

(2015) 06 DEL CK 0008

Delhi High Court

Case No: Writ Petition (C) 5941 of 2015

Jamia Hamdard (Deemed
University) and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision: June 12, 2015

Acts Referred:

- Indian Medical Council Act, 1956 - Section 10(4)

Hon'ble Judges: P.S. Teji, J

Bench: Single Bench

Advocate: Parag Tripathi, Senior Advocate, Saket Sikri, Ekta Sikri, Pranjoy Dey, Aditya Sikka, Vikalp Mudgal, Ankit Verma and Anusuya Choudhary, for the Appellant; Bhagwan Swarup Shukla, CGSC, Advocates for the Respondent

Judgement

P.S. Teji, J.

The present application bearing C.M. No. 10764 of 2015 has been filed in W.P.(C) No. 5941/2015 for the grant of stay of the impugned letter dated 07.06.2015 issued by the respondent No. 1/Union of India during the vacation.

2. Case of the petitioner is that vide letter dated 07.06.2015, the respondent No. 1 directed the petitioner No. 2/Hamdard Institute of Medical Sciences and Research not to admit any students in the MBBS course for the academic year 2015-2016. The petitioner No. 2 had already initiated the admission process in April for the 4th Batch of 100 MBBS students for the academic year 2015-16. The petitioner has already received 6000 applications and the process of admission has to be completed by 15.06.2015. The foundation of impugned letter is the recommendations of respondent No. 2/Medical Council of India which have been given contrary to the directions of respondent No. 1 vide letter dated 07.05.2015. Instead of undertaking compliance verification, the respondent No. 2 issued a letter dated 14.05.2015 wrongly reiterating the earlier recommendation to the Government of India not to renew the permission for admission. It is submitted that

no deficiencies existed in the college of petitioner No. 2. The petitioners have prayed for stay of operation of letter dated 07.06.2015 passed by respondent No. 1; letter dated 14.05.2015 issued by respondent No. 2 to respondent No. 1 recommending not to renew the permission; to direct the respondents to renew the permission before 15.06.2015 to enable the petitioner No. 2 to continue with the admission process and to permit the petitioner No. 2 to continue with the process of admission during the pendency of the writ petition.

3. The petitioner earlier filed a writ petition bearing W.P.(C) No. 5763/2015, in which the learned Single Judge passed the order dated 28.05.2015 which reads as under :

"The petitioner has filed the present petition impugning an order dated 14.05.2015 passed by the Medical Council of India (hereinafter "the MCI").

According to the petitioner, the aforesaid letter is wholly without jurisdiction as the Central Government had not sought any recommendation from MCI. The MCI earlier sent its negative recommendation, not to grant approval, to the Central Government. According to the petitioner, this was considered by the Central Government and by a letter dated 07.05.2015, the Central Government had called upon MCI to proceed in the following terms:-

"An undertaking may be obtained from the college. Recommended for approval."

It is contended that in these circumstances, the role of MCI was limited to following the Committee's recommendation as indicated above.

The learned counsel for MCI disputes the same and states that MCI does not accept undertakings from private institutions and in the circumstances, the Committee's recommendations are contrary to its policy as well as devoid of any statutory force. In addition, the learned counsel for MCI also states that in view of paras 3 and 4 of the aforesaid letter, the Central Government had asked MCI for compliance verification and to send revised recommendations after compliance verification.

In the aforesaid circumstances, the controversy in the present petition is narrowed down to the interpretation of the letter dated 07.05.2015 sent by the Central Government. In this view, it would be necessary for Central Government to unequivocally clarify its stand as to the import of the aforesaid letter, the Central Government would clarify whether it had called upon MCI to merely accept an undertaking or to send a revised recommendation.

It is also relevant to note that according to the MCI it had already conducted a compliance inspection on 12.02.2014 and 13.02.2014 and, therefore, no further verification was necessary. In the circumstances, the Central Government would also have to unequivocally clarify whether it desired the MCI to conduct a verification inspection after 07.05.2015 notwithstanding the earlier inspection and compliance verification conducted earlier.

The learned counsel for the Central Government shall submit an affidavit clarifying the aforesaid issues in Court tomorrow. List on 29.05.2015."

4. The Ld. Single Judge further passed the order dated 29.05.2015 which reads as under:

"The petitioner impugns a communication dated 14.05.2015 sent by the Medical Council of India (hereafter "MCI") to respondent No. 2 recommending that the permission for admission to fourth batch of MBBS students for the academic year 2015-16, be not renewed.

