

(2018) 08 CHH CK 0234

Chhattisgarh High Court

Case No: Writ Petition (C) No. 1864 Of 2018

Chandulal Chandrakar Memorial
Medical College

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision: Aug. 23, 2018

Acts Referred:

- Medical Council Act, 1956 - Section 11(2)
- Constitution Of India, 1950 - Article 141, 226

Hon'ble Judges: P. Sam Koshy, J

Bench: Single Bench

Advocate: Mrigendra Singh, Sudeep Agrawal, Manish Nigam, N.K. Vyas, R.S. Marhas

Final Decision: Dismissed

Judgement

P. Sam Koshy, J

1. The present petition under Article 226 of the Constitution of India has been filed assailing the order dated 31.05.2018 (Annexure P/1) whereby the respondent No.1 at the behest of the Medical Council of India (in short, MCI) has not granted permission for renewal of the admission of fresh batch of 150 seats for the MBBS course at the petitioners' college. At the same time, the petitioners have also challenged the decision of the respondents not to recognize the college so far as MBBS course is concerned till proper recognition is granted.
2. The facts which has led to the filing of the present petition is that the petitioners college was established in the year, 2013 in the name and style as mentioned in the cause title. Since 2013 onwards according to the petitioners they have running the Medical College successfully with all necessary

statutory and technical compliances as laid down by the respondent No.2-MCI from time to time. In spite of fulfilling all the requisite criteria, the respondents however for the academic year 2017-18 have vide the impugned order not granted permission to the petitioners' college so far as fresh admission against 150 seats allocated to the petitioners' medical college is concerned. In addition, the respondents have also taken a decision not to grant recognition. According to the petitioners, the said act on the part of the respondents is highly arbitrary and bad in law for the reason that the respondents have not taken into consideration the contentions and submissions which the petitioners have provided to both the Union of India as well as the MCI.

3. According to the petitioners, the respondents in the instant case conducted an inspection on 19.03.2018 and 9th and 10th April, 2018. Thereafter, vide correspondence/report dated 25.04.2018, 30 days time was granted to the petitioners seeking explanation and for removing the defects. However, without considering any of those contentions which the petitioners have raised in their reply and without any further inspection, the impugned order dated 31.05.2018 have been passed.

4. The petitioners submit that once when the petitioners have intimated the respondents in respect of the work carried out by the petitioners establishment so far as defects and defaults which have been detected during the course of inspection, it was the bounden duty on the part of the respondents to have revisited the petitioners' establishment and should have physically verified so far as the alleged defects which they had on an earlier occasion found and should have verified whether it has been cured/rectified and only thereafter should have made appropriate recommendations. The respondents have not adhered to the minimum requirement as is envisaged under Section 11(2) of the Indian Medical Council Act, 1956 (in short, the Act, 1956). The respondent MCI itself had conducted the inspection in March-April, 2018 whereas it ought to have been done much earlier. It was also the contention of the petitioners that since the respondents themselves had inspected the College at a late stage, they were supposed to provide sufficient time to explain on the inspection note pointing out the deficiency, if any.

5. It was further contention of the petitioners that once when the Govt. of India was satisfied with the compliance report submitted by the petitioners as per inspection note dated 25.04.2018, in all fairness, the respondent MCI should have conducted a fresh inspection to ensure that all deficiencies have been cured. The Govt. of India could not have accepted the recommendations of the MCI after the petitioners had submitted their compliance report. Furthermore, as per Section 11(2) of the Act, 1956, it is the Central Govt. which had to take a decision after consulting the MCI. Therefore, the act on the part of the Govt. of India in not taking an independent view, but being under the influence of the MCI, while passing the impugned order dated 31.05.2018 (Annexure P/1) therefore requires to be reconsidered.

6. The petitioners relied upon 2017 (15) SCC 690, Global Medical College and Super Specialty Hospital and Research Centre Vs. Union of India & Another, 2017(15) SCC 759, Melmaruvathur Adhiparasakthi Institute of Medical Sciences and Research Vs. Union of India & Another, 2017(16) SCC 249, IQ City Foundation & Another Vs. Union of India & Others, to support their contention.

7. Per contra, the counsel for the MCI opposing the petition submitted that as per requirement of law when the petitioners had applied for renewal of permission for fresh batch of 150 MBBS students for the academic year 2018-19, the MCI had conducted an inspection in the month of March-April, 2018 and in the course of inspection the MCI found various deficiencies and some of the deficiencies were basic infrastructure facilities itself. It is not a case where the petitioners' establishment is a new establishment. The petitioners have been operating medical college since, 2013 and therefore they were expected of maintaining the minimum requisite criteria fixed by the MCI from time to time. Having not done so, the MCI had taken a decision not to grant renewal for fresh admission against 150 seats for MBBS course.

