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

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

Court: Madras High Court

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 the order passed by the second Respondent dated 30.6.2011 declining the request of the Petitioner

seeking permission to increase the MBBS seats from 150 to 250 per annum from the academic year 2011-2012 and direct the Respondents

to consider the application dated 9.8.2010 for the grant of Letter 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 the year 1985 by the Annamalai University in Annamalai Nagar, Chidambaram, Cuddalore

District, under the name and style of "Rajah Muthiah Medical College" after getting necessary permission from the State Government and approval

from the Medical Council of India. It had constructed academic and administrative blocks, separate hostels for boys and girls, staff quarters,

canteen and other infrastructures as per the norms and guidelines issued by the Medical Council of India.

(b) According to the Petitioner, the College is having all facilities for training 250 MBBS students, qualified faculty members and technical staff as

well as supporting staff are appointed and they are on the pay roll of the Petitioner College. It also made huge investments for the expansion of the

outdoor patients, class rooms, Labs, Library, faculty room, hostel, canteen, staff quarters, equipments, library books, etc.

(c) In the year 1985, when the college was established, permission was granted for an intake of 75 students from 1985-1986 for the first year

MBBS course. The said intake capacity was subsequently increased and from the academic year 2003-2004 permission is granted to admit 150

students for the first year MBBS Course.

(d) In the year 2010, the Petitioner proposed to increase the student strength from 150 to 250 and application was submitted to the second

Respondent on 9.8.2010 seeking grant of Letter of Permission from the academic year 2011-2012, enclosing all details and documents which are

required for the above said permission. The Petitioner was required to obtain essentiality certificate from the Government of Tamil Nadu, which

was also 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 for the increase of intake as there is dearth of Doctors in Tamil Nadu and also certified that increase of strength will

serve public interest and the proposal is feasible over which OPD strength per day is more than 3000, bed occupancy is 80, affiliated teaching

hospital is unitary in character, etc.

(e) The Medical Council of India visited the Petitioner College for inspection on 4th and 5th April, 2011 and at that time there was a strike by the

section of resident Doctors and therefore OPD strength was less. The Council of Assessors sent a report to that effect and thereafter a re-inspection

was made on 3rd and 4th June, 2011 and submitted a further report to the Board of Governors of the Medical Council of India without serving a

copy to the Petitioner.

(f) The impugned letter dated 30.6.2011 was issued by the Medical Council of India, which was received on 4.7.2011, 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 their requirement of 500; deficiency of para-medical staff; Auditorium of 2000 sq.mtrs not available; and shortage of supervisory Nursing

Staff. It was decided by the Board of Governors to return the application seeking increase of intake of admission of first year MBBS seats from

2011-2011 under Section 10A of the Medical Council of India Act, 1956.

(g) It is stated in the affidavit that even though the said statement is made in the order, the application was not returned and the same was also not

received by the Petitioner. The said order is challenged in this writ petition on the ground that the alleged deficiencies were informed to the Petitioner

for the first time only through the impugned order dated 30.6.2011 without enclosing the list of deficiencies and without giving an opportunity of being

heard and therefore the same is unreasonable and arbitrary.

(h) It is further stated in the affidavit that a similar order rejecting application for establishment of new Medical College of Shree Chhatrapati

Shivaji Educational Society was considered by a Division Bench of the Delhi High Court and passed an interim order on 10.6.2011 in L.P.A. No.

544 of 2011 in CM. No. 11730 of 2011 and a direction was issued to the Medical Council of India to reconsider the case of the Petitioner therein.

The said order was challenged before the Honourable Supreme Court in S.L.P. No. 16233 of 2011 and the Honourable Supreme Court declined to

interfere. The said order was passed by the Delhi High Court as there was violation of principles of natural justice, viz., not furnishing copy of the

report by the Council of Assessors and failure to give an opportunity of being heard.

