

(2015) 09 DEL CK 0204

In the Delhi High Court

Case No : Writ Petition (C) 9348 of 2015

Father Muller Charitable Institution

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 29-09-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Indian Medical Council Act, 1956 — Section 10A, 10A(4)

Citation : (2015) 09 DEL CK 0204

Hon'ble Judges : Rajiv Shakdher, J

Bench : Single Bench

Advocate : Krishnan Venugopal, Senior Advocate, P.V. Dinesh, Udai V.S. Rathore, Sindhu T.P. and Rajesh P., for the Appellant; Rajesh Gogna, CGSC and Bhavna Bajaj, Advocates for the Respondent

Judgement

Rajiv Shakdher, J.

CM No. 21669/2015 Exemption

1. Allowed subject to just exceptions.

WP(C) 9348/2015 & CM No. 21668/2015 (Interim directions)

2. This is a second round of litigation by the petitioner. In the first round the petitioner had filed writ petition bearing no. 8317/2015. This writ petition was disposed of by me vide order dated 18.09.2015. The operative directions are contained in paragraphs 8 to 11.2 of the said order. For the sake of convenience, the same are extracted hereinbelow:

"..8. After hearing the learned counsel for the parties and given the stand taken before me by the learned counsel for the petitioner, which is that, an entirely new deficiency was referred to in the 2nd inspection report dated 14.05.2015, which did not find mention in the first inspection report, I am inclined to direct respondent no.2/MCI to examine, in the very least, the material placed on record

along with the aforementioned two representations filed by the petitioner.

9. The learned counsel for the petitioner has indicated to me that he will be satisfied, even if, the compliance verification, is limited to the examination of only the documents placed on record with aforementioned representations. According to the learned counsel, no physical inspection is required, though the petitioner is not averse to such an exercise being carried out by respondent no.2/ MCI, if deemed fit.

10. This direction is issued especially in the circumstance, as indicated above, as the deficiency qua faculty was not adverted to, admittedly, in the 1st inspection report. Respondent no.2/MCI thus, requires to examine the response of the petitioner made in this behalf via the two representations filed with it.

11. Having regard to the fact that the writ petition will become infructuous after 30.09.2015, respondent no.2/ MCI will do the needful within the next 5 days and communicate its findings and / or recommendations to the Central Government on or before 23.09.2015.

11.1 The Central Government will thereafter, take a final decision in the matter, in accordance with law. In case, respondent no.2/MCI deems it necessary to call upon the petitioner's representative to assist its officers, in the evaluation of the record, due intimation will be sent to the petitioner, in that behalf. The petitioner's representative will then carry, if necessary, original records to facilitate the completion of the exercise envisaged hereinabove.

11.2 It is made clear, that it is left entirely to the discretion of respondent no.2/ MCI as to whether or not it would like to carry out in addition to the documentary evaluation, a physical verification of the claims made by the petitioner in its representations.."

3. The petitioner is aggrieved by the fact that despite the directions of this court, no formal intimation has been sent to the petitioner by respondent no. 2 i.e., the Medical Council of India (in short the MCI) with regard to its representations dated 08.04.2015 and 27.04.2015, whereby it had sought consideration of its case for permission to admit the fourth batch of MBBS students against increased intake. To be noted, the intake qua the writ petitioner has been increased from 100 to 150.

4. In the past, the petitioner had obtained the necessary renewal permission from MCI for academic years 2012-2013, 2013-2014 and 2014-2015. This fact is evidenced upon perusal of letters of permission dated 21.06.2012, 20.06.2013 and 04.07.2014, appended as Annexures P/8, P/9 and P/11, respectively. However, in respect of fourth batch, which pertains to academic year 2015-2016, MCI has objections. These objections were articulated before me in the previous round by MCI. Therefore, for the sake of convenience, following facts are required to be noticed.

