

(2020) 08 RAJ CK 0186

In the Rajasthan High Court

Case No : Civil Writ Petition No. 5592 Of 2020

Tirupati Balaji Educational Trust, Bhilon Ka Bedla, Udaipur,
Rajasthan And Anr

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 17-08-2020

Acts Referred:

Indian Medical Council Act, 1956 — Section 10(A)
Constitution Of India, 1950 — Article 32

Citation : (2020) 08 RAJ CK 0186

Hon'ble Judges : Vijay Bishnoi, J

Bench : Single Bench

Advocate : Kuldeep Mathur, Vikas Balia, R.S. Saluja, Harsh Chittora, Sanjeet Purohit

Judgement

This writ petition is preferred on behalf of the petitioners challenging the communications dated 13.03.2020 (Annexures-8 to 19), whereby the respondent No.2 - Board of Governors in supersession of Medical Council of India, New Delhi has rejected the prayer of the petitioners for increase in allotment of student in various post graduate courses for the academic year 2020-2021 and reaffirmed its decision dated 11.02.2020, whereby the respondent No.2 has granted permission to the petitioners for admitting specific numbers of students in various post graduation courses.

The facts, in a nut shell, are that the petitioner No.1 is a Trust registered under the relevant law and the petitioner No.2 is a private medical college run by the petitioner No.1 since the year 2014. The respondent No.2 vide public notice dated 21.02.2019 (Annexure-1) invited applications for starting/increasing of seats in post graduate courses (Broad Specialty) under Section 10(A) of the Indian Medical Council Act, 1956 for the academic year 2020- 2021. Pursuant to the public notice dated 21.02.2019 (Annexure-1) the petitioner No.2-college submitted applications on 29.05.2019 for starting various post graduate courses in 12 departments. Details of the same are as follows :- "1. M.S. in General

Surgery (with 19 seats);

2. M.D. in Radio Diagnosis (with 10 seats);

3. M.D. in Pediatrics (with 11 seats);

4. M.D. in General Medicine (with 19 seats);

5. M.S. in Orthopedics (with 11 seats);

6. M.S. in Obstetrics & Gynecology (with 11 seats);

7. M.D. in Anesthesiology (with 10 seats);

8. M.S. in Otorhinolaryngology (with 5 seats);

9. M.D. in Dermatology, Venereology and Leprosy (with 5 seats);

10. M.S. in Ophthalmology (with 5 seats);

11. M.D. in Psychiatry (with 5 seats) and

12. M.D. in Respiratory Medicine (with 5 seats)." The respondent No.2 conducted regular inspection of the petitioner-college for examining the capacity of it for starting the post graduate courses applied by it. Vide communication dated 08.01.2020 the respondent No.2 directed the Principal of petitioner-college to appear before it on 13.01.2020 to furnish explanation regarding appointment of 5 faculty members as referred in the communication and in response thereto, the authorised representatives of the petitioner-college appeared before the respondent No.2 and submitted its explanation on 13.01.2020 and after providing personal hearing to the representatives of the petitioner-college, the respondent No.2 has issued separate communications dated 11.02.2020 and granted permission for admission to the petitioner-college in 12 post graduate courses for specific numbers of students. The details of it are as follows :-

Name of the courses	Seats allotted
M.S. in General Surgery	5 seats
M.D. in Radio Diagnosis	4 seats
M.D. in Pediatrics	4 seats
M.D. in General Medicine	10 seats
M.S. in Orthopedics	5 seats
M.S. in Obstetrics & Gynecology	3 seats
M.S. in Otorhinolaryngology	3 seats
M.D. in Dermatology, Venereology and Leprosy	1 seats
M.S. in Ophthalmology	2 seats

M.D. in Psychiatry	2 seats
M.D. in Respiratory Medicine	2 seats
M.D. in Anesthesiology	6 seats

Being aggrieved with the action of the respondent No.2 for sanctioning the less number of seats for the various post graduate courses, the petitioner-college submitted a representation before the respondent No.2 on 17.02.2020 and prayed for increase in the intake capacity of various post graduate courses.

