

A KANACHUR ISLAMIC EDUCATION TRUST(R)

v.

UNION OF INDIA AND ANOTHER

(Special Leave Petition (Civil) No. 25650 of 2015)

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SEPTEMBER 30, 2015

[M. Y. EQBAL AND C. NAGAPPAN, JJ.]

Education/Educational Institutions: MBBS course – Application for establishment of new medical college – MCI conducted inspection of petitioner college and pointed out various deficiencies – Submission of compliance report by petitioner stating rectification of the deficiencies – Government of India disapproved the scheme submitted by petitioner for establishment of new medical college – Writ petition – High Court refused to interfere with the decision of the Government – SLP – Held: No justification or reason to interfere with the impugned order passed by the High Court – Petitioner’s institution granted liberty to remove all the deficiencies and rectify all the defects as pointed out by the respondent-MCI for conducting inspection of the petitioner’s institution afresh.

F CIVIL APPELLATE JURISDICTION : Special Leave Petition (C) No. 25650 of 2015

From the Judgment and Order dated 01.09.2015 of the High Court of Delhi at New Delhi in Writ Petition (Civil) No. 7128 of 2015

G Amrendra Saran, Salman Khurshid, Nidhesh Gupta, Sr. Advs., Kaushal Gautam, Ranjan Kumar Pandey, J. Singh, Kyaphamlin V. Kharlyngdoh, Ms. Sakshi Kotiyal, J. S. Bhasin, Anand Nandan, Nishant Shokeen, (For T. Mahipal), Advs. with them for the Appellant.

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KANACHUR ISLAMIC EDUCATION TRUST(R) v. UNION 831
OF INDIA

Ms. Pinki Anand, ASG, Vikas Singh, Sr. Adv., Gaurav Sharma, Prateek Bhatia, Ms. Amandeep Kaur, Ajay Sharma, M. P. Gupta, Ajay Kumar Singh, D. S. Mahra, Advs. with them for the Respondents. A

The following Order of the Court was delivered B

ORDER

M. Y. EQBAL, J. 1. The petitioner-Trust has preferred this special leave petition against the impugned judgment and order dated 01.09.2015 passed in Writ Petition (Civil) No.7128 of 2015 whereby the Delhi High Court dismissed the said writ petition. C

2. In the aforesaid writ petition, the petitioner challenged the communication dated 15.06.2015 of respondent no.1 – The Ministry of Health and Family Welfare (for short ‘UOI’) disapproving the application of the petitioner for establishment of a new medical college for the academic year 2015-16. A further direction was sought for by the petitioner in the writ petition directing respondent no.2-Medical Council of India (MCI) to inspect the petitioner’s college for the purpose of establishment of new medical college for the academic year 2015-16 and a further direction to the respondent to consider the compliances submitted by the petitioner. D E F

3. It appears that in March, 2014, the petitioner-Trust was granted consent by the Karnataka State Pollution Control Board for establishing medical college and hostel with 750 bedded hospital. The Rajiv Gandhi University of Health Sciences, Karnataka, on the report of the Local Enquiry Committee gave affiliation for the proposed course of MBBS with a total intake of 150 seats. The essentiality and feasibility certificate for starting MBBS course at petitioner’s institution was also issued by the State Government in August, 2014. G H

A The Medical Council of India conducted the inspection of the medical college and hospital through an Assessor and pointed out the following deficiencies:

“1. Deficiency of faculty is 15% as detailed in report.

B 2. Lecture Theaters : Facility for E Class is not available.

3. Students' Hostels : They are not furnished. Toilet facilities are inadequate. Mess is not available. Visitors' room, A.C. study room with computer & Internet are not available.

C 4. Residents' Hostels : They are not furnished. Toilet facilities are inadequate. Mess is not available. Visitors' room, A.C. study room with computer & Internet are not available.

D 5. Nurses' Hostels : They are not furnished. Toilet facilities are inadequate. Mess is not available. Visitors' room, A.C. study room with computer & Internet are not available.

E 6. OPD : Injection room for males/females, Dressing room for males/females, plaster cutting room are not available. In Ophthalmology OPD, dark room, Refraction room, Dressing room/Minor procedure room are not available.

F 7. Audiometry & Speech Therapy are not available.
8. There were no major or minor Surgical operations on day of assessment.

G 9. There was no delivery – normal or Caesarean on day of assessment.

10. MRD : It is partly computerized.

H 11. OT : Although 5 OTs as required are available, one is not furnished, resulting in shortage of 1 OT.

