

Index Medical College Hospital And ... vs Union Of India And Anr on 14 May, 2019

Author: C. Hari Shankar

Bench: C. Hari Shankar

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 4856/2019 & CM APPLs. 21583/2019, 21584/2019, 22535/2019
INDEX MEDICAL COLLEGE HOSPITAL AND RESEARCH CENTRE Petitioner
Through: Mr. Sandeep Sethi, Sr. Adv.
with Mr. K. P. Gautam, Mr. S. V. Rateria,
Mr. Harsh Kumar and Ms. Ekta Singh,
Advs.

versus

UNION OF INDIA AND ANR. Respondents
Through: Mr. Rahul Sharma, Mr. C. K. Bhatt, Advs. for R-1
Mr. T. Singhdev, Ms. Puja Pal, Ms. Arunima Pal, Ms. Michelle Biaktansangi and Mr. Tarun Verma, Advs. for R-2/MCI

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
ORDER

% 14.05.2019 CM APPL. 21583/2019 (for exemption)

1. Allowed, subject to all just exceptions.

2. The application stands disposed of.

CM APPL. 22535/2019 (for amendment in writ petition)

3. This application seeks to amend the writ petition by incorporating therein, the challenge to the order dated 18 th March, 2019, passed by the Medical Council of India (MCI).

4. I had noted, in my order dated 6th May, 2019, that in the absence of such a challenge, the prayers in the writ petition could not be granted, whereupon learned counsel for the petitioner had sought an adjournment to enable him to amend the writ petition and incorporate a challenge to the order dated 18th March, 2018.

5. Inasmuch as, notice yet to be issued in the matter, requirement of the separate issue on the application for amendment is obviated.

6. The application for amendment is, accordingly, allowed. The amended writ petition, filed along with the application is taken on record.

W.P.(C) 4856/2019

7. Issue notice to the respondent to show cause as to why rule nisi be not issued.

8. Counter affidavit be filed by the respondent within four weeks with advance copy to the petitioner who may file rejoinder thereto, if any, within two weeks thereof.

9. Notices are accepted by Mr. Rahul Sharma, learned counsel, on behalf of the Respondent No. 1 (UOI) and by Mr. T. Singhdev, learned counsel, on behalf of Respondent No. 2 (MCI).

10. Renotify on 22nd August, 2019.

CM APPL 21584/2019 (interim relief)

11. By this application, the petitioner prays for issuance of a direction to the MCI to process the petitioner's application, for increase of the MBBS seats from 150 to 250 for the academic session 2019-20 and to carry out the inspection on the petitioner's institution.

12. Mr. Sandeep Sethi, learned Senior counsel, submits that, in case, such an inspection is carried out, it would be seen that all the deficiencies stand removed and the petitioner is fully compliant with the requirements as contained in the regulations of MCI, i.e. The Opening of a New or Higher Course of Study or Training (including Post-graduate Course of Study or Training) and Increase of Admission Capacity in any Course of Study or Training (including a Postgraduate Course of Study or Training) Regulations, 2000 (hereinafter referred to as "the 2000 Regulations").

13. The two major objections, of the MCI, for passing of any direction, to it, to inspect the petitioner's premises, at this stage, as vocalized by Mr. T. Singhdev, learned counsel for Respondent No. 1, are the following (i) the petitioner had submitted an essentiality certificate dated 7th July, 2017, issued by the State Government of Madhya Pradesh, which clearly indicates that the petitioner was not compliant in respect of the requirements, relating to the OPD strength, the bed occupancy and the Unitary nature of the hospital, and (ii) in any event, when the given time schedules fixed by the Supreme Court in the judgment, i.e. Ashish Ranjan v. Union of India (2016) 11 SCC, 225, inspection of the petitioner's premises was required to be conducted by the MCI by 15th December, 2018, and, at this point of time, carrying out the said inspection would violate the said directions.

14. That apart, Mr. Singhdev submits that, in view of the fact that the essentiality certificate, submitted by the petitioner indicated that the petitioner was not compliant with the 2000 Regulations, the requirement of physical inspection, by the MCI, of the petitioner's premises, stood

obviated. He seeks reliance, for this purpose, on para 31 of the judgment of Supreme Court in Royal Medical Trust v. Union of India (2015) 10 SCC, 19, specifically in respect of sub paras

(a) and (b) in the said para. For ready reference the said sub paras (a) and (b) of para 31 of the judgment of Supreme Court in Royal Medical (supra) may be reproduced thus:

"(A) Initial assessment of the application at the first level should comprise of checking necessary requirements such as essentiality certificate, consent for affiliation and physical features like land and hospital requirement. If an applicant fails to fulfil these requirements, the application on the face of it, would be incomplete and be rejected. Those who fulfil the basic requirements would be considered at the next stage.