The petitioners have thereafter filed a writ petition being Writ Petition(s) (Civil) No(s).380/2020 (Tirupati Balaji Education Trust & Ors. Vs. UOI & Ors.) before the Hon'ble Supreme Court under Article 32 of the Constitution of India and the Hon'ble Supreme Court in that writ petition vide order dated 28.02.2020 was pleased to pass the following order:-

"Having regard to the circumstances of this case, we consider it appropriate to permit the Board of Governors of Medical Council of India to decide the representations dated 17.02.2020 made by the petitioners within a period of two weeks from today.

It is made clear that any delay in deciding the representations shall not be pleaded for denying the relief to the petitioners. The time will liable to be extended."

Pursuant to the direction given by the Hon'ble Supreme Court the respondent No.2 has decided the representations of the petitioner-college dated 17.02.2020 on 13.03.2020 and rejected the prayer of the petitioner-college of increasing in the intake capacity of various post graduate courses and reiterated its decision of allowing the petitioner-college to admit specific number of students in various post graduate courses as approved by its vide communication dated 11.02.2020. The writ petition being Writ Petition(s) (Civil) No(s).550/2020 (Tirupati Balaji Education Trust & Ors. Vs. UOI & Ors.) filed by the petitioners before the Hon'ble Supreme Court was taken up for hearing on 08.07.2020 and the same was disposed of as withdrawn by passing the following order:-

"Mr. Dushyant Dave, learned Senior Advocate appearing on behalf of the petitioner seeks to withdraw the writ petition in order to approach the High Court. The High Court will hear the petitioner and dispose of the writ petition on its merits as soon as possible and positively before 31.07.2020.

The Writ Petition is disposed of as withdrawn."

Thereafter, this writ petition before this Court was presented on 20.07.2020 and the same was listed in Court on 24.07.2020 but it was adjourned and the next date was fixed as 28.07.2020.

On 28.07.2020, on account of suspension of court proceedings the matter could not be taken up and the next date was fixed as 30.07.2020, however, on that

date also the case was adjourned and thereafter it was listed on 10.08.2020. On 10.08.2020, learned counsel for the respondent-MCI has stated that he has already filed the hard copy of the reply with the Registry and a direction was issued that the same be placed on record. Learned counsel for respondent-MCI was not in a position to argue the matter through VC due to poor connectivity and on his request the case was adjourned for 11.08.2020. On 11.08.2020, after hearing the parties for quite some time the case was posted for 13.08.2020 on account of holiday on 12.08.2020. On 13.08.2020, the case was again heard at length but hearing could not be completed till rising of Court, therefore, the case was fixed for 14.08.2020. On 14.08.2020, the matter was again heard and parties had informed that the last round of counseling i.e. mop up round for filling of residual seats is to be completed by 19.08.2020 as per the notification dated 12.08.2020 issued by the office of the Chairman, NEET, PG Medical and Dental Admission/Counseling Board 2020. In such circumstances, this Court has decided to pass order on interim application particularly taking into consideration the fact that the respondent No.2 has not filed para-wise reply to the writ petition and has submitted a short counter affidavit with a prayer to grant leave to file detail para-wise counter affidavit to the writ petition as and when directed.

Learned counsel for the petitioners have submitted that the impugned communications dated 13.03.2020 rejecting the prayer of the petitioners for increase in the intake capacity of various 12 post graduate courses is absolutely illegal. It is submitted that the respondent No.2 has rejected the representations of the petitioners on one of the grounds that some of the faculties engaged by it are of 67 to 70 years of age and, therefore, those faculties cannot be counted amongst the total teachers available in the department because they will become overage by the time the students have completed their post graduate courses. It is argued that the said ground taken by the respondent No.2 is not tenable in the eye of the law because as per Minimum Qualification for Teachers in Medical Institutions Regulations, 1998 the maximum age limit up to which a person can be appointed or granted reemployment in service against the posts of Teachers or Dean or Principal or Director, as the case may be, is 70 years. In the case of the petitioners none of the faculties was above 70 years at the time of submitting applications pursuant to the public notice dated 21.02.2019 (Annexure-1). Learned counsel for the petitioners has submitted that if some of the faculty members have completed 70 years of age by this time then new faculties will be engaged by the time the courses are started. It is further argued that when the maximum age for appointing a faculty is prescribed under the law is 70 years, the respondent No.2 is not correct in claiming that a faculty between 67 and 70 years of age cannot be counted against the strength of teachers engaged by any college for imparting education in post graduate courses.

