

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

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**Date of decision: 21<sup>st</sup> September, 2015**

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**W.P.(C) No. 7672/2015 & CM No.14975/2015 (for directions)**

**VENKATESHWARA UNIVERSITY & ANR ..... Petitioners**

Through: Mr. Nidhesh Gupta, Sr. Adv. with Mr.  
J.S. Bhasin, Ms. Rashmi Priya, Mr.  
Nishant Shokeen, Mr. Inderjeet Singh  
and Mr. Abhijeet, Advs.

Versus

**MEDICAL COUNCIL OF INDIA & ANR. .... Respondents**

Through: Mr. Vikas Singh, Sr. Adv. with Mr. T.  
Singhdev, Ms. Biakthansangi and Ms.  
Puja Sarkar, Advs. for R-1/MCI.  
Mr. Rajesh Gogna and Ms. Bhavna  
Bajaj, Advs. for R-2/UOI.

**CORAM:-**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

**RAJIV SAHAI ENDLAW, J.**

1. The petition impugns, (i) the recommendation dated 5<sup>th</sup> March, 2015 of the respondent no.1 Medical Council of India (MCI) for disapproval of the scheme submitted by the petitioner no.1 Shri Venkateshwara University, a Private University sponsored by the petitioner no.2 Shri Bankey Bihari Educational and Welfare Trust, for establishment of a new medical college with intake of 150 students annually in the MBBS course / programme, at

Gajraula, District – Amroha, Uttar Pradesh with effect from the Academic Year 2015-2016; as well as, (ii) the communication dated 15<sup>th</sup> June, 2015 of the respondent no.2 Union of India (UOI) disapproving the said scheme of the petitioners. Axiomatically, a mandamus is also sought to the respondent no.2 UOI to grant Letter of Permission to the petitioners for starting a new medical college with effect from the Academic Year 2015-2016.

2. This writ petition dated 10<sup>th</sup> August, 2015 came up before this Court first on 12<sup>th</sup> August, 2015 when notice thereof was issued. Counter affidavit has been filed MCI and the counsel for the petitioners stated that no rejoinder would be necessary. The senior counsel for the petitioners and the senior counsel for the MCI were heard on 27<sup>th</sup> August, 2015, 31<sup>st</sup> August, 2015 and 1<sup>st</sup> September, 2015 and judgment reserved.

3. Prior to considering the respective pleadings and contentions, I may record that considering that the challenge is to the disapproval dated 15<sup>th</sup> June, 2015 and further considering that the last date prescribed for grant of approval by the respondent no.2 UOI is 15<sup>th</sup> July, 2015 and the date for commencement of the academic session for the MBBS course / programme was / is 1<sup>st</sup> August, 2015, the petition brought before this Court first on 12<sup>th</sup> August, 2015 is indeed belated. The petitioners have sought to explain some

of the delay by pleading that they first approached the Supreme Court by way of W.P.(C) No.485/2015 which was on 6<sup>th</sup> August, 2015 dismissed as withdrawn with liberty to approach the High Court if advised. The petitioners have not pleaded the date of approaching the Supreme Court. However even if it were to be believed that the petitioners had approached the Supreme Court immediately after 15<sup>th</sup> June, 2015, same would still not be a sufficient explanation for delay in approaching this Court as it cannot be said that the petitioners could have *bona fide* approached the Supreme Court directly.

4. Though the delay from 15<sup>th</sup> June, 2015 to 12<sup>th</sup> August, 2015 i.e. of about two months only may not appear to be much but has to be seen in the context of the facts and the nature of the challenge. As per the prescribed time schedule, the last date for grant of permission was 15<sup>th</sup> July, 2015 and the date for commencement of the academic session was / is 1<sup>st</sup> August, 2015. It has been held in ***Smt. Sudama Devi Vs. Commissioner*** (1983) 2 SCC 1 that the question whether the principles of laches, acquiescence and waiver are attracted to particular facts is dependent upon the nature of the relief sought and the urgency therefor. It was held that there may be cases where even short delay may be fatal while there may be cases where even

