

(2015) 04 TP CK 0019
In the Tripura High Court
Case No : WP(C)(PIL) 03 of 2014

Ashok Sinha

APPELLANT

Vs

The State of Tripura and Others

RESPONDENT

Date of Decision : 30-04-2015

Acts Referred:

Citation : (2015) 04 TP CK 0019

Hon'ble Judges : Deepak Gupta, C.J.;Utpalendu Bikas Saha, J

Bench : Division Bench

Advocate : C.S. Sinha, for the Appellant; B.R. Bhattacharji, T.D. Majumder, G.A., S. Chakraborty, Addl. G.A. and N. Guha, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Deepak Gupta, C.J.

1. In this writ petition filed in the public interest, the main question which arises for consideration is-

"Whether the Tripura Medical College is under the administrative control of the State of Tripura?"

2. The Medical Council of India has framed its regulations known as the "Medical Council of India Regulations on Graduate Medical Education, 1997" and regulation 5(2) which is relevant for our purpose reads as follows:-

"5(2). In states having more than one university/board/examining body conducting the qualifying examination (or where there is more than one medical college under the administrative control of one authority) a competitive entrance examination should be held so as to achieve a uniform evaluation as there may be variation of standards at qualifying examinations conducted by different agencies."

3. The petitioner is himself a doctor and has filed the present petition in which it is alleged that the State of Tripura virtually owns and controls the Tripura Medical

College and Dr. B.R. Ambedkar Memorial Teaching Hospital, Hapania (hereinafter referred to as the "Tripura Medical College"). The grievance of the petitioner is that by treating this college as a separate entity, the State is charging exorbitant fees from the students and also conducting a separate examination for admission into the college. It is alleged that the State of Tripura is the owner and in administrative control of the college and hence, it is not entitled to charge higher fees in the Tripura Medical College as compared to the fees charged in the Agartala Medical College.

4. The stand of the Government is that the Tripura Medical College is run by a society and the society is the owner of the college and the society has full administrative control in running the college. According to the State, it is neither the owner nor in administrative control over the college.

5. Before dealing with the contentions, it would be pertinent to give the background of the setting up of the Tripura Medical College. The Government of Tripura entered into an agreement on 07-10-2004 with Global Educational Net (GENET) which was a society registered in Kerala and the Government as well as the society agreed to run and manage the Tripura Medical College on public-private partnership mode. The said college was granted permission to admit 100 MBBS students in the first batch during the year 2006-07. Thereafter, another batch of 100 students was admitted after due permission in the year 2007-08. However, the permission to admit students in the third batch was denied to the said college on the ground of deficiencies in infrastructure, faculty and clinical material. Thereafter, GENET expressed its inability to run the college.

6. The stand of the State is that the State of Tripura keeping in view the future of 200 MBBS students who were prosecuting studies in the Tripura Medical College rescinded all agreements entered into with GENET and cancelled the Lease Deeds in favour of the GENET on 23-05-2009. The State Government with a view to protect the interest of the students decided to constitute a society known as "Society for Tripura Medical College and Dr. B.R.A. Memorial Teaching Hospital". There is no dispute till this stage.

7. Whereas the petitioner contends that the society is nothing else but another face of the Government, according to the State the society is totally independent and free from any Government interference.

8. Various documents have been filed by the parties but we may make reference to the Memorandum of Association of the society. Clause II(iv) of the Memorandum of Association reads as follows:-

"II(iv). To ensure that Tripura Medical College and Dr. B.R.A.M. Teaching Hospital at Hapania, Agartala is developed into a self sustaining revenue generating project and obtaining permission as required from MCI."

