
(2015) 09 AHC CK 0126

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 55571 of 2015

Subharti K.K.B. Charitable Trust and Others

APPELLANT

Vs

Counseling Board and Others

RESPONDENT

Date of Decision : 30-09-2015

Acts Referred:

Indian Medicine Central Council Act, 1970 — Section 10(4), 11(2)

Citation : (2015) 11 ADJ 534 : (2016) 114 ALR 127 : (2016) 1 AWC 55 :
(2016) 1 UPLBEC 281

Hon'ble Judges : Rakesh Tiwari and M.C. Tripathi, JJ.

Bench : Division Bench

Advocate : Anurag Khanna and Nipun Singh, for the Appellant; Avanish Mishra, Piyush Mishra and Jyotsna Srivastava, for the Respondent

Final Decision : Disposed Off

Judgement

1. Heard Sri Anurag Khanna, senior Advocate assisted by Sri Nipun Singh, counsel for the petitioner, Sri Avanish Mishra appearing for respondent No. 3- Medical Council of India and Sri Piyush Mishra representing respondent No. 2- Union of India. This petition has been filed praying for the following reliefs:

"(i) issue a writ, order or direction in the nature of certiorari quashing the impugned inspection report dated 16th-17th March, 2015 and 21-22nd September, 2015, prepared by assessors of the respondent No. 3 being without jurisdiction and null and void;

(ii) issue a writ, order or direction in the nature of certiorari quashing the impugned letter issued by respondent No. 3 dated 30.3.2015 and 14.5.2015;

(iii) issue a writ, order or direction in the nature of mandamus directing the respondent No. 2 to issue fourth renewal of permission for the additional batch of 50 students; and

(iv) issue a writ of mandamus directing the respondent No. 1 to issue letter of

recognition to the additional 50 students of the petitioner college under section 11(2) of the IMC Act."

2. Yesterday i.e. on 29.9.2015 the matter was taken up and considering the urgency of the matter since it relates to the career of 50 students, who would otherwise get admission if the strength of the petitioner College is ultimately held to be 150 seats, this Court granted time to Shri Avanish Mishra, learned counsel appearing for Medical Council of India to seek instructions in the matter and directed the matter to come up today.

3. Brief facts giving rise to this petition are that Subharti Medical College, Meerut (petitioner College) was established in the year 2001. The petitioner College thereafter was granted approval on 7.2.2007 for under-graduate courses under Section 11(2) of Indian Medicine Council Act (in short, the Act) for 100 annual admissions. The petitioner College is also approved under Section 11(2) of the Act in 19 subjects for post-graduate studies and is running post-graduate course in another one subject under Section 10(A) of the Act with the permission of respondent Nos. 2 and 3. The petitioner College applied for the increase in the annual intake of MBBS Course from 100 to 150 seats vide letter dated 20.10.2009. The Assessors of respondent No. 3 conducted inspection of the petitioner College on 24th and 25th June, 2010 and having found adequate infrastructure, staff and clinical material, granted renewal of permission to the petitioner College to increase the number of undergraduate seats from 100 to 150 w.e.f. academic year 2011-12 and 2012-13 under Section 10A of the Act vide letters dated 7.5.2011 and 23.6.2012. As per the regulations of Medical Council of India, the renewal for permission for the additional 50 seats is to be given every year for five years till the batch is approved under Section 11(2) of the Act and thereafter every five years. The respondent No. 3 carried out inspections of the petitioner College every year and granted annual renewals of permission till the academic batch 2012-13. A meeting was held of the Board of Governors of respondent No. 3 on 10.7.2013 and the Board of Governors of respondent No. 3 found that the petitioner College fulfilled all the criteria for the grant of renewal of permission of additional 50 seats for the academic year 2013-14 vide resolution dated 10.7.2013 at clause (o).

