

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO.825 OF 2017

THE CHAIRMAN AL AZHAR MEDICAL COLLEGE
AND SUPER SPECIALITY HOSPITAL ...PETITIONER(S)

VERSUS

UNION OF INDIA & ORS. ...RESPONDENT(S)

WITH

WRIT PETITION (CIVIL) NO.838 OF 2017
AND WRIT PETITION (CIVIL) NO.839 OF 2017

O R D E R

These writ petitions have been filed under Article 32 of the Constitution of India by the petitioners who are private medical colleges who have been denied permission to admit the students in M.B.B.S Course for the academic year 2017-18 by orders dated 14.08.2017 and 18.08.2017 issued by the Central Government.

The main contention of the petitioners is that they have been denied permission in spite of the finding arrived at by the Central Government that there is no deficiency or that the deficiencies are negligible.

After the Central Government withdrew the permission to admit the students initially by orders dated 14.08.2017 and 18.08.2017, the petitioners-colleges approached the High Court of Kerala by filing writ petitions. The High Court passed an interim order dated 25.08.2017, allowing the petitioners-colleges to provisionally admit the students for the academic year 2017-18. The respondent-Medical Council of India

challenged the said interim order/s before this Court by filing special leave petitions. Thereafter, this Court set aside the order/s dated 25.08.2017 of the High Court and permitted the petitioners-colleges to approach this Court by filing writ petition under Article 32 of the Constitution of India. Hence, these writ petitions.

Mr. Kapil Sibal, Mr. Dushyant A. Dave, and Mr. Rajeev Dhawan, learned Senior Counsel appearing for the petitioners-colleges, submitted that the common error that vitiates the aforesaid orders of the Central Government in all the instant writ petitions, is that the Central Government has found that there are no deficiencies or negligible deficiencies in the petitioners-colleges and has yet declined the permission to the petitioners to admit students in M.B.B.S. Course for the academic sessions 2017-18.

It is therefore necessary to briefly consider the orders of the Central Government in the instant cases.

In the case of Al-Azhar Medical College, the Central Government has in para (17) of its order dated 14.08.2017, observed the findings of the Hearing Committee regarding the deficiencies in the said college as follows :

"The Committee notes that Al-Azhar Medical College was granted LoP in 2014-15 and has admitted subsequent batches, the last one in 2016-17 with the OC approval.

MCI conducted compliance verification on 04-05 January, 2017. The college has denied deficiency

of faculty and residents as pointed out in the inspection report. The Committee noted that 3 faculty were present during head count and the grounds for not accepting them as noted on p/37-38 of SAF would not hold in view of the documents submitted by the college. One case of maternity leave has been placed. 6 faculty were on leave which is proportionately small compared to the total faculty requirement of 114 and 102 accepted in the inspection.

The argument of the college on SRs rested on the fact that they are diploma holders post MBBS and have requisite 3 years experience. However, the same was not proved on documentary basis. Rejection of one SR was due to non submission of original document, which the college claims was submitted on the second day. This explanation is accepted.

The submission of the college regarding clinical material seems convincing. The OPD figure was noted as 711 at 2.00 P.M. and OPD continues well beyond 2.00 P.M. The MRD data furnished by the college corroborates this and the OPD figure was 924 at 4.30 p.m. There are certain Express Clinics after 4.30 PM and the final OPD figure was 960. A copy of OT register suggests 9 major operations on the day. Further the contention that some elective operations get rescheduled due to MCI inspection is not off the mark. ICU beds are available as per MSR. College has submitted photo and video for O.G. casualty.

The college informs that 5 nurses in one room was an abnormality due to temporary shifting on account of blockage of drain. Normally 3 nurses are accommodated in one room. Similarly, the issue of only two quarters available for non teaching staff against requirement of 36 cannot be conclusively commented upon. However, it is unlikely that a 3 year running college would not have such infrastructure."

However, thereafter the government has stated that no fresh batch for 2017-2018 may be allowed unless the Medical Council of India (MCI) could consider the compliance submitted by the colleges and make revised recommendations.

After having found that the explanation of the colleges regarding the alleged deficiencies is convincing, we are surprised that without giving any reasons the government has declined permission for fresh batch for the year 2017-2018. It is not possible to fathom why the order states that the order is made tentative by the statement that no fresh batch may be allowed unless MCI considered the compliance submitted by the colleges and make revised recommendations.

In the case of DM Education & Research Foundation, the central government has observed as follows :

"The Hearing Committee notes that the college was able to furnish detailed and satisfactory submission on each point raised in the assessment. The college made the initial point that the inspection was conducted against the parameters of 4th renewal /2017-18 instead of compliance verification for 3rd renewal/ 2016-17 as mandated by the OC. this is significant since the requirement under MSR increases sharply, for example, faculty from 117 to 132 and number of beds from 410 to 650 for medical college with 150 admissions. They have given comparative chart of deficiencies against both parameters. While the contention of college is valid, the rationale behind MCI recommendation was that the college was due for next renewal permission in the year 2017-18 which could have mandated another inspection and thus it was a combined inspection.

