(2011) 08 MAD CK 0311

Madras High Court

Case No: Writ Petition No. 16298 of 2011 and M.P. No''s. 1, 2, 3 of 2011

Rajah Muthiah Medical College and Dean, Annamalai University		APPELLANT
	Vs	
The Union of India(UOI) and The Board of Governors in Supersession of Medical Council of India		RESPONDENT

Date of Decision: Aug. 5, 2011

Acts Referred:

- Drugs and Cosmetics Rules, 1945 - Rule 122
- Indian Medical Council (Amendment) Act, 2010 - Section 3B
- Indian Medical Council Act, 1956 - Section 10A, 10A(4)

Hon'ble Judges: N. Paul Vasanthakumar, J

Bench: Single Bench

Advocate: Satish Parasaran, for the Appellant; R. Maheswari, SCGSC for 1st Respondent and V.P. Raman, for 2nd Respondent, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

N. Paul Vasanthakumar, J.
By consent of all parties, the writ petition is taken up for final disposal.

2. The prayer in the writ petition is to quash theorder passed by the second Respondent dated 30.6.2011 declining the request of the Petitioner seeking permissionto increase the MBBS seats from 150 to 250 per annum fromthe academic year 2011-2012 and direct the Respondents toconsider the application dated 9.8.2010 for the grant ofLetter of Permission for the increase of seats.

3. The brief facts necessary for disposal of the writ petition are as follows:

(a) Petitioner Medical College was established in theyear 1985 by the Annamalai University in Annamalai Nagar,Chidambaram, Cuddalore District, under the name and styleof "Rajah Muthiah Medical College" after getting necessarypermission from the State Government and approval from theMedical Council of India. It had constructed academic and administrative blocks, separate hostels for boys and girls,staff quarters, canteen and other infrastructures as perthe norms and guidelines issued by the Medical Council ofIndia.

(b) According to the Petitioner, the College ishaving all facilities for training 250 MBBS students,qualified faculty members and technical staff as well assupporting staff are appointed and they are on the pay rollof the Petitioner College. It also made huge investmentsfor the expansion of the outdoor patients, class rooms,Labs, Library, faculty room, hostel, canteen, staffquarters, equipments, library books, etc.

(c) In the year 1985, when the college wasestablished, permission was granted for an intake of 75students from 1985-1986 for the first year MBBS course.The said intake capacity was subsequently increased andfrom the academic year 2003-2004 permission is granted toadmit 150 students for the first year MBBS Course.

(d) In the year 2010, the Petitioner proposed toincrease the student strength from 150 to 250 andapplication was submitted to the second Respondent on9.8.2010 seeking grant of Letter of Permission from theacademic year 2011-2012, enclosing all details anddocuments which are required for the above said permission. The Petitioner was required to obtain essentialitycertificate from the Government of Tamil Nadu, which wasalso issued by the Health and Family Welfare Department,Government of Tamil Nadu by its letter dated 29.9.2010. The State Government issued essentiality certificate forthe increase of intake as there is dearth of Doctors inTamil Nadu and also certified that increase of strengthwill serve public interest and the proposal is feasibleover which OPD strength per day is more than 3000, bedoccupancy is 80, affiliated teaching hospital is unitary incharacter, etc.

(e) The Medical Council of India visited thePetitioner College for inspection on 4th and 5th April, 2011and at that time there was a strike by the section ofresident Doctors and therefore OPD strength was less. TheCouncil of Assessors sent a report to that effect andthereafter a re-inspection was made on 3rd and 4th June, 2011and submitted a further report to the Board of Governors ofthe Medical Council of India without serving a copy to thePetitioner.

(f) The impugned letter dated 30.6.3011 was issued by the Medical Council of India, which was received on4.7.2011, stating that on assessment of physical and other teaching facilities available based on the Council of Assessor''s visit dated 3rd and 4th June, 2011, a report was submitted which was considered by the Board of Governors and four deficiencies were pointed out viz., Library seating capacity is available for 320 students against there quirement of 500; deficiency of

para-medical staff;Auditorium of 2000 sq.mtrs not available; and shortage ofsupervisory Nursing Staff. It was decided by the Board of Governors to return the application seeking increase ofintake of admission of first year MBBS seats from 2011-2011under Section 10A of the Medical Council of India Act, 1956.