4. On 18.7.2013 the petitioner College received a letter dated 14.7.2013 from the respondent No. 3 mentioning that in the light of some cases under investigation by the CBI against the petitioner College, the Board of Governors of the respondent No. 3 had decided not to approve for admission of 4th batch (third renewal of permission) of increased intake from 100 to 150 under Section 10(A) of the Act for the academic session 2013-14. Aggrieved with the order dated 14.7.2013 refusing permission to the petitioner College from inducting 150 students in place of 100 students, the petitioners filed a Writ C No. 46127 of 2013, in which following interim order was passed on 19.9.2013:

"Having considered the submissions made by learned senior counsel and in the absence of any counter-affidavit rebutting the averments made in the writ

petition or the submissions made by learned senior counsel and also considering the fact that 150 seats have been sanctioned for the petitioner-Institute for the year 2013-14 in the MBBS course and the fact that career of 50 students who would otherwise lose a session or more if deprived of admission, in case the writ petition subsequently stands to be allowed, we by way of an interim measure grant liberty to the petitioner-Institute to proceed with the admission to the extent of 50 additional seats over and above the annual capacity of 100 seats. Such admissions shall, however, be subject to the outcome of the writ petition.

For the purposes of grant of admission Shri Navin Sinha further pointed out that a direction to the Counseling Board, U.P. Combined Medical Entrance Test is necessary as the Counseling Board recommends the names of the selected candidates. We, therefore, direct the respondent No. 4-Chairman, Counseling Board, U.P. Combined Medical Entrance Test represented through their counsel Shri Mohit Singh, who is present in the Court, to recommend the names of 50 selected candidates in the order of merit to the petitioner-Institute by 28.9.2013 as we are informed that the last date of admission is 30.9.2013."

5. Aggrieved with the aforesaid interim order the respondent No. 3 preferred a Special Leave Petition No. 31890 of 2013 before Hon"ble Supreme Court, which was dismissed on 7.10.2013. In the academic batch 2013-14 the admissions were made with the permission of this Court. Thereafter the respondent No. 3 conducted a surprise inspection of the petitioner College for granting 4th renewal of annual permission for 50 additional seats in the academic batch 2014-15 on 11th and 12th April, 2014. The respondent No. 3 recommended to the respondent No. 2 not to renew the permission for 50 admissions for academic session 2014-15. The petitioner College filed Writ C No. 37292 of 2014 which was allowed on 22.7.2014 with following observations:

"A communication dated 04 July 2014 was sent by the Government of India to the Principal of Medical College annexing therein a letter dated 14 June, 2014 of the Medical Council of India in connection with the scheme submitted by the Medical College for granting permission for renewal of 50 additional seats for MBBS course in the session 2014-15. The Medical College was directed to submit a compliance report latest by 3:00 p.m. on 07 July 2014. The Medical College submitted the compliance report to the Central Government on 7 July 2014. The Central Government, however, sent a letter of the Medical Council of India for reassessment/verification of the compliance report but the Medical Council of India by a letter dated 10 July 2014 expressed its inability to reassess, verify or furnish a revised recommendation. It is for this reason that Government of India by a letter dated 15 July 2014 informed the Medical College that it would not be possible to approve the scheme for renewal of permission to the 5th Batch of additional 50 students for the MBBS Course.

Sri Naveen Sinha, Learned Senior Counsel appearing for petitioner has submitted that in view of the provision of section 10(4) of the Medical Council of India, 1956, it was necessary for the Central Government to have either examined the

compliance report itself or sought assistance of the Medical Council of India, but the Central Government did not examine the compliance report at all nor reasonable opportunity of being heard was provided to the petitioner. It is, therefore, his submission that the decision taken by the Central Government should be set aside.

We have heard Sri R.B. Singhal, learned Assistant Solicitor General assisted by Smt. Jyotsna Srivastava as well as Avinash Mishra, learned counsel appearing for Medical Council of India. Sri Singhal has supported the impugned order and has submitted that as the Medical Council of India did not submit any verification report, the Central Government had no option but to reject the scheme.

It is not in dispute that pursuant to the letter dated 04 July 2014 sent by the Central Government, the Medical College had submitted a compliance report on 7 July 2014. This was required to be examined by the Central Government. The Central Government, however, forwarded the compliance report to the Medical Council of India to reassess/verify it and furnish a revised recommendation. The Medical Council of India expressed its inability to reassess/verify the compliance report. In such an eventuality, the Central Government could have itself examined the compliance report or could have again asked the Medical Council to submit its report but this was not done. The result is that the compliance report submitted by the Medical College has neither been examined by the Medical Council of India nor by the Central Government. This has vitiated the order dated 15 July 2014.

