

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No.1409 of 2018

Order reserved on: 27-6-2018

Order delivered on: 10-7-2018

1. Shri Gangajali Education Society, Through I.P. Mishra, S/o Late Shri S.P. Mishra, aged about 76 years, Chairman, Shri Gangajali Education Society, Sector-6, Bhilai, District Durg (Chhattisgarh)
2. Shri Shankaracharya Institute of Medical Sciences, Through I.P. Mishra, S/o Late Shri S.P. Mishra, aged about 76 years, Chairman, Shri Gangajali Education Society, Sector-6, Bhilai, District Durg (Chhattisgarh)

---- Petitioners

Versus

1. Union of India, Through its Secretary, Ministry of Health and Family Welfare, Govt. of India, Nirman Bhawan, New Delhi – 110 001
2. Medical Council of India, Through its Secretary, Pocket No.14, Sector 8, Dwarka, New Delhi – 110 077

---- Respondents

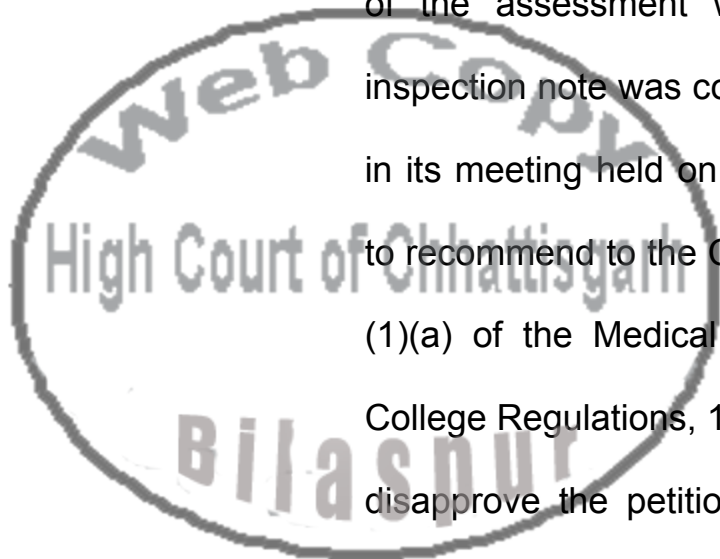
For Petitioners: Mr. A.P. Shrotri and Mr. C.R. Sahu, Advocates.
For Respondent No.1 / Union of India: -
Mr. B. Gopa Kumar, Assistant Solicitor General of India.
For Respondent No.2: Mr. R.S. Marhas, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. Shri Shankaracharya Institute of Medical Sciences is a medical college established and run by Shri Gangajali Education Society. The said college was granted permission to admit 150 MBBS students for the academic year 2017-18 with 150 seats pursuant to the order of the Hon'ble Supreme Court. Thereafter, the said institution made an application for grant of renewal of permission for admission of 3rd batch of 150 MBBS students for the academic year

2018-19. That application was duly processed and Medical Council of India (MCI) conducted inspection of petitioner No.2 College and found gross deficiencies holding that the petitioner Medical College had failed to fulfill its minimum infrastructure, teaching faculty, clinical material and other physical facilities in their medical college. The deficiencies pointed out in the inspection report have been detailed out in the inspection report dated 9th & 10th October, 2017. Apart from other deficiencies, the deficiency of residents was to the extent of 32.65% (more than 30%) and bed occupancy on the day of the assessment was only 22.66% (less than 50%). The inspection note was considered by the Executive Committee of MCI in its meeting held on 27-11-2017 and the said committee decided to recommend to the Central Government to invoke Regulation 8(3) (1)(a) of the Medical Council of India Establishment of Medical College Regulations, 1999 (for short, 'the Regulations, 1999') and to disapprove the petitioners' application. The said decision of the Executive Committee was approved by the Oversight Committee constituted by the Supreme Court and MCI recommended to the Central Government not to grant renewal of permission for admitting 3rd batch of 150 MBBS students for the academic year 2018-19 by memo dated 14-12-2017, 19-2-2018 and 4-5-2018. However, the Central Government constituted a hearing committee for granting opportunity of hearing to the petitioner College under Section 10A(4) of the Indian Medical Council Act, 1956 (for short, 'the IMC Act') and thereafter, based on the conclusion of the hearing committee, by memo dated 10-1-2018 requested respondent No.2 MCI to review the scheme in light of the documents submitted by



