

APOLLO INSTITUTE OF MEDICAL SCIENCES &
RESEARCH AND ORS.

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v.

UNION OF INDIA AND ANR.

(Writ Petition (Civil) No. 496 of 2017)

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AUGUST 31, 2017

[DIPAK MISRA CJI, A.M. KHANWILKAR AND
DR. D.Y. CHANDRACHUD, JJ.]

*Education/Educational Institutions – Medical College –
Petitioners made application for establishment of new medical
college for the academic session 2016-17 – Application disapproved
by Ministry concerned – However, in view of the approval of
Oversight Committee constituted under the directions of Supreme
Court, Letter of Permission granted by respondent no.1 in favour
of the petitioners' college for the academic session 2016-17 subject
to certain conditions – Executive Committee of the Medical Council
of India (MCI), however, noticed deficiencies and sent a negative
recommendation to Ministry – Ministry debarred the petitioners'
college from admitting students for two years – Challenge to –
Supreme Court directed respondent No.1 to reconsider the case of
the petitioners' college afresh on the basis of material available on
record – Ministry on the basis of favourable observations made by
Hearing Committee w.r.t. the deficiencies, though confirmed the
conditional permission granted to the College in 2016-17, but denied
permission to admit students for the academic session 2017-18 –
Held: The impugned order, though acknowledged the fact that the
petitioners' college is a compliant college in respect of infrastructure
and academic matters however, prohibited it from admitting students
in the MBBS course for the academic session 2017-18 without
assigning any tangible reason – Admittedly, the petitioners' college
started functioning from the academic session 2016-17, on the basis
of a conditional Letter of Permission – The conditions specified
therein were substantially fulfilled in all respects – Impugned
decision set aside – Further, in the peculiar facts of the present
case, to do complete justice and in the larger public interest,
directions issued in exercise of plenary powers u/Art.142 –*

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- A *Constitution of India – Art. 142 - Medical Council Act, 1956 – s.10A(4).*

Allowing the petition, the Court

- B **HELD:** 1.1 The Hearing Committee, as well as the Competent Authority of the Central Government, had shown complete disregard to the fact situation and moreso when they have found that the infrastructure and academic requirements were fully in place in so far as the petitioners' college is concerned. In fact, the impugned order acknowledges the fact that the petitioners' college is a compliant college in respect of
- C infrastructure and academic matters. In such a situation, it cannot be discerned as to what weighed with the Hearing Committee and Competent Authority of the Central Government to prohibit the petitioners' college from admitting students in the MBBS course for the academic session 2017-18. No tangible reason whatsoever was assigned by the said authorities in that regard,
- D leave alone any reason. [Para 7] [704-C-D]

- E 1.2 The approach of the statutory authorities is bordering on abdication of their statutory duty and is against the letter and spirit of the earlier direction given by this Court to reconsider the case of the petitioners' college afresh on the basis of material available on record. Admittedly, the petitioners' college had started functioning from the academic session 2016-17, on the basis of a conditional Letter of Permission. The conditions specified therein have been substantially fulfilled in all respects including infrastructure and academic requirements. [Para 8]
- F [704-E-F]

- G 1.3 Considering the fact that the petitioners' college had fulfilled the infrastructure and academic requirements and has already operated the college for the academic session 2016-17 by admitting the first batch of students in the MBBS course and further, even the Competent Authority had noticed that there were no major deficiencies, this petition and the application filed by the petitioners is allowed in the larger public interest. Further directions are issued to the respondents as have been issued in the judgment of *Dr. Jagat Narain Subharti Charitable Trust and Anr. Vs. Union of India and Ors.*, delivered on 30th August, 2017.
- H [Para 9] [704-G-H; 705-A]

Dr. Jagat Narain Subharti Charitable Trust and Anr.
vs. Union of India and Ors. 2017 (10) SCALE 308 –
relied on.

