

(2013) 09 SC CK 0073

In the Supreme Court Of India

Case No : Writ Petition (Civil) No. 590 of 2013 and I.A. No. 2 in Special Leave Petition (Civil) No. 28480 of 2012 (Under Article 32 of the Constitution of India)

Manohar Lal Sharma

APPELLANT

Vs

M.C.I. and Others

RESPONDENT

Date of Decision : 12-09-2013

Acts Referred:

Establishment of Medical College Regulations (Amendment) Rules, 2010 — Rule 8(3)(1)
Establishment of Medical College Regulations, 1999 — Regulation 8
Indian Medical Council (Amendment) Act, 2010 — Section 3B

Citation : (2014) 2 ABR 67 : (2013) 5 LW 543 : (2013) 11 SCALE 294 : (2013) 10 SCC 60 : (2014) 1 SCJ 312 : (2013) 4 SCT 516 : (2014) 3 WBLR 65

Hon'ble Judges : K.S. Panicker Radhakrishnan, J;A.K. Sikri, J

Bench : Division Bench

Advocate : A.D.N. Rao, Abhishek Agarwal and K. Sarada Devi and Party in Person, for the Appellant; P.S. Patwalia and Vikas Singh, Amit Kumar, Atul Kumar, Avijit Mani Tripathi, Ankit Rajgharia and Gaurav Sharma, for the Respondent

Judgement

K.S. Panicker Radhakrishnan, J.—We are, in these cases, concerned with the legal validity of the approval granted by the Medical Council of India (for short "the MCI") dated 15th July, 2013 for renewal of permission for admission of the third batch of 150 M.B.B.S. students at Chintpurni Medical College & Hospital (for short "the College") for the academic year 2013-14. The above mentioned College was established during the year 2011-12 and it admitted 150 M.B.B.S. students for that year. Renewal of permission for the second batch was sought for the academic year 2012-13. The MCI carried out an inspection on 19/20th April, 2012 and noticed various deficiencies and, in addition, one fake faculty was also presented before the Inspection Team. Copy of the Assessment report was placed before the Board of Governors of the MCI. The Board of Governors, therefore, issued a show cause notice dated 20.6.2012 to the faculty, stating as follows:

Chintpurni Medical College & Hospital, Pathankot was Assessed on 19th and 20th April, 2012 by Assessors of MCI and you have been shown as Associate Professor in the Department of Chest & TB. It was declared in the declaration form submitted to MCI by the College authorities of Chintpurni Medical College and Hospital, Pathankot that you have joined the college on 07.06.2011 and have joined the college on 07.06.2011 and have been working in the department of Chest & TB since then.

Simultaneously, you were produced before the Assessment team of MCI on 20th and 21st April, 2012 at S.N. Medical College, Agra as Associate Professor in the Department of Chest & TB and it was declared in the declaration form submitted to MCI that you have joined in the college on 19.04.2012.

Since, it is clear that you have been working at both the medical colleges simultaneously, you are required to explain as to why action be not taken against you for the above said misrepresentation.

You are therefore directed to appear before the Secretary, Medical Council of India on 25.06.2012 along with your explanation failing which Council would be free to initiate action as deemed fit including cancellation of registration.

2. MCI also sent a letter dated 22.06.2012 to the Medical College stating that the deficiencies pointed out by the Inspection Team of the MCI on 19/20 April 2012 were of serious nature and, hence, Board of Governors had decided not to renew the permission to admit 2nd batch of students, however, the Medical College was given an opportunity to present their case on 25.06.2012.

3. The College, in response to the letter, sent a compliance report dated 23/25-06.2012. The Board of Governors of the MCI, after considering the Assessment report, nature of deficiencies and the explanation submitted by the College in the personal hearing, finally decided not to grant renewal of permission for admitting fresh batch of 150 M.B.B.S. students for the academic year 2012-13. Communication dated 27.06.2012, in this regard, was sent by the MCI to the College.

4. The College then filed Writ Petition No. 12368 of 2012 before the Punjab and Haryana High Court challenging the order dated 27.06.2012 seeking a writ of certiorari to quash the decision taken by the Board of Governors of the MCI on 22.06.2012 and 27.06.2012 and also for a direction to admit the second batch of MBBS students for the academic year 2012-13. The learned Single Judge of the High Court passed an interim order on 02.08.2012 directing the MCI to conduct another inspection to Assess the deficiencies pointed out earlier. Aggrieved by the same, the MCI filed LPA No. 1228 of 2012 before the Division Bench of the High Court. The LPA was disposed of by the Division Bench on 10.09.2012 nullifying the decision of the Board of Governors of the MCI dated 29.05.2012 and directed a fresh inspection after giving an opportunity of hearing to the College and it was permitted to place all materials before the Inspection Team. Aggrieved by the same, the MCI preferred SLP (C) No. 28480 of 2012. By the

time, the direction issued by the High Court was carried out and an inspection was conducted by the MCI Team and not much major deficiencies were noticed and the Assessment report of September 2012 was placed before the Board of Governors on 21.09.2012, which accepted the report. The said fact was brought to the notice of this Court and this Court disposed of SLP(C) No. 28480 of 2012 on 27.09.2012. Operative portion of the order reads as follow:

...