(B) Inspection should then be conducted by the Inspectors of MCI. By very nature such inspection must have an element of surprise. Therefore sufficient time of about three to four months ought to be given to MCI to cause inspection at any time and such inspection should normally be undertaken latest by January. Surprise inspection would ensure that the required facilities and infrastructure are always in place and not borrowed or put in temporarily."

15. Mr. Singhdev's submission, relying on the above extracted sub paras (a) and (b) of para 31 of the judgment of Supreme Court in Royal Medical (supra), is that the MCI is required to inspect the college only if the essentiality certificate, submitted by it, reveals that the college is compliant with the requirement stipulated in the 2000 Regulations.

16. As against this, the contention of Mr. Sethi, learned Senior counsel for the petitioner, assisted by Mr. Kaushal Gautam, learned counsel, is that the requirement of submitting an essentiality certificate stands completed and eviscerated by the notification dated 24 th October, 2016, to which reference is to be found at page 53 of the paper-book.

17. Vide the said notification, Clause 3.2 of the 2000 Regulations was completely removed therefrom.

18. In view thereof, the submission of learned Senior counsel, is that the observations in the essentiality certificate dated 7 th July, 2017 (supra), even if adverse to the petitioner, could not be taken into account by the MCI. Rather, learned Senior counsel would seek to invite the attention to clause 6 of the said 2000 Regulations, which reads thus:

"6. EVALUATION BY MEDICAL COUNCIL OF INDIA:-

The Council shall evaluate the application to accept the desirability and prima facie feasibility for increasing the admission capacity at the existing medical college/institution and the capability of the medical college/institution to provide the necessary resources and infrastructure for the scheme.

While evaluating the application, the Council may seek further information, clarification or additional documents from the medical college/institution as considered necessary and shall carry out a physical inspection to verify the information; clarification or addition documents supplied by the medical colleges/institutions. The dates for receipt of application and processing dates are given in the Schedule to these Regulations.

The 2nd Para of Clause 6 above has been substituted with the following in terms of Notification published on 29.12.2009 in the Gazette of India:-

"While evaluating the application, the Council may seek further information, clarification or additional documents from the applicant as considered necessary and shall earn/ out an inspection to ascertain and assess the facilities of teaching faculty, residents, clinical material, hostels and other infrastructure facilities vis-a- vis the minimum standard requirements for the number of students for which the college recognized for the award of MBBS Degree as per the Minimum Standard Requirements for the Medical College for 50/100/150 Regulations, 1999.

The Council shall process the application for starting of a Post Graduate Course or for increase of annual intake of Post Graduate courses only in case the college meet with the facilities for teaching faculty, residents, clinical material, hostels and other infrastructure facilities as required under the Regulations for the respective number of students for which the college is recognized for the award of MBBS degree and then shall carry out the physical inspection to verify the information, clarification, additional documents supplied by the medical college teaching faculty, residents, clinical material and instrumentation and other infrastructure facilities in the concerned department in which the Post Graduate Course is proposed to be established or increase of seats in the concerned Post Graduate Course is proposed.

The dates of receipt of application for increase in admission capacity in Post Graduate Courses and processing dates are given in the schedule. The dates of receipt of application and processing of applications in respect of application and processing of applications in respect of increase of seats in MBBS Course shall be as per the Schedule included in the Establishment of Medical College Regulations, 1999.""

19. This clause, it is submitted, mandated physical inspection of the petitioner's premises by the MCI, which had not taken place.

20. Apropos the reference, by Mr. Singhdev, to the date-line, stipulated in Ashish Ranjan (supra), the submission of learned Senior counsel is that, with afflux of time, the said date-line has seized to apply, for the simple reason, today, with the MCI being substituted/superseded by Board of Governors, the difference between the MCI and the Central Government has vanished, and MCI has essentially become a part of the Central Government.

21. As such, stages 2 to 6, in the time schedule, stipulated by the Supreme Court in its judgment in Ashish Ranjan (supra), for processing application for increase of admission capacity in MBBS course, have effectively merged. In fact, the heading to the said tabular statement, as set out by the Supreme Court in Ashish Ranjan (supra), the heading to the tabular statement reads thus:

"TIME SCHEDULE FOR RECEIPT OF APPLICATIONS FOR INCREASE OF ADMISSION CAPACITY IN MBBS COURSE/RENEWAL OF PERMISSIO FOR INCREASE OF SEATS AND PROCESSING OF THE APPLICIONS BY THE CENTRAL GOVERNMENT AND THE MEDICAL COUNCIL OF INDIA."