(g) It is stated in the affidavit that even thoughthe said statement is made in the order, the applicationwas not returned and the same was also not received by thePetitioner. The said order is challenged in this writpetition on the ground that the alleged deficiencies wereinformed to the Petitioner for the first time only throughthe impugned order dated 30.6.2011 without enclosing thelist of deficiencies and without giving an opportunity ofbeing heard and therefore the same is unreasonable andarbitrary.

(h) It is further stated in the affidavit that asimilar order rejecting application for establishment ofnew Medical College of Shree Chhatrapati ShivajiEducational Society was considered by a Division Bench of the Delhi High Court and passed an interim order on10.6.2011 in L.P.A. No. 544 of 2011 in CM. No. 11730 of 2011and a direction was issued to the Medical Council of Indiato reconsider the case of the Petitioner therein. The saidorder was challenged before the Honourable Supreme Court inS.L.P. No. 16233 of 2011 and the Honourable Supreme Courtdeclined to interfere. The said order was passed by theDelhi High Court as there was violation of principles ofnatural justice, viz., not furnishing copy of the report bythe Council of Assessors and failure to give an opportunityof being heard.

(i) On 4.7.2011 immediately after the receipt of theimpugned order, the Principal of the College gave a replyalong with supporting documents and handed over the samepersonally at the office of the first Respondent and prayedfor reconsidering the order. The same having not beenconsidered this writ petition is filed with the above saidprayer, mainly contending that Section 10A of the MedicalCouncil of India Act, 1956, particularly Section 10A(4) proviso stating that No. scheme shall be disapproved by theCentral Government/second Respondent except after givingthe person or College concerned a reasonable opportunity ofbeing heard.

(j) It is also stated in the affidavit in support of the writ petition that all the deficiencies pointed out are rectified and the petitioner Medical College is also prepare to remit a further inspection fee for fresh assessment and the respondents may conduct fresh assessment and pass fresh orders.

4. The second Respondent has filed counter affidavitand in paragraph 18 it is contended that the Board ofGovernors considered the Assessor''s report and decided notto issue Letter of Permission for the increase of MBBSseats from 150 to 250 for the academic year 2011-2012,which was duly communicated to the Petitioner College byletter dated 5.5.2011 and in order to afford a reasonableopportunity on 5.5.2011 a show cause notice was issued asto why the application for the increase of intake cannot berejected on account of deficiencies

reported. Thereafterthe Petitioner, by letter dated 23.5.2011 prayed for freshinspection which was also conceded and the inspection wasconducted on 3rd and 4th June, 2011 and the said report wasagain considered by the Board of Governors in its meetingheld on 14.6.2011 wherein several deficiencies werenoticed including seating capacity in the library,deficiency of para-medical staff, Auditorium, shortage ofsupervisory nursing staff and the said decision was communicated on 30.6.2011 along with the Assessor''s report.It is also stated that the blood bank licence of thehospital has not been renewed. The expert body havingassessed the availability of faculty members andinfrastructures, the said decision cannot be reviewed bythis Court and therefore the writ petition is to bedismissed.

5. A reply affidavit was filed by the Petitionerstating that the show cause notice issued on 5.5.2011 wassuitably replied and re-inspection was conducted by theAssessors and without furnishing the inspection report andgiving reasonable opportunity of being heard, the impugnedorder was passed and therefore the same is in violation ofthe statutory provision as well as the principles ofnatural justice. In the format prescribed by the secondRespondent to the Council of Assessors, there is nospecific column pertaining the para-medical and non-teaching staff and in the Petitioner college, 332 para-medical staff and 204 other supporting staff and 312technical staff are available, apart from ministerial staffand non-teaching staff numbering 462. The staff nurses arealso considered as para-medical staff, which fact can beverified and the second Respondent arbitrarily stated that only lesser number of staff are available. In respect ofthe nursing staff, the Assessors recorded that sufficientnumber is available. Regarding the non-renewal of bloodbank licence it is stated that renewal application was madeand the Director of Drugs Control, Tamil Nadu, by orderdated 25.8.2009 certified that the application for renewalof the licence for a further period from 1.1.2008 to31.8.2012 is under process and the licencee shall continueto operate the blood bank till further order is passed ontheir application made as per Rule 122 of the Drugs andCosmetics Rules. Pointing out the above, the Petitionerhas prayed for allowing the writ petition.