the petitioner College and furnish its recommendation to the Central Government. MCI respondent No.2 herein considered the matter in its Executive Committee meeting dated 26-4-2018 and in view of the provision contained in Regulation 8(3)(1)(a) of the Regulations, 1999, resolved to reiterate its earlier decision taken on 22-11-2017 which was duly accepted by the Oversight Committee constituted by the Supreme Court.

2. Questioning legality, validity and correctness of the recommendations made by the Executive Committee on 26-4-2018 not to consider the case of the petitioner College for renewal of permission for admitting 150 MBBS students for the academic year 2018-19, this writ petition has been preferred on the ground stating inter alia that MCI is only a recommendatory body under Section 10A(3) of the IMC Act and final authority is Central Government and, therefore, respondent No.2 could not have overturned the decision of the Central Government taken under Section 10A(4) of the IMC Act read with the Regulations, 1999 directing review and the impugned recommendation made by respondent No.2 MCI is violative of the principles of natural justice incorporated in Section 10A(3) of the IMC Act and decision has been taken by the Executive Committee of the MCI which is not the Council, as such, the impugned recommendation dated 26-4-2018 cannot be construed to be a recommendation under Section 10A of the IMC Act by the MCI and, therefore, it is without jurisdiction and without authority of law.

3. Detailed return has been filed by respondent No.2 / MCI stating

inter alia that the petitioner Medical College has failed to maintain the minimum infrastructure, teaching faculty, clinical material and other physical facilities in its Medical College due to which respondent No.2 MCI was constrained to recommend to the Central Government to disapprove the petitioners' scheme / application to admit 150 MBBS students for the academic year 2018-19 and in light of Regulation 8(3)(1)(a) of the Regulations, 1999, the petitioner College is not entitled to be provided opportunity of rectification of the deficiencies. It has also been stated that the validity of Regulation 8(3)(1)(a) of the Regulations, 1999 has already been upheld by the Delhi High Court and as such, the petitioner College is not entitled for opportunity of hearing to rectify the deficiencies, therefore, the writ petition deserves to be dismissed.

4. No return has been filed by respondent No.1, as in the writ petition, no order passed by the Central Government has been challenged.
5. Mr. A.P. Shroti, learned counsel for the petitioners, would firstly submit that the decision of the Central Government dated 10-1-2018 passed in exercise of powers conferred under the IMC Act read with the Regulations, 1999 has attained finality, as it has not been challenged by respondent No.2 and respondent No.2 was enjoined to submit its report in the same manner as prescribed for the initial report in the light of the documents submitted by the petitioners and the recommendation of the Oversight Committee and it could not have been overturned by MCI. He would further submit that MCI is only a recommendatory body under Section 10A(3) of the IMC Act and final authority is the Central Government

which has directed for review and which is binding on MCI in view of the decision rendered by the Division Bench of the M.P. High Court in the matter of RKDF Medical College Hospital and Research Centre v. Union of India and another¹ and, therefore, the recommendation made by MCI dated 26-4-2018 to the extent of the petitioners' College deserves to be quashed being without jurisdiction and without authority of law.

