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**(2016) 12 CAL CK 0009**

**In the Calcutta High Court**

**Case No : M.A.T. No. 1740 of 2016 (CAN No. 9610 of 2016)**

Medical Council of India

APPELLANT

Vs

Sikha Agarwal

RESPONDENT

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**Date of Decision : 07-12-2016**

**Acts Referred:**

Indian Medical Council Act, 1956 — Section 10A

**Citation : (2017) 1 CalLJ 89**

**Hon'ble Judges : Jyotirmay Bhattacharya and Ishan Chandra Das, JJ.**

**Bench : Division Bench**

**Advocate :** Mr. Saugata Bhattacharyya and Mr. Sunit Kumar Roy, Advocates, for the Appellants; Mr. Subir Sanyal and Mr. Ratul Biswas, Advocates, for the Respondent/Writ Petitioner; Mr. Saumitra Banerjee, Advocate, for the Respondent Nos. 9 to 14; Mr. Pranab Kumar Das

**Final Decision : Dismissed**

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## **Judgement**

Jyotirmay Bhattacharya, J. - This Mandamus Appeal is directed against an order passed by the learned Single Judge of this Court on 26th July, 2016 in W.P. No. 7055(W) of 2016, at the instance of the Medical Council of India and its Secretary who were impleaded as respondents no. 1 & 2 in the writ petition filed by the respondents no. 1 to 8 herein.

2. By the said order, the Medical Council of India was directed to grant official recognition to the course undertaken by the writ petitioners and also to grant recognition to the other batch of members as that of the petitioners who had passed out from the Institute concerned, namely, Employees State Insurance Corporation ? PGIMSR and Medical College & Hospital at Joka in respect of the same course.

3. The Medical Council of India was also directed to grant recognition to the students admitted in the said Medical College for the academic years from 2011-2015. A rider was also added to this extent that the order passed by the learned Single Judge will not prevent the Medical Council of India from taking

appropriate steps against the Institute, if it finds any infrastructural deficiency at the Institute. While disposing of the said writ petition, the submission made on behalf of the Institute that the C.T. Scanner machine will be operational by September 30, 2016 was also placed on record.

4. The legality and/or correctness of the said order is under challenge in this First Miscellaneous Appeal at the instance of the Medical Council of India and its Secretary.

5. Let us now consider as to how far the learned Single Judge was justified in passing the aforesaid order in the facts of the present case.

6. Here is the case where we find that the Employee's State Insurance Corporation ? PGIMSR & Medical College & Hospital at Joka (hereinafter referred to as "the said Institute") submitted an application before the concerned department of the Central Government of India seeking permission for starting of MS(OBG) course in the said Institute under the West Bengal University of Health Science. The Central Government forwarded the said application to the Medical Council of India, which by its letter dated 31st March, 2011 intimated the Dean/Principal of the said Institute about the grant of permission of the Board of Governors for starting of MS(OBG) course with annual intake of 2(two) students per year with prospective effect, i.e. from the academic year 2011-2012 at the said Institute under Section 10A of the Indian Medical Council Act, 1956 as amended. While granting such permission, the Medical Council of India also intimated the Dean/Principal of the said Institute that such permission for starting of the above course and admission of students will be till such time, the first batch of students admitted against the above course appears for the final examination in the subject. It was also intimated to the concerned Institute that the college authority may take up the matter for recognition of the qualification under Section 11(2) of the Indian Medical Council Act, 1956 at the time of first batch admitted against the course appears for final examination. Such letter of permission which was issued by the Assistant Secretary of the Medical Council of India dated 31st March, 2011 addressed to the Dean/Principal of the said Institute did not contain any specification as to the infrastructural facilities which were required to be set up by the said Institute as a precondition either for recognition of the course or for recognition of the qualification of the students, after they come out successfully after completing the said course.

7. Pursuant to such permission granted by the Medical Council of India, two students were admitted in the said course in the year 2011. Subsequently in every year two students were admitted in the said Institute till 2015. Thus, altogether 10 students were admitted in the said Institute in the said course during the period of 2011-2015. These students were all admitted in the said course by following the procedure for selection of candidates for Post-Graduate course, as provided in the Post-Graduate Medical Education Regulation, 2000.

8. As per the practise prevalent at the relevant time, 50% of such seats were

allotted for the central quota and 50% of such seats were allotted to the state quota. So far as the central quota is concerned, the students were recommended for admission, after they were found suitable for such admission in the test conducted by the Director General of Health Sciences. Remaining 50% of the state quotas were filled up by the students who were found suitable in the test conducted by the West Bengal University of Health Sciences.

