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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 4666/2015 & CM 8445/2015**

CHINTPURNI MEDICAL COLLEGE AND
HOSPITAL

..... Petitioner

Through Mr Amit Sibal, Sr. Advocate with
Mr Adit S. Pujari & Mr Namit Suri,
Advocates.

versus

MEDICAL COUNCIL OF INDIA

..... Respondent

Through Mr Tushar Mehta, ASG with
Mr T. Singhdev, Ms Manpreet Kaur
Bhasin, Mr Manan Khera, Ms Puja
Sarkar, Ms Michelle, Advocates for
R1/MCI.

AND

+ **W.P.(C) 1182/2015 & CM 2078/2015, 4127/2015, 7711/2015**

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AND HOSPITAL

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R1/MCI.
Mr Rajesh Gogna, CGSC with Mr
Sumit Rajput, G.P. and Mr Sameer
Sharma, Advocate for R2.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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29.05.2015

W.P.(C) 1182/2015 & CM 2078/2015, 4127/2015, 7711/2015

1. The petitioner college impugns a communication dated 21.01.2015 sent on behalf of the Medical Council of India (hereafter 'MCI') to the Central Government, communicating the decision of the Executive Committee of MCI to recommend not to renew the permission for admission of fifth batch (150 seats) of MBBS course to the petitioner college for the academic year 2015-16.
2. The petitioner college also impugns the decision of the Executive Committee of MCI taken in its meeting held on 13.01.2015 insofar as it relates to the petitioner college. The Executive Committee of MCI had noted several alleged deficiencies in respect of the petitioner college and based on the same had formed its opinion to recommend that the permission for admitting the fifth batch of the students of MBBS course to the petitioner college for the academic year 2015-16, not be renewed.
3. The principal contention advanced by the petitioner college is that the deficiencies, as noted by the Executive Committee of MCI and also communicated to the Central Government, were non-existent and contrary to the Assessor's report relied upon by the Executive Committee to form such opinion. MCI disputes that the opinion formed by its Executive Committee was contrary to the Assessor's report and contends that even though the Executive Committee's conclusion may appear to be contrary to the conclusion of the Assessor's report, the facts relied upon by the Executive

Committee to form its opinion are ascertainable from the Assessor's report. The learned counsel for MCI contends that although the conclusion of the Assessor's report may not indicate the deficiencies as noted by the Executive Committee, a closer examination of the contents of the Assessor's report would establish that the petitioner college was non compliant with the specified requirements.

4. MCI had invoked the bank guarantee for a sum of ₹10 crores submitted by the petitioner college. By an order passed on 18.09.2014 in W.P.(C) 469/2014, the Supreme Court had permitted various colleges including the petitioner college, to grant admissions for the academic year 2014-15 subject to the President/Chairman and Secretary of those institutions, running the medical colleges, filing an undertaking that there is no defect in the medical colleges run by them and further affirming that if the said undertaking was found to be incorrect, the deposit made by the institutions be forfeited by way of penalty. It is not disputed that if any deficiencies were found, the petitioner college would be liable to forfeit its deposit/bank guarantee, in terms of the aforesaid order. However, the petitioner college submits that since there are no deficiencies, the bank guarantee submitted by the petitioner college could not be invoked.

5. The learned counsel for MCI submits that the bank guarantees had been accepted by MCI pursuant to the directions issued by the Supreme Court and submits that it would be apposite if the petitioner college approaches the Supreme Court with regard to any relief in respect of invocation of the bank guarantee. According to the petitioner college, the bank guarantee has been invoked strictly in terms of the order dated 18.09.2014 passed by the Supreme Court. In view of the aforesaid

submission, the learned counsel for the petitioner college sought to withdraw its challenge to the decision of the Executive Committee of MCI to invoke/forfeit the bank guarantee submitted by the petitioner college with liberty to approach the Supreme Court.

6. During the course of hearing held on 21.05.2015, the learned Additional Solicitor General, appearing for MCI had submitted that the petitioner college had persuaded the Punjab National Bank, Batala Road, Amritsar, to not honour the bank guarantee furnished by the concerned bank on a false representation that the invocation of the bank guarantee has been stayed. This was disputed by the learned counsel for the petitioner college at the material time. However, at the commencement of the hearing today, the learned counsel for the petitioner college fairly submitted that the petitioner college had sent a communication to the concerned bank incorrectly stating that the invocation of the bank guarantee had been stayed.