6. Mr. R.S. Marhas, learned counsel appearing for respondent No.2 MCI, would submit that the petitioners' application for grant of renewal for admitting 150 MBBS students for the academic year year 2018-19 was subjected to inspection and the deficiencies pointed out in the inspection conducted on 9th & 10th October, 2017, were so grave in nature that the same could not be brushed aside in the larger public interest and also in the interest of the student community and hence respondent No.2 was compelled to recommend to the Central Government not to grant renewal of permission for admitting 3rd batch of 150 MBBS students for the academic year 2018-19. He would further submit that the deficiencies, particularly the deficiency of residents was to the extent of 32.65% (more than 30%) and bed occupancy was only 22.66% (less than 50%) and in that view of the matter, respondent No.2 has recommended to invoke Regulation 8(3)(1)(a) of the Regulations, 1999 and, therefore, no opportunity of rectification of the deficiencies is required to be provided to the petitioner Medical College and it has been reiterated by respondent No.2 in its latest communication dated 26-4-2018 duly approved by the Oversight

1 2015(3) M.P.L.J. 611

Committee. Moreover, the constitutional validity of Regulation 8(3) (1)(a) of the Regulations, 1999 has been upheld by the Delhi High Court in W.P.(C)No.5041/2015 titled as **Shree Chhatrapati Shivaji Education Society and another v. Union of India and another** on 28-5-2015, therefore, the present petition is not maintainable and deserves to be dismissed.

7. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.

8. The question which falls for consideration is, whether respondent No.2 herein Medical Council of India is justified in making recommendation to the Central Government not to grant renewal of permission for admitting 3rd batch of 150 MBBS students for the academic year 2018-19 and to disapprove the said application by the impugned memo?

9. Section 10A of the IMC Act provides that notwithstanding anything contained in this Act or any other law for the time being in force, no person shall establish a medical college; except with the previous permission of the Central Government obtained in accordance with the provisions of this section. Sub-section (2) of Section 10A provides that every person or medical college shall, for the purpose of obtaining permission under sub-section (1), submit to the Central Government a scheme in accordance with the provisions of clause (b) and the Central Government shall refer the scheme to the Council for its recommendations. Sub-section (4) of Section 10A mandates consideration by the Central Government the scheme

and recommendations of the Council, and provides as under: -

“(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).”

10. The first proviso to sub-section (4) of Section 10A of the IMC Act provides that no scheme shall be disapproved by the Central Government except after giving the person or college concerned a reasonable opportunity of being heard.

11. The Regulations, 1999 have been framed by the Central Government in exercise of the powers conferred by Section 10A read with Section 33 of the IMC Act. Regulation 8(3)(1)(a) of the Regulations, 1999 provides as under: -

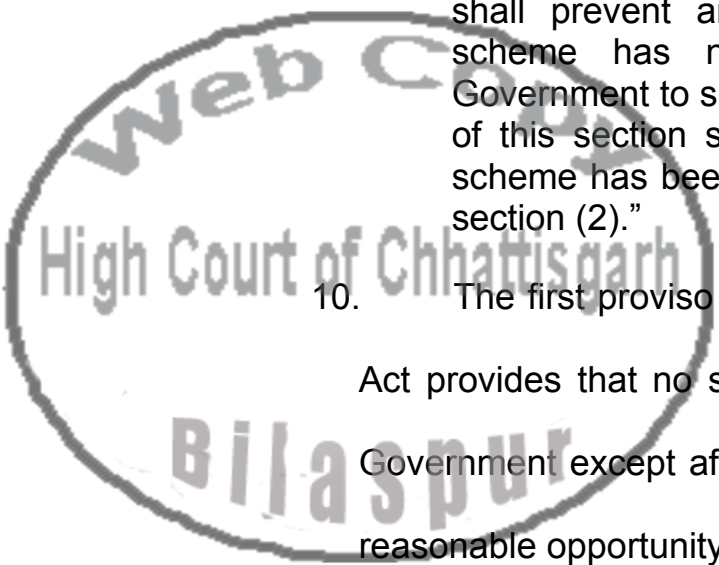
“8. GRANT OF PERMISSION:

xxx xxx xxx

xxx xxx xxx

xxx xxx xxx

(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 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."