The principal ground urged by the petitioner to assail the said communication is that the same is not in conformity with the letter dated 07.05.2015 addressed by the Central Government to MCI. According to the petitioner, the Committee constituted by the Central Government to provide an opportunity of hearing to the concerned institutions had considered the case of the petitioner and had recommended that "an undertaking may be obtained from the college". The petitioner contends that in the circumstances, there was no occasion for MCI to have issued a communication dated 14.05.2015; and all that MCI was required to do was to accept the undertaking as recommended to the Committee.

The learned counsel appearing for MCI submits that the contents of the letter dated 07.05.2015 did not require MCI to accept any undertaking, as the recommendations made by the Committee (as mentioned in the communication dated 07.05.2015) had to be considered by the Central Government. He further referred to paragraphs 3 and 4 of the said letter which read as under :-

"3. After considering recommendations of MCI and Hearing Committee, the Ministry has decided that the MCI may be asked for compliance verification.

4. In view of above, MCI is required to send revised recommendation after compliance verification."

He submits that the aforesaid directions only implied that the Central Government had considered the recommendations of MCI as well as the recommendations of the Committee and had decided that MCI may be asked for "compliance verification" and also send "revised recommendations." He submits that in view of the fact that compliance verification (that is, inspection conducted after the initial inspection to verify whether the deficiencies pointed pursuant to the initial inspection had been cured) had been conducted on 12.02.2015 and, therefore, no further compliance verification was necessary. In this view, MCI issued the letter of 14.05.2015 reiterating its negative recommendation. All parties, including Central Government, agree that no further inspection was to be carried out pursuant to the letter dated 07.05.2015. Therefore, the principal controversy is narrowed down to the issue whether any further action is required by the MCI. In my view, it is not necessary to further dwell into the course that MCI was required to follow because, MCI has

already made its recommendations. The MCI is unequivocal in its recommendation and its views are also reiterated in the impugned communication of 14.05.2015. The Committee constituted by the Central Government had heard the submissions of the various colleges including the petitioner allege. All that remains now is for the Central Government to take its decision.

At this stage, the learned counsel for the petitioner submits that if the Central Government decides not to renew its approval, the petitioner would be left remediless, as the schedule prescribed for granting approvals and for admission of students is inflexible. The last date for granting or denying approval is 15.06.2015 and, therefore, it is essential for the Central Government to take a clear decision in the matter prior to the said date in order to enable the petitioner to take appropriate remedies, if aggrieved. In the circumstances, respondent No. 2 (Central Government) is directed to take the final view on the petitioner's application on or before 07.06.2015. The petition is disposed of with the aforesaid directions."

5. Aggrieved by the order of the learned Single Judge, the petitioner filed the LPA bearing No. 388/2015 in which the Hon"ble Division Bench passed the order dated 03.06.2015 which reads as under :

"Issue notice.

Learned counsels accept notice on behalf of respondent Nos. 1 and 2.

Learned counsel for respondent No. 2 states that no final decision has been taken in the matter as yet as noted vide letter dated 07.05.2014 as Annexure A- 8 and will be taken by 07.06.2015. However, this submission of learned counsel for Union of India is refuted by learned counsel for the appellant, according to the appellant a decision already stands taken on 07.05.2015. At request list on 8th June, 2015."

6. The Hon"ble Division Bench disposed of the LPA No. 388/2015 vide order dated 08.06.2015 while observing as under :

"1. On first call, Ms. Saroj Bidawat, learned counsel appearing for Respondent No. 2 Union of India stated that the file was with the concerned Ministry and a decision was expected very shortly.

2. After pass over, Ms. Bidawat informed the Court that Respondent No. 2 has taken a decision, accepting the "revised recommendation" of the Medical Council of India (MCI) whereby renewal of the permission to the Appellant has been refused for the academic year 2015-16. She further assures the Court that a copy of the said order/decision taken today by Respondent No. 2 will be furnished to the Appellant through counsel today itself positively.

3. Mr. Parag Tripathi, learned Senior counsel for the Appellant states that the Appellant will take immediate steps to challenge the said decision in accordance with law. He seeks liberty to raise the grounds of challenge urged in the present

appeal, in the said petition.

4. In view of the decision taken today by the Central Government, there is no scope of further orders in the present appeal. Liberty as prayed for is granted to the Petitioner to challenge the said order in accordance with law.