9. Thus, all the writ petitioners including two others were either recommended for their admission in the said course in the said Institute either on the basis of the counselling held by the Counselling Committee constituted by the Director General of Health Sciences or on the recommendation made by the counselling committee constituted by the State of West Bengal. After they were admitted in the said course, they prosecuted their studies there. The students who were admitted in the said course in the year 2011 completed their studies in the said course in 2014.

10. Problem started when as per the condition mentioned in the permission letter, the concerned authority of the said Institute applied before the Medical Council of India for recognizing the said course and also for grant of recognition to the qualification of the students who have come out successfully in the final examination.

11. The Medical Council of India after considering such prayer of the said Institute, intimated the decision which was taken by the Post Graduate Committee of the Council on its meeting held on 26th August, 2014 to the Dean/ Principal of the said College vide the letter issued by the said Council on 20th September, 2014. The College authority was informed that the Post Graduate Committee considered the Council assessor's report (24.04.2014) and decided to recommend not to recognise MS(OBG) qualification granted by West Bengal University of Health Sciences, Kolkata in respect of students being trained at the said Institute because of certain infrastructural deficiencies in the said Institute as mentioned in the said letter dated 20th September, 2014. By the said letter, the Institute was requested to rectify the said deficiencies at the earliest and submit a compliance report for further consideration in the matter.

12. In pursuance of the said letter issued by the Medical Council of India dated 20th September, 2014, a compliance report was submitted by the said Institute seeking recognition of the said course.

13. The Medical Council of India was also not satisfied with the compliance report and recorded in the minutes of the meeting held on 18th February, 2015 that the Post Graduate Medical Education Committee considered the Compliance Verification Assessment Report dated 8th January, 2015 along with the Council Assessor's Report dated 24th April, 2014 and compliance dated 17th October, 2014 submitted by the College authority and decided to recommend not to recognise MS(OBG) qualification granted by the West Bengal University of Health Sciences, Kolkata in respect of students being trained at the said Institute for

certain deficiencies as mentioned in the letter issued by the Medical Council of India dated 18th March, 2015. It was mentioned therein that in case, the College authority desires to submit compliance, the same should be received by the office of the Medical Council of India within six weeks with a rider that if no compliance is received within the period or compliance/compliance verification is found unsatisfactory, it will result in stoppage of admission to the Post Graduate Course against the above mentioned permission as per the provision of Section 11(2) of the said Act with a further rider that failure to seek timely recognition/renewal of recognition as required shall invariably result in stoppage of admission to the Post Graduate Course.

14. In pursuance of the said direction issued by the Medical Council of India, the concerned Institute further submitted its compliance report on 23rd April, 2015. Even thereafter the Medical Council of India was not satisfied as the Medical Council of India found some deficiencies still remained in the said Institute. The major deficiency which was pointed out by the Medical Council of India was lack of C.T. Scan and M.R.I. machine in the said Institute. The Medical Council of India, thus, refused to grant recognition to the said courses for two seats in the said Institute and communicated its decision by its letter dated 26th August, 2015 to the said Institute. Further time of six weeks was granted to the College authority for submission of further compliance report with a warning that if no compliance is received within the period or the compliance/compliance verification is found unsatisfactory, it will result in stoppage of admission to the Post Graduate Course against the above mentioned seats.

15. In pursuance of the said direction of the Medical Council of India, the said Institute submitted a compliance report before the Council on 28th September, 2015. The Director General of the said Institute gave an undertaking for installation of in-house C.T. Scan and M.R.I. facilities within a period of six months and prayed for recognition of M.S. course in OBGY in the said Institute. Even then, the Medical Council of India was not satisfied about the infrastructural facilities available in the said Institute. The decision which was taken by the Post Graduate Medical Education Committee of the said Council in its meeting held on 1st March, 2016 was communicated to the concerned Institute by its letter dated 11th March, 2016. The decision which was so taken by the Council in the said meeting runs as follows :-

"The Postgraduate Medical Education Committee considered the Compliance Verification Assessment Report (26/06/2015) along with the Council Assessor's Report (April, 2014 & Jan., 2015) and compliance dated 12/09/2015 (assessor letter)\\ 28/09/2015 and 16/02/2016 submitted by the college authorities and decided to recommend not to recognize MS (OBG) qualification for 02 seats granted by West Bengal University of Health Sciences, Kolkata in respect of students being trained at ESIPGIMSR, ESI Hospital, Joka, Kolkata because of the following facts :-

Compliance is not satisfactory.

