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

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W.P.(C) 5129/2014

LORD BUDDHA SHIKSHA

PRATISTHAN SAHARSA

..... Petitioner

Through: Mr. Nidhesh Gupta, Sr. Advocate  
with Mr. Ashish Kumar and  
Mr. Avijit Mani Tripathi, Advs.

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Rajesh Gogna, CGSC for R-1/  
UOI.  
Mr. Vikas Singh, Sr. Advocate with  
Mr. T. Singhdev, Mr. Paritosh Kumar  
Singh and Mr. Anshuman Maula,  
Advs. for respondent No. 2

Reserved on : 25<sup>th</sup> August, 2014

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Date of Decision : 08<sup>th</sup> September, 2014

**CORAM:**

**HON'BLE MR. JUSTICE MANMOHAN**

### **J U D G M E N T**

**MANMOHAN, J:**

#### **CM APPL. 1024/2014 in W.P.(C) 5129/2014**

1. Present application has been filed seeking a direction to respondent-Medical Council of India (in short 'MCI') to conduct a compliance verification assessment of applicant/ petitioner-medical college with regard to deficiencies pointed out in the recommendation by MCI to the Central Government dated 20<sup>th</sup> May, 2014. By the present application, petitioner also seeks renewal of permission to admit 100 MBBS students in the Academic Year 2014-15.

2. The facts of the present case are that on 19<sup>th</sup> June, 2012, petitioner-medical college was granted permission for establishment of medical college with intake of 100 MBBS students for Academic Year 2012-2013.
3. The petitioner's application for renewal of permission for Academic Year 2013-2014 was rejected. The order of rejection has attained finality.
4. Mr. Nidhesh Gupta, learned senior counsel for petitioner contended that the deficiencies pointed out were contrary to MCI regulations as criteria for 2<sup>nd</sup> renewal (3<sup>rd</sup> Batch) had been applied to the petitioner instead of criteria for 1<sup>st</sup> renewal (2<sup>nd</sup> Batch).
5. Mr. Nidhesh Gupta pointed out that the assessors in their inspection report had observed that since petitioner's permission for admitting 100 MBBS students in medical college had not been renewed for Academic Year 2013-2014, the inspection for the Academic Year 2014-2015 was, in fact, for 1<sup>st</sup> renewal (2<sup>nd</sup> Batch).
6. Mr. Nidhesh Gupta stated that in any case, the deficiencies pointed out were minor in nature and had been rectified before filing the compliance report. He further stated that in particular, as far as staff requirements were concerned, the strength of Assistant Professors/Professors remained the same irrespective of whether it was a case of 1<sup>st</sup> renewal (2<sup>nd</sup> Batch) or 2<sup>nd</sup> renewal (3<sup>rd</sup> Batch).
7. On the other hand, Mr. Vikas Singh, learned senior counsel for respondent-MCI stated that the petitioner's contention that they were wrongly assessed for the grant of 2<sup>nd</sup> renewal of permission for admitting 3<sup>rd</sup> Batch of 100 students for Academic Year 2014-15 is incorrect and misconceived since petitioner-medical college had been established in the Academic Year 2012-13 and, therefore, mathematically speaking Academic

Year 2014-15 would constitute the 3<sup>rd</sup> Batch.

8. Mr. Vikas Singh further submitted that the petitioner-medical college was obliged to achieve certain annual targets as prescribed under the statutory regulations of MCI on a year to year basis. He added, non-compliance of annual targets for grant of 1<sup>st</sup> renewal of permission did not permit the petitioner to treat Academic Year 2014-15 as 2<sup>nd</sup> batch. The relevant portion of the counter-affidavit is reproduced hereinbelow:-

*“64.It is submitted that the contention of the petitioner that they were wrongly assessed for the grant of 2<sup>nd</sup> renewal of permission for admitting 3<sup>rd</sup> batch of 100 MBBS students for the academic year 2014-15 is incorrect, misconceived and denied. It is respectfully submitted that the petitioner medical college was established in the academic year 2012-13, thereafter the college was obliged to fulfil the annual target for evaluation towards grant of 1<sup>st</sup> renewal of permission for admitting 2<sup>nd</sup> batch of 100 MBBS students for the academic year 2013-14, however the petitioner medical college failed to fulfill the annual targets for the grant of 1<sup>st</sup> renewal of permission. Now the petitioner medical college was considered for grant of 2<sup>nd</sup> renewal of permission for admitting 3<sup>rd</sup> batch of 100 MBBS students for the academic year 2014-15. Therefore the contention of the petitioner that they should have been assessed on the parameters of 1<sup>st</sup> renewal of permission is incorrect, baseless and misconceived.*