However, learned senior Counsel appearing for the MCI stated that in obedience to the direction of the High Court the inspection was conducted on 19.09.2012 and the report of the Inspection Team was accepted by the Board of Governors on 21.09.2012. Under such circumstances, we find that there is no impediment in granting permission for the 2013-14 batch. Appropriate admission orders, therefore, be passed within one month.

5. The MCI, in obedience to the direction issued by this Court passed an order on 25.10.2012 granting permission to the College for renewal of permission for admission of the third batch of MBBS students for the academic year 2013-14. The MCI, in the meantime, conducted a routine inspection on 1/2 April, 2013 to verify whether the Medical College is maintaining infrastructure, facilities, faculty and clinical material etc. or not and certain deficiencies were noticed and conveyed to the College directing them to rectify the same and submit a compliance report. The College then submitted its compliance report, which was placed before the Board of Governors in its meeting held on 19.06.2013, and the following order was passed:

Chintpurni Medical College & Hospital, Pathankot, Punjab for Renewal of permission of 3rd Batch of 150 MBBS students -- The Board of Governors considered the Assessment report dated 1st-2nd April, 2013 along with the notes of the Undergraduate Committee and the compliance report submitted by the College authorities of Chintpurni Medical College & Hospital, Pathankot, Punjab for renewal of permission of 3rd batch of 150 MBBS students and decided to verify the compliance submitted by the college authorities by way of physical verification Assessment.

6. The Board of Governors, following the above decision, decided to conduct a surprise inspection by a team of two doctors, namely, Dr. Mukesh Kalra and Dr. Ashok Agarwal. The Inspection Team was directed to verify as to whether the College had rectified the deficiencies by looking to the compliance report as well as to verify the credibility of a complaint received against the College. Surprise inspection was conducted by the Team on 06.07.2013 and following deficiencies were pointed out:

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 specialties and 5 (JR+SRs). There were one or two patients in each OPDs. There were no IPD 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 Ist 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 (60SR required, 75JR required) including tutors (29 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 saw any patients. We feel 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 from 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.

7. The College having come to know about the surprise inspection made a request on 08.07.2013 to the Board of Governors of the MCI to afford them a personal hearing to present their case. The Board of Governors, however, met on 10.07.2013 and having come to know about the gross deficiencies pointed out by the MCI Team in its surprise inspection report dated 06.07.2013, decided to reject the renewal of permission granted for the academic year 2013-14. Copy of the order was communicated to the College vide its letter dated 14.07.2013.

8. The College authorities then approached the MCI and placed the order passed by this Court on 27.09.2012, wherein this Court had ordered that there is no impediment in granting permission for the academic year 2012-13. The Board of Governors, so as to give effect to this Court's order, recalled their earlier letter dated 14.07.2013 issued to the College and, in obedience to the directions of this Court, issued the Letter of Permission (in short "LoP") dated 15.07.2013 granting permission for admission of a batch of 150 MBBS students for the academic year 2013-14. It is that order that has been challenged in Writ Petition (C) No. 590 of 2013. After getting the legal opinion the MCI also preferred, as already stated, I.A. No. 2 of 2013 in SLP(C) No. 28480 of 2012 seeking clarification/modification on the order dated 27.09.2012.

9. We have heard counsel on either side at length. We are in this case primarily concerned with the question whether the MCI was justified in passing the order dated 14.07.2013 rejecting the request for renewal of permission for the 3rd batch of MBBS students for the year 2013-14.

10. Shri Vikas Singh, learned senior Counsel appearing for the College, submitted that the decision taken, rejecting the request for renewal of permission for the year 2013-14, was illegal, since the College had rectified the deficiencies pointed out and that the order was passed in violative of principles of

natural justice. Learned senior Counsel submitted that the College was also not given any opportunity to file the objection to the report dated 06.07.2013, before the same was accepted by the Board of Governors rejecting the request for renewal of permission. Learned senior Counsel also submitted that since the inspection was conducted on a holiday, some deficiencies/infirmities might have been noticed by the Inspection Team, but those infirmities were not that serious to reject permission sought for. Learned senior Counsel submitted that, for the year 2012-13, the College could not admit the 2nd batch of MBBS students, consequently, the parameters followed by the team for giving an adverse report were incorrect and those aspects also could not be brought to the notice of the Board of Governors of the MCI. Learned senior Counsel also submitted that, in any view, the College is willing to have yet another inspection by the inspection team.

