

**(1999) 11 AHC CK 0123**  
**In the Allahabad High Court**  
**Case No : C.M.W.P., No. 38367 of 1999**

Subharti K.K.B. Charitable Trust

APPELLANT

Vs

Union of India and others

RESPONDENT

**Date of Decision :** 05-11-1999

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Establishment of New Medical Colleges, etc. Regulations, 1993 — Regulation 5  
Indian Medical Council (Amendment) Act, 1993 — Section 10(5), 10A, 10A(4), 33

**Citation :** (2000) 1 AWC 534 : (2000) 1 UPLBEC 655

**Hon'ble Judges :** Onkareshwar Bhatt, J;A.A. Desai, J

**Bench :** Division Bench

**Advocate :** Yasharth and Sudhir Chandra Agrawal, for the Appellant; Kirit Rawal, Addl. S.G. of India, S.N. Srivastava, S.S.C., Maninder Singh, Pradeep Kumar and Vikram Nath, for the Respondent

**Final Decision :** Allowed

## Judgement

Onkareshwar Bhatti, J.—By means of this writ petition under Article 226 of the Constitution of India, petitioner has prayed for issuance of a writ of certiorari for quashing the impugned order dated 19.7.1999. Annexure-26 to the writ petition, passed by respondent No. 1. The petitioner has also prayed for issuance of a writ, order or direction in the nature of mandamus directing the respondent No. 1 to issue an order granting permission to the petitioner to commence medical college as per the scheme submitted without any further inspection or enquiry within the period so fixed by the Court.

2. Sri Sudhir Chandra Agrawal, learned Senior Advocate, appearing for the petitioner. Mr. Kirit Rawal, learned Additional Solicitor General of India, and Sri S.N. Srivastava, learned Senior Standing Counsel, appearing for respondent No. 1 and Sri Maninder Singh, learned counsel appearing for the respondent No. 2 were heard at length and in detail.

3. The petitioner is a registered charitable trust. The petitioner submitted a

scheme on 6.8.1996 for setting up of a medical college in Meerut to the respondent No. 1, which was referred to the respondent No. 2.

4. The petitioner's case is that it applied and was granted no objection certificate from the State Government of Uttar Pradesh. The petitioner trust also applied for and was granted consent to affiliation by Chaudhary Charan Singh University, Meerut. The petitioner trust has also been accorded consent for affiliation by Purvanchal University, Jaunpur and by Dr. Bhim Rao Ambedkar University, Agra. The petitioner submitted the Scheme giving relevant details regarding ownership of 25 acres of land, a copy of the Government Order issued by the Government of Uttar Pradesh notifying that the District Hospitals were available for teaching purposes of new medical colleges and a memorandum of understanding with Lokpriya Nursing Home Ltd. for the use of 300 bed hospital for teaching purposes. Subsequently, this memorandum of understanding was converted into an agreement of perpetual lease whereby the Lokpriya hospital was irrevocably handed over to the petitioner. Subsequently, without conducting any inspection the respondent No. 2 recommended rejection of the petitioner's Scheme. Thereafter the respondent No. 1 issued notice to the petitioner to appear for personal hearing which took place firstly on 27.2.1997 and secondly on 30.7.1997. On 13.8.1997 three doctors, claiming to represent the respondent No. 2, visited the college premises and carried inspection. The inspection-report along with notice of hearing on 5.11.1997 was sent to the petitioner. The petitioner submitted a written representation alleging that the defects/deficiencies pointed out in the inspection report were misconceived. On 31.1.1998 another team of three doctors visited the petitioner's hospital. No further action was taken after the inspection dated 31.1.1998. The petitioner sent a representation on 9.3.1998 to the respondent No. 1, which received no response.

5. The petitioner then filed Writ Petition No. 12531 of 1998 claiming that it was entitled to a declaration to the effect that its medical college was deemed to have been approved u/s 10A (5) of the Indian Medical Council (Amendment) Act, 1993.