7. It is necessary to note that although MCI had invoked the bank guarantee furnished by the petitioner college, the same has not been encashed by the concerned branch of the Punjab National Bank. It appears that the bank has acted on the representation of the petitioner college that the invocation of the bank guarantee had been stayed by this Court. The said representation/communication is palpably false as no order was granted by this Court at any stage staying the invocation of the bank guarantee. The conduct of the petitioner college is clearly dishonest and must be deprecated. *Prima facie*, such conduct is contemptuous and should disentitle the petitioner college for any discretionary relief. However, since the learned counsel for the petitioner college had expressed remorse on behalf of the petitioner college and keeping in view that the counsel had volunteered the

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information regarding false representation at the commencement of the hearing, I have refrained from initiating any further action in this regard.

8. In the circumstances, the petitioner college is at liberty to approach the Supreme Court for any relief regarding the Bank Guarantee or waiver of penalty. However, it is clarified that unless any specific orders are passed by the Supreme Court, MCI is at liberty to encash the bank guarantee and also further institute such proceedings as may be advised against the Punjab National Bank for not honouring its commitment.

9. As the petitioner college has withdrawn its challenge to invocation of the bank guarantee, the principal controversy that remains is whether the decision of MCI that certain deficiencies existed in the petitioner college is justified on the basis of the Assessor's report.

10. Before proceeding further, it is necessary to refer to the alleged deficiencies as noted by the Executive Committee of MCI in its meeting held on 13.01.2015. The same are indicated in the impugned communication dated 21.01.2015 and are quoted below:-

- “1. Shortage of Sr. Residents – 11.8%.
2. Examination Hall cum Auditorium: Finishing work is going on. It is not functional.
3. Lecture Theaters: Only 2 lecture theaters are available in the college against requirement of 3. Lecture theater in the hospital is required in addition to those prescribed for the college as per Regulation B.1.3 of Minimum Standard Requirement Regulations for 150 intake and therefore cannot compensate for the 3rd lecture theater required for the college.
4. Number of major operations were only 11 on day of assessment.
5. There were only 2 patients in SICU and PICU/NICU on day of assessment.

6. RICU is not available.
7. Only 2 mobile X-ray machines are available against requirement of 3 as per Regulations.
8. Only 3 static X-ray machines are available against requirement of 4 as per Regulations.
9. Anatomy department: Mounted specimens are only 110. Number of cadavers are only 6 which is inadequate for 150 students.
10. Pathology department: Mounted specimens are only 45.
11. UHC: It is not under control of Principal.
12. Other deficiencies as pointed out in the assessment report.”

According to the MCI, these deficiencies are ascertainable from the Assessor's report of 06.12.2014 read along with the letter dated 12.12.2014.

11. MCI has reported that the number of Senior residents are deficient by 11.8%. This is clearly at variance with the deficiency as reported in the assessment, which is reported as 3.4%. The said form dated 06.12.2014 is signed by the assessors of MCI as well as the representatives of the petitioner college. There is no dispute as to the number of doctors engaged by the petitioner college. Apparently, the discrepancy is on account of the method used for calculating the shortage, that is, not adjusting the deficiency in senior residents with the excess number of junior residents in the department of General Medicine, Paediatrics and Tuberculosis & Respiratory diseases. Admittedly, at the time of conduct of inspection on 06.12.2014, there was a deficiency of 7 Senior Residents, one each in the department of General Medicine, Paediatrics, Tuberculosis & Respiratory diseases, and General Surgery and 3 Senior Residents in the department of Anaesthesiology. There is no dispute with regard to deficiency in the department of General Surgery and Anaesthesiology and according to the

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petitioner college, the deficiency in respect of Senior Residents is only 4. Although there is a deficiency of one Senior resident each in the department of General Medicine, Paediatrics, and Tuberculosis & Respiratory diseases, the number of other junior resident doctors are in excess of the requirement in those departments. According to the petitioner college, the deficiency in Senior Residents in these departments must be set off against the strength of junior residents. The petitioner college has also referred to a document titled "Requirements to be fulfilled by the Applicant Colleges for obtaining Letter of Intent and Letter of Permission for Establishment of the new Medical Colleges and Yearly Renewals under Section 10-A of the Indian Medical Council Act, 1956." (hereafter referred to as 'the Guide').