12. Thus, Regulation 8(3)(1) of the Regulations, 1999, as amended, deals with grant of permission. The medical colleges are obliged to maintain minimum standards as provided in the Regulations of the Council throughout the year in order to ensure that the students pursuing the MBBS course get proper teaching and training in a medical college.

13. Thus, Regulation 8(3)(1)(a) of the Regulations, 1999, would be applicable to the institutions which have to be established and are up to the stage of second renewal of permission, as well as renewal of permission of increased intake. Regulation 8(3)(1)(a) provides that during any regular inspection, if a medical college is found to have deficiency of teaching faculty and / or residents, being more

than 30% and / or the bed occupancy is found to be less than 50%, such an institute shall not be given an opportunity to rectify any such deficiency and will not be considered for renewal of permission for that academic year so as to ensure strict compliance with the IMC Act and the Regulations made thereunder.

14. The constitutional validity of Regulation 8(3)(1)(b) of the Regulations, 1999 came up for consideration before a Division Bench of the Delhi High Court in Shree Chhatrapati Shivaji Education Society (supra) in which the Division Bench has upheld the constitutional validity of Regulation 8(3)(1)(b) of the Regulations, 1999. Thereafter, a Full Bench of the Delhi High Court in the matter of Malla Reddy Institute of Medical Sciences and another v. Union of India and another² has held as under: -

“52. For the aforesaid reasons, we hold that the provisos (a) to (d) to Regulation 8(3)(1) of the Regulations shall not in any way circumvent the opportunity of being heard/opportunity to rectify the deficiencies provided under sub-Sections (3) and (4) of Section 10-A of the Medical Council Act. However, the same shall be in strict adherence to the time Schedule fixed in the Regulations and in conformity with the Schedule as laid down in Royal Medical Trust (supra).”

15. The decision of the Full Bench of the Delhi High Court in Malla Reddy Institute of Medical Sciences (supra) was questioned before the Supreme Court in Civil Appeal No.4812/2016 (Medical Council of India v. Malla Reddy Institute of Medical Sciences and others), decided on 27-4-2016, in which the Supreme Court has held as under: -

“8. Since the Full Bench did not strike down the concerned provisos of Regulation 8(3)(1) nor directed for reading down their effect, its answers must be confined

² W.P.(C)No.7106/2015, decided on 29-9-2015

to the peculiar facts and further, in our view, the High Court on receipt of the reference erred in issuing directions contrary to the relevant provisos.

9. In the aforesaid facts and circumstances, it is clarified that the impugned Full Bench judgment does not adversely affect the provisos (a) to (d) of Regulation 8(3) (1) of the Regulations and the Division Bench erred in allowing the writ petitions by issuing directions contrary to the relevant provisos. Consequently, the final order passed by the High Court on the basis of the impugned judgment is held to be bad in law.

10. It is admitted at Bar that the adverse effect of the relevant provisos upon the writ petitioners is over for all practical purposes.”

16. Thus, the Supreme Court has clarified the Full Bench judgment of the Delhi High Court has held that the Full Bench judgment does not adversely affect the provisos (a) to (d) of Regulation 8(3)(1) of the Regulations, 1999.

17. In the matter of Medical Council of India v. State of Karnataka and others³ the Supreme Court has held that the Regulations of MCI are binding and mandatory. The principle of law laid down in MCI v. State of Karnataka (supra) with reference to medical courses was reemphasized by the Constitution Bench of the Supreme Court in the matter of Dr. Preeti Srivastava and another v. State of M.P. and others⁴ and also in the matters of Dr. Narayan Sharma and another v. Dr. Pankaj Kr. Lehtar and others⁵, State of Punjab v. Dayanand Medical College and Hospital and others⁶, State of M.P. and others v. Gopal D. Tirthani and others⁷ and Harish Verma and others v. Ajay

3 (1998) 6 SCC 131

4 (1999) 7 SCC 120

5 (2000) 1 SCC 44

6 (2001) 8 SCC 664

7 (2003) 7 SCC 83

Srivastava and another⁸.