9. The Chairman of the society was the then Health Secretary, the Member Secretary of the society was also an IAS Officer, 3(three) other members of the

society were Government Servants and 4(four) were pensioners and out of these pensioners, two were doctors. The Executive Committee of the society comprises of the Chief Executive Officer who happens to be an IAS Officer and Dr. J.K. Nag also a Government Servant. It is the Executive Committee which is empowered to manage the day to day affairs of the society. The Executive Committee as of date consists of only Government Officials and nobody else. At the time when the society was set up, the entire funds were provided by the Government though according to the Government these funds were provided as interest free loan (soft loan). The society cannot be dissolved without the permission of the State Government.

10. The petitioner relies upon various documents in support of its contention that the society is nothing else but a Government society and the administrative control is that of the State Government. In this behalf, the first document relied upon by the petitioner is a letter dated 24-06-2009 sent by Sri Y.P. Singh, Chairman of the society and also the Secretary, Health to the Government of Tripura at the relevant time. In this letter, Sri Singh has detailed the factual situation leading to the setting up of the society and has in the letter stated that the management to run the Tripura Medical College entirely vests with the society and the services of Sri Rakesh R. Yadav, IAS have been placed at the disposal of the society as Chief Executive Officer. It has been mentioned that the State has released Rs. 9.00 crores to the society. Para-5 of the letter reads as follows:-

"5. In view of above fact, you are requested to please ratify the change in management and ownership of Tripura Medical College and Dr. B.R.A. Memorial Teaching Hospital in favour of "Society for Tripura Medical College and Dr. B.R.A. Memorial Teaching Hospital" constituted by the State Government and also kindly to treat it as a Government run Medical institution."

(emphasis supplied)

11. The petitioner then places reliance on the notice issued by the Chief Executive Officer of the society on 18-05-2010 wherein it is mentioned as follows:-

"The Tripura Medical College and Dr. BRAM Teaching Hospital, Hapania is now owned by the State Govt. and managed by a registered Society under the name and style of "Society for Tripura Medical College and Dr. BRAM Teaching Hospital, Hapania" w.e.f. 23rd May, 2009."

(emphasis supplied)

12. The petitioner also relies upon the affidavit filed by Dr. Satya Ranjan Debbarma, Director of Health Services which apparently was filed while praying for approval of change of management. In column No. 7 where the Category of the Applicant is to be mentioned, the same is entered as "Government of Tripura". In the Managerial Capability, it is mentioned that a society has been

constituted by the Government of Tripura and this society is headed by the Principal Secretary, Health, another member is the Principal Secretary, Finance, the Secretary, Law, the Chief Executive Officer of the college who is also an IAS Officer, the Director, Health Services and Director, Medical Education, a retired IAS Officer, a retired IPS Officer and some other doctors. All these persons are members by name and not by designation.

13. In the Financial Capability, it is mentioned "Financed by Govt. of Tripura". It is also mentioned that the funds for the college shall be provided from the annual budget of the Department of Health and Family Welfare, Government of Tripura. The petitioner has also made reference to the following portion of the reply filed by the State wherein it is mentioned as follows:-

"In order to get the said privilege of permission relaxation from the Medical Council of India, the Principal Secretary, Health and Family Welfare Department, the Government of Tripura while informing the Secretary, Ministry of Health and Family Welfare, Government of India with a copy to the Secretary, Medical Council of India regarding the change in management and ownership of Tripura Medical College in favour of "Society for Tripura Medical College and Dr. BRA Memorial Teaching Hospital" had requested to treat this Medical College as a Government run Medical College since the State Government is providing interest free loan for infrastructure development."

14. The petitioner has also made reference to the following letter dated 09-09-2011 sent by the Deputy Secretary, Medical Council of India to the BSF Authorities, relevant portion of which reads as follows:-

"With reference to your letter dated 09.09.2011, this is to inform you that Tripura Medical College and Dr. BRAM Memorial Teaching Hospital, is a Govt. run Medical Institution since June 2009, as per State Govt. letter dated 24.06.2009 (copy enclosed)."

