

Madha Medical College And Research ... vs Union Of India on 12 September, 2017

Equivalent citations: AIRONLINE 2017 SC 400

Author: D Y Chandrachud

Bench: D Y Chandrachud, A M Khanwilkar, Dipak Misra

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REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO 674 OF 2017

MADHA MEDICAL COLLEGE AND RESEARCH
INSTT. THR. ITS MANAGING DIRECTOR

..Petitioner

VERSUS

UNION OF INDIA AND ANR.

..Respondents

JUDGMENT

Dr D Y CHANDRACHUD, J 1 By an order dated 31 May 2017, the Union government has debarred the petitioner from admitting 150 students for the MBBS course during academic years 2017-18 and 2018-19. Besides challenging the order of debarment, the petitioner seeks a mandamus for the grant of recognition under Section 11 of the Indian Medical Council Act, 1956 ('IMC Act'). In consequence, the petitioner also seeks a direction to permit it to participate in the process of counselling for admission to the 17:52:20 IST Reason:

MBBS degree programme for the ensuing academic year. Since a bank guarantee of Rs 2 crores furnished by the petitioner is to be invoked in pursuance of the impugned decision, relief against encashment of the guarantee has been sought.

2 The petitioner was granted recognition in 2011-12 to conduct the MBBS degree course with an intake of 150 students. The petitioner college is affiliated to Dr M G R Medical University. The

petitioner was granted renewal of permission to admit fresh batches of MBBS students during the academic years 2012-13 and 2013-14. The petitioner has not admitted students during 2014-15 and 2015-16. For the purpose of admitting students in 2016-17, assessment of the physical infrastructure and teaching facilities was carried out under Section 11(2) of the IMC Act on 18/19 March 2016. The assessment reports were considered by the Executive Committee of the Medical Council of India ('MCI') which noted the existence of as many as 39 deficiencies. Among the deficiencies noted were the following :

“1. Deficiency of faculty is 52.2% as detailed in the report.

2. Shortage of Residents is 91.7 % as detailed in the report.

..

4. Bed occupancy is 54.76% on day of assessment.” ..

25. Students' Hostels : Available accommodation is 365 against requirement of 563. It is not properly furnished, Toilet facilities are inadequate. Visitors' room, A.C. Study room with Computer & Internet & Recreation room are not available. Hygiene is poor, Mess is not available.

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27. Residents' Hostels : Available accommodation is 20 + 2 flats against requirement of 85. It is not properly furnished. Toilet facilities are inadequate. Visitors' room, A.C. Study room with Computer & Internet & Recreation room are not available.

Hygiene is poor. Mess is not available.

28. Nurses' Hostel : It is not properly furnished. Toilet facilities are inadequate. Visitors' room, A.C. Study room with Computer & Internet & Recreation room are not available. Hygiene is poor...” Having regard to the above deficiencies, the Executive Committee decided to recommend to the Union government not to grant recognition to the petitioner for the award of the MBBS degree. This decision was communicated to the Union government on 22 March 2016. The college was called upon to rectify the deficiencies within two weeks. The college submitted its compliance on 4 April 2016. This was verified in an assessment conducted on 22 April 2016. 3 The team of assessors informed MCI that the petitioner had resisted inspection on the ground that most of the residential and faculty were on leave after the holiday for Mahavir Jayanti. According to the petitioner, the assessment was in violation of the regulations which prohibit inspection within two days before or after a religious or festival holiday declared by the Central/State government. It has been stated on behalf of MCI that the public holiday was on 19 April 2016 and hence the assessment of 22 April 2016 could not have been denied, under Regulation 8(3)(1)

(d) of the Establishment of Medical Colleges Regulations, 1999. 4 The Executive Committee of MCI held a meeting on 13 May 2016 and, having regard to the above assessment reports, decided to recommend to the Union government not to award recognition under Section 11(2) or grant renewal of permission for academic year 2016-17. The Union government by its letter dated 10 June 2016 informed the petitioner not to admit a fresh batch of students for 2016-17.