8. According to MCI, since by the time the inspection was conducted and inspection note was received, the last date prescribed for granting permission of intake of the fresh students have already lapsed on 30.04.2018 and thereafter the respondent MCI could not have granted the approval or permission for intake of 150 candidates. However, so far as recognition for awarding MBBS course is concerned. The counsel for the MCI fairly

accedes that they will conduct a fresh inspection keeping in view the compliance report submitted by the petitioners to the MCI can only be considered for the next academic session 2019-20.

9. The counsel for the MCI relied upon the decision of the Supreme Court in case of Ashish Ranjan Vs. Union of India, 2016(11) SCC 225 and Priya

Gupta Vs. State of Chhattisgarh, 2012(7) SCC 433.

10. Having heard the contentions put forth on either side and on perusal of the records, the core issue which has to be considered is whether the

impugned order Annexure P-1 dated 31.05.2018 passed by the Govt. of India, Ministry of Health and Family Welfare is justified or not.

11. The admitted facts which come out from the pleadings of the either side are that the petitioner establishment was started as a medical college

since 2013, Ever since the petitioner has got recognition so also permission to intake the number of seats for MBBS course as decided by the Govt. of

India from time to time. The respondent no.2, Medical Council of India which is the Body which recommends the Govt. of India under the provisions

of Indian Medical Council Act of 1956 for grant of recognition of an Institution as a medical college and also recommends the capacity of intake of an

Institution. The Medical Council of India conducted two inspections of the petitioner establishment. One on 19th of March, 2018 and the other on 9th

& 10th April, 2018. The inspection was for grant of permission for admission of fresh batch in MBBS course and also for grant of recognition of the

Institution. The Medical Council of India, pursuant to the inspection, gave a report to the Govt. of India vide their report dated 25.04.2018. Based on

the inspection report, the Govt. of India called upon the petitioner establishment vide notice dated 09.05.2018 granting a personal appearance to the

petitioner seeking explanation in respect of the inspection report more particularly on the shortfalls which were detected during the course of

inspection. The petitioner establishment was called upon on 15 th May, 2018 along with all requisite information, materials and documents both in soft

as well as hard copy. The petitioner in compliance to the notice dated 09.05.2018 appeared before the Govt. of India on 15.05.2018 and gave

clarifications. Thereafter a comparative chart on the deficiency pointed out by the MCI and the explanation provided by the petitioner was prepared

(Annexure P-6) with the observation of the Body which had scrutinized the explanation provided by the petitioner and was thereafter sent to the

Medical Council of India on 19.05.2018. Thereafter, the Medical Council of India sent compliance report and recommendations to the oversight

Committee constituted by the Supreme Court on the issue vide their correspondence dated 25.05.2018 Annexure R-2/12. At the same time, the

Medical Council of India sent its opinion dated 25.05.2018 in respect of different medical colleges including the petitioner establishment to the

Government of India expressing their inability to consider/ reconsider at this stage. So far as the permission for admission of the present academic

session 2018-19. As regards the recognition part is concerned, the Medical Council of India has intimated the Govt. of India that the

explanation/compliance report submitted by the petitioner has to be verified physically by the Medical Council and thereafter fresh recommendation of

the Council would be made.

12. It would be relevant at this juncture to refer to the shortfalls which were detected by the Medical Council at the time of inspection:

Deficiencies pointed out by MCI:

1. Shortage of Residents is 13.75% as detailed in the report.

2. All the Residents are not staying in the hostel.

3. Except in General medicine & O.G. departments, in no other department, Residents knew anything about patients of their specialty suggesting that

they are not working regularly & have presented themselves just for assessment.

4. Bed Occupancy of patients on day of assessment at 11:15 a.m. was 49.23%. If 20 Non-genuine patients are to be excluded, it comes to 44.23% as

detailed in the report.

5. Patients

(i) General Medicine- during round of the assessment 11:15 a.m. on 9.4.18, patients in various wards were as follows 9/30, 14/30, 10/30, 26/30 and

23/30=82/150. On these 11 patients are not be counted as 2 were admitted with headache 1 with B2 deficiency, 2 hypothyroidism, gastritis 1 UTI 11

generalized weakness, 1 enteric fever and 1 colitis.

None of the patients case file has clinic investigative evidence of the disease or diagnosis and even the treatment prescribed did not match with the clinical diagnosis. This leaves only 71 patients worth considering.

(ii) Paediatrics- during round of the assessor at 12:30 p.m. patients in various wards were as follows 6/30, 12/30 and 8/30=26/90. On these 26 patients at total of 14 were admitted today i.e. on 9.4.18.

(iii) TB & Respiratory Medicine- 19 patients on 20 beds.

