
(2014) 09 P&H CK 0188
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 2028 of 2014

Jagat Deep Kaur	Vs	APPELLANT
State of Punjab		RESPONDENT

Date of Decision : 16-09-2014

Acts Referred:

Indian Medical Council Act, 1956 — Section 10A

Citation : (2014) 4 SCT 574

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : Kanwaljit Singh, Senior Advocate and Ajaivir Singh, Advocate for the Appellant; Vandana Malhotra, Addl. A.G., Karan Singh Sandhu, Advocate, Gurminder Singh, Senior Advocate, R.P.S. Bara, Advocate, Rajiv Atma Ram, Senior Advocate and Arjun Partap Atma Ram, Advocate for the Respondent

Judgement

K. Kannan, J.

I. Prayer in the writ petition by students in the medical college

1. All the petitioners are students of the 4th year of the MBBS course in the 5th respondent medical college called the Chintpurni Medical College. They seek for a prayer for mandamus against the State authorities and the Medical Council of India to shift the petitioners to any other medical college duly affiliated and approved by the State of Punjab. The prayer is in the context of some problems in the matter of renewal of permission to admit students which the college has faced subsequent to their admission for the succeeding sessions. The withdrawal of permission to admit students for the subsequent years 2012-2013, 2013-2014 are locked up in litigations and the fact is that the college is not able to admit students after the admission of the petitioners in the year 2011-12. Some of the facts that would become necessary to consider the petitioners' rights as canvassed could be culled out from the judgment of the Supreme Court itself in *Manohar Lal Sharma v. MCI and others* in CWP No. 590 of 2013, for the observation in the judgment is the fulcrum on which the case of the petitioners

remain riveted. II. Prayer for transfer en bloc of students, the basis of claim

The college was established during the year 2011-2012 and admitted 150 students for that year. Renewal of permission for the second year was sought for the academic year 2012-2013 and the Board of Governors of MCI, finding that there were several deficiencies, after notice and receiving objection, had decided not to renew the permission to admit 2nd batch of students. The college sent a compliance report after the deficiencies were purported to have been removed but the Board of Directors was still not convinced and a final decision was taken not to grant permission for admitting the fresh batch of students for the year 2012-2013. This was challenged in CWP No. 12368 of 2012 before this Court. An order passed by this Court directing fresh inspection was challenged by MCI in LPA No. 1228 of 2012. The Bench also gave direction for inspection and MCI preferred a SLP before the Supreme Court. In the meanwhile, as per the directions of the High Court, an inspection had been carried out. At that time, the deficiencies seem to have been made good and there was a recommendation made for granting permission for the year 2013-2014 batch. The MCI, therefore, granted permission for renewal of admission of the 3rd batch of MBBS course for the academic year 2013-2014. The Supreme Court concluded the case in the SLP referred to above that appropriate order for admission would be passed within one month. However, after granting permission to the college for renewal of permission for admission of the third batch of MBBS students for the academic year 2013-14 on 25.10.2012, the MCI conducted a routine inspection on 1/2 April, 2013 and also carried out a surprise inspection carried out on 06.07.2013. The report of the surprise inspection which was taken notice of by the Supreme Court in CWP (Civil) No. 590 of 2013 is the basis for the present writ petition and therefore, the deficiencies pointed out are extracted again:-

"1. At first we visited the emergency services of the hospital. On our observation only one junior resident was there with one or two nursing staff. There was one bed occupied and one or two OPD patients seen in emergency of the hospital.

2. Then we met the Dean and Principal of the college and asked them to arrange for the videography which they said was difficult to arrange. Then we took some videos and photographs in our personal camera if MCI wants we can provide the same.

3. We took complete round of all the departments" wards OPD and verified the working and presence of faculty at 10.30 am. List is enclosed for reference. This was around total 15 teachers in all specialities and 5 (JR+SRs). There were one or two patients in each OPDs. There were no OPD patients in any ward and any paramedical and medical staff available in any of the ward.

4. Then we verified the compliance of last inspection. Regarding student accommodation there was only one girl's hostel of 4 floors with two floors ready (15 rooms on ground floor and 22 rooms in first floor with capacity of 3 students in one room). Rest two floors were under renovation. No boy's hostel was there.