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1.4 The impugned decision is quashed and set aside to the extent it bars the petitioners to admit upto 150 students for the academic session 2017-18. Instead, the respondents are directed to permit the petitioners' college to take part in the current-year counselling process which is still in progress. The cut-off date for completing the admissions in respect of the petitioners' college, however, will stand extended till 5th September, 2017. The respondents shall make available students willing to take admission in the petitioners' college through central counselling, in order of their merit. This direction is being issued in exercise of plenary powers of this Court under Article 142 of the Constitution of India, in the peculiar facts of the present case, to do complete justice and in the larger public interest, so that aspiring students who have not been admitted to the 1st year MBBS course for the academic session 2017-18, in order of their merit in NEET examination, will get an opportunity to be admitted in the petitioner college. At the same time, it is made clear that the MCI or the Competent Authority of the Central Government is free to inspect the petitioners' college as and when deemed fit and, if any deficiency is found after giving opportunity to the petitioners' college, it may suitably proceed against the said college in accordance with law. This arrangement will subserve the ends of justice. [Para 10] [705-B-E]

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Case Law Reference

2017 (10) SCALE 308 relied on Para 9

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CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil)-No. 496 of 2017.

Under Article 32 of the Constitution of India.

Amitesh Kumar, Ms.Priti Kumari, Mritunjay Kumar Sinha, Advs.
for the Petitioners.

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Gaurav Sharma, Prateek Bhatia, Dhawal Mohan, Advs. for the Respondents.

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A The Judgment of the Court was delivered by

B A.M. KHANWILKAR, J. 1. The petitioners made an application to the Ministry of Health and Family Welfare, Government of India for establishment of a new medical college at Murukambattu Village, Chittoor, Andhra Pradesh, in the name and style of 'Apollo Institute of Medical Sciences & Research' for the academic session 2016-17. The Ministry forwarded the application to the Medical Council of India (for short "MCI") for evaluation and for making recommendations to the Ministry under Section 10A of the Indian Medical Council Act, 1956, (for short "1956 Act") for the academic session 2016-17. MCI submitted an assessment report after which the respondent No.1 Central Government declined to issue a letter of permission to the petitioners' college. An opportunity of hearing was accorded to the petitioners' college under Section 10A (4) of the 1956 Act on 24.02.2016 and the case was referred back to MCI for review. MCI, in turn, returned the application with a negative recommendation. Consequent thereto, the Ministry, upon D. accepting the recommendation of MCI, disapproved the application submitted by the petitioners for establishment of a new medical college for the academic session 2016-17 vide its letter dated 15.06.2016.

2. The Oversight Committee (for short "OC") constituted under the directions of this Court, however, issued directives, as a result of which the Ministry asked for and obtained a fresh compliance from the college and forwarded the same to MCI vide letter dated 22.06.2017. MCI then submitted its report, citing various reasons and that report, in turn, was forwarded to the OC for its guidance. The OC approved of the scheme submitted by the petitioner college for the academic session 2016-17 vide letter dated 29.08.2016, subject to certain conditions. On the basis of the approval of the OC, the respondent No.1 Central Government issued a Letter of Permission on 12.09.2016 in favour of the petitioners' college for the academic session 2016-17, with conditions imposed by the OC. Assessment and verification of compliance was undertaken by MCI which submitted its report on the basis of the inspection. The Executive Committee of the MCI, in its meeting held on 22.12.2016, noticed the deficiencies and decided to send a negative recommendation to the Ministry. The Ministry/Director General of Health Services (for short "DGHS") then afforded personal hearing to the college on 17.01.2017. The Hearing Committee did not accept the explanation offered by the petitioner college and submitted its negative finding. The H

said report was forwarded to the OC for guidance. The OC, in turn, vide letter dated 14.05.2017 conveyed its opinion to the Ministry in which it observed thus:

"I. Faculty:- Once 7 members faculty are considered, the deficiency becomes 1.53%, which is within the acceptable limits.