(iv) Psychiatry- 10 patients on 15 beds.

13. The petitioner appears to have been banking on the inspection report dated 25.04.2018 wherein while sending the inspection report to the Govt. of

India, a copy was also forwarded to the petitioner establishment wherein the petitioner was granted one month's time from 25.04.2018 to 25.05.2018

for explanation and rectification of the deficiencies pointed out in the inspection note along with documentary evidence. That the petitioner had given

an explanation to all the deficiencies with documentary proof to the Govt. of India on 15.05.2018 itself when they were called for personal hearing.

Thus, the Medical Council of India or for that matter the Govt. of India should have carried out a fresh inspection and taken a decision in respect of

the explanation so provided and should have then taken a decision so far as permission for grant of admission to the fresh batch for current academic

session 2018-19 for MBBS course is concerned.

14. So far as the grievance regarding recognition of the petitioner college is concerned, the same may not need much deliberation for the reason that

the Medical Council of India can still conduct an inspection of the petitioner establishment and take a decision on the basis of the findings from the

fresh inspection. Hence, we now need to only concentrate on the decision of refusal to grant permission for admission to fresh batch of MBBS course

of 150 seats to the petitioner establishment.

15. At this juncture it would be relevant to refer to the judgment of the Hon'ble Supreme Court in the case of ""Dr. Ashish Ranjan And Ors. v. Union

Of India And Ors."" [2016(11) SCC 225]. The said judgment is one of the first judgments whereby the schedule in respect of completion of the

admission process for the MBBS course has been laid down and has received the stamp of the Hon'ble Supreme Court and while passing the judgment the Hon'ble Supreme Court in paragraph No.3 of its judgment has very emphatically asked all the Chief Secretaries of the State to ensure that all the stakeholders follow the schedule as prescribed by the Medical Council of India in its letter and spirit and not to make any deviation whatsoever.

16. As per the said judgment itself the final recommendations for the permission by the Medical Council of India for admission to the fresh batch of MBBS course has to be made by the 30 th of April, 2018, which in the instant case has already been lapsed and therefore, thereafter the respondent No.2 or for that matter the respondent No.1 cannot permit deviation in the schedule.

17. The Hon'ble Supreme Court earlier also in the case of ""Mridul Dhar (Minor) & Anr. v. Union of India & Ors."" [2005(2) SCC 65] in paragraph

No.18 has in very categorical terms held that there is no reason for nonobservance of the time schedule which has been provided after discussions

with all the States functionaries. Again in paragraph No.35 while concluding the judgment, the Hon'ble Supreme Court had observed that the time

table mentioned by the Medical Council of India shall be strictly adhered to by all the concerned including the States and Union territories. Again in the

case of ""Priya Gupta v. State Of Chhattisgarh & Ors."" [2012(7) SCC 433] the Hon'ble Supreme Court in paragraphs No. 38 to 40 held as under:-

38. From the above discussion and reference to various judgments of this Court, it is clear that adherence to the principle of merit, compliance with

the prescribed schedule, refraining from mid-stream admissions and adoption of an admission process that is transparent, non-exploitative and fair are

mandatory requirements of the entire scheme.

39. Now, let us examine the adverse consequences of non-adherence to the prescribed schedules.

40. The schedules prescribed have the force of law, in as much as they form part of the judgments of this Court, which are the declared law of the

land in terms of Article 141 of the Constitution of India and form part of the regulations of the Medical Council of India, which also have the force of

law and are binding on all concerned. It is difficult to comprehend that any authority can have the discretion to alter these schedules to suit a given situation, whether such authority is the Medical Council of India, the Government of India, State Government, University or the selection bodies constituted at the college level for allotment of seats by way of counseling. We have no hesitation in clearly declaring that none of these authorities are vested with the power of relaxing, varying or disturbing the time schedule, or the procedures of admission, as provided in the judgments of this Court and the Medical Council of India Regulations.

18. Reiterating the aforesaid propositions, the Hon'ble Supreme Court again in the case of ""D.Y. Patil Medical College v. Medical Council of India &

Anr."" [2015(10) SCC 51] in paragraphs No. 22 & 25 has held as under:

22. On an analysis of the aforesaid decisions, it is crystal clear that the time schedule is required to be strictly observed. Hence, it would not be

appropriate to issue any direction for consideration of petitioner's case for the ongoing academic session 2015-16 in which inspection is yet to be

made. It is too late in the day to direct inspection for the session 2015-16 as all the dates fixed in the time schedule are over and fixation of time

schedule has a purpose behind it and from a particular date the session has to commence and part of seats to be filled by a competitive examination

held on all-India basis. Any relaxation in the time schedule would make holding of examinations on an all India basis a farce and several complications

would arise.