1. CT & MRI are not available. They are still outsourced. Deficiency remains as such.

2. Other deficiencies as pointed out in the Assessment Report."

16. The Institute concerned was further directed to submit further compliance report within four weeks from the date of issuance of the said letter by the Medical Council of India with a rider that if compliance is not received within the said period or compliance or compliance verification is found unsatisfactory, it will result stoppage of admission to Post Graduate course against the above mentioned seats.

17. The legality and/or correctness of the said decision of the Medical Council of India which was communicated to the Institute concerned vide its letter dated 11th March, 2016 was challenged in the writ petition. To ascertain as to how far such challenge is sustainable in law, we are required to consider certain provisions of the Post Graduate Medical Education Regulation, 2000. The relevant provisions which we are required to consider for the present purpose, are Regulation 8(1A) and Regulation 11.2(c) which are set out hereunder :-

Regulation 8(1A) runs as follows :-

"8(1A). The Central Government shall exempt any such existing/proposed non-teaching institutions or specialist institution or autonomous body owned and managed by the Central Government/State Government from fulfilling the prescribed provision of having an under graduate teaching facility and allow starting Postgraduate medical course."

Regulation 11.2(c) runs as follows :-

"11.2(c). An institution eligible to start post-graduate course(s) under sub-regulation (1A) of Regulation 8 may enter into a comprehensive Memorandum of Understanding with an ongoing recognised medical college, located within a reasonable distance from it as would not disrupt the smooth running of the said course(s), for the purpose of availing the facilities of the basic medical sciences departments of the college concerned; or it shall create the requisite facilities in its own set-up as per the guidelines indicated in Appendix-III. In addition, such an institution shall set up full-fledged departments of Pathology, Biochemistry, Microbiology and Radiology."

18. If these two provisions are taken into consideration, it appears to us that any existing/proposed non-teaching institution or specialised institutions or autonomous body owned and managed by the Central Government or State Government may be allowed to start post-graduate medical colleges even without fulfilling the prescribed provision of having an under graduate teaching facility provided exemption is granted by the Central government as per regulation 8(1A). It necessarily means that if such exemption is granted by the Central Government, the institutions as referred to in Regulation 8(1A) may start post graduate medical course even without having under graduate teaching

facility. As a matter of fact, the present Institute was allowed to enjoy such exemption granted by the Central Government. At the time when permission was granted to start the said course in Master degree by the Medical Council of India in 2011, the said Institute did not have any provision of having any under graduate teaching facility. Such facilities of under graduate teaching was made available to the said Institute for the first time in academic session 2013-2014.

19. Problems started when the said Institute prayed for grant of recognition to the said course and also for grant of recognition to the qualification acquired by the students after completing the said course successfully.

20. We have already indicated above that most of the lacking infrastructural facilities were subsequently made up by the Institute. The infrastructural facility which could not be provided by the said Institute has been mentioned in the letters written by Medical Council of India on 26th August, 2015 and 11th March, 2016. From those letters, we found that the main stress was given by the Council about the lacking facility relating to C.T Scan and MRI which are not available at the said Institute.

21. Let us now consider as to how far lack of such in-house facilities can be a ground either for refusal to grant recognition to the said course or for refusal to grant recognition to the qualification of the successful students of the said Institute. The answer to the said question can be traced out from Regulation 11.2(C ) which we have already set out herein above.

22. On bare reading of the said provision, it appears to us that for fulfilling the conditions for obtaining such recognition two options were available to the Institute which was permitted to start Master Degree Course as per Regulation 8(1A). One of such options was to enter into a comprehensive memorandum of understanding with an ongoing recognised medical college, located within a reasonable distance from it, as would not disrupt the smooth running of the said course(s), for the purpose of availing the facilities of the basic medical sciences departments of the college concerned. The other option was to create the requisite facilities in its own set up as per the guidelines indicated in Appendix-III and in addition thereto the Institute is also required to set up full-fledged departments of Pathology, Biochemistry, Microbiology and Radiology.

23. In the present case we have found that the concerned Institute, instead of opting for the second option, opted for the first option. Instead of creating requisite facilities in its own set up as per the guidelines indicated in Appendix-III, the Institute entered into the comprehensive memorandum of understanding with an ongoing recognised medical college for the purpose of availing facilities of basic medical sciences departments of the said college. Only complaint of MCI against the said Institute is that its radiology department is not comprehensive as it does not have in-house C.T Scan and MRI machines. The Institute concerned entered into memorandum of understanding with IPGMER, Kolkata which is a reputed medical college in Kolkata for the purpose of availing of the

facilities relating to C.T Scan and MRI. The patients of the Institute concerned who are required to undergo such tests are sent to the IPGMER and after conducting such tests on those patients the test report of C.T Scan and/or MRI and the plates are sent to the concerned Institute. Regulation 11.2 (C), in our view is satisfied as the Institute concerned is enjoying the facilities of basic medical science departments of the IPGMER so far as the CT Scan and MRI facilities are concerned, as per the said memorandum of understanding entered into between the concerned Institute and the IPGMER.