(i) On 4.7.2011 immediately after the receipt of the impugned order, the Principal of the College gave a reply along with supporting documents and

handed over the same personally at the office of the first Respondent and prayed for reconsidering the order. The same having not been considered

this writ petition is filed with the above said prayer, mainly contending that Section 10A of the Medical Council of India Act, 1956, particularly

Section 10A(4) proviso stating that No. scheme shall be disapproved by the Central Government/second Respondent except after giving the person

or College concerned a reasonable opportunity of being 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 prepared 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 affidavit and in paragraph 18 it is contended that the Board of Governors considered the Assessor's

report and decided not to issue Letter of Permission for the increase of MBBS seats from 150 to 250 for the academic year 2011-2012, which was

duly communicated to the Petitioner College by letter dated 5.5.2011 and in order to afford a reasonable opportunity on 5.5.2011 a show cause

notice was issued as to why the application for the increase of intake cannot be rejected on account of deficiencies reported. Thereafter the

Petitioner, by letter dated 23.5.2011 prayed for fresh inspection which was also conceded and the inspection was conducted on 3rd and 4th June,

2011 and the said report was again considered by the Board of Governors in its meeting held on 14.6.2011 wherein several deficiencies

were noticed including seating capacity in the library, deficiency of para-medical staff, Auditorium, shortage of supervisory 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 the hospital has not been

renewed. The expert body having assessed the availability of faculty members and infrastructures, the said decision cannot be reviewed by this Court

and therefore the writ petition is to be dismissed.

5. A reply affidavit was filed by the Petitioner stating that the show cause notice issued on 5.5.2011 was suitably replied and re-inspection was

conducted by the Assessors and without furnishing the inspection report and giving reasonable opportunity of being heard, the impugned order was

passed and therefore the same is in violation of the statutory provision as well as the principles of natural justice. In the format prescribed by the

second Respondent to the Council of Assessors, there is no specific column pertaining the para-medical and non-teaching staff and in the Petitioner

college, 332 para-medical staff and 204 other supporting staff and 312 technical staff are available, apart from ministerial staff and non-teaching staff

numbering 462. The staff nurses are also considered as para-medical staff, which fact can be verified and the second Respondent arbitrarily stated

that only lesser number of staff are available. In respect of the nursing staff, the Assessors recorded that sufficient number is available. Regarding the

non-renewal of blood bank licence it is stated that renewal application was made and the Director of Drugs Control, Tamil Nadu, by order dated

25.8.2009 certified that the application for renewal of the licence for a further period from 1.1.2008 to 31.8.2012 is under process and the licensee

shall continue to operate the blood bank till further order is passed on their application made as per Rule 122 of the Drugs and Cosmetics Rules.

Pointing out the above, the Petitioner has prayed for allowing the writ petition.

6. Mr. Satish Parasaran, learned Counsel for the Petitioner submitted that the Petitioner is not praying for assessment of the Assessor's report or the

decision taken by the second Respondent, by this Court and the Petitioner may be given an opportunity to place its case before the Respondents in

compliance with the principles of natural justice, as an opportunity of being heard is statutorily provided. The learned Counsel also submitted that if

the Respondents are willing to send further inspection team for reassessment, the Petitioner is prepared to pay the fee of Rs. 4 lakhs for that purpose

as it was paid earlier and a fresh assessment may be made to find out as to whether the Petitioner is complying with the conditions for the grant of

permission or not. The learned Counsel also relied on the judgment of the Delhi High Court confirmed by the Honourable 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 the first inspection/assessment made by the

Assessors, several deficiencies were pointed out and due to the stand taken by the Petitioner that the staff were on strike on the inspection days, a

further inspection was conducted as requested by the Petitioner and during the second inspection also several deficiencies were noted, which

were considered by the experts and therefore No. indulgence be shown to the Petitioner by this Court. The learned Counsel also submitted that the

Petitioner was issued show cause notice on 5.5.2011 and opportunity was given, which can be treated as compliance of the principles of natural

justice and therefore the writ petition may be dismissed as the Respondents noticed deficiencies for the grant of permission to increase the student

strength from 150 to 250 for 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 writ petition is, whether the order passed by the second Respondent dated 30.6.2011 is in compliance

with the statutory requirement of Section 10A of the Medical Council of India Act, 1956, and whether the Petitioner is entitled to get reconsideration

of its application dated 9.8.2010 for the grant of Letter of Permission for the increase of MBBS seats from 150 to 250 per annum from the

academic year 2011-2012.