4.1 On 27-28.11.2014 a team of assessors deputed by MCI had carried out

physical inspection of the facilities available with the writ petitioner. In the inspection as per the stand of MCI, following deficiencies were found:

- "1. Shortage of Residents - 8.6%
2. One lecture theatre of 200 capacity is of level type.
3. MRD is manual.
4. RICU is not available
5. There is no seminar room in Physiology Department.
6. There is no family programme in RHTC..."

4.2 Consequently, the executive committee of MCI considered the deficiencies in their meeting held on 16.12.2014. At this meeting a decision was taken to convey to the Central Government its recommendation, to the effect, that it should not grant renewal permission to the writ petitioner for the academic session 2015-2016.

4.3 This decision was conveyed by the MCI to the Central Government vide communication dated 22.12.2014.

4.4 The Central Government, in turn, vide letter dated 13.01.2015, brought the recommendations of the MCI to the notice of the writ petitioner and, thereupon, in accordance with the provisions of Section 10A(4) of the Indian Medical Council Act, 1956 (in short the IMC Act), granted an opportunity of hearing to the writ petitioner. The hearing for this purpose was fixed on 20.01.2015.

4.5 Evidently, the writ petitioner filed a compliance report dated 17.01.2015 with the Central Government, whereupon a second inspection was carried out by MCI. A copy of the compliance report, apparently, was also sent to MCI, which bore the same date i.e. 17.01.2015. This inspection was carried out on 17.03.2015. This time around, the MCI came up, essentially, with the deficiencies qua faculty and shortage of residents. In so far as deficiency qua faculty was concerned, according to MCI, in percentage terms it amounted to 13.87%. As regards shortage of residents, as per MCI, in percentage terms, it was equivalent to 20.56%.

4.6 It may be pertinent to note, that the deficiency qua faculty did not find mention in the earlier inspection which was carried out on 27/28.11.2014. Furthermore, the shortage qua residents was also shown to have increased from that which appeared in MCI's earlier report.

4.7 The writ petitioner claims that after the second inspection held on 17.03.2015, it had no information as to what decision MCI had taken, till the decision of its executive committee was uploaded on its website on 13.05.2015.

4.8 The MCI, it appears, vide communication dated 14.05.2015, informed the Central Government of the decision taken by its executive committee. Apart from

the deficiencies, already noted above by me, there was also a reference to "other deficiencies"; apparently, referred to in MCI's assessment report.

4.9 It is in this background that the petitioner had approached this court by way of a writ petition under Article 226 of the Constitution whereupon order dated 18.09.2015 was passed.

5. Mr. Venugopal, learned senior counsel, has made submissions on behalf of the petitioner. His stand before me is that, officially, no communication has been sent to the writ petitioner as to the decision taken by MCI which, as per the order of this court dated 18.09.2015, had to be taken on or before 23.09.2015. Furthermore, learned senior counsel's submission was that the position qua the Central Government, is no different. Learned counsel, however, informed the court that, informally, the writ petitioner had received intimation that, MCI has recommended to the Central Government not to grant renewal permission to it for the academic year 2015-2016.

5.1 Mr. Venugopal, was at pains to submit that despite a detailed explanation with regard to the deficiencies raised, qua the alleged absence of faculty and/or residents, the MCI has proceeded to reject its explanation submitted in that behalf.

6. Mr. Vikas Singh, learned senior counsel, who appeared along with Mr. Singhdev, Advocate, informed the court that a communication dated 23.09.2015 has been sent by MCI to the Central Government intimating its decision not to recommend writ petitioner's case for renewal permission qua academic year 2015-2016. Mr. Singh placed a photocopy of the said decision on record. It is submitted on behalf of MCI that while the decision of the Central Government was awaited, no interim direction could be issued by this court. Learned counsel said, in several cases courts had declined prayers made for permitting admission of students on a provisional basis.

7. Mr. Gogna, who appears for the Central Government, said that he had no instructions as to what was the final decision of the Central Government qua the communication dated 23.09.2015 sent by the MCI. The learned counsel was also not able to inform me, at this juncture, as to when exactly the communication dated 23.09.2015 was received by the Central Government.