Learned counsel for the petitioners has further stated that the other grounds, on the basis of which the representations of the petitioner-college praying for increasing the seats allotted to it in various post graduate courses have been rejected, are that some of the faculties are not working from a quite long time

with the college or because of their prior appointment elsewhere. In some of the cases the faculties have been non-suited because they have worked for various institutions in last few years. Learned counsel for the petitioners has argued that the above referred grounds are not available to the respondent No.2 for rejection of the representations of the petitioners because the rules does not provide a specific period for which the faculty is required to be engaged in a college and it is also not provided that if a faculty is engaged in different institutions prior to its engagement with the applicant college then the said faculty is disqualified to teach in the post graduation courses.

Learned counsel for the petitioners have further submitted that after the petitioner-college applied for starting post graduate courses pursuant to the Annexure-1 the accessors/inspectors appointed by the respondent No.2 have conducted various inspections of the petitioner-college and submitted their reports and in the said reports no deficiency/lacunae has been reported regarding the availability of infrastructure or other requirements. It is submitted that in the communications dated 13.03.2020 also the respondent No.2 has failed to point out any lacunae/deficiency regarding availability of infrastructure with the petitioner-college.

Learned counsel for the petitioner has also invited my attention towards the fact that the respondent No.2, on the one hand, is not approving the faculties of aged between 67 and 70 years in same post graduate courses, whereas on the other hand has approved the faculties aged more than 67 years in other post graduate courses. Similarly, learned counsel for the petitioners have submitted that in some post graduate courses the respondent No.2 have approved the faculties, who have changed their jobs frequently or have gap in their last engagement and engagement with the petitioner-college and, therefore, it is clear that the respondent No.2 has acted on there whims and such action of the respondent No.2 cannot be approved.

Learned counsel for the petitioners has lastly prayed that if the interim relief prayed for in the interim application is not allowed, the petitioners will suffer irreparable loss as they have already built huge infrastructure and have also engaged faculties for teaching in the applied post graduation courses.

Per contra, learned counsel appearing for the respondent- MCI has argued that the respondent No.2 has not committed any illegality in rejecting the representations filed by the petitioner- college with a prayer for increase in the intake capacity in the various post graduate courses. It is submitted that the respondent No.2 has granted the sanctioned intake capacity to the petitioner-college in different post graduate courses after considering the facilities available with the petitioner-college. It is submitted that after taking into consideration the infrastructure, teaching faculties and other physical facilities, the respondent No.2 has rightly rejected the representation of the petitioner-college vide communication dated 13.03.2020.

So far as the decision of the respondent No.2 of not approving the faculties between 67 and 70 years is concerned, learned counsel for the respondent No.2 has submitted that a resident, who joins a college for post graduate course, has to complete his/her training/studies under one guide/teacher and such guide/teacher cannot be permitted to be changed during the continuation of the course except under exceptional circumstances. For that reason the teachers who are more than 67 years of age cannot be considered as faculty because every batch in the post graduate course is of a duration of three years. Learned counsel for the respondent No.2 has further submitted that the respondent No.2 after taking into consideration the over all facts and circumstances of the case and after taking into consideration the various complaints received and after providing personal hearing to the petitioner-college has sanctioned specific number of seats for post graduate courses to the petitioner- college and the said decision of respondent No.2 is not liable to be interfered with. Learned counsel for respondent No.2 has further submitted that in the due course of time detailed para-wise reply to the writ petition will be filed, however, in the facts and circumstances of the case no case of grant of interim stay in favour of the petitioner is made out.

Heard learned counsel for the rival parties.