(emphasis supplied)

15. Even in the introduction of the college in its prospectus, it is mentioned as follows:-

"The Government of Tripura had taken over the Tripura Medical College and Dr. B.R. Ambedkar Memorial Teaching Hospital from Global Education Net (GENET) w.e.f. 23-05-2009 and vested the management with the Society for Tripura Medical College and Dr. BRAM Teaching Hospital. Since then, it has been functioning through an Executive Committee headed by the Chief Executive Officer under the guidance of a Governing Body of the Society headed by the Principal Secretary, Health and Family Welfare, Govt. of Tripura as Chairman. The Government of Tripura is extending all kinds of help including the financial assistance to the College and Hospital."

16. The petitioner has also referred to the various letters written by the Principal Secretary, Health on the letterhead of the "SOCIETY FOR TRIPURA MEDICAL

COLLEGE and DR. BR AMBEDKAR MEMORIAL TEACHING HOSPITAL". Below this description, it is mentioned "OWNED BY GOVT. OF TRIPURA". This is a letter authorizing officials of the Medical Council of India to make inquiries into the matter. In another letter dated 02-06-2010, the Director, Health Services has written as follows:-

"5. As such, the Tripura Medical College and Dr. B.R.A. Memorial Teaching Hospital, Agartala is being run by the said Society on behalf of the State Government. Necessary funds are provided from the Annual Budget of the Deptt. of Health and Family Welfare, Govt. of Tripura."

(emphasis supplied)

In this letter also, after the name of the society in bold it is mentioned "Govt. of Tripura".

17. There are many other documents including birth certificates issued by the college which would indicate that the college and the society have been treating itself as a Department of the Government of Tripura. Reference may also be made to the memorandum dated 21-07-2014 sent by the Director of Medical Education wherein it is mentioned that staff of Medical Education Institutions under the control of Directorate of Medical Education, Government of Tripura should submit their leave applications well before the date of proceeding on leave except where the leave is on medical ground. A copy of this letter has been sent to the Principal and Chief Executive Officer of the Tripura Medical College also. Another memorandum of 5th August, 2011 releases funds under the State Plan to the Tripura Medical College and the amount released is Rs. 11.25 crores. The petitioner has also made reference to various other documents wherein communications have been sent either by the Government to the Tripura Medical College or by the Tripura Medical College to the Government which clearly indicate that the State is exercising administrative control over the college. Reference may also be made to certain orders whereby the Director of Health Services, Government of Tripura has transferred or deputed persons to the Tripura Medical College without there being any request from the college. This also indicates that the college is virtually functioning under the control of the Director of Health Services. The number of orders passed in this behalf are many.

18. On the other hand, the Stand of the State is that the State only provided funds to the college with a view to help it tide over its difficulties when GENET backed out and refused to run the college any longer. It is pointed out that in the balance sheets of the college, the amount advanced by the Government is shown as a loan. It has been urged that even now in the records of the MCI, the college is shown to be a trust college. We are, however, not at all impressed with this portion of the argument because it appears that the entries which were made in the year 2006 when the college was constituted by the trust continue in the records of the Medical Council but the letters of the Medical Council issued later clearly indicate that the college was being treated as a Government college.

19. At the same time, we must make reference to certain documents which indicate that the Government of India has not treated the Tripura Medical College as a Government college. There are letters on record which show that the Government of India has refused to nominate students to the Tripura Medical College under 15% All India quota on the ground that such nominations are only made to Government Medical Colleges. The State has also brought on record a corrigendum dated 23-03-2015 wherein the earlier memorandum dated 21-07-2014 with regard to leave applications has been withdrawn insofar as the Tripura Medical College is concerned. It would, however, be pertinent to mention that this order was passed after arguments had been heard in part on 19-03-2015.

20. Some other material which would show that the college is not treated as a Government college is the fact that whereas Government colleges are exempt from payment of any fees to the Medical Council when new courses under various departments are started, whenever the Tripura Medical College has applied for creation of new courses and has been given permission to start the same, it has had to pay very heavy fees to the Medical Council. It would also be pertinent to mention that after the writ petition was filed, the society passed a resolution that the loan of the Government should be repaid.