*65.It is submitted the petitioner medical college is obliged to achieve the annual targets as prescribed under the statutory regulation of the Council on the year to year basis. It was the petitioner who failed to fulfil the minimum annual requirements for grant of 1<sup>st</sup> renewal of permission that does not mean that the petitioner will not fulfil the annual target since the first batch admitted in academic 2012-13 are presently in the 3<sup>rd</sup> year of MBBS course. The whole contention of the petitioner is to mislead this Hon'ble Court as for the present academic session also, for the grant of renewal*

*of permission for admitting 3<sup>rd</sup> batch of MBBS students, the petitioner medical college has failed to achieve the annual targets-minimum infrastructure and other physical facilities in their medical college.”*

9. Mr. Vikas Singh also pointed out that in cases of renewal of permissions/affiliation for 3<sup>rd</sup> Batch, certain clinical subjects such as Community Medicine, General Medicine, Paediatrics, Dermatology, Psychiatry, General Surgery etc. get added. The additional subjects necessitate appointment of additional Assistant Professors/Professors etc.

10. Mr. Vikas Singh added that MCI had received various complaints/letters from students pointing to various deficiencies in infrastructure, teaching faculty and other physical facilities at the petitioner-medical college. According to him, the above said letters raised serious doubts about the functioning of the petitioner-medical college. The letter dated 2<sup>nd</sup> January, 2014 reads as under:-

*“Our organization wish you and entire council a very Happy and Prosperous New Year. The society has great expectations from the new council. We are fighting against corruption and have renowned thousands social workers in the country forming part of it.*

*Last year we had issues related to medical colleges and particularly Lord Buddha Medical College, Saharsa, Bihar. The council tried to correct the evils in the college and we were also satisfied but after a month college returned to the same pattern of which details are as under. Immediately after all inspection is over, the faculties, patients and equipments disappeared. Please note followings:*

*1) You conducted inspection on 30.12.2013 at Lord Buddha Medical College, Saharsa of which college was having full information a week before and arranged each facility i.e. faculty, patients and equipments. Your tour operators based*

- at Patna and other places asks colleges to arrange hotels and other facilities. Inspection is carried out and after inspection each facility disappeared. Your certain staff helps the college.*
- 2) We have conclusive proofs, representation of students that college have 35 nurses, 40 paramedical & other staff, 35 doctors and 50 IPD and 150 OPD. The faculties are arranged on contract and belong to remote places and on information of inspection, they assemble and after inspection, they disappear.*
  - 3) The OPD/IPD records are fabricated as there is no patients.*
  - 4) As per guidelines, the college is supposed to have 150 faculties approx, 110 paramedical staff, 180 nursing staff and 450 OPD and 200 IPD. Every guideline is violated and by having prior information college manages easily on inspection day and in this process, your some officers also help.*
  - 5) We have proof of salary, PF records and your inspectors never demand TDS, Bank payment proof of salary, PF and audited balance sheets and do hanky, panky in inspections.*
  - 6) Students have represented us that they want shift from the college immediately due to no teaching, no patients and are threatened.*
  - 7) A complete faculty provider racket is effective in the country of which we have complete list that is Vikas Kumar from Muzaffarpur-09335586113, 09528685041 Mr. Rajesh Massey-Bareilly-09897916933, Mr. Tej Prahash, Patna-0918539888281, Mr. Abhisek Kumar- Mr. Amit Chowdhary of Meerut Mr. Devender 08006408445, Mr. Ravi Vyas-0900957887, Mr. Bhardwaj 09893026830, Mr. Ranvir-09548426839. They arrange faculty for two days in different colleges and have corrupted the medical profession. Is MCI promote this practice. Stringent action against the corrupt colleges and against these persons should be taken with police enquiry.*
  - 8) We have video proof (Can be made available to you on demand) and if you conduct surprise inspection then each aspect will be clear. But your surprise inspection is also*