long delay may not be evidence of laches on the part of petitioner and that in every case it will have to be decided on facts and circumstances whether petitioner is guilty of laches. The petitioner ought to have known that after 15<sup>th</sup> July, 2015, UOI could not have granted approval to the petitioner, even if the earlier disapproval was wrong. The Courts, though in certain cases on reversing the decision of the UOI of disapproving the scheme or denying renewal permission have directed UOI, after 15<sup>th</sup> July, to grant approval / renewal permission but only on the principle of “none can be allowed to suffer on account of delay in adjudication” and where the petitioner had acted with promptitude. Here, the petitioners themselves having approached the Court long after the date prescribed for grant of approval, even if were to succeed in the petition, cannot be granted the relief for the reason of having approached the Court long after the last date prescribed for grant of approval. Even if this Court were to set aside the disapproval dated 15<sup>th</sup> June, 2015 of the UOI of the scheme submitted by the petitioner and were to hold that the petitioner in fact ought to have been granted approval, the date of the said approval cannot relate back to a date before the institution of the petition and would at best relate back to 12<sup>th</sup> August, 2015 and which is

beyond the prescribed time. In my opinion, this petition is liable to be dismissed on the ground of laches, acquiescence and waiver alone.

5. However for the sake of completeness, it is deemed appropriate to deal with the challenge on merits as well.

6. The position as emerging from documents is as under:-

- A. that the petitioner no.2 Trust claims to be running a 300 bedded hospital known as Venkateshwara Hospital;
- B. that the petitioners on 24<sup>th</sup> September, 2013 applied under Section 10A of the Indian Medical Council Act, 1956 (MCI Act) for establishment of a new medical college with effect from the Academic Year 2014-2015;
- C. that the MCI carried out inspection of the proposed medical college and the attached hospital on 23<sup>rd</sup> and 24<sup>th</sup> March, 2014 and in which the following deficiencies were found:-

*“1. Lecture Theaters: Facility for E class is not available.*

*2. Clinical material: Bed occupancy on day of assessment was 53% against requirement of 60%. The occupancy in was 49 patients in Gen. Surgery out of 90 beds (54%), 36 patients in Gen. Medicine out of 72 beds*

*(50%) and 10 patients in Paediatrics out of 24 beds (i.e.41%).*

3. *ICUs: There was no patient in MICU on day of assessment. There were only 2 patients (i.e. occupancy 40% ) on day of assessment in SICU & NICU/PICU. Admitted patients were not of critical conditions. No serious patients are admitted in hospital & they are referred to other hospitals. The data of last 6 months showed that there was not a single patient put on ventilator.*
4. *Deficiency of teaching faculty is 13.33% (i.e. 8 out of 60) as under:*
  - a) *Professor: 2 (Biochemistry: 1, Gen. Medicine:1)*
  - b) *Asso. Prof.: 4 (Anatomy: 1, Biochemistry: 1, Pharmacology: 1, Microbiology:1)*
  - c) *Asst. Prof.: 1 (Anatomy:1)*
  - d) *Tutor: 1 (Anatomy:1)*
  - e) *Most of the senior staff are commuting from distant places like Meerut, Moradabad, Ghaziabad, etc. which are at a distance of 60-70 kms.*
5. *Shortage of Residents is 35.55% (i.e. 16 out of 45) as under:*
  - a) *Senior Resident: 9 (Gen. Medicine:1, Gen. Surgery: 3, ENT: 2, Anaesthesiology: 2, O.G.:1)*
  - b) *Junior Resident: 7 (Gen. Medicine: 1, Gen. Surgery: 1, ENT: 1, Orthopaedics: 1, Ophthalmology: 1, O.G.:2)*
  - c) *Most of the Senior Residents are commuting from distant places like Meerut, Moradabad,*

*Ghaziabad, etc. which are at a distance of 60-70 kms. which is not as per Regulations. Only 1 Senior Resident of Orthopaedics is staying in the campus.*

*6. Other deficiencies as pointed out in the assessment report.”*

- D. MCI, vide its letter dated 10<sup>th</sup> June, 2014 recommended to the UOI to disapprove the scheme for establishment of new medical college submitted by the petitioners;
- E. that on the basis of the compliance / rectification of the deficiencies reported by the petitioners during the hearing given by the UOI on 26<sup>th</sup> and 27<sup>th</sup> June, 2014 under the First Proviso to Section 10A(4) of the MCI Act, the UOI vide its communication dated 1<sup>st</sup> July, 2014 forwarded the compliance / rectification reported by the petitioners to the MCI for review and to conduct compliance verification assessment if necessary and to make fresh recommendations for approval or disapproval;
- F. the Executive Committee of the MCI on 8<sup>th</sup> July, 2014 examined the direction dated 1<sup>st</sup> July, 2014 supra of UOI and concluded that compliance verification could not be considered

without a physical inspection and that it was impermissible for the MCI to conduct any inspection after 15<sup>th</sup> June, 2014;

