

(2003) 09 SC CK 0076

In the Supreme Court Of India

Case No : I.A. No's. 5-6 and 7-14 in civil Appeal No's. 599-600 of 2002 with
Writ Petition (C) No. 317 of 2000

P.C. Kesavan Kuttynayar

APPELLANT

Vs

Harish Bhalla and Others
Malay Ganguly Vs Medical
Council of India and Others

RESPONDENT

Date of Decision : 23-09-2003

Acts Referred:

Dentists Act, 1948 — Section 10

Indian Medical Council Act, 1956 — Section 10A, 10B

Citation : (2003) 107 DLT 265 : (2004) 2 JCR 44 : (2003) 2 JT 186 Supp :
(2003) 8 SCALE 94 : (2003) 4 SCALE 377 : (2003) 8 SCC 490 : (2003) 3 SCR
1063 Supp : (2003) 3 UPLBEC 2768

Hon'ble Judges : M. B. Shah, J;Ashok Bhan, J

Bench : Division Bench

Advocate : Soli J. Sorabjee, Attorney General, Raju Ramachandran, Additional Solicitor General, Harish N. Salve A.C., K.K. Venugopal, M.N. Krishnamani and Madan Bhatia and Rakesh Dwivedi, Manish Singhvi, Prateek Jalan, Amit Mahajan, D.S. Mahra, A. Mariarputham, Aruna Mathur, Maninder Singh, Pratibha M. Singh, Angad Mirdha, Ankur Talwar, Annam D.N. Rao, Avik Dutta, Santanu Ghosh, V.M. Monga, Nageshwar Pandey, Anup Sinha, Pramod Dayal, Raju Subramaniam, Jayamala Godbole, Sanand Ramakrishnan, Sweetie Manchanda, P.H. Parekh, Indu Malhotra, J.S. Wad, G.S. Chatterjee, Raja Chatterjee, L. Nageshwara Rao, Rajeev Sharma, Pawan, Sunita Sharma, Rekha Pandey, Krishna Sarma, V.K. Siddharthan, Anil Srivastava, Jyoti Dutt, Sunita R. Singh, B.B. Singh, Kamini Jaiswal, Shomila Bakshi, Geetanjali Mohan, Prakash Shrivastava, A. Subhashini, Monika Bapna, J.S. Attri, Anis Suhrawardy, B.S. Banthia and W.A. Nomani, Ravindra K. Adsure, for Mukesh K. Giri, K.H. Nobin Singh, M. Gireesh Kumar, Ranjan Mukherjee, Sumita Hazarika, U. Hazarika, Kamal Shankar, Sunita Sharma, D.N. Ray, J.R. Das, Swetaketa Mishra, Gourang Biswal, Moushumi Galhot, Naresh Bakshim, R.S. Suri, V.G. Pragasam, Anurag D. Mathur, P.N. Ramalingam, V. Balaji, Gopal Singh, Sandeep Singh, Ashok K. Srivastava, Rachna Srivastava, Rohit Singh, Tara Chandra Sharma, Neelam Sharma, Fjaz Maqbool, Dinesh Kumar Garg, Yakesh Anand, Sanjeev Anand, S. Srinivasan, M.B. Rama Subba Raju, S. Sunita, V. Sudeer, Ruby Singh Ahuja, Badri Prasad Singh, Udai Umesh lalit, Sushil Kumar Jain, D.N. Ray, Sumita Ray, S.N. Bhat, Vipul Maheshwari, P.K. Chakravarti, D. Stephen, K. Yanthan and Hemantika Wahi, for appearing partie, for the Appellant;