18. At this stage, it would be appropriate to notice the proceedings that have taken place pursuant to the application filed by the petitioner College for renewal of permission for admitting 150 MBBS students to its college for the academic year 2018-19. The assessors of MCI conducted inspection on 9th & 10th October, 2017 and submitted its report to the Executive Committee of MCI and that Committee considered the report in its meeting dated 22-11-2017 which was approved by the Oversight Committee on 24-12-2017 and thereafter, MCI forwarded the recommendation to the Central Government by its memo dated 15-12-2017. Thereafter, the Government of India constituted a hearing committee as per the proviso under Section 10A(4) of the IMC Act and directed MCI to review the schemes in light of the documents submitted by the College which states as under: -

“No.U-12012/48/2017-ME.I (Pt-I) [FTS.3131703]
Government of India
Ministry of Health & Family Welfare
(ME.I Section)

Nirman Bhawan, New Delhi-11
Dated the 10th January, 2018

To

The Secretary,
Medical Council of India,
Pocket – 14, Sector – 8,
Dwarka, New Delhi-75.

Subject: Establishment of New Medical Colleges/Increase of MBBS seats/Permission for Renewal of MBBS course at existing Medical Colleges for the academic year 2018-19 Hearing granted to applicant/Medical Colleges where MCI has recommended for disapproval of schemes-reg.

Madam,

I am directed to refer to the subject noted above and to say that as per the proviso under Section 10 A (4) of IMC Act, 1956, a Committee has been constituted for granting opportunity of hearing to the applicant Colleges/Institutions whose schemes for establishment of new Medical Colleges/Increase in admission capacity in MBBS Course etc for the year 2018-19 were recommended for disapproval by the MCI. The Committee has given hearing to the authorized representatives of the Medical colleges/applicants on 08.01.2018. Based on the compliance submitted by the colleges concerned in support of their claim, the Committee has recommended for review of the following schemes by MCI. The compliance report submitted by the colleges concerned in original **along with observation and recommendation of the committee** are sent herewith as per details given below:-

Sl	Name of College/applicant	Recommendation of Committee
1	xxx xxx xxx to xxx xxx xxx 8 xxx xxx xxx	xxx xxx xxx xxx xxx xxx xxx xxx xxx
9.	Shri Shankaracharya Institute of Medical Sciences, Bhilai [Renewal of Permission for MBBS Course 3 rd Batch (150 Seats)] (Pvt.)	Submissions as made by the college at column 4. A number of deficiencies of faculty, residents, clinical material and infrastructure has been pointed out. However, in view of the submission and compliance submitted by the college, the matter may be referred to MCI for review.

2. In view of above, MCI is requested to review the schemes in light of the documents submitted by the Colleges / applicants & the recommendation of the Committee and furnish its recommendations accordingly to this Ministry.”

19. Pursuant to the memo dated 10-1-2018, the Executive Committee of MCI considered the matter in its meeting dated 26-4-2018 at serial No.106, relevant portion of which states as under: -

“106. Renewal of permission for MBBS course for 3rd batch (150 seats) of Shri Shankaracharya Institute

of Medical Sciences, Bhilai, Chhattisgarh under Chhattisgarh Ayush & Health Sciences University, Raipur u/s 10A of the IMC Act, 1956 for the academic year 2018-2019.

