

Medical Council Of India vs Vedantaa Institute Of Academic ... on 1 June, 2018

Equivalent citations: AIR 2018 SUPREME COURT 2642, 2018 (7) SCC 225, 2018 (5) ABR 68, (2018) 5 MAD LJ 490, (2019) 2 MPLJ 85, (2019) 2 MAH LJ 590, (2018) 8 SCALE 9, (2018) 3 SCT 198, (2018) 4 BOM CR 256, (2018) 3 ESC 381, (2018) 3 JCR 294 (SC), 2018 (8) ADJ 72 NOC

Author: L. Nageswara Rao

Bench: Mohan M. Shantanagoudar, L. Nageswara Rao

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No.5805 of 2018
(Arising out of S.L.P. (Civil) No.11164 of 2018)

Medical Council of India

.... Appellant

Versus

Vedantaa Institute of Academic Excellence Pvt. Ltd. and Ors.

... Respondents

JUDGMENT

L. NAGESWARA RAO, J.

Leave granted.

1. Vedantaa Institute of Academic Excellence Pvt. Ltd. and Vedantaa Institute of Medical Sciences, Respondent Nos.1 and 2 herein filed Writ Petition No.4319 of 2018 in the High Court of Judicature at Bombay seeking a direction to the Appellant to send its Experts' team for the purpose of verifying the compliance of the deficiencies pointed out earlier. They also prayed for a direction to the Appellant to forward its recommendation to the Central Government before 30th April, 2018.

They sought a 15:05:59 IST Reason:

further direction to Respondent No.3 herein, Union of India to consider the grant of renewal permission on the basis of the recommendations received from the Appellant. The High Court allowed the Writ Petition and directed the Medical Council of India to inspect Respondent No.2, Medical College and submit a report to

the Union of India before 30th April, 2018. Aggrieved thereby, the Appellant Council has filed the above appeal.

2. Respondent No.1 submitted an application under Section 10-A of the Indian Medical Council Act, 1956 (hereinafter referred to as the 'Act') for starting a Medical College. A letter of intent was issued to Respondent No.1 after conducting an inspection. The Union of India issued a letter of permission dated 31.05.2017 to Respondent No.1 to admit the first batch of 150 students for the academic year 2017-2018. After issuance of a letter of permission, the Respondent No.2 College was included in the list of Colleges for centralised process of admission carried out by the State of Maharashtra. Students were allotted for the year 2017-2018 in the centralised counselling. The inspection for the purpose of granting first renewal for admission of students for the academic year 2018-2019 was conducted on 25.09.2017 and 26.09.2017. The Executive Committee of the Appellant Council considered the assessment report in its meeting held on 25.10.2017 and it was decided as under:-

“The Executive Committee of the Council considered the assessment report (25/26.09.2017) and noted the following:-

1. Deficiency of faculty is 84.05% as detailed in the report.
2. Shortfall of Residents is 87.23% as detailed in the report.
3. Pathology, Microbiology, Pharmacology, Forensic Medicine, Community Medicine departments are under construction
4. Bed Occupancy is 01% at 10 a.m. on day of assessment.
5. Wards: Majority of the wards were locked or under renovation and non-functional.
6. Data of OPD attendance, Radiological & laboratory investigations are inflated.
7. There was NIL Major, NIL Minor & NIL Daycare Operation on day of assessment.
8. There was NIL woman in Labour room.
9. Nursing staff: 164 Nursing staff are available against requirement of 175.
10. Paramedical & Non-teaching staff: 90 Paramedical & Non- teaching staff are available against requirement of 100.
11. MRD: There is no MRD Office.
12. O.T.: Non of O.T. was functional on day of assessment
13. ICU: There was NIL patient in ICCU & all ICUs on day of assessment.

14. 1 Mobile X-ray machine is available against requirement of 2.
15. Blood Bank is not functional.
16. Kitchen is not functional.
17. Examination hall: It is under construction.
18. Central Library: Librarian is not available.
19. Central Photography section: There is no staff.
20. Students' Hostels: Available accommodation is for 128 students against requirement of 226.
21. Residential quarters: 18 quarters are available for faculty against requirement of 20. 16 quarters are available for non-teaching staff against requirement of 32.
22. RHTC: It is not yet allotted.
23. UHC: It is not yet allotted.
24. There is no CME activity during the year.
25. Other deficiencies as pointed out in the assessment report.

The Executive Committee noted that Regulation 8(3)(1)(a) of the Establishment of Medical College Regulation (Amendment), 2010 (Part II), dated 16th April, 2010 and amended on 18th March, 2016 provided as under:-

“8(3)(1).....

(a) Colleges in the stage of Letter of Permission upto II renewal (i.e. Admission of third batch) It is observed during any inspection/assessment of the institute that the deficiency of teaching faculty and/or Residents is more than 30% and/or bed occupancy is <50% (45% in North East, Hilly terrain etc.), compliance of rectification of deficiencies from such an institute will not be considered for issue of Letter of Permission (LOP)/ renewal of permission in that Academic Year.” In view of the deficiencies as noted above, the Executive Committee of the Council decided to recommend to the Central Govt. to invoke Regulation 8 (3)(1)(a) of the Establishment of Medical College Regulation, 1999 and disapprove the application of the Vedantaa Institute of Medical Sciences, Palghar, Maharashtra under Maharashtra University of Health Sciences Nashik u/s 10A of the IMC Act, 1956 for renewal of permission of MBBS course 2nd batch (150 seats) for the academic year 2018-2019.”

