

(2013) 07 DEL CK 0615
In the Delhi High Court
Case No : Writ Petition (C) 4223 of 2013

Venkateshwara University

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 11-07-2013

Acts Referred:

Indian Medical Council Act, 1956 — Section 10A

Citation : (2013) 07 DEL CK 0615

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : A.M. Singhvi, Mr. Maninder Singh, with Mr. J.S. Bhasin and Mr. Abdesb Chaudhary and Mr. Amit Jaiswal, for the Appellant; Akshay Chandra, Adv for UOI and Mr. Amit Kumar, Ashish Kumar and Mr. Ankit for MCI, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Jain, J.

CM No. 9843/2013

1. The petitioner before this Court applied to the respondent-Medical Council of India vide letter dated 29.09.2012, to start MBBS course with 100 seats. No attempt was made by the respondent-MCI to carry out inspection of the hospital and medical college of the petitioner at any time prior to 28.05.2013. In fact, the respondent-MCI, at one point of time, informed the petitioner that its application had been lost/misplaced. Vide e-mail dated 27.05.2013, respondent-MCI appointed three Professors to carry out inspection of the medical college and hospital of petitioner on 29.05.2013 and 30.05.2013. Vide letter dated 29.05.2013, the petitioner requested MCI to carry out the inspection by second week of June sine their lecture hall, hostel, residential block and certain lab equipments were under completion. It was further stated in the said letter that all these pending works would be completed within a week. When the professors appointed by MCI went to the premises of the petitioner at Gajraula on

29.05.2013, they were not allowed to carry out inspection as would be evident from their report dated 29.05.2013, whereby they stated as under:-

We, the undersigned, members of Assessment Committee for inspection of Venkateshwara Institute of Medical Sciences, Gajraula, J.P. Nagar, U.P. with reference to your letter-MCI-34 (41)/2013-Med dated: 24.05.2013 related to the above subject reached Gajraula today i.e. 29.05.2013 for inspection. But the college authorities are not in a position to undergo inspection which they informed (vide letter no. SVU/RO/12-13/630 dated 29.05.2013) and unable to take us for inspection of both college and hospital premises. Hence, we could not assess the physical and other teaching facilities and teaching faculties of Venkateshwara Institute of Medical Sciences, Gajraula, U.P.

Vide circular dated 29.05.2013, MCI decided that considering the time schedule prescribed in the Regulations, no requests for postponement/rescheduling of the assessment would be entertained. It was further decided that in case any medical college applying for LOP/COR etc. requests for postponement/rescheduling or refuses to entertain the assessors because of absence of college authorities, MCI will not be able to accede to such request and will go with the scheduled inspection and assessment and will not further assess such college for the current session.

2. Vide communication dated 03.07.2013, the respondent intimated the petitioner as under:-

I am directed to inform you that the assessment of the physical and the other teaching facilities available for establishment of new medical college at Gajraula, J.P. Nagar, Uttar Pradesh by Shri Venkateshwara University, Meerut, Uttar Pradesh u/s. 10A of the IMC Act, 1956 for the Academic year 2013-14 was carried out by the Council's Assessors on 29th & 30th May, 2013. The assessment report was considered by the Board of Governors at its meeting held on 25th & 26th June, 2013 and it has been decided not to approve for establishment of new medical college at Gajraula, J.P. Nagar, Uttar Pradesh by Shri Venkateshwara University, Meerut, Uttar Pradesh.

Being aggrieved from the refusal of the respondent to carry out inspection of its college and hospital, the petitioner filed this writ petition on 05.07.2013 and the writ petition was listed for the first time on 08.07.2013 for hearing, 06th and 07th July, 2013 being Saturday and Sunday respectively.

The prayer made in the application is for a direction to the respondents to take all necessary steps, including inspection of the college for grant of letter of permission to start MBBS course for 150 seats for the Academic Session 2013-14.

3. It has been submitted by the learned counsel for the petitioner that there is no rule or regulation, fixing any particular deadline for the purpose of inspection of the colleges/hospitals and in fact MCI has, in the past, been carrying out re-inspection of the premises of various colleges, where deficiencies were found

during the first inspection. It has been pointed out that in its meeting held on 11th and 12th June, 2013, the Board of Governors decided to carry out physical verification for the purpose of ensuring compliance in respect of as many as 5 colleges. He also submits that the deficiencies found in those cases can by no means be said to be minor deficiencies, as would be evident from the chart which the petitioner has placed on record along with the affidavit filed today in the Court. It is further pointed out that even in its meeting held on 02.07.2013, the Board of Governors allowed physical verification in respect of Sivagangai Medical College, Sivagangai, Tamil Nadu.