II. Resident:- Once 3 residents are considered, the deficiency becomes 2.17%, which is within the acceptable limits.

III. OTs:- EC pointed out that OT in General Surgery, ENT, Ophthalmology and OG have 2 tables which is not as per norms. There is no such mention in the SAF. In SAF 2.10 it has been marked as 9 Major OTs against required 4 and 2 Minor OTs as required, which is more than the MSR. Hence there is no deficiency.

IV. ICUs:- This deficiency is subjective. No MSR.

V. Mobile X-ray machines:- This deficiency is subjective. No MSR.

VI. USG machine:- PNDT approval for 1 USG machine is available and applied for the other.

VII. MRD:- This deficiency is subjective. No MSR.

LOP Confirmed"

3. The Ministry, however, acting upon the negative recommendation of MCI vide letter dated 31.05.2017, debarred the petitioner college from admitting students for two years and authorised MCI to encash the Bank Guarantee offered by the petitioners. That decision was assailed by the petitioners before this Court in the present writ petition.

4. On 01.08.2017, this Court called upon the respondent No.1 Central Government to reconsider the materials on record pertaining to the issue of confirmation, including the letter of permission granted to the petitioners' college, as was the case of other colleges whose matters were heard together by this Court. Pursuant to the said directions, the Ministry afforded a personal hearing to the petitioner college on 04.08.2017. The Hearing Committee made favourable observations with regard to the deficiencies and while recommending to the Ministry to

- A confirm the conditional permission granted to the college in 2016-17, however recommended not to permit the petitioners' college to admit students in the MBBS course for the academic session 2017-18 and to apply afresh for renewal of permission for the academic session 2018-19, as per MCI Regulations. On the basis of the said recommendation, the Ministry passed an order on 10.08.2017. The relevant portion of the
- B said order reads thus:

"17. Now, in compliance with the above direction of Hon'ble Supreme Court dated 01.08.2017, the Ministry granted hearing to the college on 04.08.2017. The Hearing Committee after considering the record and oral & written submission of the college submitted its report to the Ministry. The findings of the Hearing Committee are as under:

The college does not seem to have any infrastructural deficiency. MCI has pointed out faculty and resident deficiency at 12.3% and 8.69%.

The deficiency is not of high order. The contention of college that 7 of the 8 faculty shown as deficient were assigned for medical camp organized on the day of inspection is supported by the note written by Principal of the college on the last page of the SAF form which is also signed by all the four assessors. The Principal has mentioned that the 7 faculty and 3 residents had already left for the camp before the surprise inspection. The Committee has also noted the medical camp order dated 19.11.2016 and that the deficiencies of faculty correspond to those sent for the camp duty. However, the assessors have not noted the 10 names in the SAF form as 'faculty/residents present but not counted' if they had come late. Further the column on RHTC in the SAF form is devoid of any details and no reference to camp could be seen.

The college has submitted a certificate from MCI vendor which states that 158 faculty have been enrolled on 26.07.2017 for biometric attendance system.

The other deficiencies regarding 2 tables in OTs, AERB and PNDT approval have been rectified post assessment as per documentary evidence furnished.

In view of the above, the Committee is of the opinion that the deficiency of faculty and residents is marginal. The submission of the college regarding medical camp on the day of assessment as a result of which 10 doctors could not be available for head count seems bonafide but cannot be confirmed. In such case debarring the college for two years seems excessive even though the recommendation is as per the conditions of OC approval.

The committee recommends that conditional LoP for 2016-17 may be confirmed. No fresh batch for 2017-18 may be allowed. The college may apply for renewal permission to MCI for the session 2018-19.

18. Accepting the recommendations of the Hearing Committee, the Ministry confirms the conditional permission granted to the College in 2016-17. Further, it has been decided not to permit admission of students in MBBS courses for the academic session 2017-18 at the College. The College may apply afresh for renewal of permission for the academic session 2018-19 as per MCI Regulation.

19. Admission made in violation of above conditions will be treated as irregular and action will be taken as per provision of IMC Act, 1956 and the Regulations made thereunder."