- G. MCI vide its communication dated 10<sup>th</sup> July, 2014 informed so to the UOI;
- H. UOI vide its final order dated 15<sup>th</sup> July, 2014 to the petitioners disapproved the scheme submitted by the petitioners for establishment of new medical college with effect from the Academic Year 2014-2015;
- I. the petitioners filed W.P.(C) No.652/2014 in the Supreme Court impugning the said disapproval by UOI for the Academic Year 2014-2015 which was on 4<sup>th</sup> August, 2014 dismissed as withdrawn with liberty to approach the High Court;
- J. the petitioners filed Civil Misc. Writ Petition No.41746/2014 before the Allahabad High Court impugning the disapproval by the UOI for the Academic Year 2014-2015; the said writ petition was also on 13<sup>th</sup> August, 2014 dismissed as withdrawn with liberty to file a fresh petition challenging the recommendation of the MCI also;



- K. the petitioners thereafter filed Civil Misc. Writ Petition No.43057/2014 before the Allahabad High Court but in which no order was passed despite several adjournments;
- L. the petitioners again approached the Supreme Court by SLP (C) No.25833/2014 which was disposed of vide order dated 24<sup>th</sup> September, 2014 observing that since the last date prescribed for admission of the students was 30<sup>th</sup> September, 2014, it would be impossible for the MCI or UOI to by that time decide whether to grant approval to the proposed medical college for the Academic year 2014-2015 and directing the MCI to carry out inspection and submit the Report to the UOI for starting a new medical college for the Academic Year 2015-2016;
- M. that in accordance with the aforesaid direction the MCI inspected the proposed medical college and attached hospital of the petitioners on 13<sup>th</sup> and 14<sup>th</sup> October, 2014 for granting permission for the Academic year 2015-2016 and in which inspection found the following deficiencies:-

*“1. (a) Deficiency of teaching faculty is 20% as detailed in the report.*

- (b) Dr. Sharad Gupta, presented as Professor, Paediatrics did not produce original certificates on 13/10/2014 – i.e. first day of assessment. On the next day, he produced original experience certificate which appeared fake. Dean of the institute Dr. R.K. Gupta was present during verification. On suspicion of its genuineness, Dr. Sharad Gupta was confronted after which he had confessed that he is a M.D. Paediatrics practicing in Agra and all his teaching experience certificates are fake. He told that Mr. Vivek Tyagi – Agent in Meerut (Mobile No.8171568767) — was involved in his appointment. The matter was reported to Chairman of the institute Shri Sudhir Giri for further action. One of the relative of Dr. Sharad Gupta along with two other persons entered the room in the evening hours on 14/10/2014 where assessors were preparing the report. They started abusing us and threatened them & their families.
- (c) The following faculty are not working in the hospital but appeared only for MCI assessment as confessed by them on their D.F.:
- (i) Dr. A. Anuragi, Asst. Prof. of Medicine;
  - (ii) Dr. N. Goyal, Asst. Prof. of Medicine &
  - (iii) Dr. P. Chaudhary, Asst. Prof. of Medicine.
2. Shortage of Residents is 11.11% as detailed in the report.
3. Clinical material is inadequate with deficiency of:

- (a) *Indoor bed occupancy: Most of the patients did not require admission and cases are of poor quality for teaching purpose.*
- (b) *Radiological investigations: Records are not maintained.*
- (c) *Residents are not involved in patient care as most of them not staying in the campus and coming from nearby town.*
- (d) *Faculty are also not involved in IPD patient care as can be verified by case papers.*
- 4. *Data of clinical material provided by the institute is inflated. Fake OPD patients and investigations are written in the registers. In IPD most of the patients did not required admission. Case papers did not have patients' notes. Faculty and SR. & JR. were unaware of the details of the patients. They were not involved in patient care.*
- 5. *Most of the patients in ICUs did not require admission. There was no patient in PICU / NICU on day of assessment.*
- 6. *AERB approval is not available for X-ray equipment.*
- 7. *Other deficiencies as pointed out in the assessment report."*

