

**(2018) 08 MP CK 0240**

**In the Madhya Pradesh High Court**

**Case No :** Writ Petition No.11349, 14525, 16597, 19694 Of 2018

Sneha Mandawra

APPELLANT

Vs

Union Of India

RESPONDENT

**Date of Decision :** 30-08-2018

**Acts Referred:**

Indian Medical Council Act, 1956 — Section 10A

**Citation :** (2018) 08 MP CK 0240

**Hon'ble Judges :** P.K. Jaiswal, J;S.K. Awasthi, J

**Bench :** Division Bench

**Advocate :** Piyush Mathur, Amol Shrivastava, Akash Vijayvargiya, Meena Chaphekar, Akshay Kelapure, Deepak Rawal, Lucky Bijoriya, Sumer Singh Chouhan, Bhuvan Gautam, Sunil Jain, Parika Singh

## Judgement

P.K. Jaiswal, J

As common question of law and facts are involved in these four writ petitions, therefore, the writ petitions are heard analogously and are being disposed of by this common order. For the sake of convenience, facts are taken from Writ Petition No.11349/2018.

2. The petitioners are the medical students of Course MBBS (2nd Prof) admitted in Modern Institute of Medical Sciences, Indore (respondent No.8) affiliated with Madhya Pradesh Medical Science University (respondent No.5) for the academic year 2016-17. All these students were selected through NEET counselling after clearing the AIPMT Examination in the year 2016. The admissions were given as per the recommendation of the Oversight Committee formed, as per the orders of the Hon'ble Supreme Court in Modern Dental College & Research Centre & others v. State of Madhya Pradesh & others reported in (2016) 7 SCC 353.

3. The students cleared their 1st Prof. Examination and the results were declared on 22.11.2017. Thereafter, the students started noticing various irregularities in the conduct of the management and the classes, by the time of

March, 2018, the lectures completely stopped and there have been no classes conducted ever since. The students started together information and found out that the salary of the Teaching Staff has not been paid for long and after inspection conducted by the Medical Council of India, the recognition of the private medical college for admitting further students for Academic Years 2017-18 and 2018-18 have been taken away, although the admissions given to the students are still subsisting and valid.

4. Due to lack of funds and inability to maintain the infrastructure, the Management of the private medical college has left the students on the streets. There is no possibility of the said private medical college to regain its functionality and it is clear that the future of around 149 students have been left to wrought. The students took to street protests in the blinding summer heat. The private medical college has been abandoned and shut, the management has disappeared.

5. In spite of street protest on Regal Square, Indore, no action has been taken in the matter, and therefore, they filed this writ petition on the ground that the State Government of Madhya Pradesh has the responsibility and obligation towards students, as per Regulations of the Medical Council of India Establishment of Medical Colleges Regulations, 1999 and the Essentiality Certificate granted by them to the private medical college, who has no interest to protect the career of all these students.

6. According to the petitioners, the State Government is bound to take over the responsibility of the students such as the petitioners, who have been admitted in the private medical college in furtherance of the Feasibility / Desirability Certificate (Essentiality Certificate) issued by the State of Madhya Pradesh (respondent No.3) and whereas the private medical college (respondent No.7 - Shri Astha Foundation for Education Society) has failed to create basic infrastructure, as per the Medical Council of India norms and respondent No.1 has not stopped the private medical college from making any fresh admission. The petitioners have prayed for the following relief: -

#### "VII. RELIEF SOUGHT:

In the facts and circumstances of the present case, the petitioner humbly prays that this petition may kindly be allowed, and that this Hon'ble Court may be pleased to:

(a) Issue a Writ in the nature of Mandamus or other directing as per law the respondent No.3 and 4, State Government to take over the responsibility of the petitioners, who have been admitted in the medical college in furtherance of the Feasibility / Desirability Certificate (Essentiality Certificate) issued by Respondent No.3, and whereas the medical College (respondent No.7) has failed to create basic infrastructure as per MCI norms and whereas the Respondent No.1 has now stopped the college from making any fresh admission.

(a) Issue a Writ of Mandamus or other directing the Respondent No.1 and 2 to grant necessary permission and sanctions to the Respondent No.3 to shift and accommo- date the petitioners to any other Government Affiliated College in the State of MP.

(c) Issue a Writ of Mandamus directing the Respon- dent No.2 - Medical Council of India to forthwith approve the proposal of the Respondent No.3 to shift the petition- ers from the Respondent No.8, medical college and re-ad- mit the petitioners in the Government Medical Colleges and other Medical Colleges.

(d) Issue a Writ of Mandamus directing the Respon- dent No.1, Central Government to allow an increase in the admission capacity / maximum number of students in the MBBS Course to all the Medical Colleges in the State of Madhya Pradesh and accord necessary permissions to re-admit the petitioners in terms of directions passed by this Hon'ble Court.