5. The appeal is disposed of. Order be given dasti to the parties under the signature of the Court Master."

7. Arguments advanced by the learned Senior counsel Mr. Parag Tripathi for the petitioners are that on 12/13.11.2014, first inspection of the college of the petitioner No. 2 was conducted by the respondent No. 2 and certain deficiencies were noted down. The government of India gave opportunity of personal hearing to the petitioner under Section 10(4) of the Medical Council of India Act, 1956 on 19.01.2015. A surprise inspection was again conducted by respondent No. 2 on 12/13.02.2015. On 16.02.2015, petitioners wrote a letter to the respondent clarifying the position that the deficiencies were meted out and the college fulfills all the requirements for renewal. Thereafter, the Government of India vide letter dated 07.05.2015 asked the respondent No. 2 to obtain an undertaking from the petitioners and the Committee recommended for approval. On 12.05.2015, the petitioners gave undertaking to the effect that all the deficiencies were rectified, but despite that on 14.05.2015, the respondent No. 2 recommended to the Government of India not to renew the permission for admission of 4th batch of 100 seats of petitioner No. 2 for the academic year 2015-16. Thereafter, the petitioner filed a writ petition bearing W.P.(C) No. 5763/2015 which was disposed of on 29.05.2015 with the direction to the Central Government to take the final view on the petitioner's application on or before 07.06.2015. Thereafter, the petitioners filed an appeal bearing LPA No. 388/2015 which was disposed of on 08.06.2015. It is submitted that the objections and undertaking of the petitioners were never sent to the Government of India by the respondent No. 2 vide which the deficiencies were rectified by the petitioners which shows non-application of mind by the Government of India in issuing impugned letter dated 07.06.2015 and by the virtue of the same, the date of admission process is being affected. It is submitted that the petitioners are having good prima facie case for interim relief.

8. On the other hand, learned Additional Solicitor General Mr. Tushar Mehta has argued that several deficiencies were found during the first inspection dated 12/13.11.2014 and the Council recommended to Government of India not to renew the permission for admission for the academic year 2015-16. The petitioners were given opportunity of personal hearing, but despite the same, the deficiencies could not be rectified within the time. Thereafter, another surprise inspection was carried out on 12/13.02.2015 and again similar deficiencies were found. The respondent No. 2 vide recommendation dated 14.05.2015 again recommended not to renew the permission for admission. The Government of India vide letter dated 07.06.2015, communicated that it had examined the recommendations of the hearing

committee and further recommendations of Medical Council of India and decided to accept its recommendations not to renew the permission for admission of 4th batch of MBBS course. The petitioner No. 2 was directed not to admit any students in MBBS course for the academic year 2015-16. It is further submitted that no interim relief is required as the admission process is to start after the declaration of result of All India Pre-Medical Test which has not been declared so far.

9. In support of his contentions, learned Additional Solicitor General has relied upon judgment in case of [Medical Council of India Vs. JSS Medical College and Another](#), AIR 2012 SC 726 : (2012) 1 JT 127 : (2012) 1 SCALE 140 : (2012) 5 SCC 628 : (2013) 1 SLJ 149 : (2012) AIRSCW 644 in which it was held as under :

"Without adverting to the aforesaid issues and many other issues which may arise for determination, the High Court, in our opinion, erred in permitting increase in seats by an interim order. In normal circumstances the High Court should not issue interim order granting permission for increase of the seats. The High Court ought to realise that granting such permission by an interim order has a cascading effect. By virtue of such order students are admitted as in the present case and though many of them had taken the risk knowingly but few may be ignorant. In most of such cases when finally the issue is decided against the College the welfare and plight of the students are ultimately projected to arouse sympathy of the Court. It results in a very awkward and difficult situation. If on ultimate analysis it is found that the College's claim for increase of seats is untenable, in such an event the admission of students with reference to the increased seats shall be illegal. We cannot imagine anything more destructive of the rule of law than a direction by the Court to allow continuance of such students, whose admissions is found illegal in the ultimate analysis."

10. The present application bearing C.M. No. 10764/2015 has been filed for the grant of urgent relief during vacation before this Court being Special Single Bench.

11. The learned ASG Mr. Tushar Mehta for the respondents has argued that in the present case no urgent relief is required as the admission for the course of MBBS is to be made on the basis of declaration of All India Pre-Medical Test and the result of AIPMT has not been declared and the declaration of result has already been stayed by the Hon"ble Supreme Court in W.P.(C) No. 298/2015 titled Tanvi Sarwal vs. Central Board of Secondary Education and Ors. along with W.P.(C) No. 299/2015 titled Jahnvi Shanker and Ors. Vs. Union of India and Ors.; W.P.(C) No. 305/2015 titled Adeeba Ahmed vs. Union of India and Ors. and W.P.(C) No. 325/2015 titled Anil Subhas vs. Union of India and Ors. Learned ASG further argued that after the declaration of the result, counselling of the candidates is being done and thereafter only the admission is to be made in the course of MBBS by any institution and that could be done by 30th September. Learned ASG further argued that the grant of interim relief may be decided after having the response/reply of the respondents on verification of the contentions made by the counsel for the petitioners as most of

the contentions made by the counsel for the petitioners are contrary to the record. Learned ASG further argued that passing the interim order without rival contentions on the record, stay the operation of order dated 07.06.2015 and granting the permission for the admission in the MBBS course for the year 2015-16 is tantamount to allowing the writ petition and granting the renewal for making the admission for the year 2015-16 and further to play with the date of the medical students who would be directionless if relief is not confirmed and further subject matter the involvement of 100 more students as party to the writ petition.