22. Learned Senior counsel would emphasise that the Supreme Court had set out the said time schedule because as the situation prevailed then, the MCI and the Central Government were different entities and the recommendation of the MCI had to be submitted for getting approval by the Central Government, which is not the situation, which exists now.

23. Given the above circumstances, the learned Senior counsel would seek to submit that, if the MCI is not directed to conduct the inspection of the petitioner's premises, now, the cut-off date of 31st May, 2019, for issuance of a letter for permission by the Central Government would expire.

24. Having heard both sides, I am, prime facie, not in agreement with the submission of Mr. Singhdev that, merely because the essentiality certificate as issued by the State Government of Madhya Pradesh may have indicated that the petitioner was not compliant with requirements of the 2000 Regulations, the requirement of physical inspection of the premises of the petitioner, by the MCI, in terms of Regulation 6 of the 2000 Regulations, was done away with.

25. The interpretation, of which Mr. Singhdev would seek to place reliance on clauses (a) and clause (b) in para 31 of the judgment of Supreme Court in Royal Medical (supra), prima facie, do not commend acceptance. As I read the said clauses, at this prima facie stage, they do not seem to require the exercise of inspection, by the MCI, to be necessitated only where there is positive essentiality certificate, issued by the State Government. Clause (a), when it refers to the essentiality certificate states that, if an applicant failed to fulfill the requirements of the essentiality certificate, the application would be incomplete and would be rejected, prima facie, would seem to refer to whether an essentiality certificate is filed with application or not, and not to refer to the contents of the essentiality certificate itself.

26. In other words what clause (a) in para 31 of Royal Medical (supra), would seems to indicate is that, if, on initial assessment of the application, submitted by the petitioner, it is found that the necessary requirement of an essentiality certificate was lacking, the application would be treated as incomplete.

27. Clause (b) which follows thereupon, applies where the application is not to be rejected as incomplete under clause (a) and clause (b) clearly states that, if a complete application is submitted, inspection should be conducted by the Inspectors of MCI.

28. This requirement, in my understanding, applies, irrespective of whether the essentiality certificate is positive or negative.

29. It is not impossible to visualize the situation in which, though the State Government may opine that the institution is non-compliant, the MCI, on its inspection, found the institution to be compliant.

30. The requirement of inspection by the MCI, as contained in Regulation no. 6 of the 2000 Regulations, has not been made subject to a positive essentiality certificate being initially submitted by the parties, is, in my prima facie view, advisedly so.

31. In view thereof, keeping in mind the fact that this order, it cannot be said to be adverse, in any manner, to the MCI either, I am of the view that given the fact that the entire exercise is required to be completed by 31st May, 2019, the MCI should be directed to conduct an inspection of the petitioner's premises, to ascertain whether the petitioner is compliant with the requirements of the 2000 Regulations or not, and to arrive at a decision in that regard.

32. Mr. Singhdev submits that, given the fact that there are only seventeen days left, within which such an inspection could be carried out, the inspection cannot be treated as being carried out by surprise.

33. The said submission also fails to impress, firstly the MCI ought to have inspected the premises of the petitioner, as required by regulation no. 6 of the 2000 Regulations, much before now, and having failed to do so, cannot use this as an argument not to carry out the inspection at this stage. Secondly, the ultimate aim of the entire procedure is to see whether the institution is compliant in respect of the requirement of increasing the number of its seats.

34. For this, the only authority, which could take a firm decision in the matter would be the MCI.

35. For the above reasons, I am of the view that the application deserves to be allowed to the limited extent that the MCI should be directed to carry out an inspection of the petitioner's premises - obviously, without any prior notice to the petitioner in that regard - and to prepare a report, pursuant thereto, regarding the compliance, or otherwise, of the petitioner, with the requirement of the 2000 Regulations.

36. Any such report, as prepared, would be filed on record of this Court, under a cover of an appropriate index, after serving advance copy thereto, to learned counsel representing the petitioner.

37. The report, pursuant to the said inspection, would have to be prepared prior to 31st May, 2019.

38. The application is allowed in the above terms.

Order be given dasti under the signature of the Court Master.

C. HARI SHANKAR, J MAY 14, 2019/bh