(f) Issue a Writ of Mandamus directing Respondent No.6 the President, Admission and Fee Regulatory Com- mittee, State of MP to recover the entire amount as de- manded by Respondent Nos. 7 and 8 and paid by the stu- dents / petitioners in excess of the norms set by Respon- dent No.6, from the sum of Rs. two crore offered by Re- spondents 7 and 8 as Bank Guarantee and which has not been encashed by the MCI in terms of directions issued by this Hon'ble Apex Court in WRIT PETITION (CIVIL) No.1052 OF 2017 and to refund such excess payments to the petitioners / students along with penal interest @ 18% per annum, and / or

(g) Pass any other orders or directions which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

7. On 17.07.2018, this Court, after hearing the learned counsel for the parties, directed the respondents for grant of approval on the proposal submitted by the State Government on 23.06.2018.

8. On 25.07.2018, this Court directed the MCI to consider the aforesaid proposal and pass an appropriate order therein.

9. On 09.08.2018, we again directed MCI to take a final decision on the proposal dated 23.06.2018 and file a detail affidavit.

10. On 16.08.2018, we passed the following order:-

"We have perused the affidavit dated 14.8.2018 of Dr. Reena Nayyar, Secretary of Medical Council of India, New Delhi, Officer-n-Charge of this case.

On 10.8.2018 the matter pertains to transfer/accommoda- tion of the MBBS students, who had been granted admis- sion at Modern Medical College, Indore for the academic year 2016-17 was considered by the members of the Execu- tive Committee of the Council by circular dated 10.8.2018. After due deliberation, it has been decided by the members of the Executive Committee of the Medical Council that it shall not be in the interest of the students of Modern

Medi- cal College, Indore to accommodate/transfer them to other private Medical Colleges within the State of Madhya Pradesh. Therefore, the students admitted in Modern Medical College, Indore during the academic year 2016-2017, be transferred /accommodated in Government Med- ical Colleges of the State of Madhya Pradesh proportion- ately. The members of the Executive Committee further decided that the students of Modern Medical College, In- dore should pay the same fee as being charged by the said Private Medical Colleges in which they were initially ad- mitted, so that the additional revenue, which will be gener- ated from fees can be utilized to upgrade the infrastructure in the said Government Medical Colleges to which the stu- dents will be transferred and the same shall suitably meet the requirements of additional/transferred students.

The aforesaid decision of the Executive Committee of the Medical Council has been forwarded to the Oversight Committee as appointed by the Hon'ble Supreme Court vide letter dated 13.8.2018 (Annexure R-2/1). The Over- sight Committee vide its letter dated 14.8.2018 has ap- proved the proposal of Medical Council of India contained in Council letter dated 13.8.2018. Thereafter the aforesaid decision of the Medical Council of India has been commu- nicated on 14.8.2018 to the Central Government and the State Government of Madhya Pradesh. The relevant para of the proposal read as under:-

"It is further noted that the medical colleges are sanc- tioned specific annual intake capacity based on infrastruc- ture, clinical material, teaching faculty / residents and other physical facilities as available in the medical col- leges. In the Private Medical Colleges, the infrastructure as well as clinical material is extremely limited and most importantly the clinical material is not as abundant as that in the Govt. Medical colleges, which gives vast practi- cal experience to the students. The govt. Medical Colleges, for various cogent reasons, have abundant clinical mate- rial / inflow of patients, which is the most crucial aspect of the teaching & training of medical students.

Therefore, transferring the 295 students of Advance Med- ical College, Bhopal and Modern Medical College, Indore in the Private Medical College in the State of M.P., will re- sult in a situation, wherein the intake capacity of such Pri- vate Medical Colleges, in which the students are accom- modated shall be substantially increased in relation to the infrastructure, clinical material, teaching faculty / resi- dents & other physical facilities as available, which will be detrimental to the teaching & training of all medical stu- dents admitted in such colleges. This will adversely affect and deteriorate the standard of medical education im- parted by such Private Medical colleges. MCI being a cus- todian of medical education can not accept any proposal compromising quality of medical education. However, by transferring the students of Advance Medical College, Bhopal and Modern Medical College, Indore, in the Govt. Medical Colleges, due to the abundant clinical material / inflow of patients, even the transferred students shall be imparted quality teaching & training.

In view of the above peculiar situation that has arisen, wherein, 2 private

medical colleges in the State of Madhya Pradesh, on being repeatedly failed to fulfill the minimum infrastructure have been shut down; the members of the Executive Committee are of the considered view that it shall not be in the interest of students to accommodate / transfer the students of Advance Medical College, Bhopal and Modern Medical College, Indore to other Private Medical Colleges in the State of Madhya Pradesh. Therefore, the students admitted in Modern Medical College and Advance Medical College in the academic year 2016-17, be transferred / accommodated in Govt. Medical Colleges of the State of Madhya Pradesh proportionately. The members of the Executive Committee further decided to recommend that they should pay the same fees as being charged by the private medical colleges in which the students were initially admitted, so that the additional revenue, which will be generated from fees can be utilized to upgrade the infrastructure in the said Govt. Medical Colleges in which the students will be transferred. This will suitably meet the requirements of additional / transferred students."

