

WP (C) No.30 of 2015

Sikkim Manipal University & Anr. Vs. Union of India & Ors.

HIGH COURT OF SIKKIM : GANGTOK

(Civil Extra Ordinary Jurisdiction)

DATED : 7th OCTOBER, 2015

S.B. : HON'BLE MR. JUSTICE S. P. WANGDI, JUDGE

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- Petitioners** : 1. Sikkim-Manipal University (SMU),
Through its Registrar,
5th Mile, Tadong,
Gangtok, East Sikkim.
2. Sikkim Manipal Institute of Medical Sciences
(SMIMS),
Through its Dean,
5th Mile, Tadong,
Gangtok, East Sikkim.

versus

- Respondents** : 1. Union of India,
Through the Secretary to the Government,
Ministry of Health & Family Welfare,
Nirman Bhavan,
New Delhi-110 001.
2. Medical Council of India,
Through the Secretary,
Sector-8, Pocket-14, Phase-1,
Dwarka,
New Delhi-110 075.
3. The State of Sikkim,
Through The Secretary to the Government,
Department of Health & Family Welfare-
Services,
Government of Sikkim,
Secretariat, Tashiling,
Gangtok, East Sikkim.

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4. Axis Bank Ltd.,
Through the Branch Manager,
Rangpo Branch,
NH 31-A Rangpo Main Bazaar,
East Sikkim- 737 132.

Application under Article 226 of the Constitution of India, 1950

Appearance

Mr. Nikhil Nayyar, Mr. A. Alhuwalia, and Mr. Tashi Rapden Barfungpa Advocates for the Petitioners.

Mr. Karma Thinlay Namgyal, Central Govt. Advocate with Mr. Thinlay Dorjee Bhutia, Advocate for Respondent No.1.

Mr. S.S. Hamal, Ms. Yangchen D. Gyatso, Ms. Sonam Chuden Bhutia, Ms. Tshering Palmoo Bhutia and Mr. Hissey Dorjee Bhutia, Advocates for Respondent No.2.

Mr. J. B. Pradhan, Additional Advocate General with Mr. S. K. Chettri and Ms. Pollin Rai, Assistant Government Advocates for State-Respondent No.3.

J U D G M E N T

Wangdi, J.

- 1.** This Writ Petition has been preferred by the Sikkim–Manipal University and the Sikkim-Manipal Institute of Medical Sciences (herein referred to jointly as the Petitioner-College) seeking to impugn letter dated 30.03.2015 and 14.05.2015, Annexures P19 and P25 respectively, of the Respondent No.1 by which it was decided to recommend to the Respondent No.1, not to

accord to the Petitioner-College permission to admit increased intake of 50 to 100 students for the year 2014-15 to the MBBS course and, also directing the Petitioner-College to show cause, *inter alia*, as to why recognition already granted for 50 MBBS seats shall not be withdrawn/revoked. Thus, as per the Petitioner-College, challenge in the present proceedings is in respect of intake into the under graduate MBBS course for the year 2014-15 and the recognition already accorded in the year 2007 for 50 seats in the MBBS Course.

2. It is submitted that the Petitioner-College having commenced its MBBS Course in the year 2001, it had received the necessary recognition under Section 11(2) of the Medical Council of India Act, (in shot "MCI") for 50 MBBS seats. In 2010-11, it had applied for and had been granted permission to increase the intake from the earlier 50 to 100 MBBS students. In each of the successive four years, thereafter 100 students were admitted to the MBBS course. Of these 100 students, 50 seats were the ones recognized in the year 2007 while the additional 50 were on the basis of the permission obtained on an annual basis.

3. To state the background briefly, it may be stated that the Petitioner-University was granted permission by the Board of Governors for increasing intake of MBBS students from 50 to 100 seats in the year 2010-11. However, when permission for renewal for admitting II batch of MBBS students towards increased intake of 50 to 100 in the year 2011-12 was refused by the MCI-Respondent No.2, the Petitioner filed Writ Petition No.37 of 2011 in the High Court of Sikkim and, by an interim order, the Petitioner-College was permitted to admit the increased intake subject to the outcome of the Writ Petition which, was finally decided by Judgment dated 27.4.2012 holding that the facilities of STNM Hospital had to be included while assessing the Petitioner-College.

4. Thereafter, for the batches of III and IV years i.e., 2012-13 and 2013-14, the Respondent No.2-MCI granted renewal of permission to the increased intake of 50 to 100 seats, but for the year 2014-15, the Respondents No.1 and 2, in a sudden turn around from its earlier practice, excluded the facilities of the STNM Hospital while assessing the Petitioner-College and refused renewal of permission for V year batch.

5. The Petitioner-College thus filed Writ Petition No. 34 of 2014 before this Court during the pendency of which certain orders came to be passed by the Hon'ble Supreme Court in ***Hind Charitable Trust Shekhar Hospital Pvt. Ltd, Vs. Union of India & Ors***, in pursuance of which the Petitioner-College admitted 100 students on the basis of an affidavit filed as directed, certifying that there were no deficiencies. The case is yet to be disposed of by the Hon'ble Supreme Court.