The boys were housed in two villas (No. 3 and No. 4) which were meant for faculty. There was no nurse's hostel. They were housed in 1st villa. The No. 2 villa was occupied by director and total of 5 villas were there, which were meant for senior faculty. There were two other buildings under construction, one of 3 bed room flats (8 flats) and another of 2 bed room flats (8 flats) were under construction and out of which in one building of 3 bed room flats, two ground floor flats were ready and occupied by male students. No other resident accommodation is available for teaching and non teaching staff.

5. Only one batch of 150 students is admitted as last year in 2012-13 and no batch was admitted after that in 2012-13.

6. On being asked we were not provided with AERB approval documentary proof and list of histopathology and cytopathological investigations done on the day of inspection. MRD record regarding histopathology and cytopathology was not given for verification.

7. AT 2 PM we did the head count by previous declaration forms submitted in last inspection to MCI. The list is enclosed for reference. There were 44 faculty members (108 required) and 6 residents (60 SR required, 75 JR required) including tutors (20 required) verified. Although their physical presence could be verified but there was no address proof shown. On being asked, we were told that rest of the staff is on summer vacation and college provided the list of faculty on leave which is enclosed for reference. But only 6" residents were verified and residents are not provided any summer holidays. We did not agree to this version of holidays from college authorities.

8. At 4 PM we again took round of the hospital and verified the computerized record provided by college. We could not verify the census of last day (5-07-13) from wards. The census showed 243 IPD patients but in morning round there was no patient in the wards. On the day of inspection, the record showed 518 patients but we hardly show any patients. We felt not above 100 patients would have come to hospital on the day of inspection till 3 PM. Therefore, the hospital record was not authenticated physically.

9. The pharmacological and forensic medicine department was not having concrete roof top.

10. The nursing college is shown part of medical college building and is not separate.

11. The library has external space for reading for students. The required 2400 sq.m. Space is there.

12. On an average 3-4/day both major and minor surgeries are done in all subjects. The OT's were equipped but looked unused. In July till the day of the inspection 6 major surgeries were done in all subjects.

13. A demand draft for Rs. 3 lacs was asked for college as instructed from MCI.

The Director Principal gave a letter that it will be forwarded in one week time as today (on inspection day) is Saturday and bank is closed here. The copy of letter is enclosed."

The problem of renewal of permission has not been settled yet and even for 2014-14, it is reported that the case is still pending before the Supreme Court.

III. Petitioners' stand: Failure of norms of essentiality certificate as justification for the relief

2. Learned Senior Counsel appearing on behalf of the petitioners would argue that in terms of the notification issued by the Medical Council of India for "establishment of medical college regulations of 1991", the scheme for obtaining permission of the Central Government to establish a medical college has perforce to clear an essentiality certificate, a plea not found in the original pleadings but brought through replication to the pleadings of the college. The essentiality certificate in Form 2 shall secure no objection of the State Government/Union Territory Administration for the establishment of the proposed medical college at the proposed site and availability of adequate clinical material as per the Council regulations. The clinical materials would mean the requisite number of patients and facilities like beds etc. and if the inspection team had found that the college was wanting on such basic ingredients and the college which had been established did not have such facilities, there was a duty for the State to take over. The Senior Counsel would refer to the recitals in the essentiality certificate that cast an obligation on the State to the following effect:-

"It is further clarified that in case the applicant fails to create infrastructure for the medical college as per MCI norms and fresh admissions are stopped by the Central Government, the State Government shall take over the responsibility of the students already admitted in the College with the permission of the Central Government."