4. The learned counsel for the respondent vehemently opposes the prayer made in the interim application primarily on two grounds. The first ground urged by the learned counsel for the respondent is that the petitioner exhibited scant respect to the process of MCI by not allowing inspection to be carried out by a team of professors on 29th and 30th May, 2013, despite having prior intimation in this regard. The submission is that the case of the petitioner is different from the cases in which inspection was carried out, deficiencies were noticed and later another opportunity was given to remove those deficiencies. According to the learned counsel in all such cases, no attempt was made by the applicant to obstruct the inspection by the team deputed by MCI for this purpose. According to the learned counsel if a person who does not allow the team of MCI to carry out inspection is granted indulgence of having inspection through the process of the Court, that would result in a situation where the colleges are encouraged to refuse/obstruct inspection wherever they are not ready with the requisite infrastructure, etc. and then after arranging the infrastructure, may be temporarily, they would seek inspection through the process of the Court, within a particular time limit since they know that 15.07.2013 being the last date stipulated by Supreme Court for issue of letter of permission, the inspection, if allowed by the Court, has to be within a few days between the date of filing of the writ petition and 15th July which is the last date for issue of LOP and they can temporarily arrange doctors, nurses, patients and equipment for this short period. He further submits that in no case, MCI has allowed inspection on the request of the applicant, where the applicant did not allow the team of MCI to inspect its college/hospital.

5. I am in agreement with the learned counsel for the respondent that a person who does not allow inspection to be carried out by the team deputed by MCI for the purpose is not entitled to indulgence of the Court by way of a direction for carrying out inspection during the limited time available between the date on which the applicant comes to the Court and the last date for issue of LOP. This would certainly encourage unscrupulous applicants to temporarily arrange things such as patients, doctors, nurses and equipments for a short period. In my view, even if there are certain deficiencies in the infrastructure available in the college, the applicant ought to allow inspection so that deficiencies may be identified by the assessors of MCI and then seek time from MCI for removal of the deficiencies found out during the course of inspection.

6. As noted earlier, vide circular dated 29.05.2013, MCI decided not to entertain any request for postponement/rescheduling of the assessment. The petitioner, therefore, knew immediately on issue of the aforesaid circular that its request for carrying out inspection will not be entertained by MCI. It is true that the communication rejecting the application came to be issued only on 03.07.2013, but, that, to my mind, made no difference since the petitioner knew the fate of its case on account of issue of this circular dated 29.05.2013. The learned counsel for the petitioner states that the circular dated 29.05.2013 was not in the knowledge of the petitioner. That, however, is disputed by the learned counsel for the respondent-MCI which says that the circular is uploaded on the website immediately after it is issued. Be that as it may, the fact remains that the petitioner chose to come to this Court only on 05.07.2013, despite it knowing fully well that last date for issue of LOP, as fixed by the Supreme Court in the case of Priya Gupta vs. State of Chhattisgarh & Ors. Civil Appeal No. 4318 of 2012, is 15.07.2013. Today, being 11.07.2013, there is hardly any time now left for a proper inspection and a meaningful consideration of the inspection report by MCI. If an inspection is directed at this stage, MCI will first have to identify the professors who have to carry out inspection, it will have to take consent and ascertain availability of those professors thereafter, those professors will have to carry out inspection and submit a report. The said report will then have to be considered by a Committee formed by MCI for this purpose. All this exercise, to my mind, cannot be meaningfully and effectively carried out within the limited time of 3-4 days available from now. In these circumstances, I do not deem it appropriate to issue the interim direction sought in this application. The learned counsel for the petitioner states that no hearing was given to the petitioner before rejecting its application which is contrary to the mandatory provisions of the regulations framed by MCI. That aspect can be examined while deciding the writ petition, but as far as interim relief is concerned, considering the facts and circumstances as noted above, no such relief can be granted to the petitioner at this stage.

The application is accordingly dismissed.

W.P. (C) 4223/2013

Counter-affidavit has already been filed by the respondent-MCI, but the learned counsel would like to file a para-wise counter affidavit to the writ petition. Be filed within four weeks. Respondent No. 1-Union of India is also directed to file its parawise reply within that period.

Rejoinder can be filed within two weeks thereafter.

Renotify on 19.11.2013.