6. The respondents filed counter-affidavits. This Court on 6.5.1998 directed that another inspection be made and in this inspection the Medical Council of India should point out the deficiencies and also suggest how to remove it and provide help, so that the medical college can be set up soon. On 6.7.1998 the respondent No. 2 filed an affidavit along with a copy of the inspection report. It was averred that in view of eight defects pointed out by them in the report, they had recommended to the Central Government not to issue letter of intent to the petitioner college. The petitioner filed a detailed affidavit on 10.7.1998 demonstrating that eight defects pointed out were totally unfounded. Thereafter this Court passed an order on 24.7.1998 directing the respondent No. 1 to examine the entire matter and pass appropriate orders within two months. The respondent No. 1 struck down six out of eight defects pointed out by respondent No. 2 by order dated 12.11.1998. However, two defects were pointed out. The

petitioner in view of the order dated 12.11.1998 passed by the respondent No. 1 amended its writ petition and added to the existing prayers. Amended counter-affidavits were also filed by the respondents. This Court disposed of the writ petition by order dated 19.3.1999 with liberty to the petitioner to make representation before the respondent No. 1 with all materials to satisfy that the two defects pointed out in the impugned order have been removed. It was made clear that consideration will be of the same application which was filed earlier and shall not be treated as fresh application. The Court also ordered that the representation, if so filed, shall be considered and decided within one month from the date it is filed.

7. The petitioner submitted a representation to the respondent No. 1 on 25.3.1999. Thereafter the respondent No. 2 appointed two inspectors. While conducting the inspection on 4.5.1999 the inspection team of the respondent No. 2 wanted to conduct full scale inspection. The President of the petitioner trust requested the inspection team to confine the inspection on the aspects specified by the Court's order dated 19.3.1999. The respondent No. 1 after taking into consideration the above report passed the impugned order on 19.7.1999. The petitioner made representation on 26.7.1999 to the respondent No. 1 to review the orders dated 19.7.1999 and 4.8.1999, which has not met with any response.

8. During pendency of the writ petition the respondent No. 1 has disposed of the representation of the petitioner by an order dated 15.9.1999, which is Annexure-1 to the additional affidavit filed by the petitioner. The petitioner has alleged that even this order has been passed in haste in an attempt to avoid action for contempt of this Court's order dated 19.3.1999 and it is mala fide.

9. The respondent No. 1 filed counter-affidavit. It has been stated in it that in pursuance of the order of the Court dated 19.3.1999 the representation was received from the petitioner on 26.3.1999. Thereafter the Central Government decided to ask the respondent No. 2 to carry out inspection. The inspection was carried out on 4.5.1999. However, by communication dated 20.5.1999 the respondent No. 2 informed that the inspection was not permitted by the college and the respondent No. 2 decided not to recommend for issuance of the letter of intent to the petitioner. The petitioner by its letter dated 4.6.1999 refuted and controverted the facts in relation to the inspection made on 4.5.1999. To resolve the controversy a joint meeting was held on 18.6.1999, whereafter the impugned order was passed on 19.7.1999. It is stated that the order dated 15.9.1999, has been passed in bona fide discharge of the official duties.

10. The respondent No. 2 has also filed counter-affidavit. It has been stated that the application of the petitioner besides various other deficiencies were found to be lacking in relation to the precondition of the college owning a hospital of not less than 300 beds which can be developed as teaching hospital. It is also stated that on 4.5.1999 the petitioner did not permit the inspection-team to carry out the inspection for verification of the necessary facts.

11. In the additional affidavit it has been stated that the petitioner owns and manages a hospital of not less than 300 beds with infrastructural facilities, which are capable of being developed. It is further stated that 75% of the work is complete. It is also stated that in each category the staff exceeded the requirements and clinical staff has been converted into full time.