3. Learned Senior Counsel Sh. Kanwaljit Singh would argue that the obligation of the State to take over must be seen in the particular context that the students must be re-admitted to some other college. The petitioners find an useful ally in the Medical Council of India which supports the petitioners' grievance in full and reiterates that the institute suffers from every single norm laid down for standards of education through adequate faculty and the clinical material that are necessary to help the students secure meaningful preparation as physicians or surgeons. The learned Senior Counsel appearing on behalf of the Medical Council of India Sh. Gurminder Singh read out at length various deficiencies which were identified and brought out in each one of the inspections carried out and the justifications of non-renewal of permission to admit students that could not be afforded to the subsequent batches. The learned Senior Counsel would also state that if there was a direction from the Court for relocating them to other colleges, it should not be a difficult exercise, for, the students could be distributed amongst the various colleges that have necessary infrastructures and

which have appropriate recommendation or permission for additional intake. The petitioners bring to their support two decisions which, according to them, make possible for such an intervention in the manner sought for. The learned Senior Counsel refers me to a decision in *Mulani Akash Jaysukhbhai and Others Vs. Union of India and Others* with reference to a new medical college which failed to comply with any of the regulations of the essentiality certificate and therefore, the Medical Council of India did not renew the approval for the subsequent year. In terms of the essentiality certificate, directions were issued to the State Government to accommodate the students in other colleges. The similar situation was dealt with by the Madras High Court in *D.D. Medical College and D.D. Hospital v. Medical Council of India* in W.A. 179 of 2014 and other cases decided on 30th April, 2014.

IV. The response of college against petitioners" plea

4. The prayer of the petitioners is contested by the college and at the forefront of the argument, the learned Senior Counsel Sh. Rajiv Atma Ram would refer to the decision of the Supreme Court in *Government of Andhra Pradesh and Another Vs. Medwin Educational Society and Others*, that literally set down the genesis of how the essentiality certificate came about and the nature of powers that could be exercised in a case where a particular college failed to have the essentialities that were required in the certificate. The Supreme Court outlined in the said case the following:-

"An essentiality certificate to set up a medical college at the proposed site and adequate clinical material by a person is required to be obtained in Form 2 appended to the Establishment of New Medical Colleges Regulations, 1999. Grant of the said certificate in the prescribed form emanates from the scheme framed under the parliamentary legislation. The said form is a part of the Regulations which are required to be considered in the light of the parliamentary Acts. Keeping in view the practical difficulties faced by the Central Government or the statutory bodies like the Medical Council of India or the University Grants Commission, some power is sought to be delegated to the State so as to make the parliamentary statute completely workable. Such "play in the joint" is also desirable having regard to the federal structure of our Constitution. The question of delegation of power to the State Government under the Regulations of 1993 read with the scheme framed thereunder, has to be considered having regard to the limited manpower and resources available to the Medical Council and the Dental Council on the one hand, vis-a-vis the plentitude of resources including the expertise in the matter of local conditions in the State on the other. It cannot be contended that the Central Government has abdicated its powers in favour of the State in terms of Entry 66 List I of the Seventh Schedule of the Constitution. Parliament is empowered to enact an Act for the purpose of ensuring coordination and determination of standards in institutions for higher education or research and scientific and technical institutions. By reason of such a provision the Central Government cannot be said to have abdicated its power in favour of

the State. Thereby only a part of its function is required to be carried out by the State."

The extracted portion would reveal the State's role in the whole scheme of things of how the State Government would make its own assessment and give recommendations to the Central Government. The requirement in essentiality certificate of State Government to take over the responsibility would arise only in a situation where the fresh admissions are stopped by the Central Government and take over of such responsibility would require migration of students from one college to another. The learned Senior Counsel would point out that even the Central Government has not been made party and therefore, it shall be impermissible by either MCI or students themselves to declare that they should be shifted out of the college to some other college. Learned counsel would argue that the State's take over must be understood only as the power that vests in the State to cause migration of students from one college to another. The petitioners admittedly were not asking for take over of the college and its facilities by the Government and for running of the college at the same place. On the other hand, they wanted to locate themselves to some other college which would mean that the State take over, that is asked for, should satisfy also the test of migration set forth under the Regulations.

5. The Senior Counsel for the College would also argue that the issue of how the State Government will cope with the situation of the failure and inability to stick to the essentialities were discussed in *Islamic Academy of Education and Another Vs. State of Karnataka and Others*, . The predominance of consideration of local needs was the reason that required an essentiality certificate and the attempt of senior counsel Sh. Atma Ram was, therefore, to say that the State could be the best judge to act in the manner necessary. The counsel would refer to me the stand of the State in its reply where the State has submitted as follows:-

".....That even after the disaffiliation of the respondent No. 5 college by the Medical Council of India (MCI), students who have been admitted in previous year can continue their studies till the completion of course. Their degrees will be recognized by MCI. As regarding transferring students to some other recognized college of the State, it is submitted that this exercise is not possible keeping in view the large number of students.....