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The Central Govt. vide letter dated 20.06.2017 requested the Council to revisit the applicability of the Regulation 8(3)(1)(a), 8(3)(1)(b) and 8(3)(1)(c) since, in the case where the said clauses were applied, the application of the college were not considered any further. Whereas, as per section 10A(4) of the IMC Act, 1956, the Govt. of India has to grant an opportunity for rectification of deficiencies. The said letter of the Ministry was considered by the Executive Committee of the Council at meeting held on 11.07.2017, wherein, the Committee in view of the fact that the said Regulation was inserted in the Establishment of Medical College Regulation, 1999 in order to ensure the regular availability of clinical material and teaching faculty, throughout the year, decided that in the larger public interest and in the interest of the medical college education, the said Regulation should be applied without any change. The Council vide letter dated 13.10.2017, communicated the decision of the Executive Committee of the Council to the Ld. Oversight Committee for approval and the Ld. Oversight Committee vide letter dated 03.01.2018, approved the decision of the Executive Committee to apply the Regulations 8(3)(1)(a), 8(3)(1)(b) and 8(3)(1)(c), without any change or modification.

The Executive Committee further noted that the Council vide its letter dated 31.01.2018 has referred the case of Shri Shankaracharya Institute of Medical Sciences, Bhilai, Chhattisgarh under Chhattisgarh Ayush & Health Sciences University, Raipur to the Ld. Oversight Committee, for their opinion. The Oversight Committee vide letter dated 19.02.2018 has conveyed as under:-

“Please refer to Medical Council of India letter dated 31.01.2018 on the above mentioned subjects, the Oversight Committee considered the Council's proposal and documents furnished to it. The Oversight Committee has approved the Council's proposal contained in the above mentioned letters.”

In view of the above the Executive Committee after

detailed deliberations decided to reiterate its earlier decision taken at its meeting held on 22.11.2017, that in view of application/invocation of Regulation 8(3)(1)(a) of the Establishment of Medical College Regulations, 1999, which disentitles the medical college for compliance due to gross deficiencies found during the last assessment, the application of Shri Shankaracharya Institute of Medical Sciences, Bhilai, Chhattisgarh under Chhattisgarh Ayush & Health Sciences University, Raipur cannot be considered for renewal of permission for academic year 2018-19.”

20. The aforesaid recommendation of the Executive Committee has been approved by the Oversight Committee on 4-5-2018. It is this recommendation which has been sought to be challenged by the petitioners herein. The submission of the learned counsel for the petitioners is that since the Central Government has directed for review of its decision in light of the documents submitted by the college as per the proviso under Section 10A(4) of the IMC Act, MCI was bound to consider the same and could not have recommended to invoke Regulation 8(3)(1)(a) of the Regulations, 1999.

21. Proviso (a) to Regulation 8(3)(1) of the Regulations, 1999 clearly provides that in respect of Colleges in the stage up to II renewal (i.e. Admission of third batch), if during regular inspection of the institute it is observed that there is deficiency of teaching faculty and/or residents is more than 30% and/or bed occupancy is less than 50%, such an institute will not be considered for renewal of permission in that Academic Year. It is not in dispute that in the instant case, the deficiency of residents was to the extent of 32.65% i.e. more than 30% and bed occupancy on the date of assessment was only 22.66% i.e. less than 50%. Therefore, MCI

was entitled to recommend to invoke Regulation 8(3)(1)(a) of the Regulations, 1999 which has been invoked and recommendation was made to the Central Government to disapprove the renewal of the petitioner College, thereafter, again direction was made by the Central Government and again MCI has considered and reiterated its recommendation made earlier on 22-11-2017 based on Regulation 8(3)(1)(a) of the Regulations, 1999. The constitutional validity of Regulation 8(3)(1)(a) of the Regulations, 1999 has already been upheld by the Delhi High Court and clarified by the Supreme Court in Civil Appeal No.4812/2016 (Medical Council of India v. Malla Reddy Institute of Medical Sciences and others), decided on 27-4-2016 and MCI Regulations are mandatory and binding as held by Their Lordships of the Supreme Court in **MCI v. State of Karnataka** (supra).

22. The scope of interference in the recommendation of MCI came to be considered by the Supreme Court recently in the matter of **Medical Council of India v. Vedantaa Institute of Academic Excellence Pvt. Ltd. and others**⁹ in which the Supreme Court relying upon a matter in the case of **Medical Council of India v. Kalinga Institute of Medical Sciences (KIMS) and others**¹⁰ and proviso (a) to Regulation 8(3)(1) of the Regulations, 1999, did not agree with the decision of the Bombay High Court and set aside the same by observing as under: -

“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

9 AIR 2018 SC 2642

10 AIR 2016 SC 2294

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 inasmuch 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 (AIR 2016 SC 2294) (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.”