Shri Manoj Dwivedi, learned Addl. Advocate General has submitted that the Government of Madhya Pradesh accepted the aforesaid proposal and gave its consent on 14.8.2018.

In view of the above, Shri Deepak Rawal, learned Assistant Solicitor General, who is appearing on behalf of the respondent No.1/Union of India prays for and is granted three working days to take an appropriate decision and convey the same to this Court on the next date of hearing. List the matter on 24.8.2018."

11. On 28.08.2018, it was pointed out by the Secretary, Medical Council of India that they have granted approval for re-allocation of the seats to the petitioners in Government Medical Colleges; and after granting approval by the Oversight Committee, the matter is pending before the Government of India for passing appropriate order therein under Section 10-A of the Indian Medical Council Act, 1956.

12. Today, Shri Deepak Rawal, learned Assistant Solicitor General for Union of India (respondent No.1) has made a statement at Bar that on 29.08.2018, the Government of India has granted approval for re-allocation of 149 students admitted in the academic session 2016-17 in Modern Institute of Medical Sciences, Indore (respondent No.8) to Government Medical Colleges in the State of Madhya Pradesh.

13. Paragraphs No.1 and 2 of letter dated 29th August, 2018 read, as under: -

"I am directed to say that the Medical Council of India after considering the proposal of the State Government of Madhya Pradesh submitted vide letter No.F.13-5/2018/55-I dated 23.06.2018 for reallocation of 146 students admitted in Advance Medical College, Bhopal and 149 students admitted in Modern Medical College, Indore in the academic session 2016-17 conveyed their recommendation to transfer / accommodate the students in Government Medical Colleges of the State of Madhya Pradesh proportionately with the condition

that the students should pay the same fee as being charged by the private Medical Colleges in which the students were initially admitted so that the additional revenue, which will be generated from fees can be utilized to upgrade the infrastructure in the said Gov- ernment Medical Colleges in which the students will be transferred. A copy of MCI's letter No.MCI-34(41) (Gen)/2018-Med./129891 dated 14.08.2018 received in this regard is enclosed.

2. After considering the recommendation of MCI, ap- proval of the Central Government is hereby conveyed for shifting of MBBS students admitted in the academic ses- sion 2016-17 at Advanced Medical College, Bhopal and Modern Medical College, Indore to Government Medical Colleges in the State of Madhya Pradesh. It has also been decided that sanctioned seats of recipient Medical Colleges will be deemed to have been increased in that batch only to the extent of number of students accommodated on such shifting. There will be no change in permitted capacity of each of the recipient Colleges for the purpose of subsequent admissions."

14. Shri Piyush Mathur, learned Senior Counsel appearing for the petitioners has drawn our attention to the law laid down by the Apex Court in the case of Asheesh Pratap Singh & others v. Union of India and others reported in (2003) 2 SCC 309 and sub- mitted that the Director, Medical Education, Govern- ment of Madhya Pradesh be directed to comply with the approval dated 29.08.2018 and work out a solution in such a manner that 149 students may be accommodated in Government Medical Colleges in the State of Madhya Pradesh in respect of whom directions have been given by the Medical Council of India, Oversight Committee and Government of India, within a period of three days from the date of filing of certified copy of this order, as per the Medical Council of India Establishment of Medi- cal Colleges Regulations, 1999; and if counselling in respect of 149 students is required, the same may be done within a specified time.

15. He has further submitted that they have de- posited Admission Fee to Modern Institute of Medical College, Indore, but the same has not been refunded by the private medical college, and therefore, they may be adjusted in the Government Medical Colleges, where all the students will get their admission.

16. We cannot accept the aforesaid proposal for adjustment of Admission Fee, but grant liberty to the students who have deposited their Admission Fee to take appropriate recourse of law to recover the aforesaid amount from the private medical college, in accordance with law.

17. In the above circumstances, we direct, on the especial facts of this case, to Medical Council of India and the Director, Medical Education, Government of Madhya Pradesh to take appropriate steps for granting admission of 149 students of Modern Institute of Medi- cal Sciences, Indore (respondent No.8) to Government Medical Colleges in the State of Madhya Pradesh, as per Regulations; and if counselling is required, the same may be done, in accordance

with law, within the time limit framed by the Hon'ble Supreme Court; and all the necessary steps be taken within a period of three days from the date of filing of the certified copy of this order, strictly as per the approval dated 29.08.2018.

18. We also appreciate the timely action taken by the officers / official (1) Director, Medical Education, Government of Madhya Pradesh, (2) Medical Council of India and (3) Government of India. Due to their promptly and timely action, students will save their academic session.

19. With the aforesaid directions, Writ Petition No.11349/2018, Writ Petition No.14525/2018, Writ Petition No.16597/2018 and Writ Petition No.19694/2018 are allowed and disposed of.

20. Original order be retained in Writ Petition No.11349/2018 and a copy thereof be retained in connected Writ Petition No.14525/2018, Writ Petition No.16597/2018 and Writ Petition No.19694/2018.