N. MCI, vide its communication dated 28<sup>th</sup> November, 2014 to the UOI accordingly not only recommended disapproval of the scheme for establishment of new medical college for the Academic Year 2015-2016 but also invoked Clause (d) of the

proviso to Regulation 8(3)(1) of the Establishment of Medical College Regulations, 1999 (EMC Regulations);

O. UOI vide its letter dated 3<sup>rd</sup> February, 2015 to the MCI asked the MCI to examine the case of the petitioners in the light of the order dated 24<sup>th</sup> September, 2014 supra of the Supreme Court and also asked the MCI as to how the Clause (a) of the proviso to Regulation 8(3)(1) of the EMC Regulations had been invoked ( I may record that the MCI in its letter dated 28<sup>th</sup> November, 2014 had not invoked Clause (a) but Clause (d) of the proviso);

P. the Executive Committee of the MCI considered the letter dated 3<sup>rd</sup> February, 2015 of the UOI in its meeting held on 2<sup>nd</sup> March, 2015 and vide its letter dated 5<sup>th</sup> March, 2015 to UOI informed that:-

- (i) that the MCI in its letter dated 28<sup>th</sup> November, 2014 had invoked Clause (d) of the proviso to Regulation 8(3)(1) and not Clause (a) as

mentioned by the UOI in its letter dated 3<sup>rd</sup> February, 2015;

- (ii) that Clause (d) of the proviso to Regulation 8(3)(1) had been invoked as the petitioners had indulged in hiring / showing fake faculty and had submitted false declaration forms of the faculty; and,
- (iii) that Clause (d) of the proviso to Regulation 8(3)(1) is applicable in case of scheme for establishment of new medical college also and thus the MCI was reiterating its recommendation of disapproval of the scheme submitted by the petitioners for the Academic Session 2015-2016 also.

Q. UOI on 10<sup>th</sup> April, 2015 granted an opportunity of hearing to the petitioners and in which the petitioners represented that there was no deficiency and they had not employed any faculty member with a fake / forged document and had not submitted any wrong declaration; and,

R. UOI vide its impugned communication dated 15<sup>th</sup> June, 2015 disapproved the scheme for the year 2015-2016 also.

7. The senior counsel for the petitioners contended:-

- (i) that three Judge Bench of the Supreme Court in judgment dated 20<sup>th</sup> August, 2015 in W.P.(C) No.705/2014 titled ***Royal Medical Trust (Regd.) Vs. Union of India*** has held that Court can in individual cases extend the schedule prescribed and thus the dates prescribed in the schedule for grant of permission would not be a deterrent to granting permission to the petitioners as sought if the petitioners are found entitled thereto;
- (ii) that the Supreme Court in ***Royal Medical Trust (Regd.)***, on an interpretation of Section 10A(3) of the MCI Act, has held compliance verification to be necessary and which has not been done in the present case. It was however clarified that the amended Regulation 8(3) was not considered in the said judgment;
- (iii) a draft declaration form, of mis-declaration wherein MCI has accused the petitioners of, was handed over and with respect to

the charge of the MCI, of the petitioners having employed fake doctors it was contended that the Ethics Committee is seized of the issue and till a final decision thereon Clause (d) of the proviso to Regulation 8(3)(1) cannot be applied to the petitioners;

- (iv) that the inspection carried out by the MCI on 13<sup>th</sup> and 14<sup>th</sup> October, 2014 was for the Academic Year 2014-2015 and no inspection has been carried out for grant of permission for the Academic Year 2015-2016;
- (v) that even if it is to be held that the inspection carried out on 13<sup>th</sup> and 14<sup>th</sup> October, 2014 was for the Academic year 2015-2016, that being the only inspection and no compliance verification inspection having been carried out, the petitioners have not been granted opportunity of hearing as laid down by the Supreme Court in *Royal Medical Trust (Regd.)* supra to be given;
- (vi) Clause (d) of the proviso to Regulation 8(3)(1) of the EMC Regulations uses the word 'found' and which is indicative of,

that the charge of having employed teachers with fake / forged documents has to be established before the said Clause can be invoked and as long as the Ethics Committee of the MCI is seized of the question, it cannot be said that the petitioners have been “found” to have employed teachers with fake / forged documents;