3. The said decision of the Executive Committee was approved by the Oversight Committee on 16.11.2017. The Appellant by a letter dated 21.11.2017 communicated the decision of the Executive Committee as approved by the Oversight Committee to the Union of India. By a letter dated 07.12.2017, the Respondent No. 3, Union of India directed the Respondent College to respond to the recommendation of the Appellant. A detailed reply was submitted by the College and even a personal hearing was given.

4. The High Court allowed the Writ Petition filed by Respondent No.1 and 2 mainly on two grounds. According to the High Court, Regulation 8 (3) (1) proviso (a) of the Establishment of Medical College Regulations, 1999 (hereinafter referred to as the Regulations) is not applicable to the case of Respondent No.1 and 2. The relevant portion of Clause 8 (3) (1) is extracted as under:-

“8 GRANT OF PERMISSION:

(3)(1). The permission to establish a medical College and admit students may be granted initially for a period of one year and may be renewed on yearly basis subject to verification of the achievements of annual targets. It shall be the responsibility of the person to apply to the Medical Council of India for purpose of renewal six months prior to the expiry of the initial permission. This process of renewal of permission will continue till such time the establishment of the medical College and expansion of the hospital facilities are completed and a formal recognition of the medical College is granted.

Further admissions shall not be made at any stage unless the requirements of the Council are fulfilled. The Central Government may at any stage convey the deficiencies to the applicant and provide him an opportunity and time to rectify the deficiencies. Note: In above clause, “six months” shall be substituted by “as per latest time schedule” PROVIDED that in respect of a) Colleges in the stage of Letter of Permission upto II renewal (i.e. admission of third batch) If it is observed during any inspection/assessment of the institute that the deficiency of teaching faculty and/or Residents is more than 30% and/or bed occupancy is <50% (45% in North East, Hilly terrain, etc.), compliance of rectification of deficiencies from such an institute will not be considered for issue of Letter of Permission (LOP)/renewal of permission in that Academic Year.”

5. The other point which found favour with the High Court is the manner in which the inspection was conducted. The High Court held that the inspection conducted by the Assessors was not fair.

6. Mr. Vikas Singh, learned Senior Counsel appearing for the Appellant submitted that findings recorded by the High Court that Regulation 8 (3) (1) is not applicable to the Respondent College as it had sought for first renewal is clearly erroneous. He submitted that the High Court lost sight of the first proviso to Regulation 8 (3) (1). He contended that there is no ambiguity in the language of the first proviso to Regulation 8 (3) (1) which covers Colleges upto the second renewal. According to the said Regulation, Institutions having deficiency of teaching faculty and/or residents more than 30 per cent and/or bed occupancy less than 50 per cent will not be considered for renewal of

permission for that academic year. In view of the large scale deficiencies found in the inspection conducted on 25.09.2017 and 26.09.2017, Mr. Singh submits that there is no question of an opportunity being given to Respondent No.1 to rectify the deficiencies. He also urged that the inspection was done strictly in accordance with the Assessors' Guide issued by the Medical Council of India. He pointed out that the general instructions issued to the Assessors clearly shows that it was mandatory to verify the attendance sheet of every department (completed before 11.00 am), signed by the faculty present on the day of assessment and duly counter-signed by the Head of Department. According to the Assessors' Guide the institutions should be asked to submit daily average clinical data for the last 12 months and clinical data of the first day of assessment. Bed occupancy was to be verified at 10.00 am, whereas OPD, Laboratory and Radiological Investigation data etc. are to be verified at 2.00 pm on the first day of assessment. In respect of verification of teaching faculty and resident doctors, the Assessors' Guide provides for checking of faculty attendance before 11.00 am on the first day of assessment. Only faculty/residents who signed the attendance sheet before 11.00 am are to be verified. No verification should be done for the faculty/residents coming after 11.00 am. Mr. Vikas Singh, learned Senior Counsel took us through the inspection notes to submit that the inspection done by the assessment team cannot be found fault with. He also relies upon the judgment of this Court in *Medical Council of India v. Kalinga Institute of Medical Sciences (KIMS) & Ors.*¹, to state that the report of the Experts should not be interfered with by this Court.