8. I must, at this stage, only indicate that Mr. Venugopal has placed before me a compilation of orders passed not only by the Supreme Court, but also by the High Courts, based on which, he submitted that in such like situations, courts have passed interim directions for provisional admission. In this behalf, in particular, reliance was placed by Mr. Venugopal on the orders of the Supreme Court dated 07.08.2015 and 18.08.2015, passed in WP(C) No. 414/2015, titled: Pondicherry Institute of Medical Sciences & Anr. vs. Union of India & Anr.; order dated 22.09.2015, passed in SLP No. 26218/2015, titled: MCI vs. P. Krishna Das & Ors.; order of the Division Bench of the Kerala High Court dated 15.09.2015, passed in WA No. 1880/2015, titled: Principal, Mount Zion Medical College,

Chayalode vs. UOI & Anr.; order dated 10.06.2015, passed in SLP No. 16551-16552/2015, in the case of MCI vs Sikkim Manipal University & Ors.; order dated 17.08.2015, passed in SLP No. 22599/2015, titled: MCI vs. Sau Mathurabat Bhausaheb Thorat Sevabhai Trust & Ors. [to be noted, by this order the Supreme Court disposed of the SLP directing the Division Bench of the Bombay High Court to dispose of the writ petition uninfluenced by the impugned judgement of the Bombay High Court which is dated 07.07.2015 in WP(C) 5481/2015]. Accordingly, reliance was also placed on the order dated 07.07.2015 passed by the Division Bench of the Bombay High Court in WP(C) No. 5481/2015.

9. What has emerged from the record, presently, is that the writ petitioner which established the medical college in 1992 (and which, I am told, is otherwise a 132 years old entity) has been since 1999, subjected to 19 inspections by MCI and in none of these inspections permission has been declined except in the instant case. The writ petitioner has set out in detail its explanation with regard to the alleged deficiency qua faculty and shortage of residents. These explanations have been adverted to in paragraphs 7.21 to 7.25 of the writ petition. Broadly, the explanations given are as follows:

(i) On the day of the second inspection i.e. 17.03.2015, three faculty members were not available as they had been appointed as external examiners by the State Medical University. Since they were obliged to attend to their examination duties, they could not be called by the writ petitioner before 11.00 a.m. as desired by the assessors. The assessors of MCI refused to include the said persons in the head count. The proof of their deployment as examiners, in the form of certificates issued by the concerned university, has been submitted. Furthermore, the bank pay roll and the TDS certificates issued to the said persons have also been submitted.

(ii) In annexure P-17, the reasons for absence are set out. A quick perusal of the tabular chart submitted by the writ petitioner would show that most of them were not available on account of leave of various kinds taken by the faculty. The nature of leaves was, broadly, as follows: Commuted leave, privilege leave, maternity leave and sick leave. In all these cases, where the person concerned was on leave, bank pay roll and TDS Certificate was filed to show their engagement with the writ petitioner. As a matter of fact, in some cases, the concerned person was claimed to be in the operation theatre. In these cases also, not only the bank pay roll for the last three months and the copies of TDS certificate were appended, but also attendance sheet were apparently filed.

10. Despite these explanations, in the communication dated 29.03.2015, the MCI has come to an adverse conclusion, based on one singular fact, which is that the nature of leave is not the kind of leave which is accepted by it while making an assessment as to whether or not the deficiency pointed out was cured. This exercise, however, was carried out admittedly by MCI based on the documents filed by the writ petitioner. No physical verification was carried out; a methodology which MCI chose to employ in this case. The discretion with regard

to this aspect was, quite clearly, within the domain of MCI. For the sake of convenience, the extract of the decision contained in communication dated 23.09.2015 is set out hereinafter.