The college pointed out that the deficiency of faculty and residents as pointed out in MCI's assessment at 15 and 9 respectively should actually be 16 and 8 as per the calculation sheet in SAF. The same was verified and found correct.

It is seen that 10 faculty were present during inspection but not accepted on different grounds. As per MCI's Regulations no faculty can appear in an inspection for more than 1 medical college in an academic year. Since the academic year commences in August, the ground of appearing

in another college would not hold for two faculty. One faculty was sent for short training as per Government of Kerala order, Seven faculty were not considered on account of publications. The research publications of some faculty were perused and it was found that they were in requisite number and published in reputed journals.

The shortage of 8 Residents was well explained by the college. Some Residents were not accepted on grounds as above and some others appeared in NEET PG on 5th & 6th December, 2016 and relevant documents in support were provided :

The administrative experience of Dr. C. Ravindran for MS is accepted. The contention of the college for bed occupancy is also acceptable. The issues regarding 1 mobile x-ray, hospital LT, MRD and pre-clinical Departments are not major in nature and have been experienced by the college. The deficiency of nurses accommodation would require verification.

In view of the above, the Committee concludes that though a number of deficiencies have been pointed out in MCI's assessment, none appears too glaring and have been adequately explained by the college."

In spite of the above, the central government has ordered that no fresh batch of 2017-2018 may be allowed unless MCI could consider compliance submitted by the colleges.

In the case of Principal, Mount Zion Medical College, the central government has observed as follows :

"The Committee notes that Mount Zion Medical College was granted LOP in 2014-15 and has admitted subsequent batches, the last one in 2016-17 with the OC approval.

It is noted that the deficiency of bed occupancy does not arise since bed occupancy on day of assessment is noted as 76% and the average for last 3 months is shown as 77% as per p/17 of the SAF, signed by the assessors. This is more than the requirement of 75%.

The only deficiency remaining is of faculty at 9.28% i.e. 9 out of 97. It is seen from page 46 of the SAF that 3 faculty members were present but could not be accepted as they came late. They appear to be regular faculty. Four faculty were on leave. Two faculty were not available with the college as per their own admission. The college was asked to provide Form-16/bank statement for the 7 faculty not accepted. However, they have only provided a statement of salary for the month of January, 2017 which is not a very reliable proof.

The only deficiency is regarding faculty for which the college was expected to provide conclusive proof. The college could not provide Form-16/Bank Statement to the Committee.

The Committee notes that the conditional LOP for 2016-2017 was confirmed by the Ministry vide letter dated 31.05.2017. No fresh batch for 2017-18 may be allowed, unless MCI could consider the compliance submitted by the college and make revised recommendation. The college may apply for renewal permission to MCI for the session 2018-19.

17. Accepting the recommendations of Hearing Committee, the Ministry reiterates its earlier decision dated 31.5.2017 to confirm the conditional permission granted in 2016-17 and not to permit admission to students in NBBS Course for the year 2017-18 at the college. However, the College may apply for renewal permission to MCI for the session 2018-19 as per the provisions of IMC Act & Regulations framed thereunder."

In this case, the government has refused permission to admit the students in the MBBS course for the year 2017-2018 without making it contingent upon approval by the MCI.

We find a similar situation arose before this Court in the case of *Apollo Institute of Medical Sciences & Research & Ors. vs. Union of India & Anr.* - [W.P.(C)

No.496 of 2017] where this Court was constrained to observe as follows :

"Having considered the rival submissions, we have no hesitation in taking the view that the Hearing Committee, as well as the Competent Authority of the Central Government, have shown complete disregard to the fact situation and more so when they have found that the infrastructure and academic requirements were fully in place in so far as the petitioners' college is concerned. In fact, we find that the impugned order acknowledges the fact that the petitioners' college is a compliant college in respect of infrastructure and academic matters. In such a situation, we are at a loss to discern as to what weighed with the Hearing Committee and Competent Authority of the Central Government to prohibit the petitioners' college from admitting students in the MBBS course for the academic session 2017-18. No tangible reason whatsoever has been assigned by the said authorities in that regard, leave alone any reason."

We find that the above decision applies squarely to the present batch of cases. It is not necessary to consider the minor variations in the deficiencies pointed out by the learned Senior Counsel appearing for the MCI.

Mr. Vikas Singh, learned Senior Counsel appearing for the respondent-MCI, submits that the deficiencies are not insubstantial and in any case, the observation is made subject to the further inspection by the MCI.

It is not possible to accept this submission in view of the fact that the central government has itself found the deficiencies to be minimal.

Mr. Maninder Singh, learned Additional Solicitor General appearing for the Union of India and Mr. Vikas

Singh, learned Senior Counsel appearing for the respondent-MCI, relied upon a judgment of this Court in *Royal Medical Trust & Anr. vs. Union of India & Anr.* - [W.P.(C) No.747 of 2017], wherein this Court while disposing of the writ petition, observed that the Court will not entertain any petition from any institution/college/society/trust or any party for grant of LoP for the academic year 2017-18.

Accordingly, Mr. Maninder Singh, learned Additional Solicitor General appearing for the Union of India, sought time to obtain a clarification from the Bench which delivered the judgment in the case of *Royal Medical Trust & Anr.*, (supra).