Judgement

1. Heard the learned Amicus Curiae and the counsel for the parties.
2. In pending Appeals learned Amicus Curiae is required to approach this Court for appropriate directions including the manner of working of the Ad-hoc Committee in the matter of recognition, renewal including grant of permission in respect of medical colleges.
3. Reasons for seeking this relief is, as contended by the senior counsel Mr. Salve and Mr. Venugopalan, that for some reason Central Government granted permission to increase, the strength of students in medical colleges in violation of Section 10A of the Indian Medical Council Act 1956 (hereinafter referred to as the "Act") and the Regulations framed by Medical Council of India.
4. This Ad-hoc Committee was appointed by this Court's order dated 20th November, 2002, Relevant part of this order is as under:--

".... For enhancing the confidence of the people in the forthcoming of the Medical Council of India, which is having wide powers under the Medical Council Act 1956, we order accordingly. We appoint a Committee of four eminent doctors namely. Dr. N. Rangaba shyam of Chennai, Prof. P.N. Tandem of New Delhi Dr. S.K. Bhansali of Mumbai and Dr. (Ms.) S. Kantha of Bangalore, as members of Ad-hoc Committee to assist and nominate the work of the Medical Council of India. The Ad-hoc Committee would work harmoniously and in full cooperation with the Executive Committee of the Council, The Committee would associate itself particularly in selection and appointment of Inspectors and scrutinize their reports and making recommendations for grant of recognition to medical college.

If any member of the Ad hoc Committee in course of working finds any practical or legal difficulty, it would be open for him/them to approach this Court for appropriate orders through learned senior counsel Mr. Harish N. Salve (Amicus Curiae). It would also be open to them to make recommendations how the functioning of the Executive Committee can be made more effectively and prompt....."
5. Thereafter, the Ad hoc Committee started its work in harmony with the Executive Committee of Medical Council of India overseeing, inter alia, the process of inspection of colleges and dealing with the recommendation to be made for the recognition / grant of permission to such colleges.
6. The contention which is raised in the present I.As. is with regard to the exercise of power by the Central Government by bypassing the M.C.I. as well as the provisions of Section 10A of the Act.
7. This Court has repeatedly considered the provisions of the Act and the held

that statutory provisions and rules prescribed for Medical education should be strictly adhered to. As early as in the case of *A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Another*, : *Government of A.P.* [1986]2SCR749 , the Court observed thus:--

"Any direction of the nature sought by Shri Venugopal would be in clear transgression of the provisions of the University Act and the Regulations of the University. We cannot by our fiat direct the University to disobey the statute to which it owes its existence and the regulations made by the University itself. We cannot imagine anything more destructive of the rule of law than a direction by the Court to disobey the laws."

Thereafter, in 1994 again, this Court considered this aspect in *State of Punjab and others Vs. Renuka Singla and others*, and held thus:-

"The High Courts or the Supreme court cannot be generous or liberal in issuing such directions which in substance amount to directing the authorities concerned to violate their own statutory rules and regulations, in respect of admissions of students. Technical education, including medical education, requires infrastructure to cope with the requirement of giving proper education to the students, who are admitted. Taking into consideration the infrastructure equipment, staff the limit of the number of admissions is fixed either by the Medical Council of India or Dental Council of India. The High Court cannot disturb that balance between the capacity of the institution and number of admissions on 'compassionate ground'. The High Courts should be conscious of the fact that in this process they are affecting the education of the students who have already been admitted, against the fixed seats, after a very tough competitive examination. There does not appear to be any justification on the part of the High Court, in the present case, to direct admission of respondent No. 1 on 'compassionate ground' and to issue a fiat to create an additional seat which amounts to a direction to violate Section 10A and Section 10B(3) of the Dentists Act."

8. The reason for taking this much caution is well reflected in the decision rendered by this Court in *Medical Council of India Vs. State of Karnataka and Others*, wherein the Court held as under:--

"29. 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."

9. This case was referred to with approval in case of *K.S. Bhoir Vs. State of Maharashtra and Others*, . The Court also hold that the compliance with the

requirements under the Act and the regulations being mandatory in absence of their compliance, no permission could be granted by the Central Government for the increase in admission capacity in any course in any Medical College, The Court further held that for one time increase in admission capacity the colleges should have submitted the scheme prepared in accordance with the Act and the Regulations to the Central Government.