5 Following the decision communicated by the Oversight Committee 1 in a letter dated 13 June 2016, the Union government forwarded the compliance submitted by the petitioner on 17 June 2016 to MCI. The Executive Committee of MCI noted that the letter of the Oversight Committee covered those obligations falling under Section 10 A of the IMC Act. Since the case of the petitioner pertained to the grant of recognition under Section 11(2) it was according to the Executive Committee not covered by the decision of the Oversight Committee. This was communicated to the Union government on 5 July 2016.

6 In the meantime, pursuant to MCI's letter dated 15 May 2016, the petitioner submitted its compliance on 9 June 2016. On 6 July 2016 the college was directed to resubmit its compliance after rectifying deficiencies. After the petitioner submitted a letter of compliance dated 9 July 2016, it was decided to verify this by a fresh assessment.

7 On 12 August 2016, the Oversight Committee, on the basis of the information furnished by the medical colleges on their website and without conducting physical assessment, approved the case of the petitioner for grant of conditional recognition under Section 11(2) of the IMC Act in respect of the 150 students admitted in the 1 The Oversight Committee was appointed in pursuance of a judgment dated 2 May 2016 of this Court in Modern Dental College and Research Centre Vs. State of M.P., Civil Appeal 4060 of 2009 decided on 2 May 2016.

(2016)7 SCC 353 medical college, subject to the college submitting, within 15 days from the date of notification of the approval by the Central government, the following documents :

(i) An undertaking on affidavit from the Dean/Principal and the Chairman of the Trust affirming that the deficiencies pointed out by the assessors of the Council in the compliance verification assessment stand rectified;

(ii) A Bank Guarantee for a sum of Rs 2 crores in favour of the Council which shall be valid for a period of one year or till such time the first renewal inspection takes place, whichever is later.

It was further directed by the then Oversight Committee that the inspection of the medical colleges which have been recommended for grant of Conditional Letter of Permission/Recognition under Section 11(2) of the IMC Act shall be conducted after 30 September 2016 and any college which is found to have not complied with the deficiency as per their undertaking shall be debarred from admitting any students for a period of two years i.e. 2017-18 & 2018-19.

8 On 8 September 2016 conditional recognition was granted to the petitioner for academic year 2016-17, in terms of the decision of the Oversight Committee dated 12 August 2016. The conditions imposed included the following :

“...2 The OC has also stipulated as follows :-

a) OC may direct assessment to verify the compliance submitted by the college and considered by OC, any time after 30 September, 2016.

b) In default of conditions (i) & (ii) in para 1 above and if the compliances are found incomplete in the assessment to be conducted after 30 September, 2016, such college will be debarred from fresh intake of students for 2 years commencing 2017-18...” 9 The decision of the Executive Committee to recommend to the Union government not to grant recognition under Section 11(2) was considered by the General body of MCI on 22 November 2016. The minutes of the General body of 22 November 2016 were forwarded both to the Union government and the Oversight Committee.

10 A compliance verification assessment of the infrastructure, faculty, clinical material and other physical facilities was carried out on 21 February 2017. The compliance verification assessment noted :

(i) a deficiency of 4.54 per cent in teaching faculty;

(ii) a deficiency of 2.35 per cent of residents.

This, according to the petitioner, was well within acceptable parameters. 11 However, the petitioner has a serious grievance in regard to a second inspection which was carried out on 22 March 2017. The fresh inspection observed a deficiency of 33.33 per cent in faculty (43 out of 129) and of 64.28 per cent in residents (54 out of 84).

12 In the counter affidavit (which was filed by the MCI before the Madras High Court), the circumstances in which a fresh inspection was conducted on 22 March 2017 have been adverted to. It has been stated that MCI received a complaint dated 14 March 2016 from some students of the college stating that the college did not have adequate infrastructure, clinical material and teaching faculty/residents. The complaint alleged that prior to the MCI assessment, “ghost faculty/residents” and “fake patients” are portrayed. Specific examples of deficiencies were furnished in the complaint. On 21 March 2017 the compliance assessment verification dated 21 February 2017 was considered by the Executive Committee of MCI. Consideration of the matter was deferred inter alia in view of the complaint which had been received on 14 March 2017. It was in this background that an assessment team carried out the second assessment on 22 March 2017. Both the compliance assessments of 21 February 2017 and 22 March 2017, together with the previous assessments of March-April 2017 were considered by the Executive Committee on 28 March 2017. The following deficiencies were noted; among others:

“1. Deficiency of faculty is 33.33% as detailed in the report.