12. MCI has drawn the attention of this Court to the note-I of the staff requirements as indicated in the Guide, which reads as under:-

- "1. For purpose of working out the deficiency;
 - (a) Demonstrators/tutors are counted as faculty along with Prof., Assoc Prof., & Asst. Prof.
 - (b) SR. & JR. are counted together."

13. Undisputedly, the requirement of doctors (both senior residents and junior residents) for an intake of 150 students is 137 residents. If the deficiency of Senior residents is set off against excess of Junior residents, as contended by the petitioner college, there would be a deficiency of 4 Senior Residents out of 137 residents, which would translate to the shortage of 3.4% as reported by the assessors in their report dated 06.12.2014. According to MCI, the deficiency of Senior Residents could not be set off from excess of junior residents. The learned counsel for MCI contended that although excess of Senior Residents could compensate for shortage in junior residents, the converse was not permissible.

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14. Although, the assessment form clearly indicates the number of Senior Residents and junior residents required separately, the summary of assessment does not make any such distinction. It is perhaps for this reason that the assessors had also indicated the deficiency of Senior Resident doctors to be 3.4%. The learned counsel for MCI also pointed out that since this methodology of calculating the shortage was incorrect, the assessor's were called upon to re-compute the deficiency. This was done not only in the case of the petitioner college but also in cases of 38 other colleges. In so far as note no.1 in the Guide is concerned, the learned counsel for MCI submitted that the same was only for guidance of the assessors and was not determinative of method for calculating the deficiency.

15. The petitioner college has also referred to the decision of the Executive Committee for the previous year (2014-2015) which indicates that the shortage of residents was computed as 45.83%. This was computed by noting that there was a deficiency of 66 residents out of 144 required. Thus, *prima facie*, it appears that MCI has also been computing the deficiencies in respect of doctors by taking both the junior and Senior Residents together. However, the rationale provided by MCI for calculating the deficiency in the number of Senior Residents also cannot be ignored.

16. MCI has also reported that (i) there is a deficiency in the number of lecture theatres (only 2 lecture theatres are available against the requirement of 3); (ii) RICU is not available; and (iii) Urban Health Care Centre (UHC) is not under control of the principal. The existence of these three deficiencies is stoutly disputed by the petitioner college. It is contended that RICU is available but since the format of the assessment form does not specifically mentions RICU, the fact that it exists has not been noted in the

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assessment form. It is also contended that UHC is in control of the principal. In regard to the to lecture theatre, the petitioner college contended that there were 3 lecture theatres, even though the assessment form indicates 2, but no issue with regard to recording the same had been made since according to the assessor's report dated 06.12.2014 there was no deficiency. These disputes are essentially factual.

17. The assessment report also indicates that there is one static x-ray machine of 300 mA, whereas two are required. However, the assessors did not report this as a deficiency in their report.

18. The recommendations made by MCI were considered by the Committee constituted by the Central Government for affording a hearing to the institutions/colleges under Section 10A of the Indian Medical Council Act, 1956 (hereafter the 'IMC Act'). The Committee also noted that *"Apparently, no deficiencies in the assessor's report. Not clear how MCI has pointed out the deficiencies and conveyed disapproval. MCI may address the discrepancy and make appropriate recommendation"* and had called upon MCI to address the discrepancies. Thereafter, MCI called upon the petitioner college to submit a compliance report and also sought to re-inspect the petitioner college on 15.04.2015. However, the said inspection remained incomplete as the petitioner college did not cooperate with the assessors. According to the petitioner college, the said inspection was conducted contrary to the rules. It is contended that Central Government had only called upon MCI to address the discrepancy as to its conclusion and the deficiencies reported in the assessment report and, therefore an inspection was not necessary. It is further contended that the inspection was sought to be conducted immediately after Baisakhi (which is a major festival in

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Punjab) and therefore contrary to the relevant Rules/Regulations.

19. At this stage, it is necessary to refer to Sub section (3) & (4) of Section 10A of the IMC Act and the same are quoted below:-

“3. On receipt of a scheme by the Council under sub-section (2), the Council may obtain such other particulars as may be considered necessary by it from the person or the medical college concerned, and thereafter, it may -

(a) if the scheme is defective and does not contain any necessary particulars, give a reasonable opportunity to the person or college concerned for making a written representation and it shall be open to such person or medical college to rectify the defects, if any, specified by the Council.