....That the strength of any medical college cannot exceed the recommended strength by MCI, so the petitioners cannot be shifted to any other Medical College of this State."

6. The power of transfer does not exist was also a view of the Division Bench of the Kerala High Court in *Mary Louis Manavalan Vs. State of Kerala*, . The Division Bench was answering the same problem of what was raised in this case of whether students of medical college could claim that they have a right to be transferred to another college on the ground that institution being new, the facilities were not adequate. The Division Bench returned a finding that there was

no distinction between transfer and migration and transfer on the ground of inadequacy of facilities was not tenable.

V. Further arguments in reply by petitioners

7. Learned senior counsel for the petitioners would make substantial arguments making reference to the provisions of Section 10A of the MCI Act setting forth the scope of permission for establishment of new medical college and the parameters that would be required to be taken note of before permission is granted and the actual nature of permission being only for a period of one year subject to renewal of every year till the first batch completed its full course. In this case, the college had failed in many of the parameters and therefore, beyond the permission granted for the first batch, the college did not have requisite facilities to merit renewal of permission for subsequent years. The same considerations must prevail also to hold that college cannot any longer allow for the 4th year students to complete their course in the same college.

VI. Points of focus: The three features

8. I will stay confined essentially to examining three essential features in this case. One, whether the circumstances exist in this case for transfer of students from one college to another and two, whether such a transfer is not possible in the scheme of failure of compliance in the essentiality certificate and three, in the light of the conflicting stand taken by the petitioners and the MCI one hand and the State Government and the College on the other hand, would it be possible to allow for the prayer sought for in the petition. The answers will come through examination of subsidiary questions raised below:

(a) Taking over responsibility would include powers to transfer

9. I notice that Madras High Court and the Gujarat High Court on the one hand and the Kerala High Court on the other, have come to different conclusions on the right of a student to seek for a transfer from one college to another on the ground that facilities do not exist. If we must look at the essentiality certificate and the reference to the fact that the State will have a power to take over the responsibility of the students, I cannot understand that taking over of responsibility must be limited only to consideration of taking over of the college itself and not making way for transfer of the students from one college to another. If a college must fail in its essentiality that would include even lack of clinical facilities such as when there were not enough in-patients, enough beds, etc., the idea to take over such a college makes no meaning. A college that lacks facilities such as buildings or the staff cannot obtain better features overnight. The advent of private colleges in the field of professional education was seen to be a national necessity in the wake of the inability of the State to cope with the supply to the overwhelming demand for increased medical care for the teeming milieu and allow for private institutes to share responsibility in the field of education. The State control so far as it exists is only to ensure through expert bodies like Medical Council of India to set down standards and for the

Government to ensure that there were appropriate regulations in fee structure and admission norms providing for merit and also ensure that the needs of social justice were met by appropriate reservations to be made for socially and economically deprived students. If the regulations provided for the State take over, it would be too artificial to restrict such an expression only to mean taking over of the college itself in the manner canvassed by the learned counsel appearing for the college. The expression is not again taking over of the college but on the other hand taking over the responsibility of the students already admitted in college. I would, therefore, hold that it should be perfectly possible in a situation where the facilities do not exist and if the Medical Council of India also finds that the institution does not merit renewal and also recommends a transfer, then the issue will only be how such an exercise is to be done. The issue again would be whether a Court will ride roughshod over what the State's stand is on the subject.