12. The respondent No. 2 in exercise of the power conferred by Section 10A read with Section 33 of the Indian Medical Council Act, 1956 (102 of 1956), with the previous approval of the Central Government, has made Regulations relating to the establishment of new medical colleges. These Regulations may be called as The Establishment of new Medical Colleges, Opening of Higher Courses of Study And increase of Admission Capacity in Medical Colleges Regulations, 1993 (hereinafter called "the Regulations"), in Section 2 of the Regulations, eligibility criteria as well as qualifying criteria has been provided for application for permission of the Central Government to establish a new medical college. Clause 5 of the qualifying criteria reads as follows :

"5. that applicant owns and manages a hospital of not less than 300 beds with necessary infrastructural facilities and capable of being developed into a teaching institution as prescribed by the Medical Council of India, in the vicinity of proposed medical college.

13. By the impugned order dated 19.7.1999, the respondent No. 1 has directed the petitioner to subject itself to fresh inspection by the respondent No. 2. According to the petitioner the impugned order is wholly illegal, unwarranted and mala fide. While disposing of the Writ Petition No. 12531 of 1998 this Court on 19.3.1999 gave certain directions, as noted above.

14. The order dated 19.3.1999 passed by the Court took notice of the averments made in paragraph No. 3 of the counter-affidavit filed by Sri C.L. Bhatia, Under Secretary, Ministry of Health and Family Welfare, which indicated about the requirement of owning and managing 300 bedded hospital. It was stated that the lease granted in perpetuity seeks to transfer virtually all the rights of ownership to the lessee. The Ministry of Law have, therefore, concluded that the requirement of the applicant owning and managing a 300 bedded hospital may be viewed as having been sufficiently complied with. This Court also observed that perpetual lease, which has been granted by registered document, shall be as good as any property owned by the trust. The Court also observed that in our opinion, the perpetual lease though in strict sense cannot be termed as ownership, but in effect it is as good as ownership property and may satisfy the prescribed requirement.

15. The two defects which are mentioned in the Court's order dated 19.3.1999 are to be found in the order dated 12.11.1998 passed by the respondent No. 1. The said order states that the application submitted by the trust in 1996 is still deficient in two respects :

(i) the trust does not own and manage a 300 bedded hospital. The inspection

team has further pointed out that the hospital has single room OPDs and most of the rooms in the wards are two-bedded which are not suitable nor convenient for teaching and training of medical students.

(ii) The second major deficiency noted in the order is nonavailability of adequate teaching staff.

16. On 4.5.1999 the inspecting team of the respondent No. 2 visited the petitioner-trust and submitted inspection report, which is Annexure-P-25. The report mentions that the lease deed was registered. It also reported that the staff of training department is paid full time salary and it has been converted into full time salary basis. Photo copies of salary register for the month of April, 1999 were shown. The inspection report gives chart of the staff which was available in the clinical department. The report mentions that the photo copy of the salary register which has been given to the inspectors does not show the designation of the various staff members completely disabling the inspection team to verify the aspects relating to the deficiency of the staff required by the college at its inception. The report also under the heading "hospital is capable of being developed into a teaching hospital" mentions that the Institution has started modifications to convert single room, OPDs and single indoor wards having one or two beds. So far at three places in the indoor changes have been done and at three places the work is in progress. Rest all the indoor rooms are yet to be converted, in the OPD conversion of single rooms into bigger rooms by breaking the walls of the adjacent rooms started on the day of inspection and so far only in one room this work was going on. The team was also given a map of the whole building prepared by the architect to convert the single rooms into bigger spaces for 5 to 7 patient's wards.

17. In the impugned order passed on 19.7.1999 the above facts, as mentioned in the inspection report dated 4.5.1999, have been taken note of. However, in para 16 of the impugned order it is stated that:

"Reverting to the limited points of the two deficiencies pointed out in the order of Secy. (Health) dated 12.11.1998 the major deficiencies still appear to be in the process of rectification. The hospital structure is still being remodelled and physical verification of staff could not be done as some were reportedly on vacation. Ample opportunities have been given to the petitioner to rectify these deficiencies. He claims that he has rectified these deficiencies. However, he is not willing to have these scrutinised by Medical Council of India."

The impugned order in the ends mentions that the Medical Council of India will conduct another inspection.