10. The factual aspect regarding the submission of application by the Petitioner Medical College on 4.8.2010 and payment of inspection fee by the

Petitioner College for the increase of intake in the first year MBBS course from 2011-2012 for the second inspection, are not in dispute. The first

inspection/assessment was made by the Council of Assessors on 4th and 5th April, 2011 and on the said dates staff were on strike and thereafter as

per the request made by the Petitioner and payment of inspection fee for the second 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 meeting held on 14.6.2011, is admitted by the second Respondent in the counter affidavit in paragraph 20. According to

the second Respondent, the Under Graduate Committee perused the report of the Assessors and found several deficiencies. The Petitioner

management in its representation dated 4.7.2011, a copy of which is filed in the additional typed set of papers stating that the deficiencies pointed

out in the inspection report are not correct and the College has fulfilled all the requirements for the grant of Letter of Permission for the additional

intake. In the reply affidavit filed by the Petitioner in this writ petition dated 3.8.2011 also it is factually disputed about the Assessors report and

emphatically stated that the conditions for the grant of Letter of Permission for the increase of intake has been fulfilled.

11. The statutory provision dealing with the consideration of the proposal for the establishment of new Medical 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 establishment of new medical college, new course of study.-

(4) The Central Government may, after considering the scheme and the recommendations of the Council under Sub-Section 93 and after

obtaining, where necessary, such other particulars as may be considered necessary by it from the person or college concerned, and having regard to

the factors referred to in Sub-Section 97, either approve (with such conditions, if any, as it may consider necessary) or disapprove the scheme and

any such approval shall be a permission under Sub-section (1):

Provided that No. scheme shall be disapproved by the Central Government except after giving the person or college concerned a reasonable opportunity of being heard.....

The power vested with the Central Government as per the said 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 said Section reads as follows:

3B(b) The Board of Governors shall-

(i) Exercise the powers and discharge the functions of the Council under this Act and for this purpose, the provisions of this Act shall have effect

subject to the modification that references therein to the Council shall be construed as references to the Board of Governors;

(ii) grant independently permission for establishment of new medical colleges or opening a new or higher course of study or training or increase in

admission capacity in any course of study or training referred to in Section 10A or giving the person or college concerned a reasonable opportunity of

being heard as provided u/s 10A without prior permission of the Central Government under that section, including exercise of the power to finally

approve or disapprove the same; and

(iii) dispose of the matters pending with the Central Government under Section 10A upon receipt of the same from it.

Under the said Section 10A(4) as amended u/s 3B(b), reasonable opportunity of being heard is provided not only for the establishment of the new

Medical College, but also for opening a new or higher course of study or training or for increase of intake in the existing Medical Colleges.

12. In the counter affidavit filed by the Respondent it is stated that originally a show cause notice was issued on 5.5.2011 based on the first

Assessors report. The counter affidavit nowhere states that after the Assessor's report submitted pursuant to the second inspection made on 3rd and

4th June, 2011, opportunity was given to the Petitioner while considering the said report by the Undergraduate Committee in its meeting held on

14.6.2011. It is also not stated in the counter affidavit that before communicating the impugned order dated 30.6.2011, any opportunity to explain

the case of the Petitioner was given. The statutory provision contemplates reasonable opportunity of being heard, meaning thereby, not only issuance

of notice and calling for objections, but also to give a personal hearing before disapproving the application for the increased intake. The said

statutory provision having not been followed, the decision arrived at by the second Respondent, which was communicated through the impugned

order dated 30.6.2011 is in violation of the statutory provision as well as the principles of natural justice.

13. The learned Counsel for the Petitioner relied on the judgment of the Division Bench of the Delhi High Court made in L.P.A. No. 544 of 2011

dated 21.7.2011 in support of his contention, wherein a similar issue was considered and the Delhi High Court accepted the plea made by the

learned Senior Counsel for the College for re-inspection and also recorded the undertaking of the learned Senior Counsel that inspection fee will be

paid and the Inspection Team was therefore directed to proceed with inspection and after affording opportunity of hearing, the competent

authority was directed to pass a reasoned order. Two weeks time was given to carry out the inspection from the date of deposit of the inspection

fee. It was further directed that if Medical Council of India is satisfied, the institution shall be given permission for the academic year 2011-2012.