2. Shortage of Residents is 64.28% as detailed in the report.

3. Attendance registers of faculty and Residents of all departments were not provided by the college in the requisite time as per OC guidelines.

..

5. Bed Occupancy was 6.76% in the earlier round and 8.53% in later round. Paediatric wards which were empty during earlier round had 50 children from nearby school playing & sitting in the ward in their school uniform in the later round...” 13 The Executive Committee consequently decided to recommend to the Union government not to grant recognition to the petitioner under Section 11(2) of the IMC Act, 1956. In view of the gross deficiencies, it recommended that the college be debarred from admitting students for 2017-18 and 2018-19 and that the bank guarantee that it had furnished be encashed. The decision of MCI was communicated on 29 March 2017 to the Union government and to the Oversight Committee. The Union government after furnishing an opportunity of being heard to the petitioner, by its decision dated 31 May 2017 debarred the petitioner from admitting students for 2017-18 and 2018-19. The petitioner filed a writ petition under Article 226 of the Constitution before the Madras High Court on 8 August 2017. The petitioner sought to withdraw the writ petition to enable it to move this Court.

Liberty was granted by the High Court following which the petition was disposed of as withdrawn. Those proceedings have been instituted under Article 32 of the Constitution.

14 During the pendency of these proceedings, by an order dated 11 August 2017, the Union government was directed to afford an opportunity of a hearing to the petitioner and to take the assistance of the newly constituted Oversight Committee and to pass a reasoned order thereafter by the end of August 2017. 15 Following the above direction, the Union government has passed a fresh order dated 31 August 2017 maintaining its earlier decision. 16 While assailing the decision of the Union government, learned senior counsel appearing on behalf of the petitioner has seriously questioned the conduct of MCI in carrying out two inspections – the first on 21 February 2017 and the second on 22 March 2017 within a span of one month. The communications dated 31 May 2017 and 31 August 2017 have been challenged on the ground that they do not reveal an application of mind and are unreasoned. It has been urged that the findings in regard to deficiencies of faculty and residents in the second inspection are at variance with the observations in the earlier inspection. It has been submitted that the authorities ought to have considered the explanation of the petitioner that it was conducting health camps at a distance of more than 8 Kms. from the college campus to which doctors and residents had been sent. Moreover, it has been submitted that the petitioner produced salary slips of faculty and other staff. As regards bed occupancy, it has been urged that the first inspection team had found it to be adequate. As regards the presence of students from a nearby school, it has been urged that this arose because of an incident of food poisoning which was reported

in the school and the students were admitted 'only' for observation. 17 While considering the above submissions, we must make it clear at the outset that we are not impressed with the argument that MCI is prohibited from conducting a second or subsequent inspection. The purpose of inspection by an expert team of assessors is to verify whether a medical college has the requisite infrastructure and facilities including faculty, residents as well as clinical and non-clinical material. The basic purpose of inspection is to verify whether the college possesses the wherewithal and resources to provide quality legal education consistent with the statutory regulations which hold the field. The powers of MCI cannot be constricted by prohibiting it from carrying out another inspection, even it were to come close on the heels of an earlier inspection. As an expert statutory body, MCI may have legitimate reasons for seeking a reverification of the observations contained in a prior inspection. There may be reasons to doubt the genuineness of the picture which has been made out by the college during the course of an inspection. MCI may have prima facie reasons, to believe that the actual possession of resources and infrastructure is at variance with what was portrayed before its team of assessors. MCI has been conferred with statutory powers to protect the cause of medical education. MCI is a custodian of public interest and acts in trust for the welfare of society. Access to medical care requires the presence of qualified health professionals. Verification of the conditions which prevail in medical colleges is central to the role discharged by MCI. Hence, it would be manifestly contrary to public interest to restrict the powers of MCI to carry out a fresh inspection even though in its considered decision, such an inspection is necessary. This court cannot sit in judgment over the wisdom of an expert body and we find no basis to hold in law that there is a prohibition in carrying out a fresh inspection. In the absence of a statutory interdict, the court will not read such a restriction into the powers of MCI. In these circumstances, we find no merit in the submission. 18 In taking this view, we are duly supported by a recent judgment rendered in *IQ City Foundation v Union of India*², by a bench of three learned Judges of this Court. Hon'ble Mr Justice Dipak Misra (as the learned Chief Justice then was), speaking for the Court, held as follows :