6. Mr. Satish Parasaran, learned Counsel for thePetitioner submitted that the Petitioner is not praying forassessment of the Assessor''s report or the decision takenby the second Respondent, by this Court and the Petitionermay be given an opportunity to place its case before theRespondents in compliance with the principles of naturaljustice, as an opportunity of being heard is statutorilyprovided. The learned Counsel also submitted that if theRespondents are willing to send further inspection team forreassessment, the Petitioner is prepared to pay the fee ofRs. 4 lakhs for that purpose as it was paid earlier and a fresh assessment may be made to find out as to whether thePetitioner is complying with the conditions for the grantof permission or not. The learned Counsel also relied onthe judgment of the Delhi High Court confirmed by theHonourable Supreme Court in support of his contentions.

7. Mr. V.P.Raman, learned Counsel for the 2nd Respondent on the other hand submitted that during thefirst inspection/assessment made by the Assessors, severaldeficiencies were pointed out and due to the stand taken bythe Petitioner that the staff were on strike on theinspection days, a further inspection was conducted asrequested by the Petitioner and during the secondinspection also several deficiencies were noted, which wereconsidered by the experts and therefore No. indulgence beshown to the Petitioner by this Court. The learned Counselalso submitted that the Petitioner was issued show causenotice on 5.5.2011 and opportunity was given, which can betreated as compliance of the principles of natural justiceand therefore the writ petition may be dismissed as theRespondents noticed deficiencies for the grant ofpermission to increase the student strength from 150 to 250for the academic year 2011-2012.

8. I have considered the rival submissions made by the respective counsels.

9. The point arises for consideration in this writpetition is, whether the order passed by the secondRespondent dated 30.6.2011 is in compliance with thestatutory requirement of Section 10A of the Medical Councilof India Act, 1956, and whether the Petitioner is entitledto get reconsideration of its application dated 9.8.2010for the grant of Letter of Permission for the increase ofMBBS seats from 150 to 250 per annum from the academic year2011-2012.

10. The factual aspect regarding the submission ofapplication by the Petitioner Medical College on 4.8.2010and payment of inspection fee by the Petitioner College forthe increase of intake in the first year MBBS course from2011-2012 for the second inspection, are not in dispute.The first inspection/assessment was made by the Council ofAssessors on 4th and 5th April, 2011 and on the said datesstaff were on strike and thereafter as per the request madeby the Petitioner and payment of inspection fee for thesecond inspection, the Assessors conducted re-inspection on 3rd and 4th June, 2011, and a report was submitted before the second Respondent and the same was considered by the UnderGraduate Committee of the second Respondent in its meetingheld on 14.6.2011, is admitted by the second Respondent inthe counter affidavit in paragraph 20. According to thesecond Respondent, the Under Graduate Committee perused thereport of the Assessors and found several deficiencies.The Petitioner management in its representation dated4.7.2011, a copy of which is filed in the additional typedset of papers stating that the deficiencies pointed out inthe inspection report are not correct and the College hasfulfilled all the requirements for the grant of Letter ofPermission for the additional intake. In the replyaffidavit filed by the Petitioner in this writ petitiondated 3.8.2011 also it is factually disputed about theAssessors report and emphatically stated that theconditions for the grant of Letter of Permission for theincrease of intake has been fulfilled.

11. The statutory provision dealing with theconsideration of the proposal for the establishment of newMedical College or for the increase of intake of the existing

strength is covered u/s 10A of the Medical Council of India Act, 1956. Section 10A(4) reads as follows:

10A. Permission for establishmentof new medical college, new course of study.-

(4) The Central Government may, afterconsidering the scheme and therecommendations of the Council underSub-Section 93 and after obtaining,where necessary, such other particularsas may be considered necessary by itfrom the person or college concerned,and having regard to the factorsreferred to in Sub-Section 97, eitherapprove (with such conditions, if any,as it may consider necessary) ordisapprove the scheme and any suchapproval shall be a permission underSub-section (1):

Provided that No. scheme shall bedisapproved by the Central Governmentexcept after giving the person orcollege concerned a reasonableopportunity of being heard.....