6. Writ Petition No. 34 of 2014 having thus been rendered infructuous, this Writ Petition has been preferred seeking to assail the impugned letters referred to earlier.

7. The 1st batch of students admitted to the increased intake having been taken in the year 2010-11 and successive permissions obtained thereafter, this year i.e., in April 2015, the students having reached the Vth year are undergoing mandatory internship of one year. In order to enable these students to get employment or to pursue higher studies, it is essential that their degrees should be recognized. Thus the present Petition is concerned with the application for recognition of the Vth

year batch submitted by the Petitioner-College and the manner in which the application was processed by the Respondent No.2-MCI.

8. It is stated that initially inspection was conducted by the Respondent No.2-MCI by excluding facilities of the STNM Hospital based upon which certain deficiencies were communicated to the Petitioner-College by their letter dated 30.03.2015 Annexure P19.

9. The Petitioner-College objected to the exclusion of the STNM Hospital by their compliance report submitted vide letter dated 25.04.2015, Annexure P20, which prompted the Respondent No.2-MCI to conduct a compliance verification inspection on 7.5.2015 during which both the facilities of the Petitioner-College and those of the STNM Hospital were inspected. This was then followed by the impugned communication dated 14.5.2015 Annexure P25.

10. In their counter-affidavit, the Respondents, no doubt, have denied much of the assertions of the Petitioner-College, but during the course of the arguments

certain factual positions emerged that were undisputed. It was agreed between the parties that the communication dated 30.3.2015 Annexure P19 cannot be given effect to as it was vitiated by the exclusion of the STNM Hospital in their assessment. Thus it was agreed that the verification assessment report dated 07.05.2015 containing the portion of the assessment excluding STNM Hospital as conveyed in the communication dated 14.05.2015 under paragraph (C), should be omitted from consideration leaving only the one under paragraph (D) that pertain to the portion that included the STNM Hospital.

11. The inadequacies or deficiencies pointed out under paragraph (D), as per the Petitioner-College, were not only incorrect but also stood vitiated on account of the fact that even the 50 MBBS seats granted earlier was sought to be withdrawn by application of Clause 8(3)(1)(c) of the Establishment of Medical College Regulations (Amendment), 2010 (Part II) dated 16.04.2010 (in short “the Regulations”).

12. It is stated that the assessment report being factually incorrect and incomplete, the Dean of the Medical

College had duly endorsed his disagreement. This was followed by a communication dated 28.5.2015 issued by the Petitioner-College through its Dean pointing out the discrepancies in the assessment indicated in the letter dated 14.5.2015 Annexure P25.

13. Mr. S. S. Hamal, Learned Counsel, appearing on behalf of the Respondent No.2-MCI, would submit that letter of the Petitioner-College dated 28.05.2015 was in fact a compliance assessment letter. He would urge that the deficiencies indicated in paragraph (D) of the impugned letter including STNM Hospital, was based upon the prescribed parameters and could not be faulted. It was further submitted that it was Clause 8(3)(1)(c) of the Regulation Act that was applicable in respect of the 100 seats and not Clause 8(3)(1)(b) as asserted on behalf of the Petitioner-College.

14. Dealing with the question as regards the compliance assessment report dated 28.05.2015 (Annexure P20) and, the compliance verification report reflected in the impugned letter dated 14.5.2015 (Annexure P25), it was agreed by the parties that a fresh

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verification assessment in terms of the judgment of this Court in WP(C) No.37 of 2011 dated 27.04.2012 may be directed to be conducted under certain stipulated terms. As regards the contention on the applicability of Clause 8(3)(1)(c) of the Regulations, I am inclined to agree with the Learned Counsel for the Petitioner-College that it would be unfair and incorrect to apply this Clause when it ought to be Clause 8(3)(1)(b) that should have been applied, as the case of the Petitioner-College pertains to their application for permission under Section 10A for recognition of the Vth year batch under Section 11(2) of the MCI Act, 1956. Under Section 10A(1)(b)(ii) previous permission of the Central Government is required to increase its admission capacity.

15. An analysis of the Medical Council of India Act, 1956 (MCI) so far as it is relevant for this case is concerned which is found succinctly set out in the synopsis filed on behalf of the Petitioner-College, makes it clear that:-

(a) Under Section 10A(1)(b)(ii), no medical college shall increase its admission capacity in any course of study or training,

without the previous permission of the Central Government. 'Admission capacity' is defined in the Explanation as the "maximum number of students that may be admitted to such course or training". Section 10A(2) to 10A(8) set out the manner in which requests for permission are to be processed/considered by the Medical Council of India and the Central Government.

(b) Section 10B(3) lays down the consequence of not following the procedure prescribed in Section 10A, i.e., where admission capacity is increased without permission, the medical qualification awarded shall not be treated as recognized.

