
(2014) 08 KL CK 0177
In the High Court Of Kerala
Case No : WP(C).No. 18761 of 2014 (U)

The Director

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 12-08-2014

Acts Referred:

Indian Medical Council Act, 1956 — Section 10A

Citation : (2014) 08 KL CK 0177

Hon'ble Judges : A. Muhamed Mustaque, J

Bench : Single Bench

Advocate : Kurian George Kannanthanam, Senior Advocate, Tony George Kannanthanam and Thomas George, Advocate for the Appellant; N. Nagaresh, ASG of India and Titus Mani Vettom, SC, Medical Council of India, Advocate for the Respondent

Judgement

A. Muhamed Mustaque, J.—The petitioner approached this Court being aggrieved by Ext.P10 and P16 orders passed respectively by the Medical Council of India and Government of India.

2. The petitioner is a self financing private medical college in the State. This college was established in the year 2005. The initial intake was 50 seats for MBBS course. The first batch completed the course in the year 2010 and the college was given regular recognition as per Ext.P2 notification. Thereafter the petitioner applied for enhancement of intake from 50 seats to 150 seats. Permission was granted by the Medical Council of India for increase of seats initially for a period of one year subject to renewal on annual basis on achievement of annual targets set out in the project report and verification thereto by the Medical Council of India. The letter of permission issued by the Medical Council of India is Ext.P3. This permission was granted in the year 2011. This was further renewed in the year 2012 and also in the year 2013. The issue in this writ petition is pertaining to the year 2014-15. The petitioner was served with a notice by the Medical Council of India stating the manner in which renewal

application has to be made. This notice is produced as Ext.P6 dated 10/10/2013. The petitioner thereafter produced all the details as per Ext.P7. This was on 05/12/2013.

3. The renewal application is treated as an application similar to the application for new college/new course under Section 10A of Indian Medical Council Act, 1956. It appears that the Medical Council of India conducted an inspection to verify the details furnished by the petitioner in terms of Ext.P6. Since no response was received, petitioner sent Ext.P9 on 02/07/2014 stating that petitioner understood that inspecting team has pointed out some minor deficiencies with regard to physical facilities in the institution and that the petitioner is prepared to cure such defects and also requesting to provide assessment report. Petitioner, thereafter, received a copy of the letter addressed by the Medical Council of India to the Government. It is produced as Ext.P10. Ext.P10 is dated 10/06/2014. In Ext.P10, Medical Council of India communicated the Central Government not to renew permission for admission to the petitioner for the fourth batch of MBBS students against the increased intake i.e. from 50 to 150. It is stated in Ext.P10 that following deficiencies exist:

"1. Examination Hall-cum-Auditorium: At present, seating arrangement for only 200 against requirement of 350 as per the regulations.

2. Lecture Theatre in the hospital has no facility for E class. It is not air conditioned.

3. UHC: Teaching room is too cramped and there is very little room for placement of chairs.

4. Website: It does not provide information about CME programmes, academic activities, awards, achievements, information about affiliating University, infrastructure details like quarters, citizens' charter, list of students admitted, Result of last one year's examination and anti ragging committee (including toll free number).

4. The petitioner on receipt of Ext.P10 immediately submitted a compliance report (Ext.P12) before the Central Government on 03/07/2014 as per Ext.P11. The Central Government, based on the recommendation of the Medical Council of India in Ext.P10, disapproved the scheme for renewal of permission for admission of fourth batch of MBBS students against the increased intake i.e. from 50 to 150 for academic session 2014- 15. It is obvious that Central Government did not advert to Exts.P11 and P12. The petitioner would submit that action is arbitrary. The decision to disapprove is done without advert to compliance report submitted by the petitioner as per Exts.P11 and P12 and also without giving the petitioner an opportunity to cure defects, if at all exist. Petitioner also questions the decision made on the last date for issue of permission by the Central Government under the schedule of Medical Council of India regulations.

5. A counter affidavit has been filed by the Medical Council of India. It is pointed out that the last date for granting letter of permission is over and this Court cannot extend the last date in view of the various pronouncements of the Hon"ble Supreme Court. It is also submitted that the Central Government had moved the Hon"ble Supreme Court with Civil Appeal No. 4318-19 of 2012 seeking extension of date for Medical Council of India to furnish revised recommendations and for issuance of letter of permission/disapproval of scheme by Government of India in respect of medical colleges for which favourable recommendations have been received from Medical Council of India and also in relation to other pending applications. It is further submitted that the above application has been dismissed by the Hon"ble Supreme Court on 31/07/2014. However, it is admitted by the Medical Council of India that compliance report/representations received from various private medical colleges could not be considered by the Executive Committee without physical verification of the medical colleges and returned all representations/compliance reports which could not be verified by physical verification before 15/06/2014. However, in paras.43 and 44, it is stated that the Executive Committee has considered all the cases of Government Medical Colleges wherein there was an undertaking by the Principal Secretary/Chief Secretary of the relevant State Government claiming to have rectified deficiencies and also considered cases without physical compliance/verification based on such undertaking and forwarded to the Central Government for favourable action. It is stated in further paragraph that the application of private medical colleges cannot be considered in par with Government Medical Colleges.

6. The reasons stated for not recommending the petitioner"s college for renewal in Ext.P10 by the Medical Council of India apparently are on account of minor curable defects. Petitioner also claims to have rectified such defects. I am of the view for want of physical verification, the increase intake capacity enjoyed by the petitioner for the last three years ought not have been denied especially when Government Colleges are allowed to be considered without physical verification by inspection. There cannot be any differential yardsticks for treating medical colleges run by Government and private in terms of infrastructure for satisfying the criteria for approval. There cannot be any difference in the purpose of establishing private or aided/Government medical college as projected in the counter affidavit filed by the Medical Council of India. The purpose for establishing private or Aided/Government Medical Colleges is one and the same. The discretion exercised by the Medical Council of India in selective way by denying the renewal for Private Medical Colleges for want of compliance report regarding defects is arbitrary in the factual circumstances. The private medical colleges are also discharging a public duty supplemental to the main activity of the state in the field of education. I am of the view that the decision of Medical Council of India in such circumstances in not recommending petitioner"s request for renewal of permission for admission of fourth batch of MBBS students against the increased intake i.e. from 50 to 150 by Ext.P10 letter addressed to the

Central Government, is nothing but arbitrary. On the other hand, the order passed by the Central Government on the last date of granting letter of permission also is bad for the reason that the Central Government should not have waited till the last date to pass such order. I am also of the view that Exts.P10 and P16 are arbitrary and liable to be interdicted especially when Medical Council of India has accorded different treatment to Government Medical Colleges. But the question is whether this Court can grant the relief to the petitioner. The Hon''ble Supreme Court, as per order dated 31/07/2014, in Civil Appeal No. 4318/2012 declined the request made by the Central Government for extending time for issuing letter of permission. In view of the above, this Court cannot grant relief to the petitioner. Accordingly, the relief is declined to the petitioner.