The power vested with the Central Government as per thesaid Act is now vested with the Board of Governors viz.,the second Respondent as per Medical Council of India(Amendment) Act, 2010, incorporating Section 3B. The saidSection reads as follows:

3B(b) The Board of Governors shall-

(i) Exercise the powers and discharge the functions of the Council under thisAct and for this purpose, the provisionsof this Act shall have effect subject tothe modification that references thereinto the Council shall be construed asreferences to the Board of Governors;

(ii) grant independently permission forestablishment of new medical colleges oropening a new or higher course of studyor training or increase in admissioncapacity in any course of study ortraining referred to in Section 10A orgiving the person or college concerned areasonable opportunity of being heard asprovided u/s 10A without priorpermission of the Central Governmentunder that section, including exerciseof the power to finally approve ordisapprove the same; and

(iii) dispose of the matters pendingwith the Central Government underSection 10A upon receipt of the samefrom it.

Under the said Section 10A(4) as amended u/s 3B(b), reasonable opportunity of being heard is providednot only for the establishment of the new Medical College,but also for opening a new or higher course of study oftraining or for increase of intake in the existing MedicalColleges.

12. In the counter affidavit filed by the Respondentit is stated that originally a show cause notice was issuedon 5.5.2011 based on the first Assessors report. Thecounter affidavit nowhere states that after the Assessor''sreport submitted pursuant to the

second inspection made on3rd and 4th June, 2011, opportunity was given to thePetitioner while considering the said report by the UnderGraduate Committee in its meeting held on 14.6.2011. It isalso not stated in the counter affidavit that beforecommunicating the impugned order dated 30.6.2011, anyopportunity to explain the case of the Petitioner wasgiven. The statutory provision contemplates reasonableopportunity of being heard, meaning thereby, not onlyissuance of notice and calling for objections, but also togive a personal hearing before disapproving the applicationfor the increased intake. The said statutory provisionhaving not been followed, the decision arrived at by thesecond Respondent, which was communicated through theimpugned order dated 30.6.2011 is in violation of thestatutory provision as well as the principles of naturaljustice.

13. The learned Counsel for the Petitioner relied on the judgment of the Division Bench of the Delhi High Courtmade in L.P.A. No. 544 of 2011 dated 21.7.2011 in support ofhis contention, wherein a similar issue was considered andthe Delhi High Court accepted the plea made by the learnedSenior Counsel for the College for re-inspection and alsorecorded the undertaking of the learned Senior Counsel thatinspection fee will be paid and the Inspection Team wastherefore directed to proceed with inspection and afteraffording opportunity of hearing, the competent authoritywas directed to pass a reasoned order. Two weeks time wasgiven to carry out the inspection from the date of depositof the inspection fee. It was further directed that ifMedical Council of India is satisfied, the institutionshall be given permission for the academic year 2011-2012. The said order of the Division Bench of the Delhi Highcourt was challenged before the Honourable Supreme Court inS.L.P. No. 16233 of 2011 and the Supreme Court by order dated17.6.2011 which confirming the order clarified and passedthe following order:

(b) The Council shall be atliberty to consider the application inaccordance with the Rules, Regulationsand the parameters provided for grant ofapproval of such colleges. If as per thewisdom of the Council, conditions arenot satisfied it will be at liberty to decline the approval.

(c) We extend the period by twoweeks for considering andgranting/refusing the approval to theMedical College. The Council will be atliberty to inspect the College throughExperts as contemplated under the Rules.

14. Admission for the first year MBBS course for theacademic year 2011-2012 shall have to be completed by30.9.2011 and therefore there is sufficient time toreconsider the request of the Petitioner for the increaseof intake for this academic year 2011-2012 after affordingpersonal hearing as well as to conduct re-inspection. ThePetitioner is also willing to remit inspection fee.

15. How the words ''reasonable opportunity'' providedunder a statue are to be interpreted was considered by the Honourable Supreme Court in the decision reported in Automotive Tyre Manufacturers Association Vs. The Designated

Authority and Others, , wherein in paragraphs 80 and 81 it Designated Authority), wherein in paragraphs 80 and 81 it is held thus,

80..... unless a statutory provision, either specifically or by necessary implication excludes the application of principles of natural justice, becausein that event the court would notignore the legislative mandate, therequirement of giving reasonableopportunity of being heard before anorder is made, is generally read intothe provisions of a statute,particularly when the order has adversecivil consequences which obviouslycover infraction of property, personalrights and material deprivations forthe party affected. The principle holdsgood irrespective of whether the powerconferred on a statutory body orTribunal is administrative or quasi-judicial. It is equally trite that theconcept of natural justice can neitherbe put in a straitjacket nor is it ageneral rule of universal application.