- (vii) a download from the website of the MCI was handed over to contend that the MCI itself is declaring that Clause (d) of the proviso to Regulation 8(3)(1) of the EMC Regulations is not applicable to establishment of new medical college;
- (viii) attention was invited to the judgment dated 5<sup>th</sup> August, 2015 of the Division Bench of this Court in W.P.(C) No.6699/2015 titled *Career Institute of Medical Sciences and Hospitals Vs. Union of India* expressing doubts about the interpretation of the proviso to Regulation 8(3)(1) in judgment dated 28<sup>th</sup> May, 2015 in W.P.(C) No.5041/2015 titled *Shree Chhatrapati Shivaji Education Society Vs. Union of India* and accordingly ordering fresh inspection of the medical college;



- (ix) that SLP (C) No.23278-23279/2015 preferred by the MCI against the judgment aforesaid was dismissed though “keeping in view the peculiar facts and circumstances of the case”; and,
- (x) attention was invited to the order dated 11<sup>th</sup> August, 2015 of the Division Bench of this Court in W.P.(C) No.7106/2015 titled ***Malla Reddy Institute of Medical Sciences Vs. Union of India***, also directing the MCI to carry out fresh inspection.

8. Per contra, the senior counsel for the MCI contended:-

- I. that the inspection of the proposed medical college and attached hospital of the petitioners on 13<sup>th</sup> and 14<sup>th</sup> October, 2014 had revealed:-
  - (a) deficiency of teaching faculty of 20%;
  - (b) Dr. Sharad Gupta presented as Professor (Paediatrics) being not able to produce his original certificate on the first day of the inspection and on the next day producing original Experience Certificate which appeared to be fake;

- (c) Dr. Sharad Gupta upon being confronted, having confessed that he is a M.D. Paediatrics practicing in Agra and all his teaching experience certificates are fake and that Mr. Vivek Tyagi, Agent in Meerut was involved in his appointment in the petitioners' proposed medical college;
  - (d) the team of the inspecting doctors having been meted out threat by persons claiming to be relatives of the Chairman of the petitioner no.2 Trust;
  - (e) that three of the faculty members having confessed to be not working in the hospital and having appeared only for inspection; and,
  - (f) shortage of Residents was also 11.11%.
- II. that the inspection on 13<sup>th</sup> and 14<sup>th</sup> October, 2014 was for the Academic Year 2015-2016 and as directed by the Supreme Court vide order dated 24<sup>th</sup> September, 2014 *supra*;
- III. that the need for the UOI to vide its letter dated 1<sup>st</sup> July, 2014 to seek fresh recommendation from the MCI arose in as much as

the MCI after the inspection dated 13<sup>th</sup> and 14<sup>th</sup> October, 2014 had merely sent its Report as was directed by the Supreme Court in order dated 24<sup>th</sup> September, 2014 supra;

- IV. however upon the UOI vide its aforesaid letter dated 1<sup>st</sup> July, 2014 requiring the MCI to also send its recommendation, the recommendation dated 28<sup>th</sup> October, 2014 was sent;
- V. that the pendency of the matter before the Ethics Committee is / irrelevant as the Ethics Committee is concerned only with the action to be taken against the concerned doctors and not concerned with the approval or disapproval of the scheme submitted by the petitioner for establishment of new medical college;
- VI. a compilation of documents with respect to the proceedings before the Ethics Committee was handed over during the hearing and it was informed that the said proceedings are under different Regulations i.e. the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002;

VII. attention was invited to ***Rohilkhand Medical College and Hospital Bareilly Vs. Medical Council of India*** (2013) 15 SCC 516 to contend that it has been laid down that in case false / wrong declaration or fabricated documents have been used for procuring permission, the Institution / College would not be considered for renewal of permission for the next academic year and that the MCI need not wait till culmination of the trial initiated on the basis of charge sheet filed by the Central Bureau of Investigation (CBI);

VIII. attention was invited to ***Hind Charitable Trust Shekhar Hospital Private Limited Vs. Union of India*** (2015) 2 SCC 336 and it was contended that the Supreme Court even while granting general permission for the year 2014-2015 had clarified that the same shall not apply to colleges or institutions which had been disqualified by the MCI and / or the UOI and had been prohibited from making admissions for the reason of having employed teachers with fake degrees / certificates;