23. Following the principles of law laid down qua scope of interference in the recommendation of MCI as held in Vedantaa Institute of Academic Excellence Pvt. Ltd.'s case (supra) and in view of the fact that the petitioner College is seeking grant of second renewal of permission for admitting 3rd batch of 150 MBBS students for the academic year 2018-19, the deficiencies pointed out by MCI that is the deficiency of residents was to the extent of 32.65% (more than 30%) and bed occupancy on the day of the assessment was only 22.66% (less than 50%), the petitioners are not entitled for opportunity of rectification of deficiencies in view of the mandatory provision contained in Regulation 8(3)(1)(a) of the Regulations, 1999, which is binding and imperative. Therefore, MCI is justified in reiterating its recommendation in light of Regulation 8(3)(1)(a) of the Regulations, 1999 which is strictly in accordance with law. I do not find any merit in the submission of learned counsel for the petitioners.

24. The submission of Mr. Shroti, learned counsel appearing for the petitioners, relying upon RKDF Medical College Hospital and Research Centre (supra) is also not helpful to the petitioners, as the petitioners claiming second renewal are not entitled for opportunity of rectification of deficiencies in view of the imperative provisions contained in Regulation 8(3)(1)(a) of the Regulations, 1999.

25. Faced with this situation, Mr. Shroti, learned counsel for the

petitioners, would submit that the Central Government has passed an order on 31-5-2018 disapproving the scheme for admission of 3rd batch of 150 students in MBBS course in the petitioner's college for the academic year 2018-19 which is in teeth of the provisions contained in Section 10A(4) of the IMC Act.

26. Mr. Singh, learned counsel for MCI, submits that the recommendation of MCI invoking Regulation 8(3)(1)(a) of the Regulations, 1999 has now been accepted by the Central Government on 31-5-2018, which would clearly show that recommendation of MCI is strictly in accordance with law.

27. The operative portion of the order dated 31-5-2018 passed by the Central Government states as under: -

“7. Now therefore, the Central Government, after considering the recommendation dated 07.05.2018, has decided not to renew the permission for admission of 3rd batch of 150 MBBS students at Shri Shankaracharya Institute of Medical Sciences, Bhilai in the academic session 2018-19. The Institute is accordingly directed not to admit any student in MBBS course for the academic session 2018-19. However, the College is free to apply afresh for next academic year strictly as per Provisions of IMC Act, 1956 and Regulations framed thereunder.”

28. The order dated 31-5-2018 disapproving the scheme for renewal of permission for admission of 3rd batch of 150 students in MBBS course for the academic year 2018-19 has been brought on record by the petitioners themselves on the date of final hearing, but no attempt has been made to question the said decision taken by the Central Government by amending the writ petition with a copy to the other side. Thus, that order of the Central Government has become final. Therefore, in absence of challenge to the order

dated 31-5-2018, no order can be passed quashing the decision of the Central Government.

29. As a fallout and consequence of the aforesaid discussion, I do not find any merit in the writ petition questioning the recommendation of MCI, as such, the writ petition deserves to be and is accordingly dismissed, leaving the parties to bear their own costs.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma



HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No.1409 of 2018

Shri Gangajali Education Society and another

Versus

Union of India and another

Head Note

Recommendation of Medical Council of India recommending non-grant of permission to admit 150 students in MBBS course is in accordance with law.

एम.बी.बी.एस. पाठ्यक्रम में 150 विद्यार्थियों को प्रवेश की मंजूरी प्रदान न करने की भारतीय आयुर्विज्ञान परिषद् की अनुशंसा विधि के अनुरूप है।