(emphasis supplied)

5. The petitioners would contend that in view of the favourable observations by the Hearing Committee, it is incomprehensible as to why the petitioners' college should be deprived from admitting students for the academic session 2017-18 and especially when no significant deficiency has been noticed by either the Hearing Committee or the Competent Authority of the Central Government which would justify the drastic order passed against the petitioners' college. The petitioner enjoys high reputation. The petitioners' college aims to impart quality education. It is submitted that the conclusion reached by the Hearing Committee or, for that matter, by the Competent Authority, against the petitioners' college, cannot stand the test of judicial scrutiny. No tangible reason has been assigned to deprive the petitioners' college from admitting students in the MBBS course for the academic session 2017-18. This

- A Court ought to intervene and issue appropriate directions against the respondents.

6. The respondents, on the other hand, have supported the conclusion arrived at by the Hearing Committee and the Competent Authority. According to the respondents, it may not be permissible to sit over the subjective satisfaction of the expert body and to issue directions to the contrary. The respondents have prayed for dismissal of the writ petition and the interlocutory application.

7. Having considered the rival submissions, we have no hesitation in taking the view that the Hearing Committee, as well as the Competent Authority of the Central Government, have shown complete disregard to the fact situation and moreso when they have found that the infrastructure and academic requirements were fully in place in so far as the petitioners' college is concerned. Infact, we find that the impugned order acknowledges the fact that the petitioners' college is a compliant college in respect of infrastructure and academic matters. In such a situation, we are at a loss to discern as to what weighed with the Hearing Committee and Competent Authority of the Central Government to prohibit the petitioners' college from admitting students in the MBBS course for the academic session 2017-18. No tangible reason whatsoever has been assigned by the said authorities in that regard, leave alone any reason.

8. We have no hesitation in observing that the approach of the statutory authorities is bordering on abdication of their statutory duty and is against the letter and spirit of the direction given by this Court on the earlier occasion to reconsider the case of the petitioners' college afresh on the basis of material available on record. Admittedly, the petitioners' college has started functioning from the academic session 2016-17, on the basis of a conditional Letter of Permission. The conditions specified therein have been substantially fulfilled in all respects including infrastructure and academic requirements. Therefore, we allow this petition and the application filed by the petitioners in the larger public interest.

9. Considering the fact that the petitioners' college has fulfilled the infrastructure and academic requirements and has already operated the college for the academic session 2016-17 by admitting the first batch of students in the MBBS course and further, even the Competent Authority has noticed that there are no major deficiencies, we allow this

petition and the application filed by the petitioners in the larger public interest. We are also inclined to issue further directions to the respondents as have been issued in the judgment of *Dr. Jagat Narain Subharti Charitable Trust and Anr. Vs. Union of India and Ors.*, delivered on 30th August, 2017.

10. We, accordingly, quash and set aside the impugned decision to the extent it bars the petitioners to admit upto 150 students for the academic session 2017-18. Instead, we direct the respondents to permit the petitioners' college to take part in the current-year counselling process which is still in progress. The cut-off date for completing the admissions in respect of the petitioners' college, however, will stand extended till 5th September, 2017. The respondents shall make available students willing to take admission in the petitioners' college through central counselling, in order of their merit. This direction is being issued in exercise of plenary powers of this Court under Article 142 of the Constitution of India, in the peculiar facts of the present case, to do complete justice and in the larger public interest, so that aspiring students who have not been admitted to the 1st year MBBS course for the academic session 2017-18, in order of their merit in NEET examination, will get an opportunity to be admitted in the petitioner college. At the same time, we make it clear that the MCI or the Competent Authority of the Central Government is free to inspect the petitioners' college as and when deemed fit and, if any deficiency is found after giving opportunity to the petitioners' college, it may suitably proceed against the said college in accordance with law. This arrangement will subserve the ends of justice.

11. No order as to costs.

Divya Pandey

Petition allowed.