11. Shri P.S. Patwalia, learned senior Counsel appearing for the MCI, and Shri Amit Kumar, counsel for the MCI, submitted that the Board of Governors was justified in passing an order on 14.07.2013, after having noticed the serious deficiencies pointed out by the surprise Inspection Team in their inspection dated 06.07.2013. Learned senior Counsel submitted that the deficiencies pointed out by the Inspection Team are fundamental in nature, hence, could not be brushed aside in the larger public interest and also in the interest of the student community. Learned senior Counsel also submitted that deficiencies were pointed out to the College when regular inspection was conducted and the College was given an opportunity to rectify those deficiencies. Surprise inspection revealed that those deficiencies were not rectified and, hence, the order was issued on 14.07.2013 refusing renewal for the year 2013-14.

12. Shri Manohar Lal Sharma, appearing-in-person, pointed out that there is no reason to discard the report of the Inspection Team dated 06.07.2013 and that the College authorities had committed fraud in not placing the correct materials before the Board of Governors of the MCI and also before the Inspection Team.

Discussions:

13. MCI is a body constituted under the provisions of the Indian Medical Council Act, 1956 and has been given the responsibility of discharging the duty of maintenance of the standards of medical education in the country. It has the power to supervise the qualifications or eligibility standards for admission into the medical institutions. This Court in *State of Kerala Vs. Kumari T.P. Roshana and Another*, observed as follows:

16. The Indian Medical Council Act, 1956 has constituted the Medical Council of India as an expert body to control the minimum standards of medical education and to regulate their observance. Obviously, this high-powered Council has power to prescribe the minimum standards of medical education. It has implicit power to supervise the qualifications or eligibility standards for admission into Medical Institutions. Thus there is an over invigilation by the Medical Council to

prevent sub-standard entrance qualifications for medical courses.

14. The necessity of proper facilities, including teaching faculty, clinical materials, has been highlighted by this Court in *Medical Council of India Vs. State of Karnataka and Others*, which reads as follows:

A medical student requires gruelling study and that can be done only if proper facilities are available in a medical college and the hospital attached to it has to be well equipped and the teaching faculty and doctors have to be competent enough that when a medical student comes out, he is perfect in the science of treatment of human beings and is not found wanting in any way. The country does not want half-baked medical professionals coming out of medical colleges when they did not have full facilities of teaching and were not exposed to the patients and their ailments during the course of their study.

15. MCI on the basis of the reports, regular and compliance, is legally obliged to form an opinion with regard to the capacity of the college to provide necessary facilities in respect of staff, equipments, accommodation, training and other facilities to ensure proper functioning of the medical college or for increase of admission capacity. Section 10A of the Indian Medical Council Act, 1956 deals with the permission for establishment of new medical college, new course of study etc. Sub-section (7) of Section 10A is extracted hereunder for easy reference:

10A. Permission for establishment of new medical college, new course of study.-

xxx xxx xxx

xxx xxx xxx

7. The Council, while making its recommendations under Clause (b) of Sub-section (3) and the Central Government, while passing an order, either approving or disapproving the scheme under Sub-section (4), shall have due regard to the following factors, namely:

(a) whether the proposed medical college or the existing medical college seeking to open a new or higher course of study or training, would be in a position to offer the minimum standards of medical education as prescribed by the Council u/s 19A or, as the case may be, u/s 20 in the case of postgraduate medical education.

(b) whether the person seeking to establish a medical college or the existing medical college seeking to open a new or higher course of study or training or to increase its admission capacity has adequate financial resources;

(c) whether necessary facilities in respect of staff, equipment, accommodation, training and other facilities to ensure proper functioning of the medical college or conducting the new course or study or training or accommodating the increased admission capacity, have been provided or would be provided within the time-limit specified in the scheme.

(d) whether adequate hospital facilities, having regard to the number of students likely to attend such medical college or course of study or training or as a result of the increased admission capacity, have been provided or would be provided within the time-limit specified in the scheme;

(e) whether any arrangement has been made or programme drawn to impart proper training to students likely to attend such medical college or course of study or training by persons having the recognised medical qualifications;

(f) the requirement of manpower in the field of practice of medicine; and

(g) any other factors as may be prescribed.

It is the legislative mandate that when a new medical college is established or the existing medical college seeks to open a new or higher course of study or training, for accommodating the increased admission capacity it would be in a position to offer the minimum standards of medical education as prescribed by the MCI u/s 19A or, as the case may be, u/s 20 in the case of postgraduate medical education.