21. In the National emblem of our country, the words "Satyameva Jayate" are prominently displayed. Truth shall prevail. In a civilized society like ours, it is expected that every citizen tells the truth. When parties approach the Court, they are expected to be even more careful and ensure that they tell the truth and do not withhold any facts from the Court and do not try to mislead the Court. Unfortunately, as far as the present case is concerned, as is apparent from the various documents referred to above, the officials of the State are taking totally inconsistent stands. Some Government officials are telling lies which is not expected of Senior Government officials.

22. We may believe the State when it is urged on behalf of the State that when GENET suddenly withdrew, the State had no other option but to take over the management of the college to ensure that the future of more than 200 students as well as the future of the college itself is not jeopardized. However, while obtaining permissions from the Medical Council of India and the Government of India, very Senior Officials of the State Government kept writing that the college is a Government Institution and should be treated as a Government Medical College. The impression given both to the Medical Council of India and to the Government of India was that the college is being run by the State. The State, however, does not have the financial capacity to run the college and, therefore, tried to create a society to run the college and this college was to be run by the society in such a manner that the college becomes self-sustaining and places no financial burden on the State and we see nothing wrong with this action of the State.

23. Having held so, we cannot shut our eyes to the fact that at each and every

stage, the Director of Health Services and the Secretary, Health have treated the college as a Department of the State and even in the letterhead of the society, the words "Government of Tripura" are prominently displayed. The State has been interfering in the day to day management of the society and has virtually been running the college through the society. Thus, we are of the considered view that as of now the State is exercising administrative control over the society even though the society may be legally the owner of the college and also entitled to run the college.

24. We are dealing with a public interest litigation and the question that arises is whether we should grant relief to the petitioner even after we have held that the State exercises administrative control over the college in terms of the Medical Council Regulations 5(2) quoted hereinabove. We in a public interest litigation cannot shut our eyes to the fact that if we pass such an order, the result of which is that the State is forced to run and finance the college, we may face a situation where the State prefers to shut down the college which would cause even greater harm to society. Tripura is facing an acute shortage of doctors and the larger public interest requires that no medical college should be closed.

25. At the same time, we must clearly indicate that the State cannot have its cake and eat it too. It cannot claim that it is neither the owner of the college nor has any control over the college but at the same time the State controls the society, the State controls who are the members of the society and the State virtually runs the college through the society. Since the State has pumped a lot of fund into the college, we may agree with the suggestion that the State may have some representatives on the society. There can be no quarrel with such a situation but the State cannot constitute the society in such a manner that the society is just an adjunct of the Government and the college is treated like a fiefdom of the State.

26. Either the State must provide the finances and take over the responsibility to run the college totally in which case it can only conduct one entrance examination and charge similar fees as is being charged in the Agartala Medical College or it can handover effective control of the management to the society.

27. The students who have already got admission have not approached this Court. This petition has been filed not by students or their parents but in the public interest. As such, we are of the considered view that no relief for the past can be granted. However, as far as the future is concerned, we give two options to the State. If it wants to retain control over the college, then it must have only one entrance examination and charge identical fees in both the colleges. In case, the State does not want to do that, then it must handover effective administrative control of the college to the society.

28. This the State must do within three months from today and must clearly place before this Court by way of an affidavit the steps it has taken to vest effective control with a society which is constituted in such a manner that the

society is not just another wing of the Government.