(c) Section 11(2), in contrast with Section 10A, does not deal with the permission to admit students, but with recognition of the degree that is eventually awarded to such students. Thus, when a student is admitted in the 1st batch, he or she would still have a period of five years during which the MBBS course would need to be

completed. The recognition of the degree is, therefore, not required to be sought for at the stage when the 1st batch of students is admitted. Similarly, II batch, III batch, IV batch, and V batch of students can be admitted based on permission granted (for each year) in terms of Section 10A. However, by the time the 1st batch of students is ready to appear in its MBBS Final (Part II) Examination, the college is required to apply for recognition in terms of Section 11(2). This is necessary because the 1st batch of students, upon graduating, would be in need of a recognized medical qualification.

(d) Therefore, a series of annual permissions under Section 10A ultimately culminate in an application for recognition under Section 11(2). This is made clear by Clause 8(3)(1) of the Establishment of Medical College Regulations, 1999 which states that “This process of renewal of permission will continue till such time the establishment of the medical college and expansion of the hospital facilities

are completed and a formal recognition of the medical college is granted". Similarly, the Minimum Requirement for 100 MBBS Admissions Annually Regulation, 1999, clearly set out the different stages, i.e., Letter of Permission, 1st Renewal (2nd batch), 2nd Renewal (3rd batch), 3rd Renewal (4th batch) 4th Renewal (5th batch), and finally recognition.

16. It is thus submitted on behalf of the Petitioner-College that after having already admitted 100 MBBS students in the year 2010-11, 2011-12, 2012-13, 2013-2014 and 2015, it is now at the final stage i.e., Section 11(2) of the Indian Medical Council Act, 1956 (in short "IMC").

17. I do not find that the parties are at difference on this account, the only issues being those alluded to earlier.

18. There is no dispute that the facilities of the STNM Hospital, as per the judgment of this Court dated 27.04.2012 in WP(C) No. 37 of 2011, forms part of the Petitioner-College, being a joint venture of the State of Sikkim and Sikkim-Manipal University of which the

Petitioner-College is a constituent. The finding of this Court in WP(C) No. 37 of 2011 still applies in full force as the Hon'ble Supreme Court has neither passed any order of stay of the judgment dated 27.04.2012 nor has it been set aside. It is also conceded and agreed between the parties as noted earlier that in view of the compliance letter dated 28.05.2015, direction may be issued upon Respondent No.2-MCI to conduct a fresh inspection.

19. In view of this, in my opinion it would not be necessary to go into the entire issues involved in the Writ Petition but, would suffice if the following directions are issued:-

- (i)** The assessment report dated 30.03.2015 and 14.05.2015 Annexures P19 and P25 are hereby set aside.
- (ii)** The matter is remitted back to the MCI/Board of Governors which will conduct a fresh inspection to be completed within a period of 3 (three) months.
- (iii)** The inspection team to be deputed for the fresh inspection shall not include those

associated with the earlier inspection but, should be constituted by a team of reputed senior Doctors and experts in the field. The team, after fresh assessment, shall furnish a copy of their report to the Petitioner-College for their response providing them reasonable opportunity to rectify the deficiencies, if any, as may be pointed out in the assessment report.

- (iv)** The Respondent No.2-MCI, before taking a final decision, shall in its turn, provide to the Petitioner-College an opportunity of personal hearing through its authorized representatives.
- (v)** The inspection team in the process of inspection, shall inspect the entire facilities of the STNM Hospital. During the inspection, the team shall ensure the presence of competent representatives of the STNM Hospital.
- (vi)** The inspection of the Petitioner-College shall be limited to the deficiencies with respect to

shortage of residents and bed occupancy ensuring an overall assessment on an average and, not on the basis of observations made on a single day.

- (vii)** The assessment shall be conducted in terms of the MCI guidelines for North Eastern States and Hill States, notified Tribal Areas, Union Territories, Andaman and Nicobar Island, Daman and Diu, Dadra and Nagar Haveli and Lakshadweep which stipulate that the required bed occupancy is 60%. It shall also apply the provision of the latest Notification prescribing minimum standard requirements for the Medical Colleges as amended upto March, 2014 and specifically upon the amended of Notification dated 01.07.2015 having come into force w.e.f. 01.07.2015.
- (viii)** The entire exercise shall be undertaken and completed by the Respondent No.2-MCI, within a period of three months as earlier stated and not later than that.

(ix) The order of stay of this Court dated 26.05.2015 in CM Appl No.128 of 2015, as modified by the Hon'ble Supreme Court by its order dated 10.06.2015, shall continue to be in force until such time directions or orders to the contrary are passed. Consequently the students admitted in terms of the order shall be permitted to continue with their studies subject to what shall transpire later.

20. With the above directions, this Writ Petition stands disposed of.

(S. P. Wangdi)
Judge
07 -10-2015

Approved for reporting : **Yes**

Internet : **Yes**

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