10. Despite the aforesaid law, it is contended by the learned senior counsel Mr. Venugopal for the Medical Council as well as by the learned Amicus Curiae Mr. Salve that the Central Government bypassed the Medical Council and the Act and had issued various orders granting permissions to increase the strength of the students in some colleges or renewal of permission to the Medical Colleges. As against this, Mr. Rakesh Dwivedi, learned senior counsel for the Union of India submitted that the Central Government has neither by-passed the Medical Council nor the statutory requirements for grant of permission to increase the strength of the students in existing medical colleges / renewal of permission for the college.

11. No doubt for deciding the question--whether the permission granted by the Central Government is without complying with the statutory requirement and thus violative of Sections 10A and 10B of the Act requires consideration.

12. However, prima facie, there appears to be substance in what is contended by the learned senior counsel for the Medical Council as well as Amicus Curiae that on 23rd January, 2003, the Medical Council of India had brought the following to the notice of the Central Government:--

"Sir,

I am directed to inform you that inspection for renewal of permission for admission of 3rd batch of students for the academic session 2002-2003 at Government Medical College, Anantapur was carried out by the Council Inspectors on 30th & 31st July, 2002 and the inspection report was considered by the Executive Committee at its meeting held on 5.8.2002. On going through the inspection report the Committee observed that 34 of the faculty members i.e. 6 -- Professions, 16 --Readers and 12 - Assistant Professions joined the institution on 27.7.2002 i.e. 3 days before the inspection after transfer from other Government Medical Colleges, of the State.

In view of the above and other deficiencies pointed out in the inspection report, the Committee decided to defer the consideration of the matter for obtaining the information from the Director, Medical Education, Government of Andhra Pradesh and college authorities as to how the resultant vacancies created with the transfer of teachers from the Government Medical colleges to this college have been filled up.

On receipt of above clarification and the compliance on rectification of the deficiencies from the Director. Govt. of Andhra Pradesh the matter was again

placed before the Executive Committee at its meeting held on 31.10.2002 where it was decided to verify the same by way of an inspection. Inspection to verify the compliance was carried out by the Council Inspectors on 2nd & 3rd Jan., 2003 and the compliance verification inspection report was considered by the Executive Committee at its meeting held on 9.1.2003 where the members of the Ad hoc Committee appointed as per the Hon'ble Supreme Court order dated 20.11.2002 were also present. The decision taken by the Executive Committee is recorded as under for your information and necessary action:--

"The Executive Committee on perusal of the compliance verification report (2nd & 3rd Jan., 2003) of Government Medical College, Anantapur, noted that the college has already admitted students against the academic session 2002-2003 (3rd batch) without getting the permission renewed by the Central Government as under:--

(a) 99 students including 14 NRI students against the session 2002-03.

(b) 14 NRI students the batch 2000-01 against this session (Total 113 students)

Thus the college has not only admitted students against the said session without getting the permission renewed by the Central Government but has also increased the seats from 100 to 113 which calls for action u/s 10B of the I.M.C. Act 1956.

The Executive Committee, therefore, decided to initiate action u/s 10B of the I.M.C. Act, 1956 against the admissions made by the college authorities for the academic session 2002-03 without getting the permission renewed by the Central Government for which the institution be directed to send a merit wise list to the Council immediately. The Committee also decided that the Central Government may be requested to take up the matter with the Secretary (Medical Education) and Director, Medical Education, Government of Andhra Pradesh to take steps to rectify the violations immediately.

Since, the college had already admitted students for the academic session 2002-03, the Committee decided not to consider the inspection report carried out for renewal of permission for admission of 3rd batch of students at Government Medical College, Anantapur."