We are informed that the Bench has not passed any orders on the application for clarification in view of the judgment in *Indian Centre for Advancement of Research and Education Haldia (ICARE) & Anr. vs. Union of India & Anr.* [W.P. (C) No.633 of 2017]. In that judgment, the Bench has referred to the judgment in *Royal Medical Trust & Anr.*, (supra) and specifically observed as follows :

"The aforesaid directions were issued keeping in view the deficiencies in the college therein and the interest of the students."

Thereby restricting the directions to the case in *Royal Medical Trust & Anr.* (supra).

Turning to the present cases, we are constrained to exercise our jurisdiction in view of the fact that these students were admitted in pursuance of an interim order

dated 25.08.2017 passed by the High Court of Kerala in the writ petition. This Court set aside the said interim order in the special leave petitions filed by the respondent-MCI. Thus removing the foundation for the admission of the students. However, this Court granted permission to the colleges to file writ petitions before this Court. Hence, these writ petitions.

Therefore, clearly it would be inequitable and unjust to decline to entertain these writ petitions since the question of validity of the admission of the students is still at large. Having regard to the fact that on merits we find the deficiencies in the colleges are marginal and the colleges are largely compliant, we consider it appropriate to make a definite direction regarding the admission of the students as has been done in the earlier decisions as cited above. It is not possible to leave the students' career in limbo. We order accordingly.

It must be noted that Mr. Jaideep Gupta, learned Senior Counsel appearing for the respondent-State of Kerala, categorically submits that admission of 400 odd students should not be allowed to be cancelled since it could not be possible for such students to obtain admission in any other colleges at this stage.

We must make it clear that the marginal deficiencies will have to be removed completely by the college

management and they must offer the same for inspection by the MCI within a reasonable time from now and in any case well before the next academic year.

This order which is passed in the peculiar facts of this case shall finally determine the rights of the parties as far as the academic year 2017-18 is concerned and shall not be treated as a precedent.

In these writ petitions, this Court was compelled to take note of the annual recurrence of this kind of litigation which creates high pressure and anxiety for the students, medical institutions and all concerned. All the learned counsel appearing for the parties agreed that it is high time some deterrent measures be laid down for the colleges and the state authorities from doing acts which generate such last minute litigation.

We therefore consider it appropriate to post the matter for further hearing and orders on such measures on a later date.

Stand over for any Tuesday in the month of December, 2017.

.....J
[S.A. BOBDE]

.....J
[L. NAGESWARA RAO]

New Delhi;
September 22, 2017.

ITEM NO.54

COURT NO.7

SECTION X

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition(s) (Civil) No(s).825/2017

THE CHAIRMAN AL AZHAR MEDICAL COLLEGE AND
SUPER SPECIALITY HOSPITAL

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(FOR STAY APPLICATION ON IA 86820/2017 AND I.A. NO.94490/2017 -
IMPLEADING PARTY)

WITH W.P.(C) No.838/2017 (X)

(FOR ADMISSION and IA No.87623/2017-STAY APPLICATION AND I.A.
NO.94493/2017 - IMPLEADING PARTY)

W.P.(C) No.839/2017 (X) (I.A. NO.94496/2017 - IMPLEADING PARTY)

Date : 22-09-2017 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.A. BOBDE

HON'BLE MR. JUSTICE L. NAGESWARA RAO

Counsel for the parties

Mr. Rajeev Dhavan, Sr. Adv.
Mr. Kapil Sibal, Sr. Adv.
Mr. V. Giri, Sr. Adv.
Mr. Dushyant A. Dave, Sr. Adv.
Mr. Haris Beeran, Adv.
Mr. Mushtaq Salim, Adv.
Mr. Usman Khan, Adv.
Mr. Dev Prakash, Adv.
Mr. Sayid Marzook Bafaki, AOR

Mr. Vikas Singh, Sr. Adv.
Mr. Gaurav Sharma, Adv.
Ms. Amandeep Kaur, Adv.
Mr. Dhawal Mohan, Adv.
Mr. Prateek Bhatia, Adv.

Mr. Maninder Singh, ASG
Mr. Nalin Kohli, Adv.
Mr. Sarad Kumar Singhania, Adv.
Mr. Parbesh Bajaj, Adv.
Ms. Vishakha Ahuja, Adv.

Mr. Shadman Ali, Adv.
Mr. G.S. Makker, Adv.

Mr. Jaideep Gupta, Sr. Adv.
Mr. G. Prakash, Adv.
Mr. Jishnu ML., Adv.
Mrs. Priyanka Prakash, Adv.
Mrs. Beena Prakash, Adv.
Mr. Vijay Shankar V.L., Adv.

Mr. Venkita Subramonian T.R., Adv.
Mr. P. Sreekumar, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Stand over for any Tuesday in the month of December, 2017, in
terms of the signed order.

(SANJAY KUMAR-II)
COURT MASTER (SH)

(INDU KUMARI POKHRIYAL)
BRANCH OFFICER

(Signed Order is placed on the file)