IX. that the Head of the Department as well as the Director / Dean / Principal of the proposed medical college on the Declaration

Form are required to certify having verified the certificates / documents submitted by the teachers employed, with the original certificates / documents and with the concerned institute and having found them to be correct and authentic; it was argued that the said endorsement of the petitioners has obviously been found to be false and wrong;

- X. a compilation of the declaration forms of teachers employed submitted by the petitioners along with their scheme, was handed over to show that each one of those has been verified and endorsed by the Head of the Department and the Dean / Director / Principal of the petitioners with respect to the correctness thereof; and,
- XI. that though the petitioners on the said account are liable to be prohibited from applying for establishment permission for a period of two years but the UOI has prohibited them for one year only and qua which, also representation of the petitioners is pending.

9. The senior counsel for the petitioners in rejoinder:-

- (a) drew attention to the format of the scheme for obtaining permission for establishment of a new medical college prescribed in the EMC Regulations and contended that the Supreme Court in ***Royal Medical Trust (Regd.)*** in para 27A has dealt therewith and in accordance wherewith the view taken by the Division Bench of this Court in ***Shree Chhatrapati Shivaji Education Society*** is not correct;
- (b) that Clause (d) of the proviso to Regulation 8(3)(1) cannot be applied without giving a hearing and the same would be against the principles of natural justice;
- (c) that Ethics Committee is concerned not only with the conduct of the doctor concerned but also of the medical college / proposed medical college and for which reason only the petitioners are also being called for hearing before the Ethics Committee;
- (d) that in ***Rohilkhand Medical College and Hospital Bareilly*** supra CBI was conducting the investigation and had filed a

charge sheet; in the present case nothing of this sort has been done; decision in ***Rohilkhand Medical College and Hospital Bareilly*** was owing to the investigation of the CBI and the charge sheet filed by the CBI;

- (e) that the petitioners had not even been furnished the Report of the inspection of 13<sup>th</sup> and 14<sup>th</sup> October, 2014 on the premise that they were not entitled to an opportunity of hearing;
- (f) that the petitioners cannot be condemned without any hearing;
- (g) Clause (d) of the proviso to Regulation 8(3)(1) is not concerned with the grant of permission for establishment of a new medical college and is concerned only with the renewal permissions for subsequent years; and,
- (h) the very fact that the three Judge Bench of the Supreme Court in ***Royal Medical Trust (Regd.)*** supra did not incorporate the observations relied upon by the counsel for the MCI in ***Hind Charitable Trust Shekhar Hospital Private Limited*** supra [which was the interim order in ***Royal Medical Trust (Regd.)***]

is indicative of the MCI during the final hearing having not pressed the said point.

10. The counsel for the MCI on the close of the hearing handed over a copy of the Report of the inspection dated 13<sup>th</sup> and 14<sup>th</sup> October, 2014.

11. The counsel for the petitioners after the judgment had been reserved has filed copy of the judgment dated 1<sup>st</sup> July, 2015 of the Division Bench of the High Court of Madhya Pradesh in W.P.(C) No.7521/2015 titled ***RKDF Medical College Hospital and Research Centre Vs. Union of India*** and the copy of the order dated 8<sup>th</sup> September, 2015 of the Supreme Court in SLP (C) No.19513/2015 preferred thereagainst. The counsel for the petitioners on 16<sup>th</sup> September, 2015 also handed over a copy of the letter dated 14<sup>th</sup> August, 2015 of the UOI to one Dr. Puran Chand Dharmarth Trust and on 17<sup>th</sup> September, 2015 copy of the letter dated 14<sup>th</sup> August, 2015 of UOI to the petitioners on the representation aforesaid of the petitioners to UOI against the application of Clause (d) of the proviso to Regulation 8(3)(1) to the petitioners and informing the petitioners that UOI has decided that the said Clause is applicable only in respect of proposal for renewal of permission subsequent to the establishment of the new medical college and does not apply to the proposals for establishment of new medical colleges and that



since the proposal of the petitioners was for establishment of new medical college, the said Clause would not be applicable to the petitioners.