12. ICUs : SICU, PICU/NICU are not available. There was A
no patient in ICU. There were only 2 patients in ICCU.

13. Labour Room : Eclampsia room is not available.

14. CSSD is not functional.

15. Anatomy department : Cooling chambers are not B
available. Cadavers are not available.

16. Biochemistry department : Laboratory is not furnished.

17. Other deficiencies as pointed out in the assessment C
report."

4. Thereafter, the petitioner was informed about the
aforesaid deficiencies and was permitted to submit a
compliance report. The petitioner submitted the compliance
report to Medical Council of India stating that it has rectified all D
the deficiencies. Thereafter the respondent-MCI conducted a
compliance assessment of the petitioner's institution and
submitted a report. It is alleged by the petitioner that though it
had removed all the shortcomings and deficiencies that were
pointed out in the earlier assessment but again the following E
deficiencies were pointed out:

"1. Deficiency of faculty is 23.3% as detailed in report.

2. Shortage of Residents is 64.4% as detailed in report.

3. OPD: Institute has claimed attendance of 523 on day F
of assessment. However, around 200-250 attendance
was observed as per estimate made on day of
assessment.

4. Bed occupancy: Total occupancy 15% - i.e. 45 beds G
occupied – was observed at time of assessment.

5. NIL Special investigations like Ba, IVP were performed
on day of assessment.

6. ICUs: No patients were available in ICUs on day of H

A assessment.

7. Six faculty members as detailed in report were not considered as they had appeared for MCI assessment at another college in the current Academic Year.

B 8. Other deficiencies as pointed out in the assessment report."

5. The Government of India consequently by letter dated 15.06.2015, communicated to the petitioner-Trust its decision to accept the recommendations made by the respondent-MCI and disapproved the scheme submitted by the petitioner for establishment of new medical college. The said decisions of the respondents were assailed by filing a writ petition before the High Court. The High Court after hearing the parties and considering the relevant provisions of the Acts and Regulations and also relying upon the decisions of this Court finally dismissed the writ petition.

6. Mr. Amrendra Saran, learned Senior Counsel appearing for the petitioner, firstly submitted that all deficiencies which were pointed out by the respondent-MCI after conducting inspection were rectified and all defects were removed which is evident from the compliance verification done by the respondent-MCI. The deficiencies subsequently pointed out by the respondent-MCI on surprise inspection, was never shown in the earlier report. According to Mr. Saran, learned Senior Counsel, on the day when the surprise inspection was conducted, many members of clinical faculty and senior and junior residents had left the institution by 9 a.m. after the night duty and other were busy attending the patients in the OPDs/ ICUs and casualty, some were busy operating in the OT and conducting deliveries in the Labour Room, some had gone for visit to urban and rural health care centre affiliated to the petitioner's institution and some were on authorised leave.

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7. Mr. Saran submits that neither the inspection was conducted in accordance with the procedure prescribed in the Acts and Regulations nor the respondent-MCI team in the surprise inspection visited different departments and wards of the hospital. A

8. On the other hand, Mr. Vikas Singh, learned Senior Counsel appearing for the respondent-MCI, at the very outset, submits that in the surprise inspection, many deficiencies were found in the hospital which have been pointed out distinctly in the report. The report so prepared by the team of the respondent-MCI has been countersigned by the Dean of the petitioner's institution. He further submits that during the inspection, it was revealed that the following six professors were found present in the petitioner's institution and those professors also claimed to be the professors of another medical college present in the inspection conducted by the respondent-MCI for the current academic year: B C D

1. Dr. Shreesha
2. Dr. Suchithra A. Shetty
3. Dr. Kadri Yogesh Bangera
4. Dr. B. Ramprasad
5. Dr. Bhadrinath Talwar
6. Dr. Devi Prasad

9. Mr. Vikas Singh, learned Senior Counsel appearing for the respondent-MCI, therefore, contends that the petitioner's institution has been inspected twice but the deficiencies pointed out in the first inspection were still found there. Not only that, it was also found that on the date of inspection six faculty members who were present in the college were also found present in the inspection of different medical colleges. E F G

10. The High Court had elaborately dealt with, in the H

- A impugned order, relevant provisions of the Acts and Regulations and also considered the ratio decided by this Court in catena of decisions, and did not find any reason to justify the claim of the petitioner for grant of approval by the Government of India and finally, refused to interfere with the orders challenged therein.

11. After hearing learned Senior Counsel appearing for the parties and after giving our anxious consideration in the matter, we do not find any justification or reason to interfere with the impugned order passed by the High Court refusing to interfere with the decision of the Government of India. Accordingly, the special leave petition is dismissed.

12. However, before parting with the order, we give liberty to the petitioner's institution to remove all the deficiencies and rectify all the defects as pointed out by the respondent-MCI and thereafter approach the respondent-MCI for conducting inspection of the petitioner's institution afresh.

13. We make it clear that in the event the petitioner approaches the respondent-MCI in the manner aforesaid, then the latter shall make full-fledged inspection of the institution and submit its report to the Government of India for grant of sanction to run the petitioner's medical college for the academic year 2016-17.

14. Needless to say that the Government of India shall then take a final decision in accordance with law.

Devika Gujral

SLP dismissed.

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