“On a reading of Section 19-A of the Act, Rules and the Regulations, 2 Writ Petition (c) No.502 of 2017 decided on August 01, 2017 as has been referred to in *Manohar Lal Sharma*³ (supra), and the view expressed in *Royal Medical Trust*⁴ (supra), it would be inapposite to restrict the power of the MCI by laying down as an absolute principle that once the Central Government sends back the matter to MCI for compliance verification and the Assessors visit the College they shall only verify the mentioned items and turn a Nelson's eye even if they perceive certain other deficiencies. It would be playing possum. The direction of the Central Government for compliance verification report should not be construed as a limited remand as is understood within the framework of Code of Civil Procedure or any other law...”

19 The facts which have been placed on the record before this Court would indicate that consistent opportunities have been granted to the petitioner to rectify the deficiencies which have been found in its infrastructure, resources and facilities. In the face of the deficiencies which have been found during the course of inspection, the petitioner cannot be allowed to admit students for the ensuing academic year. The court will lean against any interpretation which will result in the foisting of under prepared medical professionals on society. 20 At the same time, we are of the view that having regard to the facts which have transpired, the petitioner should be permitted to establish

before MCI that it possesses the requisite infrastructure and has taken all necessary steps to remove the deficiencies which have been noted to exist. Such an exercise cannot be carried out in time for academic year 2017-18 since the last date for admissions has elapsed and the academic session commenced. Hence the petitioner cannot be permitted to participate in the counselling process for the ensuing academic year 3 (2013) 10 SCC 60 4 (2015) 10 SCC 19 2017-18. Any such exercise would necessarily have to be for the academic year 2018-19.

21 Hence, we allow the petitioner an opportunity to remove the deficiencies upon which MCI shall determine afresh as to whether it should be granted recognition in time for the commencement of academic year 2018-19. In the event that MCI comes to the conclusion that the petitioner has removed all deficiencies and meets the requirements of its regulations, MCI shall consider afresh the issue of recognition and the grant of permission for the academic year 2018-19. For that purpose, we direct that the bank guarantee of Rs 2 crores furnished by the petitioner shall be kept alive in the meantime.

22 We accordingly direct that :

(i) The case of the petitioner shall be duly considered by MCI and by the Union government in accordance with the prevalent regulations for academic year 2018-19.

(ii) The bank guarantee which was furnished by the petitioner shall be kept live in the meantime and shall not be encashed.

(iii) MCI shall conduct a fresh inspection as per the Regulations within a period of two months. It shall apprise the petitioner-institution with regard to the deficiencies and afford an opportunity to rectify the same and, thereafter, proceed to act as contemplated under the Act.

(iv) After MCI sends its recommendation to the Central government, it shall take a final decision according to law after affording an opportunity of a hearing to the petitioners. MCI shall take the assistance of the Hearing Committee constituted by the Constitution Bench decision in *Amma Chandravati Educational and Charitable Trust and Others v Union of India* and another⁵ or other directions given in the said decision.

However, we expressly clarify that we find no reason to interfere at this stage either with the decisions dated 31 May 2017 and 31 August 2017 of the Union government.

23 The petition is accordingly disposed of.

.....CJI [DIPAK MISRA]J [A M KHANWILKAR]J [Dr D Y CHANDRACHUD] New Delhi;

September 12, 2017 5 Writ Petition (Civil) No 408 of 2017