Everything cannot be allowed to go haywire. The entire curriculum would be unsettled in case breach of time schedule is permitted. The power given

to Central Government to relax can be exercised in exceptional circumstances and that too without disturbing the academic session. The decision-

making process after inspection has various steps and it cannot be ordered to be done in haste resulting in sub-standard education and half-baked

doctors.

25. Considering the statutory time schedule and that the same is already over and in the facts and circumstances of the case, it would not be

appropriate to direct inspection to be made and thereafter a decision to be taken for the current academic session 2015-16 as that would be in breach

of the law laid down in various decisions of this Court which is binding. Thus, we direct that the application which has been submitted by the college

for the academic session 2015-16 be considered for the next academic session, subject to fulfillment of other requisite formalities, as may be

necessary, and thereafter the MCI shall conduct an inspection well-in-time as per the time schedule fixed under the Regulations of 1999.

19. A similar view further was reiterated in the case of ""Poonaiyah Ramajayam Institute of Science and Technology Trust v. Medical Council of India

& Anr."" [2015(10) SCC 83].

20. Another factor, which weighs more in the mind of this Court is the recent decision of this Court in WPC No. 1409/2018 in the case of ""Shri

Gangajali Education Society & Anr. v. Union of India & Anr."" decided on 10.07.2018, wherein under similar facts and circumstances of the case, the

writ petition was dismissed by this Court.

21. Keeping the aforesaid legal position as it stands, now if we come to the compliance part as has been submitted by the petitioner's establishment to

the Government of India as well as to the Medical Council of India, it reveals that so far as deficiencies, which have been cited by the Medical

Council of India all of them has been contested by the petitioner's establishment and so far as the explanation, which has been provided also does not

indicate that the finding of the Medical Council of India to be incorrect, perverse or a finding without inspection or a report created with malafide

intention. The petitioner only tries to provide their own explanation and justification for the deficiencies and under the said circumstances if the

Medical Council of India on the ground that the period for grant of permission for fresh admission stands over by 30 th of April, 2018 and that it was

impossible for conducting a fresh inspection in between and hence they have refused to grant permission for admissions for the current academic

session, the same cannot be said to be either bad in law or contrary to the judgment of the Hon'ble Supreme Court or in any manner perverse.

22. Thus the writ petition to that extent does not call for any interference and the same deserves to be and is accordingly rejected. However so far as

the second relief is concerned as regards the recognition, since the Medical Council of India itself has submitted that they would have to re-inspect the

institution and thereafter finding the things to be in accordance with the guidelines of the Medical Council of India, they may take a fresh decision so

far as grant of recognition is concerned, while doing so they shall strictly abide by the provisions of the Indian Medical Council Act, 1956. The said

direction of this Court stands fortified by the directions given by the Hon'ble Supreme Court in the case of ""D.Y. Patil Medical College"" (supra).

23. The Hon'ble Supreme Court recently in the case of ""Medical Council of India v. Vedantaa Institute of Academic Excellence Pvt. Ltd. & Ors.

[AIR 2018 SC 2642] in paragraphs No. 10 & 11 dealing with similar deficiencies detected in the present case by the Medical Council of India has held

as under:

10. On perusal of the material on record, we are of the opinion that the conclusion reached by the High Court regarding the manner in which

inspection was conducted is also not correct. Bed occupancy at 45.30 per cent on random verification was the claim of Respondent No.1 and 2.

However, the inspection report shows that out of required minimum of 300 patients only 3 were available at 10.00 am on 25th September, 2017. This

Court in Kalinga (AIR 2016 SC 2294) (supra) has held that medical education must be taken very seriously and when an expert body certifies that the

facilities in a medical College are inadequate, it is not for the Courts to interfere with the assessment, except for very cogent jurisdictional reasons

such as mala fides of the inspection team, ex facie perversity in the inspection, jurisdictional error on the part of the M.C.I., etc. The submission

relating to the cyclone being a reason for the number of patients being less is not acceptable. We are in agreement with the submission made on

behalf of the Appellant that the Resident Doctors are required to be in the hospital at all points of time.

11. In view of the large scale deficiencies found in the inspection report dated 25.09.2017 and 26.09.2017 and in view of Regulation 8 (3) (1) (a), the

Respondent No.1 and 2 are not entitled to claim another inspection.

24. So far as judgments which have been cited by the counsel for the petitioner are concerned, a perusal of the background in all those cases would

reveal that the ratio or the principles laid down in those judgments have been under entirely different contextual background. In none of the above

cases was the situation or the report of the MCI or explanation given by the petitioners similar to what was made in the present writ petition. For the said reasons, all those judgments are distinguishable on facts itself.

25. The writ petition accordingly stands dismissed with the aforesaid observations.