81. Undoubtedly, there can beexceptions to the said doctrine. Asstated above, the question whether theprinciple has to be applied or not isto be considered bearing in mind theexpress language and the basic schemeof the provision conferring the power;the nature of the power conferred andthe purpose for which the power isconferred and the final effect of theexercise of that power. It is only upona consideration of these matters that the question of application of the said principle can be properly determined.

16. The contention of the Petitioner is that if anopportunity was given to the Petitioner, the Petitionercould have established the availability of allrequirements, which are allegedly said to be lacking as perthe counter affidavit. In such circumstances it is all themore necessary to give an opportunity of hearing to thePetitioner. The Supreme Court in the decision reported in Municipal Committee, Hoshiarpur Vs. Punjab State Electricity Board and Others, considered the principles of natural justice and in paragraphs 31 to 36 (in SCC) held thus,

31. The principles of naturaljustice cannot be applied in a vacuumwithout reference to the relevant factsand circumstances of the case. Thus,they cannot be put in a straitjacketformula.

13. ... Natural justice is [not an]unruly horse, No. lurking landmine,nor a judicial cure-all. Iffairness is shown by the decision-maker to the man proceededagainst, the form, features andthe fundamentals of such essentialprocessual propriety being conditioned by the facts andcircumstances of each situation,no breach of natural justice canbe complained of.

32. The two rules of naturaljustice, namely, nemo judex in causasua, and audi alteram partem now have adefinite meaning and connotation in lawand their contents and implications arewell understood and firmly established;they are nonetheless non-statutory. Thecourt has to determine whether theobservance of the principles of naturaljustice was necessary for a justdecision in the facts of the particularcase. (Vide The Chairman, Board of Mining Examination and Chief

Inspector of Mines and Another Vs. Ramjee, ; Union of India and Another Vs. Tulsiram Patel and Others, ;and Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., .

33. There may be cases where onadmitted and undisputed facts, only oneconclusion is possible. In such aneventuality, the application of theprinciples of natural justice would bea futile exercise and an empty formality. (Vide State of Uttar Pradesh Vs. Om Prakash Gupta, , S.L. Kapoor Vs. Jagmohan and Others, and U.P. Junior Doctors'' Action Committee Vs. Dr B. Sheetal Nandwani and Others, .

34. However, there may be caseswhere the non-observance of naturaljustice is itself prejudice to a personand proof of prejudice is not requiredat all. In A.R. Antulay Vs. R.S. Nayak and Another, this Court held as under: (SCC p.660, para 55)

55. ... No. prejudice need be provedfor enforcing the fundamentalrights. Violation of a fundamentalright itself renders the impugnedaction void. So also the violation of the principles of natural justice renders the act a nullity.

35. Similarly, in S.L. Kapoor(supra) this Court held: (SCC p.395,para 24)

24. ... The non-observance ofnatural justice is itselfprejudice to any man and proof ofprejudice independently of proof of denial of natural justice isunnecessary. It ill comes from aperson who has denied justice thatthe person who has been deniedjustice is not prejudiced.

36. In view of the above, in casethere is a non-compliance with astatutory requirement of law or theprinciples of natural justice have beenviolated under some circumstances, non-compliance with the aforesaid mayitself be prejudicial to a party and insuch an eventuality it is not requiredthat a party has to satisfy the courtthat his cause has been prejudiced fornon-compliance with the statutoryrequirement or principles of naturaljustice.

17. Thus, the Petitioner should have been given areasonable opportunity before passing the impugned order.The earlier show cause notice dated 5.5.2011 cannot betreated as a reasonable opportunity as subsequently re-assessment was made on 3rd and 4th June, 2011, and a report was made. Admittedly the said report was not furnished andno show cause notice was given to the Petitioner beforepassing the impugned order dated 30.6.2011.

18. In the light of the above findings, I am of theview that the interest of justice would be met by quashingthe impugned order dated 30.6.2011 giving liberty to thePetitioner to pay the inspection fee within one week tomake a fresh inspection/assessment and based on the same,the second Respondent is directed to consider the wholeissue and pass fresh orders on merits and in accordancewith law, within a period of one week from the date ofinspection. It is made clear that it is entirely up to thesecond Respondent, who is an expert body, to decide eitherto grant or refuse the request of the Petitionerconsidering all the requirements. The

entire exercise isdirected to be completed before the end of August, 2011.

The writ petition is ordered with the abovedirections. No. costs. Connected miscellaneous petitionsare closed.