*leaked.*

- 9) *However, we will not be silent on the issue and will raise voice at each forum and in case corrupt practices in the college is not curtailed then we will circulate each thing to public and to investigating agencies of which we shall not be held responsible.*

*Hope, that you will hear the demands of the students, our voice and will take all appropriate steps. Representations of certain students is enclosed. We hope that you will not forward our complaint to the college to make them alert and will unearth the facts by investigation on all the parameters as indicated."*

11. It is pertinent to mention that Mr. Nidhesh Gupta insisted on arguing the matter without filing a rejoinder affidavit. The order dated 25<sup>th</sup> August, 2014 reads as under :-

*"Mr. Nidhesh Gupta, learned senior counsel for the petitioner insists that the matter be heard today.*

*Due to his insistence, Mr. T. Singhdev has, today in Court, handed over a copy of the counter affidavit on behalf of respondent No. 2. The same is taken on record.*

*Mr. Nidhesh Gupta, states that he does not wish to file a rejoinder.*

*Consequently, upon the insistence of the Nidhesh Gupta, the application has been heard.*

*Orders reserved."*

(emphasis supplied)

12. In view of the aforesaid order, the averments in the counter affidavit have to be treated as unrebutted. The Supreme Court in ***Balkrishna Pandey Vs. State of Bihar & Ors., (1996) 2 SCC 282*** has held as under:-

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*"4. The question, therefore, is whether the promotion of the fifth*

*respondent as SSA is valid in law. It is rather unfortunate that despite filing of the counter-affidavit as early as on 13-8-1979, no rejoinder-affidavit was filed nor any unimpeachable documentary evidence has been placed on record to establish the nature of his appointment as SSA in the Directorate of SEP. In the state of things, we are necessarily driven to accept the uncontroverted averments made by the State in the counter-affidavit.*”

(emphasis supplied)

13. Consequently, this Court is prima facie of the view that petitioner's application for academic year 2014-2015 constitutes 2<sup>nd</sup> renewal (3<sup>rd</sup> Batch) and not 1<sup>st</sup> renewal (2<sup>nd</sup> Batch) as contended by the counsel for the petitioner.

14. This Court after perusal of the paper book is also of the opinion that the deficiencies pointed out by the Assessor are serious and grave in nature. Some of the deficiencies pointed out as late as May, 2014 are reproduced hereinbelow:-

- “1. Shortage of teaching faculty is 5.4% as under: Professor: 2 (1 each Physiology) & Microbiology) Associate Prof: 3 (1 each in Microbiology, Community Medicine, Anaesthesia).*
- 2. Average daily OPD attendance is 457 which is inadequate (Requirement: 500). On the day of assessment, it is still less at 440.*
- 3. Number of major surgical operations per day is inadequate. (6 total major operations of all specialities combined).*
- 4. Radiological investigations are grossly inadequate (total x-rays 47 per day)*
- 5. Laboratory investigations are grossly inadequate.*
- 6. Lecture theatres are not air conditioned.*
- 7. Paediatrics, Eye & ENT OPDs have only 3 rooms each against requirement of 4 each.*
- 8. Casualty beds are only 10 against requirement of 20.*
- 9. Blood bank is not functional. License for the same is not available.”*

15. It may be noted that inspection of petitioner-medical college took place in presence of its management including the Dean/Principal who signed the inspection report dated 30<sup>th</sup> & 31<sup>st</sup> December, 2013. Thus, the deficiencies of minimum infrastructure, teaching faculty and other physical facilities pointed out by MCI's assessors during the inspection on 30<sup>th</sup> and 31<sup>st</sup> December, 2013 stand duly accepted by the petitioner.

16. Keeping in view the aforesaid deficiencies, this Court is of the view that petitioner-college's application could have only been allowed after the Regulator, namely, Medical Council of India had re-inspected the college and stated that the deficiencies had been removed.

17. Since in the present case the minimum requirements for grant of renewal have not been met and the time schedule for inspection and re-inspection by respondent-MCI has expired as well as two counselling sessions for the next academic year are nearly complete and further the interim orders of inspection passed by different High Courts have been stayed by the Supreme Court, this Court is of the view that no interim order can be passed in favour of the petitioner at this stage. Accordingly, present application is dismissed.

18. List the writ petition on 09<sup>th</sup> October, 2014 for hearing.

**MANMOHAN, J**

**SEPTEMBER 08, 2014**

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