"?????.The Executive Committee of the Council perused the representations dt. 08/04/2015 & 27/04/2015 as had been submitted by the medical college, in accordance with the order of Hon"ble High Court of Delhi in Writ Petition (Civil) No. 8317 of year 2015 and observed as under:

The Executive Committee perused the representations dated 08/04/2015 & 27/04/2015 of the College authorities. The college vide its letter dated 8/4/15 has stated that in the assessment held on 17/03/2015, all the deficiencies had been complied with. However, the deficiencies of the staff was not complied with as many staff were on leave for valid reason like examination duty, conference leave, posting in the out reach centers/ activities. Further, it had stated that those who were operating in theater could not sign. The Committee also noted that the college authorities in this regard has given a list of 26 faculty member vide (Annexure-1) and of 16 Residents (Annexure -2) and a list of 10 Jr. Residents who have been promoted as Sr. Residents and 3 who have been newly appointed (Annexure -3). The Executive Committee recalled that vide decision dated 21.08.2014, the Executive Committee had only approved the following types of leave as acceptable during the inspection of medical colleges:-

"(1) The faculty who is on leave due to following reasons would be accepted:

(a) For attending International/ National conferences organized by the respective International/ National Associations or Societies;

(b) For attending any work assigned by Medical Council of India, either at headquarters or for assessment of a medical college;

(c) For conducting examination of the concerned subject in a medical college in a Central/ State University;

(d) For attending courts.

Provided that appropriate documents certifying the same which are countersigned by the dean are furnished.

(2) The faculty who is on sanctioned maternity leave would be accepted provided the appropriate leave sanction order issued by the sanctioning authority and countersigned by the Dean is furnished with all necessary certificates."

The Executive Committee noted that in the details provided the faculty is either stated to be on commuted leave, privilege leave, emergency call, sick leave, periphery posting. Only 3 of them are stated to be on university exam duty. This in view of the aforesaid decision dated 21.08.2104 of Executive Committee is not acceptable. Hence the deficiencies as regard faculty persist.

The same is the case with Sr. Residents/ Jr. Residents either they are on casual

leave or post off leave or in periphery posting. Hence, the deficiencies as regards residents persist. In view of above, the Executive Committee of the council decided to reiterate its earlier decision taken at its meeting dt. 13/05/2105 to recommend to the Central Govt. not to renew the permission for admission of 4th Batch of MBBS students against the increased intake i.e. from 100-150 of Father Muller's Medical College, Mangalore under Rajiv Gandhi University of Health Sciences, Bangalore u/s 10A of the IMC Act, 1956 for the academic year 2015-2016?.."

11. A perusal of the above would show that not only leave of the nature, such as, commuted leave, casual and sick leave, have not been considered, but more importantly, MCI has refused to even comment upon the evidence produced by the writ petitioner in the form of bank pay roll statements and TDS Certificates. These documents were filed to show that the faculty/residents were in position, contrary to the MCI's claim. According to me, the failure of MCI to consider the said documents has put the decision of MCI, as communicated to the Central Government vide letter dated 23.09.2015, at least presently, in jeopardy.

12. Therefore, having regard to the above, I am inclined to issue the following protem directions, in line with similar directions issued by the Supreme Court and other High Courts in such like matters:

(i) The writ petitioner, pending the disposal of the main petition, is permitted to provisionally admit students for academic year 2015-2016. The admit cards issued to the students will clearly indicate that admissions are provisional and are subject to the final orders in the writ petition. Furthermore, an undertaking will be taken from the students that they shall not claim any equity on the basis of provisional admission granted to them.

(ii) The writ petitioner shall file an undertaking with this court to the effect that in case the final decision in the writ petition went against it, it would refund to the students the entire fee collected by it for grant of provisional admission. The said affidavit will be filed by the writ petitioner within three days from today.

(iii) In the meanwhile, the Central Government will take a decision on the recommendation of the MCI dated 23.09.2015, after following the due process of law.

13. List the matter on 03.11.2015. In the interregnum, respondent no. 1 and 2 will file their counter affidavit within a period of two weeks from today. The petitioners will be at liberty to file a rejoinder to the same.