24. Mr. Bhattacharya, learned Counsel appearing for the appellants, however, contended that IPGMER with which such memorandum of understanding was entered into by the concerned Institute for availing of the facilities of basic medical science particularly the C.T Scan and MRI facilities, is not located within a reasonable distance from the concerned Institute.

25. As such, according to him the condition as mentioned in Regulation 11.2(C) is not satisfied in the instant case.

26. On reading the said Regulation, we find that though the expression "reasonable distance" is mentioned in the said provision but what exactly is meant by "reasonable distance" has not been defined in the said regulation. Expression "reasonable" is a relative expression. Both the Institutes are located within the Municipal limits of Kolkata Municipal Corporation. The distance between the two Institutes is not very far. Both are well connected by the road from several directions. We are informed by Mr. Bhattacharya, learned advocate, that the distance in between those two Institutes is about 13 Km.

27. As such, we are unable to hold that the distance between those two Institutes is unreasonable for which grant of recognition either to the said course or to the qualification of the students who have come out successfully in the said examination, can be withheld.

28. No doubt, it is true that setting up in-house infrastructure for extending those facilities to the patients is much more beneficial for the patients seeking treatment in the said Institute. However, in our view, the lack of such in house facilities for C.T Scan and MRI cannot affect the training process of the students admitted in the said course in the said Institute. Students who are seeking specialization in (OBG) are not required to acquire expertised knowledge in operating the C.T Scan machine and/or the MRI machines which is not their subject at all.

29. Acquiring expertised knowledge in operation of C.T Scan and MRI machine and preparation of the report after scanning the patient through the C.T Scan and/or MRI with reference to the scanning Plate and/or MRI plate and other related reading regarding various factors, is the job of students studying the Mater Degree Course in Radiology. Doctors having Master's Degree in OBG, are not required to operate the C.T Scan and/or MRI machine for treating their patients suffering from gynecological problems.

30. The students in the Master's Degree Course in OBG is required to acquire specialised knowledge in the subject of OBG. For treating a patient suffering from such gynecological disease, the Doctors are required to examine the C.T Scan and MRI report and the plates and thereafter they will have to select the course of treatment of such patient with their expertised knowledge in the subject after diagnosing the disease with reference to the C.T Scan and MRI report and/or the plates.

31. When such reports and/or plates are available in the Institute itself, we are of the view that lack of such in-house infrastructural facility relating to C.T Scan and MRI cannot stand in the way of grant of recognition to the said course and/or grant of recognition to the qualification of the students who have come out successfully after completing the said course.

32. Mr. Bhattacharya, learned advocate for the appellants, submits that if such facilities are made available by setting up CT Scan and MRI machines within the hospital compound, the MCI/appellant will again re-consider the prayer of the Institute for grant of recognition to the said course and also the grant of recognition to the quantification of the students of the said Institute.

33. From the correspondences exchanged between the parties, we find that the MCI primarily and mainly stressed upon the infrastructural deficiency due to non-availability of in house C.T Scan and MRI facilities in the Institute. We are still at a loss to understand as to how the students who have already come out successfully in the final examination, conducted by the University of Health Sciences will be benefited if the Institute now installs the C.T scan Machine and/or the MRI machine within the hospital compound. The writ petitioners have completed their course. They have come out successfully in the examination conducted by the university concerned. In our view the teaching process in the said course cannot be held to have been affected due to such infrastructural deficiency within the hospital compound as the students, concerned prosecuting their studies in the said course were not deprived of the benefits of examining the C.T Scan and MRI plates and/or reports which were prepared by the experts after conducting radiological test on the patients admitted in the said hospital for their treatment. Had it not been really so, these students could not have passed the final examination conducted by the recognised university for the said course. Again had it been the stand of the MCI that the learning process of the students in the said course was not complete without acquiring expertised knowledge in operation of C.T Scan and/or MRI machines, then, we could have thought about the present problem from a different angle. However, this was never the stand of MCI. We find from the correspondences exchanged between the MCI and the said Institute that MCI all throughout deferred granting of recognition to the course and the qualification of the Doctors until such deficiencies are rectified. It was also never the stand of MCI that the qualification of the students cannot be recognised until they undertake the training process in operating these machines by themselves. If that is not the stand of MCI, then how we will come to the

decision that withholding grant of recognition to the qualification of the doctors by MCI is justified.