The said order of the Division Bench of the Delhi High Court was challenged before the Honourable Supreme Court in S.L.P. No. 16233 of 2011

and the Supreme Court by order dated 17.6.2011 which confirming the order clarified and passed the following order:

(b) The Council shall be at liberty to consider the application in accordance with the Rules, Regulations and the parameters provided for grant

of approval of such colleges. If as per the wisdom of the Council, conditions are not satisfied it will be at liberty to decline the approval.

(c) We extend the period by two weeks for considering and granting/refusing the approval to the Medical College. The Council will be at liberty to

inspect the College through Experts as contemplated under the Rules.

14. Admission for the first year MBBS course for the academic year 2011-2012 shall have to be completed by 30.9.2011 and therefore there is

sufficient time to reconsider the request of the Petitioner for the increase of intake for this academic year 2011-2012 after affording personal hearing

as well as to conduct re-inspection. The Petitioner is also willing to remit inspection fee.

15. How the words "reasonable opportunity" provided under a statute 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,

because in that event the court would not ignore the legislative mandate, the requirement of giving reasonable opportunity of being heard before

an order is made, is generally read into the provisions of a statute, particularly when the order has adverse civil consequences which obviously cover

infringement of property, personal rights and material deprivations for the party affected. The principle holds good irrespective of whether the

power conferred on a statutory body or Tribunal is administrative or quasi-judicial. It is equally trite that the concept of natural justice can neither be

put in a straitjacket nor is it a general rule of universal application.

81. Undoubtedly, there can be exceptions to the said doctrine. As stated above, the question whether the principle has to be applied or not is to be

considered bearing in mind the express language and the basic scheme of the provision conferring the power; the nature of the power conferred

and the purpose for which the power is conferred and the final effect of the exercise of that power. It is only upon a 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 an opportunity was given to the Petitioner, the Petitioner could have established the availability of

all requirements, which are allegedly said to be lacking as per the counter affidavit. In such circumstances it is all the more necessary to give an

opportunity of hearing to the Petitioner. 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 natural justice cannot be applied in a vacuum without reference to the relevant facts and circumstances of the case. Thus, they

cannot be put in a straitjacket formula.

13. ... Natural justice is [not an] unruly horse, No. lurking landmine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man

proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of

each situation, no breach of natural justice can be complained of.

32. The two rules of natural justice, namely, *nemo iudex in causa sua*, and *audi alteram partem* now have a definite meaning and connotation in

law and their contents and implications are well understood and firmly established; they are nonetheless non-statutory. The court has to determine

whether the observance of the principles of natural justice was necessary for a just decision in the facts of the particular case. (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 on admitted and undisputed facts, only one conclusion is possible. In such an eventuality, the application of

the principles of natural justice would be a 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 cases where the non-observance of natural justice is itself prejudice to a person and proof of prejudice is not required at

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 proved for enforcing the fundamental rights. Violation of a fundamental right itself renders the impugned action 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 of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice

is unnecessary. It ill comes from a person who has denied justice that the person who has been denied justice is not prejudiced.

36. In view of the above, in case there is a non-compliance with a statutory requirement of law or the principles of natural justice have been violated

under some circumstances, non-compliance with the aforesaid may itself be prejudicial to a party and in such an eventuality it is not required that a

party has to satisfy the court that his cause has been prejudiced for non-compliance with the statutory requirement or principles of natural justice.

17. Thus, the Petitioner should have been given a reasonable opportunity before passing the impugned order. The earlier show cause notice dated

5.5.2011 cannot be treated 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 and no show cause notice was given to the Petitioner before passing the impugned order dated

30.6.2011.

18. In the light of the above findings, I am of the view that the interest of justice would be met by quashing the impugned order dated 30.6.2011

giving liberty to the Petitioner to pay the inspection fee within one week to make a fresh inspection/assessment and based on the same, the second

Respondent is directed to consider the whole issue and pass fresh orders on merits and in accordance with law, within a period of one week from

the date of inspection. It is made clear that it is entirely up to the second Respondent, who is an expert body, to decide either to grant or refuse the

request of the Petitioner considering all the requirements. The entire exercise is directed to be completed before the end of August, 2011.

The writ petition is ordered with the above directions. No. costs. Connected miscellaneous petitions are closed.