In such circumstances, we quash the order dated 15 July 2014 and direct the Central Government to take a fresh decision on the scheme submitted by the Medical College. The Central Government can either require the Medical Council of India to reassess/verify the compliance report, if it so considers necessary, or can itself examine the compliance report. Such an exercise is required to be done expeditiously as the first counseling for admission in the MBBS Course has already started. We, therefore, expect that the Central Government will take a decision expeditiously, preferably within three weeks from today.

The writ petition is allowed to the extent indicated above."

6. Against the aforesaid judgment, the respondent No. 3 filed Special Leave Petition (Civil) No. 22472 of 2014 before Hon"ble Supreme Court in which an interim order was passed on 21.8.2014. Later on Hon"ble Supreme Court modified its order dated 21.8.2014 on 2.9.2014 to the extent that the Central Government shall verify the report of the respondent No. 3 in relation to additional 50 seats of the petitioner College without physical verification. Later on in pursuance of the order of Hon"ble Supreme Court dated 2.9.2014 a Committee was constituted by the Central Government. The respondent No. 2 submitted the report of the Committee before Hon"ble Supreme Court on 24.9.2014. Even after the order of Hon"ble Supreme Court dated 2.9.2014 to consider the report of the Committee for the academic year 2015-16, the

respondent No. 2 has not granted 4th renewal of permission or the permission to admit students in academic batch 2015-16 of the petitioner College. The respondent No. 3 sent its Assessors on 16th - 17th March, 2015 to the petitioner College for conducting inspection to consider the grant of approval under Section 11(2) of (Recognition of the Degree) of IMC Act. The Assessors of the respondent No. 3 acted totally against the norms of the Assessors Guide of the respondent No. 3. The respondent No. 3 pointed out several deficiencies in the petitioner College on the basis of the report of the impugned inspection report dated 16-17th March, 2015, issued the impugned orders dated 30.3.2015 and 14.5.2015 recommending to the respondent No. 2 not to grant recognition to the additional batch of 50 students under Section 11(2) of the IMC Act (Recognition of the Degree) and also threatening to issue a show-cause notice for applying Clause 8 (3) (1) (c) of the Establishment of Medical College Regulation (Amendment) 2010 (Part-II) dated 16th April, 2010. The respondent No. 3 sent his Assessors again to conduct a surprise inspection for so called compliance verification for the recognition of the degree on 21-22.9.2015.

7. Shri Anurag Khanna, Senior Advocate appearing for the petitioner College submits that the respondent Nos. 2 and 3 are deliberately trying to merge the issues of granting admissions in the academic batch 2015-16 and the recognition under Section 11 (2) of the Act of the 50 students of the additional batch, whereas both the issues are separate and must be dealt separately. In spite of several reminders, there has been no response from the respondent No. 2 for granting admissions in academic session 2015-16. There is a long history of the malafides of the respondents against the petitioner College.

8. Sri Avanish Mishra appearing for Medical Council of India has filed written instructions in the matter, inter alia that:

"1. the petitioners had filed IA No. 5 in SLP (C) 22472 of 2014 before the Hon. Supreme Court captioned as MCI v. Subharti Medical College, Meerut. In this IA the college had made the following prayer:

(a) direct the Central Government to grant permission to the respondent to admit fifty students in the academic year 2015-16 in MBBS Course.

(b) direct the Special Leave Petition (C) No. 22472 of 2015 be listed for hearing on any early date, and also pass such other and further orders as the Hon. Court deems fit and proper in the facts and circumstances of the case.

2. The above I.A. was disposed of by the Hon. Supreme Court vide order dated 10.8.2015, which reads as under:

"IA No. 5/2015 is dismissed. The Medical Council of India shall ensure that necessary inspection for the academic year 2016-17 shall be done within six weeks from today."

3. The petitioner had filed another I.A. seeking modification of order dated 10.8.2015 of the Hon. Supreme Court in which the following prayer was made:

(a), to modify the order dated 10.8.2015 and pass a fresh order on the basis of the report submitted by the Central Government dated 24.9.2014 in pursuance of the order of the Hon. Court dated 2.9.2014, directing the Central Government to grant fourth renewal of permission to additional fifty seats to the respondent college within one week considering the referred decided matters of other medical colleges for this year 2015-16;

(b). to dispose of the SLP (C) No. 22472 of 2014 being infructuous and irrelevant in the light of judgment dated 20.8.2015 passed by this Bench of Hon. Court in W.P. (C) No. 705 of 2014;

(c). to modify the order dated 10.8.2015 and pass a fresh order that the MCI may conduct the compliance verification inspection in the light of already submitted report dated 29.4.2015 by the respondent college under the observer ship of an impartial officer appointed by the Hon. Court within one week for the respondent college for the approval of the additional 50 seats under section 11(2) of the IMC Act, 1956.