12. I have considered the rival contentions.

13. In the light of the UOI having now taken a stand that Clause (d) of the proviso to Regulation 8(3)(1) of the EMC Regulations is not applicable qua the petitioners, the need for adjudication on that aspect does not survive. What remains to be considered is, whether disapproval by the UOI of the scheme for establishment of new medical college with effect from the Academic Year 2015-2016 submitted by the petitioners is contrary to the procedure prescribed therefor and if so to what effect.

14. However notwithstanding the fact that UOI has decided not to apply Clause (d) of the proviso to Regulation 8(3)(1) to the petitioners for the reason of having decided that the same is not applicable to cases of establishment of new medical college but only to cases of renewal of permission, I remain quite disturbed by such a Report of the inspection of the petitioners' medical college. I have perused the said Inspection Report of the three Professors of Government Medical Colleges in Bombay and Gujarat and against whom there are no allegations of *mala fides* or having

reported so for extraneous considerations and find them to have *inter alia* reported:-

- A. that the data provided by the petitioners of the attendance in OPD, bed occupancy, surgical procedure, deliveries, radiological examinations, laboratory investigations was inflated;
- B. fake OPD patients and investigations had been entered in the registers;
- C. most of the patients reported as having been admitted did not require admission;
- D. the case papers did not have the patients' notes;
- E. the faculty, senior residents and junior residents were unaware of the details of the patients and were not involved in the patient care;
- F. the patients admitted in the ICCU, MICU and SICU were not required to be admitted therein;
- G. three of the teaching staff, though presented during the inspection, having not been found to be working in the hospital

and having appeared only for inspection / assessment and having confessed so on their Declaration Form; and,

H. one of the teaching staff presented during inspection having produced fake experience certificate and the college having registered First Information Report (FIR) in local Police Station and the declaration and fake experience certificate are attached to the Report.

15. I have wondered whether in the face of the aforesaid findings against the petitioners, can the petitioners be said to be entitled to invoke the equitable jurisdiction under Article 226 of the Constitution of India and to relief thereunder.

16. The answer obviously has to be in the negative.

17. It is not as if the petitioners were not given any opportunity of hearing by the UOI under Section 10A(4). Such opportunity was admittedly granted on 10<sup>th</sup> April, 2015 and the petitioners admit to have therein represented against the findings of the MCI. Though admittedly the copy of the Inspection Report had not been supplied to the petitioners but it cannot be said that the petitioners were prejudiced in any manner therefrom. The

officials of the petitioners are signatory to the Inspection Report and were privy to the inspection and were fully aware of the findings in the inspection. It is for this reason only that they made detailed representation thereagainst. However the said representation was not accepted by the UOI which has vide communication dated 15<sup>th</sup> June, 2015 rejected the same.

18. It thus cannot be said that there is any infraction of the procedure prescribed in Section 10A of the MCI Act.

19. What remains to be considered is the challenge on merits to the decision of the respondent no.2 UOI.

20. However before considering the said challenge, reference may be made to *Manohar Lal Sharma Vs. M.C.I.* (2013) 10 SCC 60 laying down that MCI, while deciding to grant permission or not to grant permission, is not functioning as a *quasi* judicial authority but only as an administrative authority and rigid compliance of rules of natural justice is therefore not contemplated or envisaged. It was further held that Compliance Report is called for only to ascertain whether the deficiencies pointed out were rectified or not and that if the MCI is not satisfied with the manner of compliance, it can conduct a surprise inspection, after that, no further time or

opportunity to rectify the deficiencies is contemplated, nor further opportunity of being heard is provided. The said judgment has not been overruled in *Royal Medical Trust (Regd.)* supra.

21. I have wondered that when the Report of the MCI is, as is in the present case;

- (i) that the clinical data maintained by the petitioners is inflated and that fake entries had been made therein;
- (ii) that the patients found to have been admitted to the hospital in fact did not require admission;
- (iii) that the doctors in the hospital were unaware of the details of the patients and were not involved in the patient care;
- (iv) that the patients admitted in the ICCU, MICU and SICU in fact were not required to be admitted thereto and were admitted only to meet the parameters regarding the same;
- (v) that three of the faculty members produced for headcount during the inspection were in fact found to be not teaching in the hospital and confessed thereto; and,

- (vi) one of the faculty members produced for headcount was found to be with fake experience certificate and admitted to having been shown as faculty only for headcount during the inspection,

What possible compliance verification could have been done.