16. The Indian Medical Council (Amendment) Act, 2010 confers the following powers on the Board of Governors as per Section 3B(b), which reads as follows:

3B. During the period when the Council stands superseded,--

xxx xxx xxx

(b) The Board of Governors shall--

(i) Exercise the powers and discharge the functions of the Council under this Act and for this purpose, the provisions of this Act shall have effect subject to the modification that references therein to the Council shall be construed as references to the Board of Governors;

(ii) grant independently permission for establishment of new medical colleges or opening a new or higher course of study or training or increase in admission capacity in any course of study or training referred to in Section 10A or giving the person or college concerned a reasonable opportunity of being heard as provided u/s 10A without prior permission of the Central Government under that section, including exercise of the power to finally approve or disapprove the same; and

(iii) dispose of the matters pending with the Central Government u/s 10A upon receipt of the same from it.

17. MCI, with the previous sanction by the Central Government, in exercise of its powers conferred by Sections 10A and 33 of the Indian Medical Council Act, 1956, made the Regulations known as the Establishment of Medical College Regulations, 1999. Regulation 8 of the Regulations 1999 deals with grant of permission for establishment of new college. Application/scheme submitted by the applicants is evaluated and the verification takes place by conducting

physical inspection by the team of inspectors of the MCI. The Board of Governors may grant LoP to the applicant for making admissions in the first year of MBBS course in the medical college and the permission is renewed every year subject to the college achieving the yearly target mentioned in "Minimum Standard Requirements for the Medical College for 150 Admissions Annually Regulations, 1999". Schedule I of the above mentioned Regulation provides for accommodation in the medical college and its teaching hospital. Schedule II deals with equipment required for various departments in the college and hospital. The requirements are statutorily prescribed and, therefore, the Board of Governors has no power to dilute the statutory requirements mentioned in the above mentioned Regulations.

18. We have also gone through the report of the surprise Inspection Team dated 06.07.2013 submitted by Dr. Mukesh Kalra and Dr. Ajay Agarwal. The MCI has got the power to conduct a surprise inspection to find out whether the deficiencies pointed out by the MCI have been rectified or not, especially when the College submits a compliance report. Surprise inspection naturally contemplates no notice, if the notice is given in advance, it would not be a surprise inspection and will give room for the College to hoodwink the Assessors by springing a surprise, by making perfect what was imperfect. Surprise inspection, in this case, was conducted to ascertain whether compliance report could be accepted and to ascertain whether the deficiencies pointed out in the regular inspection were rectified or not. By pointing out the deficiencies, MCI is giving an opportunity to the College to rectify the deficiencies, if any noticed by the Inspection Team. It is the duty of the College to submit the compliance report, after rectifying the deficiencies. The MCI can conduct a surprise inspection to ascertain whether the deficiencies had been rectified and the compliance report be accepted or not.

19. MCI, while deciding to grant permission or not to grant permission, is not functioning as a quasi-judicial authority, but only as an administrative authority. Rigid rules of natural justice are, therefore, not contemplated or envisaged. Rule 8(3)(1) of the Establishment of Medical College Regulations (Amendment) Act, 2010 (Part II), provides for only an "opportunity and time to rectify the deficiencies". Compliance report is called for only to ascertain whether the deficiencies pointed out were rectified or not. If the MCI is not satisfied with the manner of compliance, it can conduct a surprise inspection. After that, no further time or opportunity to rectify the deficiencies is contemplated, nor further opportunity of being heard, is provided.

20. We have already dealt with, in extenso, the deficiencies pointed out by the MCI team in its report dated 06.07.2013. In our view, the deficiencies pointed out are fundamental and very crucial, which cannot be ignored in the interest of medical education and in the interest of student community. MCI and the College authorities have to bear in mind, what is prescribed is the minimum, if the MCI dilutes the minimum standards, they will be doing violence to the statutory

requirements. MCI is duty bound to cancel the request if fundamental and minimum requirements are not satisfied or else College will be producing half-backed and poor quality Doctors and they would do more harm to the society than service. In our view, the infirmities pointed out by the Inspection Team are serious deficiencies and the Board of Governors of the MCI rightly not granted approval for renewal of permission for the 3rd batch of 150 MBBS students for the academic year 2013-14.

21. We are also of the view that such an order is not vitiated by violation of principles of natural justice, especially, when no allegation of bias or mala fide has been attributed against the two doctors who constituted the Inspection Team, which conducted the surprise inspection on 06.07.2013. When the Inspection Team consists of two doctors of unquestionable integrity and reputation, who are experts in the field, there is no reason to discard the report of such inspection. In such circumstances, we are of the view that the MCI has rightly passed the order rejecting the approval for renewal of permission of 3rd batch of 150 MBBS students granted for the academic year 2013-14. Consequently, Writ Petition (C) No. 590 of 2013 is allowed and IA No. 2 of 2013, filed in SLP(C) No. 28480 of 2012, is disposed of, as above.