29. We can understand that when the society was initially constituted, it was necessary to have some Government officials on the society. In fact, all the members of the society were either sitting Government officials or retired Government officials ensuring that the control remains of the Government. Another defect which we have found in the original memorandum of Association is that the officials nominated have been nominated by name and not by designation. One of the original members of the society who was the then Law Secretary is now a Hon"ble Judge of this Court. He could not have attended any meeting for more than three years and probably has not even been invited to any meeting of the Board of Governors. The President of the society was Sri Y.P. Singh who was the then Secretary, Health. He left Tripura in the year 2011-12 and worked in Delhi in the Central Government and has recently returned and taken over as Chief Secretary on 1st April, 2015. He could not have also attended any meeting of the society. That begs the question as to who was running the society.

30. We have perused the minutes of the meetings of the Governing Body of the society for the Tripura Medical College and even in some of these minutes, we find that the Tripura Medical College and Dr. B.R. Ambedkar Memorial Teaching Hospital is shown as a Government of Tripura undertaking. We are also shocked to find that some persons who are not originally members of the society have attended the meetings of the society. As already mentioned earlier, originally the society comprised as follows:-

A perusal of this Governing Body of the society shows that none of the persons who are shown to be chairman or members were appointed by designation and they were appointed only by name. Their designation is not even reflected in the Memorandum of Association of the society. Despite this, it appears that the Secretary, Health to the Government of Tripura, the Director, Medical Education, the Secretary, Law etc. who held the positions attended the meetings of the Governing Body without there being any authorization. The question that arises is who authorized them to attend such meetings. It is obvious that the Government directed them to attend the meetings. As against the first membership which has never been changed, the latest attendance on 19th March, 2015 is as follows:-

When the Secretary, Finance and Secretary, Law by designation are not members, how can they attend and participate in the meeting of the Governing Body? Other than Dr. Mrinal Kanti Bhowmik, Dr. Binoy Bhushan Bhowmik, Sri Dilipjit Debbarma, none of the persons who attended the meeting on 19th March, 2015 was actually authorized to attend the meeting as member of the Governing Body as per the Memorandum of Association of the Society. This also clearly indicates that the State is virtually running the society and some members have been incorporated in the society. It is not clear who has included them in the Governing Body but such inclusion is not in terms of the Memorandum of

Association. We could have set aside the entire proceedings of the Governing Body but refrained from doing so at this stage.

31. Another defect which we can point out in the memorandum and rules of the society is that there are no ways and means of replacing the members of the society or the managing committee even if they want to resign, retire or in the case of the death of any member. How the Government wants to cede control is for the Government to decide but it must reconstitute the society in such a manner that it fails to be a Government body though some Government representatives may be there to watch the interest of the Government, the day to day management of the society should vest totally in the society or its Executive Committee which should not be run again by Government officials. The Government should also prepare a plan to have a separate cadre for this medical college. If Government doctors are to be deputed all the time to the Tripura Medical College, then it is just another department of the Government. An endeavour must be made that within a period of 3(three) years from today, the entire staff of the college should be employees of the society and not of the Government. If this is not done, then the Government will continue to virtually run the college.

32. We are also constrained to observe as pointed out above that the State Government has been taking totally inconsistent stands before this Court and before the Medical Council of India and the Government of India. Whatever decision is taken now is for the Government to decide but that decision should be conveyed not only to this Court, but also to the Union of India as well as the Medical Council of India. The State cannot be permitted to take different stands before different authorities just to suit its purpose. That is highly immoral.

33. In view of the above discussion, we despite holding that as of now the State is in administrative control of the college refuse to grant relief to the petitioner in the larger interest of society subject to the condition that the State must within 3(three) months from today come out with a completely new reconstituted committee with fresh regulations and by laws which will ensure that the actual administrative control is of the said society and not of the Government. In case, the State fails to do so within a period of 3(three) months from today, then the State shall be treated to be in administrative control of the Tripura Medical College with all consequences.

34. The writ petition is disposed of in the aforesaid terms. The case may now be listed on 6th August, 2015 by which date the Chief Secretary to the Government of Tripura must file an affidavit stating what is the stand of the State vis-a-vis the directions issued by this Court.