4. The Hon. Supreme Court vide its order dated 3.9.2015 had finally disposed of the SLP filed by the Council and had passed the following order:

"leave granted.

In view of the judgment dated 20th August 2015 delivered by this Court in Royal Medical Trust (Regd.) and another v. Union of India and another (Writ Petition (C) No. 705/2014), the appeal is allowed and the order passed by the High Court is set aside. Pending application, if any, stands disposed of."

5. In pursuance of the order dated 10.8.2015 of the Hon. Supreme Court, the Council has on 21st September, 2015 carried out inspection of the said college. The report has been received and would in due course be considered by the Executive Committee of the Council for academic year 2016-17.

6. Hon. the Supreme Court vide its order dated 3.7.2015 in SLP (C) No. 17177 of 2015 titled as Medical Council of India v. Jamia Hamdard (Deemed University) and others, had directed as under:

"We have heard learned counsel for the parties.

It is stated by learned counsel for the respondents that the Central Board of Secondary Education (CBSE) has been asked to complete the examination for admission to first year MBBS and declare the results on or before 17th August, 2015. Therefore, it is not possible to grant any admission to anybody until that date.

It is stated that the matter is being heard by learned Single Judge and that the petitioner in the High Court has concluded his arguments. We request the learned Single Judge in the High Court to see if it is possible to decide the matter on or before 17th August, 2015.

Having heard learned counsel for the parties, we are of the view that the practice of giving provisional admission should not be encouraged since it tends to create an equity in favour of the students notwithstanding all precautions the Court may take by directing that provisional admission will be at the risk of the students or subject to the outcome of any writ petition.

Insofar as the present case is concerned, that situation does not arise since it is stated by learned counsel for respondents that no admissions will be made till 17th August, 2015.

However, we request the Medical Council of India to bring to the notice of the Courts this order requesting that provisional admissions may not be made in the ordinary course.

The special leave petition is disposed of accordingly."

7. That the order dated 15.9.2015 passed by the Allahabad High Court in F.H. Medical College and another v. Union of India and others, Writ Petition No. 40323 of 2015, was challenged by way of Special Leave petition before the Hon. Supreme Court bearing SLP (G) No. 27732/2015 titled as President, Medical Council of India and another v. F.H. Medical College and others, was mentioned before the Apex Court on 29.9.2015 and the Standing Counsel of Medical Council of India, has telephonically informed that the order of the Hon. High Court has been stayed by the Hon. Supreme Court."

9. Sri Avanish Mishra further submits that the Medical Council of India has conducted inspection pursuant to the order of the Apex Court on 21st -22nd September, 2015 and its report is to be considered by the Executive Committee of MCI and thereafter recommendation would be sent for considering prayer of the petitioner College for academic year 2016-17.

10. Shri Anurag Khanna, Senior Advocate appearing for the petitioner College at this stage has made an innocuous prayer for directing the Central Government to consider the case of the petitioner College in pursuance of the letter dated 17th September, 2015 for additional intake, for which hearing has been given to the petitioner College on 18th September and that the Central Government may be directed to pass appropriate orders at the earliest.

11. From the submissions made by counsel for petitioner College, it appears that respondent No. 2 invited the petitioner College for a personal hearing for the issue of grant of permission in the academic batch 2015-16 under section 10A(4) of the Act on 18.9.2015 vide letter No. U.12012/510/2015-ME-1, dated 17.9.2015. The petitioner College attended the personal hearing on 18.9.2015. During the hearing, instead of discussing the issue for which the hearing was arranged, the hearing Committee of the respondent No. 2 started asking about the issues related with the inspection done by the respondent No. 3 for grant of recognition under section 11(2) of the Act. Thus, the so called personal hearing became a futile exercise.

12. In the facts and circumstances of the case, it is expected that the Executive Council of the MCI will consider the report and send the same to the Central Government for its consideration at the earliest. The Central Government on receipt of the report, shall pass appropriate orders expeditiously preferably within two weeks from today. With the above observations, the petition stands disposed of.