(b) State's role and the State's stand would merit serious consideration

10. In this case, I have already extracted the stand of the State Government that the existing batch of students would continue and complete the course. Even the essentiality certificate only contemplates a situation of how when fresh admissions are to be stopped by the Central Government, the State Government will take over the responsibility of the students already admitted in a college. If in this case therefore the fresh admission into the college has been stopped for the succeeding years, the State's duty of taking over responsibility of the students must be to seek for appropriate permission from the Central Government in the light of what is set out in the essentiality certificate itself. We have already seen the judgment of the Supreme Court in *Medwin Educational Society's case* (supra) of the genesis of the essentiality certificate. The Medical Council of India cannot at all times be the only institution which can take a call on whether the students must be transferred from one institute or another. Tracing the history, the Supreme Court has observed that the Medical Council of India expressed difficulties and it came across the cases where colleges despite permission could not provide the infrastructure, teaching and other facilities. The 1999 regulations that came, therefore, provided for a role to a State Government to provide for several regulations that are required to be answered in the essentiality certificate itself. Education itself is a concurrent subject in the scheme of the constitution and if the State was not in a position to relocate the students in other colleges within the State as declared by it in its written statement, the attempt must only be to garner atleast the necessary infrastructure commensurate with the needs of the existing batch of students. I cannot find an occasion for the State to be saddled with the responsibility of making admission in colleges where there may not be sufficient infrastructure to take the additional load. At least as of now there is no data made available to me by the petitioners of the existing facilities or vacancies in any other college within the State to which they could be admitted. There was an option to me of merely going by the word of the Medical Council of India that the students could be

admitted elsewhere but it will be too risky a prospect of passing an order that cannot be enforced.

(c) Non-impleadment of Central Government-a serious handicap

11. In this case, there is a serious handicap that the petitioners have placed themselves in not making the Central Government also as party. We have extracted the portion of the essentiality certificate that allows State to take over responsibility with the permission of the Central Government. It is not, therefore, possible for me to even elicit the data provided to the Central Government or the information that it has at its command to secure its permission for a takeover. In the manner in which the prayer is couched and the petition is drafted with inadequate details as regards the vacancy position in other colleges as well, I will not exercise the jurisdiction to allow for the students to be transferred. Even in Madras decision in D.D. Medical College (supra), the Central Government was a party and it had delivered a decision to close the college. The State Government was prepared to transfer the students to Govt. colleges for students admitted for the year 2010-11 only. Indeed, the High Court refused permission to transfer all students admitted for subsequent years as a case of misplaced sympathy.

VII. The way forward

12. However, if there arises a situation that even for the existing batch of students, the college cannot continue, it should be left to the authorities to decide the issue in the manner which is contemplated under the regulations. Even while disposing of the petition seeking for transfer of the students, I would direct the State Government to undertake a communication with the Central Government by forwarding the recommendations of the MCI and gather its own details and share the information of the Central Government with its own recommendations. The Central Government has an important role to play in the matter of permission for establishment of a new college and new course of study under Section 10A. In this case, after establishment of the college, if facilities have floundered and the Medical Council of India also recommends that it will not possible to allow for the students to carry on with the course, then the Central Government will take an appropriate decision on the information secured from the State Government and the Medical Council of India and grant such permission to the State Government setting out the manner of how the State could take over the responsibility on behalf of the students. The State will decide from its own sources as well as from the information furnished by the MCI whether it will take over the college and run the course or transfer the students and ensure that no rules by the existing colleges are breached as regards their own intake capacity. The mandate shall therefore be: State Government will secure the data as regards the recommendations of the Medical Council of India, the stand of the college for the existing batch of 4th year students and make its own report and forward the same to the Central Government within a period of eight weeks. The Central Government will take appropriate decision and the further course of action will depend on the outcome of the Central Government's

decision in the light of the reports received by it. I am unable to set any time limit for the central government since it is not made a party but the State government may impress upon the urgency involved for such a decision and help complete the whole exercise within 12 weeks.

VIII. Parting thoughts for students and college

13. As for the students, their anxiety to propel themselves out of the college could be understood but they must know that they arrived where their merit position brought them. If the situation has deteriorated, the exit shall be in the manner that is legally possible; the circumstances with limitations of how they have brought this case to court and how reliefs could be moulded in the given situation. An alma mater is the most cherished association for a student for the rest of life. To a college, the students' memory of the institution and their sense of pride in the institution are the best avenues of advertisement; not flashy bill boards and newspaper inserts. Pitifully, the college has done little to improve its credentials. No institution is built in a single day. Sincerity of purpose and nobility of pursuit could alone redeem the ground swell and smother public ire. The college has anguished its students. Let the State action in the manner charted out above lay out a fresh road map. The writ petition is disposed of with the above observations.