22. Compliance is of rectifiable defects / deficiencies. There can be no compliance of, to say the least, malpractices, if not fraud, deceit and misrepresentation, in seeking approval. In my opinion, the opportunity of hearing contemplated in the proviso to Section 10A(4) and the opportunity and time to rectify the deficiencies contemplated in Regulation 8(3)(1) would not take within its ambit and inquiry such Report of the inspection.

23. MCI is a Statutory Body vested with expert function of making recommendations for approval or disapproval of establishment of medical college by verifying whether the colleges meet the parameters prescribed therefor. Of course the final decision on the matter has been left to the UOI. UOI during the hearing under the proviso to Section 10A(4) cannot be expected to decide on the challenge to such findings in the Report of inspection forming the basis for the recommendation of the MCI except may

be in a case where the applicant is able to with documents demonstrate that the Report of inspection is obviously incorrect.

24. In the present case, the copies of the declaration forms handed over by the counsel for the MCI during the hearing show that the members / faculty members with respect to whom it is reported that they were produced only for headcount and / or were with fake certificates have under their signatures on the declaration forms earlier signed by them and submitted by the petitioners along with their scheme, admitted so. The petitioners also admit that proceedings before the Ethics Committee are going on.

25. In the face thereof, I am unable to hold the petitioners to be entitled to invoke the writ remedy or to be entitled to any relief. There are findings of gross misrepresentation on the part of the petitioners in seeking establishment permission and such petitioners cannot be said to be entitled to approach the equitable jurisdiction of the Courts, that too after delay.

26. The explanation of the petitioners with respect to the faculty member whose experience certificate was reported to be false is that his appointment was very recent and his qualification and experience were verified from the MCIs website and upon his experience certificate having been found to be

false, appropriate action against him has already been taken. With respect to the three faculty members with respect to whom it was reported that they were produced only for head count during inspection without being employed with the petitioners, it is explained that they had been considered during the previous MCI assessments as can be verified from the teachers profile as updated by the MCI. I am afraid, I am unable to understand the purport of the said explanation. The same does not match with the Report of the inspection.

27. With respect to the Report of inflated clinical material etc. as aforesaid and making admissions to the hospital without there being any need therefore, the petitioners have simply controverted the same. It cannot be decided in this jurisdiction whether what has been reported is correct or the denial thereof by the petitioners is correct. In the absence of any plea of the Inspection Report being guided by extraneous considerations and considering the fact that the inspection is in the exercise of administrative power, I have no hesitation in, at this stage, giving credence to the Inspection Report rather than the denial thereof by the petitioners.

28. As far as other questions arising in this petition, need is not felt to deal therewith having already dealt with the same in, (i) judgment dated 20<sup>th</sup>



August, 2015 in W.P.(C) No.5941/2015 titled ***Jamia Hamdard (Deemed University) Vs. Union of India***; (ii) judgment dated 1<sup>st</sup> September, 2015 in W.P.(C) No. 7128/2015 titled ***Kanachur Islamic Education Trust (R) Vs. The Ministry of Health and Family Welfare***; (iii) judgment dated 16<sup>th</sup> September, 2015 in W.P.(C) No.6529/2015 titled ***Rajshree Educational Trust Vs. Union of India***; (iv) judgment dated 16<sup>th</sup> September, 2015 in W.P.(C) No.7671/2015 titled ***TRR Institute of Medical Sciences Vs. Union of India***; and, (v) judgment dated 18<sup>th</sup> September, 2015 in W.P.(C) No.7414/2015 titled ***Advanced Medical Science and Education Society Vs. Medical Council of India*** in the recent past and in most of which the senior counsel for the petitioners was same as in the present case.

29. The counsel for the petitioners on 18<sup>th</sup> September, 2015 also handed over copy of judgment dated 17<sup>th</sup> September, 2015 of another Single Judge of this Court in W.P.(C) No.7855/2015 titled ***Dr. MGR Educational & Research Institute University Vs. Union of India***. That is found to be turning on its own facts and has no relevance to the issue at hand.

30. The petitioners are thus not found entitled to any relief.

Dismissed.

No costs.

**RAJIV SAHAI ENDLAW, J**

**SEPTEMBER 21, 2015**

‘pp’..