13. Despite this, it appears that by order dated 21st August 2003, the Director, Ministry of Health & Family Welfare issued the following order:

"The Secretary, Health, Medical and Family Welfare Department, Government of Andhra Pradesh, Hyderabad.

Sub: Increase in seats in Government Medical Colleges at Kurnool & Warangal during the academic year 2003-04 - Renewal of permission - regarding. Madam,

I am directed to refer to your letter No. 11964/E1/2001-57 dated 4.8.2003 on the subject cited above and to say that it has been decided as a one time measure to allow admission of fresh, batches of students in the following medical

colleges against increased intake during the academic year 2003-04:--

1. Kurnool Medical College, Kurnool from 130 to 150 seats.
2. Kakatiya Medical College, Warangal from 100 to 150 seats.

This renewal of permission is subject to the condition of implementation of neutralization formula already accepted by the State Government vide their letter 18.6.2001 (copy enclosed) and conveyed in this Department's letter of even number dated 12th July, 2001 (copy enclosed). However, the State Government shall ensure compliance of all the requirements under the MCI Regulations and any deficiencies pointed out by the Medical Council of India in respect of above medical colleges. This permission is further subject to the condition that the Government of Andhra Pradesh shall sort out the pending issues of admissions made in these colleges during the year 2002-03 with Medical Council of India."

14. Similar orders are produced on record to indicate that the recommendations of the Medical Council were not called for.

15. As against this, it has been pointed out by Mr. Rakesh Dwivedi, learned senior counsel that u/s 10A(iv) the Central Government has such powers.

16. Prima facie, we do not think that the Central Government has power to issue such permission when the college is not complying with the requirements of the regulations framed by the Medical Council of India or the requirements of the Act. As the permission is already granted and probably, it appears that the colleges might have given admissions on the basis of so called increase in the strength renewal of permission for a college, we direct the Medical Council of India to carry out further inspection to find out whether there is compliance of the requirement of the Act and the Rules in all the colleges where increase of strength/renewal of permission for a college is permitted by the Central Government, by its various orders issued in August 2003. The Medical Council of India to carry out the inspection within a period of four weeks.

17. In the meantime, the Central Government is directed not to grant any further permission without following the procedure prescribed u/s 10A(i) (ii) (iii) and (vii).

18. For the time being, the D.G.H.S. inquiry as directed by the Central Government against Dr. Rangaba shyam is stayed. However, it would be open to the aggrieved person to take appropriate action before an appropriate forum, if called for.

19. Stand over for four weeks.

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20. Heard the learned counsel for the parties.

21. As suggested by the learned Attorney General the following provisions could be added in the Code of Ethics prescribed by the Medical Council of India: --

"8.7 Where either on a request or otherwise the Medical Council of India is informed that any complaint against a delinquent physician has not been decided by a State Medical Council within, a period of six months from the date of receipt of complaint by it and further the MCI has reason to believe that there is no justifiable reason for not deciding the complaint within the said prescribed period, the Medical Council of India may --

i) impress upon the concerned State Medical Council to conclude and decide the complaint within a time bound schedule:

ii) may decide to withdraw the said complaint pending with the concerned State Medical Council straightway or after the expiry of the period which had been stipulated by the MCI in accordance with para (i) above to itself and refer the same to the Ethics Committee of the council for its expeditious disposal in a period of not more than six months from the receipt of the complaint in the office of the Medical Council of India.

8.8. Any person aggrieved by the decision of the State Council on any complaint against a delinquent physician, shall have the right to file an appeal to the MCI within a period of sixty days from the date of receipt of the order passed by the said Medical Council.

Provided that the MCI may, if it is satisfied that the appellant was prevented by sufficient cause from presenting, the appeal within the aforesaid period of 60 days allow it to be presented within a further period of 60 days."

22. For inclusion of the said or similar provisions, Medical Council would take appropriate steps under the Act.

23. With regard to other issues including the aforesaid issue, adjourned for four weeks.