in its counter affidavit dated 18th May, 2023 and additional affidavit dated 18th January, 2024 has reiterated its willingness to implement the Cabinet Decision. In the additional affidavit, Respondent No. 3, GNCTD has stated that it undertakes that funds or the budget for taking over UCMS will never be an issue and GNCTD will infuse the required funds, which are initially estimated by GNCTD at Rs. 250 crores. The aforesaid affidavit(s) have been filed by the GNCTD after duly taking note of the correspondence exchange between UGC and MHRD in the year 2016 clarifying that UGC will not continue the financial assistance to UCMS after its takeover by GNCTD. In view of the



said affidavits, the letters dated 21st July, 2016 of GNCTD has become otiose. Accordingly, the reliance placed by Petitioners on the correspondence of the year 2016 is not relevant and GNCTD is bound to take all necessary steps for providing requisite funds to UCMS for augmenting the infrastructure as well as payment of salaries to the teachers and staff. In fact, in the Note dated 12th August, 2005 placed before the Cabinet, the fact with respect to expenditure and staff strength was specifically enclosed as Annexure-II and it was recorded at paragraph 17 of the said Note that one of the reasons for recommending unified control under GNCTD was that 80% of the expenditure is already being borne by GNCTD.

28. The caution to be exercised by the Constitutional Court, while interfering with Cabinet Decisions is well settled in the decisions of the Supreme Court². As a matter of rule, this Court does not substitute its view in the decision of the Government with regard to policy matters and administrative decisions, unless it runs counter to the mandate of the Constitution. In the matter of policy decision by the Cabinet so long as the infringement of Fundamental Rights is not shown, the Courts have no occasion to interfere and substitute its own judgment for the judgment of the executive. In the facts of this case, the material on record shows that there was a detailed consideration by Respondent No. 2, MoHFW, Respondent No. 1 MHRD and GNCTD on the issue at hand and it was thereafter, placed with a detailed note before the Cabinet of Union of India for considering the

² *State of U.P. v. Chaudhari Ran Beer Singh* (2008) 5 SCC 550; *State of H.P. v. H.P. Nizi Vyavsayik Prashikshan Kendra Sangh* (2011) 6 SCC 597; *Anshul Gupta vs Prime Minister Office* passed in W.P (C) No. 635/2023 decided on 01.09.2023; *W.B. Central School Service Commission v. Abdul Halim*, (2019) 18 SCC 39.



three (3) options enlisted by Respondent No. 2, MoHFW. The Cabinet after due consideration accepted one of the options as recommended by MoHFW recommending unified control of UCMS and GTB under GNCTD. The said decision of the Cabinet has been accepted by GNCTD. The Petitioners before this Court have been unable to show any violation of their fundamental rights and the only submission of the Petitioners appears to be their disgruntlement with the change of the identity of the employer. The grounds urged by the Petitioners do not make out any ground for our interference with decision of the Union Cabinet, even otherwise it has not been directly challenged by the contesting Petitioners.

29. The arguments addressed by the Respondent No. 4, DU supporting the Petitioners cannot be considered as it is contrary to its own resolution dated 09th January, 2015 placed before this Court in W.P.(C) 5417/2014. Respondent No. 4, DU is even otherwise bound by the Cabinet Decision as admitted in the counter affidavit dated 14th February, 2017. Respondent No. 4 cannot be permitted to achieve indirectly what it cannot do directly by joining hands with the Petitioners herein to oppose the takeover of UCMS by GNCTD in the present proceedings.

30. We are of the considered opinion that the non-implementation of the Cabinet Decision at the instance of the Petitioners herein (who have a tacit support of Respondent No. 4, DU) has acted against public interest (i.e., patients and students) and is only focusing to serve the private interest of the employees and the staff of UCMS. This is glaringly evident from the report of the incident of the unfortunate death of an injured patient on 02nd January, 2024 filed before this Court on 25th January, 2024 in W.P. (C) 8548/2017 and the relocation plan placed before this Court along with CM APPL.



980/2024, which highlights the failing and grossly lacking infrastructure at UCMS leading to non-provision of critical services to the patients.

31. The undertaking of the Joint Secretary with Department of Health and Family Welfare Department, GNCTD given before this Court that all requisite funds required for UCMS will be made available and budget will not be an issue is accepted by this Court and taken on record. GNCTD is bound down to the said undertaking.

32. We accordingly find no merits in the reliefs sought in the present petitions and the same are dismissed along with pending applications. Interim order dated 16th November 2016 stands vacated.

MANMEET PRITAM SINGH ARORA, J

ACTING CHIEF JUSTICE

FEBRUARY 19, 2024/msh/ms