34. Mr. Bhattacharya, however, has drawn our attention to the following decision of the Hon''ble Supreme court to support his submission that recognition to such course cannot be granted by the Medical Council of India unless the permitted Institute fulfils the conditions as prescribed in the Section 1.2(C ) and Section 10 B sub-Section 2 of the Indian Medical Council Act, 1956.

35. In the case of Medical Council of India v. Rama Medical College Hospital and Research Centre Kanpur & Anr. reported in 2012(8) SCC 80.

36. It was decided by the Hon''ble Supreme court in the said decision that grant of permission to start a Medical College under Section 10A of the said Act would not amount to grant of recognition to the course. It was further held therein that the medical college and/or institution cannot enhance the number of seats without obtaining permission either from the Council or from the Central Government. The said decision was taken by the Hon''ble Supreme Court in the context of a dispute relating to enhancement of intake capacity of the students in the medical college. However that is not the present problem in the case before us. We, however, agree with Mr. Bhattacharya, that grant of permission to start a post graduate course in the Institute enjoying exemption under Regulation 8(1A) would not amount to grant of recognition to the said course inasmuch as grant of recognition to the said course is dependant upon various other factors i.e., availability of the infrastructural facilities in the Institute and the strength of teaching and non-teaching staff etc. Such permitted Institutes are required to complete all infrastructural facilities before sending up the first batch of students for appearing in the final examination i.e. within the three years after grant of permission to such Institute to start training students in M.S. course.

37. Here in the present case the only reason for withholding grant of such recognition is lack of infrastructural facilities particularly due to non-availability of in-house the C.T Scan and/or MRI facility in the said Institute. We have already mentioned above that non availability of in house C.T scan and/or MRI facility cannot affect the learning process of the students prosecuting studies in the post graduate course in the particular subject. As such, we hold that the Medical Council of India is not justified in withholding grant of recognition to the said course for lack of such infrastructural facility in the said Institute.

38. Before parting with, we like to mention here that the Institute concerned has already installed C.T Scan machine at the said Institute in the first week of December, 2016. MRI machine is yet to be installed. Twice attempts were made for installing MRI machine at the Institute. However, no suitable bidder for installation of MRI machine at the said hospital compound could be found. The Institute is still in the search of a suitable private partner for installation of MRI machines at the said Institute. The Institute has already stopped admitting the students in the said course from 2016. Since the admission in the said course

from 2016 has already been stopped by the Institute concerned itself, we are presently concerned about the future of the students who were admitted in the said course during the period between 2011 and 2015.

39. Mr. Bhattacharya, however, contended that since no relief was claimed by the writ petitioner, for recognizing the course by the Medical Council of India, the learned Single Judge ought not to have granted such relief to the writ petitioner.

40. We do not find any substance in such contention of Mr. Bhattacharya, as we have already indicated above that grant of recognition to the qualification acquired by the students is dependent upon the grant of recognition to the course. As such unless course is recognised, the qualification of the students cannot be recognised. We do not find any reasonable justification for withholding grant of recognition to the said course for want of CT Scan and/or MRI facility at the said Institute. As such we do not find any illegality in the impugned order whereby the Medical Council was directed to recognize the course.

41. Such conclusion we draw by following the settled principle of law that reliefs can be moulded by the Court when necessary facts are before the Court and when further adjudication of dispute between the parties on foreign factual issue is not necessary. As such, we hold that grant of such relief to the writ petitioner even in the absence of such prayer being made in the writ petition cannot held to be illegal for which interference with the impugned order is necessary.

42. Mr. Bhattacharya, learned Advocate has also relied upon another decision of the Hon'ble Supreme Court in the case of Medical Council of India v. Kalinga Institute of Medical Sciences (KIMS) & Ors. reported in AIR 2016 SC 2294 to support his submission that High Court should not sit in appeal over the decision of MCI which is an expert body in laying down the guidelines for expanding the intake capacity of a Medical College. It is true that High Court cannot sit in appeal over the decision of the expert body in its policy matter but Court, in our view, can surely interfere with the decision of the Expert body when the decision of the Expert body appears to be unreasonable, biased, perverse and unscientific.

43. As such, we hold that the appeal does not deserve any merit for consideration. The appeal thus stands dismissed.

44. We however extend the time for compliance of the order passed by the learned Single Judge as well as the order passed by this Court till 15th January, 2017.

Urgent photostat certified copy of this order, if applied for, be given to the parties as expeditiously as possible.

Jyotirmay Bhattacharya, J. - I agree.