12. On the other hand, learned Senior counsel for the petitioner Mr. Parag Tripathi vehemently argued that the petitioners are not only aggrieved by the order dated 07.06.2015 for non-renewal of permission for the admission of MBBS course for the academic year 2015-16 without due application of mind, but specifically aggrieved by para 4 of the order dated 07.06.2015 which reads as under :

"You are hereby directed NOT to admit any students in MBBS course for the academic year 2015-16. Any admission made in this regard would be treated as irregular and action will be taken as per the provisions of the IMC Act, 1956 and regulations made thereunder."

The learned Senior Counsel further argued that all the renewal/grant of the permission by the Government of India is to be completed by 15.06.2015 and immediately thereafter in the absence of permission and the embargo mentioned above, no admission would be possible and ultimately it would render the Writ Petition itself as infructuous.

13. The argument advanced by the learned Senior counsel for the petitioners is that a candidate appearing for the All India Pre- Medical Test are to simultaneously applied to various institutions for the purpose of admission to keep his right reserved for admission and about 6000 applications from the candidates have been received and it has been so mentioned even in the application for the interim relief and in view of para 4 of order dated 07.06.2015, the petitioner would not even in a position to proceed with the candidature of the applicants for which the process has already been initiated. The learned Senior counsel further submitted that the petitioners may be permitted to make the provisional admissions at its own risk and responsibility, the petitioners shall made clear to the candidates that the subject matter of the validity of order dated 07.06.2015 is the subject matter of the writ petition and the candidates would be bound by the order of the Court.

14. From the totality of the rival contentions, it is apparent that the number of candidates had moved to the petitioners' institution for the admission simultaneously while making the application to appear in the All India Pre-Medical Test. The Test has been conducted but the result of the same has not been declared so far. As per schedule, the entitlement for making the admission is required to be decided by Union of India by 15.06.2015 which has been declined in the present

case vide order dated 07.06.2015. As per para 4 of order dated 07.06.2015, the petitioners have been debarred to proceed with the process already initiated by the petitioners and if same is stopped, admission to the institution of the petitioners would automatically come to an end and would culminate into the Writ Petition render as infructuous. However, it is also apparent that admissions are to be finalised by 30th September and even the result of All India Pre-Medical Test has not been declared so far which is the very basis for the admission.

15. So, in the given circumstances, this Court is of the view that no urgent relief of stay of order dated 07.06.2015 and grant of permission to make the admission for the year 2015-16 is required, particularly when the effective process of admission could take place after the declaration of the result of AIPMT which has been stayed by the Hon"ble Supreme Court. Further, the petitioners are not entitled for the stay of order dated 07.06.2015 and to grant the permission for the admission for the year 2015-16 without the counter affidavit/reply to the application/written response of the respondents to the Writ Petition. This Court is further of the opinion that an opportunity must be given to the Union of India and Medical Council of India to file their response/counter affidavit to the application filed by the petitioners before granting the stay of the operation of order dated 07.06.2015 and further to grant the permission to make the admissions.

16. This Court is of the opinion that it would be in the interest of justice if the grant of interim relief of the stay of the operation of order dated 07.06.2015 and the grant of permission for making the admissions for the year 2015-16 as interim measure is required to be decided after having the rival contention/response of the respondents by way of affidavit to the present application by the regular roster bench hearing original writ petitions on the very opening day i.e. 29.06.2015. The respondents are directed to file the counter affidavit/reply to the application within a period of one week with an advance copy to the petitioner. The petitioners are directed to file rejoinder, if any, to the counter affidavit/reply within one week enable the bench to give effective hearing and consideration for the grant of relief of stay of operation of order dated 07.06.2015 and grant the permission for admission.

17. However, it is made clear that the petitioners may continue with the process already initiated till finalisation of the admission and accepting the admission fee, at its own risk and responsibility, without prejudice to the right and contention of the parties till next date of hearing by the regular roster bench i.e. 29.06.2015. The admission shall be finalised and the fee shall be accepted only after next date of hearing i.e. 29.06.2015, subject to the further order of regular roster bench.

18. The writ petition as well as interim application may be placed before the regular roster bench on 29.06.2015.

19. Copy of the order be given to the parties under the signature of the Court Master.