18. Sub-section (4) of Section 10A of the Indian Medical Council (Amendment) Act, 1993 provides as follows :

"(4) The Central Government may, after considering the scheme and the recommendations of the Council under sub-section (3) and after obtaining,

where necessary, such other particulars as may be considered necessary by it from the person or college concerned, and having regard to the factors referred to in sub-section (7), either approve (with such condition, if any, as it may consider necessary) or disapprove the scheme and any such approval shall be a permission under sub-section (1) :

Provided that no scheme shall be disapproved by the Central Government except after giving the person or college concerned a reasonable opportunity of being heard ....."

19. Sub-section (4) Mentioned above, provides that the Central Government may approve the scheme with such conditions, if any, as it may consider necessary, meaning thereby that approval of the scheme can be with conditions.

20. Regulation 5 also speaks of the hospital with necessary infrastructural facilities and capable of being developed into a teaching institution. The above provision will show that at the time of giving permission the hospital should not necessarily be a teaching hospital, but should be capable of being developed into teaching institution. Moreover, according to the Regulations, the permission to establish new medical college and admit the students will be granted initially for a period of one year and will be renewed on yearly basis subject to verification of the achievements of annual targets and revalidation of the performance bank guarantees. This process of renewal of the one will continue till such time the establishment on permission of the medical college and expansion of the hospital facilities is completed and formal recognition of the medical college by the Council of India is granted.

21. The petitioner in its representation has stated that the chart of the available staff given along with the order dated 12.11.1998 shows on its own that more than the required teaching staff is available with the college. The chart is to be found in the order dated 12.11.1998. The order dated 12.11.1998 does not mention that the teaching staff was inadequate. The chart shows that number of teaching staff was either the same which was required at the inception or more than that. According to the petitioner the inspectors of the respondent No. 2 met with 19 out of 21 staff members of the clinical department, who were made to fill forms. The objection, it appears, was their becoming full time or not. The report of the inspectors of the respondent No. 2 dated 4.5.1399 shows that clinical staff was converted to full time salary basis.

22. In para 5 of the impugned order it is stated that :

(a) The trust has taken the control and management of Lokpriya Hospital through registered perpetual lease deed.

(b) The staff in pre-clinical departments is available. The staff in clinical department which was earlier on contract basis has also been appointed on regular basis.

(d) The modification of wards for accommodating 5 to 6 patients in a room is

underway.

After having noticed the above facts two deficiencies mentioned in the order dated 12.11.1998 of the respondent No. 1 appear to have been made good. Therefore, the insistence of respondent No. 1 to subject the petitioner trust for another inspection was wholly uncalled for. The impugned order is arbitrary exercise of power and it cannot be sustained. The order of the respondent No. 1 dated 15.9.1999, which has been passed during pendency of the writ petition, also cannot be sustained, because it has been made without giving the petitioner trust a reasonable opportunity of being heard in contravention of the first proviso to sub-section (4) of Section 10A of the Indian Medical Council (Amendment) Act. 1993.

23. In the case of Al-karim Educational Trust and another v. State of Bihar and others. 1996 (8) SCO 330, the question was of withholding or prolongation of grant of affiliation to universities, and the Hon"ble Supreme Court observed that it is impractical to insist, for a foolproof or absolute adherence to all requirements without regard to their importance or relevance. In the final analysis the question to be posed is whether there exists the minimal and satisfactory requirements to keep the matter going, and not whether better arrangements that will render the setup more efficient and more satisfactory, should be insisted as "a wooden" rule. It may be that there are some minor deficiencies here and there which call for rectification. The time can certainly set right such matters.

24. The facts and circumstances of the case show that issuance of the letter of intent and grant of permission to the petitioner trust have been unnecessarily delayed by insisting upon another inspection.

25. In view of the aforesaid discussion, the writ petition succeeds.

26. The writ petition is allowed and the impugned order dated 19.7.1999 as well as the order dated 15.9.1999 (Annexure-26 to the writ petition, and Annexure-1 to the additional affidavit of the petitioner respectively) are quashed. The respondent No. 1 is directed to pass appropriate orders of permission on the application of the petitioner trust for commencing medical college as per the Scheme submitted within four weeks.