As per the provisions of Minimum Qualification of a Teacher in Medical Institution Regulation, the maximum age limit up to which a person can be appointed or granted reemployment in service against the posts of Teachers or Dean or Principal or Director, as the case may be, is 70 years. In such circumstances, this Court is prima facie of the opinion that the decision of the respondent No.2 of not approving the faculties between 67 and 70 years is not in consonance with the rules. The justification given by the learned counsel for the respondent No.2 of not approving a faculty aged between 67 and 70 years on the premise that generally duration of a post graduate course is three years and a resident, who joins a post graduate course, supposes to complete his/her course under one guide may have some force but in the absence of any such provision in the relevant rules, this justification cannot be applied.

Moreover, learned counsel for the respondent No.2 has failed to contradict the argument of the petitioners that in some of post graduate courses, the respondent No.2 have approved the faculties aged between 67 and 70 years.

So far as the decision of the respondent No.2 of not approving the faculties on the ground of frequent change in job and gap in service are concerned, no specific reply is offered by the respondent No.2 in its reply affidavit on this point and the learned counsel for the respondent No.2 has also failed to point out any provision of law which prohibits engagement of faculties for above reasons. Learned counsel for the respondent No.2 has also failed to contradict the argument of the petitioners that in some of the post graduate courses the respondents have approved faculties though they have frequently changed their jobs or have gaps in their previous engagement and engagement with the

petitioner-college.

Though the learned counsel for the respondent No.2 has submitted that the respondent No.2 has approved specific numbers of seats for starting post graduate courses with the petitioner-college, after taking into consideration the infrastructure available in the petitioner-college but specific details regarding deficiencies in the infrastructures for giving admission to the more number of students in post graduate courses have not been detailed out in the counter reply. The petitioners in their writ petition in para No.12 has made a specific averment that the inspection carried out by the assessor/inspectors of the respondent No.2 did not find any lacunae/deficiency during inspection which may warrant reduction in the sanction of seats for post graduate courses applied by the petitioner-college, however, the said averment has not been contradicted by the respondent No.2 in its reply.

It is noticed that though in the representation dated 17.02.2020 the petitioner-college has demanded increase of seats in the various post graduate courses up to total 106 seats (specifying particular numbers of seats for each post graduate course) but in the prayer No.3 of the writ petition, it is prayed that the respondent No.2 be directed to allot 96 seats in all 12 departments for starting various post graduate courses. Learned counsel for the petitioners have submitted that initially the petitioners have applied for allotment of 116 seats for all the 12 departments, however, in the representation dated 17.02.2020 they demanded to allot 106 seats in all 12 departments but on reassessment they find that the petitioner-college is eligible for allotment of 96 seats in all 12 departments.

In view of the above discussion, this interim stay application is allowed. The respondent No.2 is directed to allot the students to the petitioner-college in 12 departments as under:- "1. M.S. in General Surgery (with 19 seats);

2. M.D. in Radio Diagnosis (with 09 seats);

3. M.D. in Pediatrics (with 08 seats);

4. M.D. in General Medicine (with 16 seats);

5. M.S. in Orthopedics (with 07 seats);

6. M.S. in Obstetrics & Gynecology (with 10 seats);

7. M.D. in Anesthesiology (with 07 seats);

8. M.S. in Otorhinolaryngology (with 04 seats);

9. M.D. in Dermatology, Venereology and Leprosy (with 04 seats);

10. M.S. in Ophthalmology (with 05 seats);

11. M.D. in Psychiatry (with 03 seats) and

12. M.D. in Respiratory Medicine (with 04 seats) Total seats (96 seats)."

The students already allotted to the petitioner-college, pursuant to the decision dated 11.02.2020, will include the over all allotment of students to the petitioner-college which means that the petitioner-college is entitled to grant admission on only those seats in the various post graduate courses, which have been increased by way of this stay order. The above allotment of seats to the petitioner-college and admissions given on the increased seats shall subject to the decision of this writ petition. The petitioner-college shall intimate the students in advance that their admission in the various post graduate course on increased seats will remain subject to the decision of this writ petition.