(b) consider the scheme, having regard to the factors referred to in sub-section (7), and submit the scheme together with its recommendations thereon to the Central Government.

4. The Central Government may, after considering the scheme and the recommendations of the Council under sub-section (3) 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 (7), 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:

Provided further that nothing in this sub-section shall prevent any person or medical college whose scheme has not been approved by the Central Government to submit a fresh scheme and the provisions of this section shall apply to such scheme, as if such scheme has been submitted for the first time under sub-section (2).”

20. It is apparent from the aforesaid scheme that MCI has to consider the scheme submitted by an institution to the Central Government with regard to the factors as referred to in Section 10A(7) of the IMC Act. The Central Government has to consider the same and it is also open for the Central Government to obtain such other particulars as it may consider necessary from the persons or the college concerned and having regard to the factors referred to in Section 10A(7) of the IMC Act, either approve or disapprove the Scheme.

21. Section 10(A)(7) of the IMC Act reads as under:-

“7. The Council, while making its recommendations under clause (b) of sub-section (3) and the Central Government, while passing an order, either approving or disapproving the scheme under sub-section (4), shall have due regard to the following factors, namely:-

- (a) whether the proposed medical college or the existing medical college seeking to open a new or higher course of study or training, would be in a position to offer the minimum standards of medical education as prescribed by the Council under section 19A or, as the case may be under section 20 in the case of postgraduate medical education.
- (b) whether the person seeking to establish a medical college or the existing medical college seeking to open a new or higher course of study or training or to increase its admission capacity has adequate financial resources;
- (c) whether necessary facilities in respect of staff, equipment, accommodation, training and other facilities to ensure proper functioning of the medical college or conducting the new course or study or training or accommodating the increased admission capacity have been provided or would

be provided within the time-limit specified in the scheme.

- (d) whether adequate hospital facilities, having regard to the number of students likely to attend such medical college or course of study or training or as a result of the increased admission capacity, have been provided or would be provided within the time-limit specified in the scheme;
- (e) whether any arrangement has been made or programme drawn to impart proper training to students likely to attend such medical college or course of study or training by persons having the recognised medical qualifications;
- (f) the requirement of manpower in the field of practice of medicine; and
- (g) any other factors as may be prescribed."

22. Clearly, the Central Government would have to take a view having regard to the aforesaid factors which includes the facilities and infrastructure of the medical college.

23. In the present case, MCI submitted its recommendations and also forwarded the Assessor's report. The petitioner college was also granted a hearing by the Central Government to respond to the recommendations made by MCI. The Assessor's report dated 06.12.2014 did not indicate deficiencies and the recommendation of MCI appeared to be in variance of the said report. This was communicated to MCI alongwith observations made by the Committee in respect of various other institutions. In respect of the petitioner college, MCI had to explain the reasons for its recommendation in the context of the Assessor's report. Clearly, MCI has now indicated the reasons for its recommendation.

24. Keeping in view the scheme of Section 10A of the IMC Act, I am

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refraining from expressing an opinion on the merits of the discrepancy as the same have to be considered by the Central Government while taking its decision whether to grant approval. However, it is apparent that at the stage of the hearing granted to the petitioner college by the Committee constituted by the Central Government, the reasons for issuing a negative recommendation were not readily available and the petitioner college may have been handicapped to some extent in responding to the same.

25. In the circumstances, I consider it necessary to direct the Central Government to also consider the submissions made by the petitioner college before taking a final view whether to grant approval for admission of the fifth batch of students or reject the same.

26. The petitioner college would be at liberty to make a brief representation with regard to the deficiencies, however, no further opportunity of hearing would be sought from the Central Government or granted. The learned counsel for the petitioner college had also agreed to the aforesaid course of action.

27. The petition is disposed of with the aforesaid directions. The pending applications also stand disposed of.

W.P.(C) 4666/2015 & CM 8445/2015

The petitioner college impugns a communication dated 01.05.2015 sent by MCI communicating the decision of the Executive Committee of MCI to reiterate its earlier recommendation not to renew the permission granted to the petitioner college for admitting the fifth batch of students for the academic year 2015-16.

The petitioner college does not press this petition in view of the directions issued in W.P.(C) 1182/2015. Accordingly, the petition and the

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pending application stand disposed of.

Dasti under the signatures of the Court Master.



VIBHU BAKHRU, J

MAY 29, 2015
RK/MK