7. Mr. Maninder Singh, learned Additional Solicitor General, appearing for the Union of India submitted that the provisos to Regulation 8 (3) (1) was inserted with a view to ensure that Institutions which do not satisfy the minimum infrastructure and faculty cannot to be given an opportunity to rectify their defects. According to him, the standards fixed by the Medical Council of India are the bare minimum and have to be strictly complied with to ensure the maintenance of basic minimum standards of medical education. Any lenience shown by this Court in providing an opportunity to such Institutions to rectify the defects will have a cascading effect in the succeeding years and would result in Colleges continuing to function with deficiencies as well as producing half baked and poor quality doctors. He showed us the predictions made by the Meteorological Department from 20th September, 2017 to 26th September, 2017. He submitted that thunderstorm and heavy rain is common in coastal areas and the 1 (2016) 11 SCC 530- Para 24 situation was not as dangerous as projected by Respondent No.1 and 2. He further submitted that the minimum requirement of faculty and residents is 70 per cent. He stated that if 70 per cent of the strength of residence had to be present in the hospital on 24.09.2017 (i.e. the previous day of inspection), it is inconceivable that there could be shortage of 84 per cent teachers and 87 per cent of residents on the date of inspection. He also stated that a natural calamity like cyclone would result in increase in the number of patients.

8. Mr. Ranjit Kumar, learned Senior Counsel appearing for the Respondent No.1 and 2 supported the judgment of the High Court. He relied upon the judgment of this Court in *Royal Medical Trust (Registered) v. Union of India*² to support his submission that an opportunity has to be given to a Medical Institute to rectify the deficiencies. He countered the submission of learned Senior Counsel for the Medical Council of India by submitting that the Regulations cannot over-ride the statute. According to him, Section 10-A as interpreted by this Court entitles the Respondent College to be

provided with an opportunity to cure the defects pointed out during the inspection. 2 (2015) 10 SCC 19 paras 26 - 31 Such provision cannot be over ridden by a Regulation. He relied upon the prediction of cyclone whereby the people of the locality were asked to stay indoors. He contended that a request was made to the team of Assessors to have another assessment on the same day. He further submitted that the inspection was not conducted in a fair manner and the report does not represent the correct picture. If another inspection is done by the Medical Council of India to verify the facilities available in the hospital and the College, the College would be able to satisfy the requirements. He relied upon the decision taken by the Medical Council of India in directing fresh inspection to be conducted in respect of a few Colleges where the deficiencies were more than the minimum prescribed in Regulation 8 (3) (1) (a). In reply to the submissions of Mr. Ranjit Kumar on this point Mr. Vikas Singh stated that a second inspection was permitted to be done only in respect of Government Medical Colleges.

9. Though Regulation 8 (3) (1) (a) was challenged in the Writ Petition filed by Respondent No.1 and 2, they did not press the relief. They restricted their challenge to the manner in which the inspection was done and for a direction to the Appellant-Council to carry out a fresh inspection. The interpretation of Regulation 8 (3) (1) (a) by the High Court is patently erroneous in as much as the High Court did not take note of the proviso to Regulation 8(3)(1). Without a proper examination of the provision, the High Court fell in error in holding that Regulation 8 (3) (1) (a) would be applicable only to the Colleges seeking second renewal i.e. admissions of the third batch. Admissions upto the second renewal i.e. admissions to third batch would fall under Regulation 8 (3) (1) (a). In other words, the proviso is not restricted only to second renewal cases. Even the first renewal is covered by proviso (a) to Regulation 8 (3) (1) as the language used is “upto second renewal”. We do not see any conflict between Section 10-A (3) and (4) of the Act on one hand and Regulation 8 (3) (1)

(a) on the other. Regulation 8 (3) (1) (a) is complementary to Section 10-A of the Act. Fixing minimum standards which have to be fulfilled for the purpose of enabling a medical College to seek fresh inspection would not be contrary to the scheme of Section 10-A. In fact, Regulation 8 (3) (1) provides that an opportunity shall be given to the medical College to rectify the defects. But, the proviso contemplates that certain minimum standards are to be satisfied i.e. there should not be deficiency of teaching faculty and/or residents more than 30 per cent and/or bed occupancy should not be less than 50 per cent. This prescription of standards for availing an opportunity to seek re-inspection is not ultra vires either the Regulation or Section 10-A of the Act.

10. On perusal of the material on record, we are of the opinion that the conclusion reached by the High Court regarding the manner in which inspection was conducted is also not correct. Bed occupancy at 45.30 per cent on random verification was the claim of Respondent No.1 and 2. However, the inspection report shows that out of required minimum of 300 patients only 3 were available at 10.00 am on 25th September, 2017. This Court in Kalinga (supra) has held that medical education must be taken very seriously and when an expert body certifies that the facilities in a medical College are inadequate, it is not for the Courts to interfere with the assessment, except for very cogent jurisdictional reasons such as mala fides of the inspection team, ex facie perversity in the inspection, jurisdictional error on the part of the M.C.I., etc. The submission relating to the cyclone being a reason for the number of patients being less is not acceptable. We are in agreement

with the submission made on behalf of the Appellant that the Resident Doctors are required to be in the hospital at all points of time.

11. In view of the large scale deficiencies found in the inspection report dated 25.09.2017 and 26.09.2017 and in view of Regulation 8 (3) (1) (a), the Respondent No.1 and 2 are not entitled to claim another inspection.

12. For the aforementioned reasons, the judgment of the High Court is set aside and the Appeal is allowed.

.....J [L. NAGESWARA RAO]J [MOHAN M. SHANTANAGOUDAR] NEW DELHI;

JUNE 01, 2018