

\$~

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

+ **W.P.(C) No.7106/2015**

*Date of Decision: September 30, 2015*

MALLA REDDY INSTITUTE OF  
MEDICAL SCIENCES & ANR.

..... Petitioners

Through: Mr.Nidhesh Gupta, Sr.Adv. with  
Mr.Amit Kumar, Mr.Ramesh Allanki, Mr.Avijit  
Mani Tripathi, Mr.Ankit Rajgarhia, Advs.

Versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr.Rakesh Kumar, Adv. for UOI.  
Mr.Vikas Singh, Sr.Adv. with Mr.T.Singhdev,  
Adv. for R-2/MCI.

**CORAM:**

**HON'BLE THE CHIEF JUSTICE**

**HON'BLE MR. JUSTICE JAYANT NATH**

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

#### **Ms.G.ROHINI, CHIEF JUSTICE**

1. The petitioner No.1 is a Medical College at Suraram District, Andhra Pradesh which was established with intake capacity of 150 students with effect from Academic Session 2012-13. This petition is filed aggrieved by the order of the first respondent dated 15<sup>th</sup> June, 2015 rejecting the request of the petitioner for renewal of permission for admission in third batch of MBBS course for the Academic Session 2015-16 on the basis of the recommendations of the Medical Council of India (for short 'MCI') and accordingly directing the petitioner not to admit any students for the Academic Session 2015-16.

2. Admittedly, the impugned order dated 15<sup>th</sup> June, 2015 is based upon

the recommendation of the MCI dated 11<sup>th</sup> May, 2015. A perusal of the MCI's recommendation dated 11<sup>th</sup> May, 2015 shows that a surprise inspection was conducted by the MCI on 27<sup>th</sup> and 28<sup>th</sup> May, 2014 in which certain deficiencies were noted including that the Experience Certificate dated 31.07.2008 produced by Dr.D.Aruna, Senior Resident in Medicine with regard to her service as Junior Resident at MNR Medical College from 01.08.2005 to 31.07.2008 is a forged document and therefore the MCI by letter dated 14.06.2014 recommended to the Central Government not to renew the permission. Subsequently by letter dated 03.09.2014, the MCI informed the Central Government its decision to recommend for debarring the petitioner College from admitting students for two Academic Years, i.e., 2014-15 and 2015-16 in terms of Regulation 8(3)(1) proviso (d) of the Establishment of Medical College Regulations, 1991 (hereinafter referred to as 'the Regulations') stating that Dr.Chandrakant Shirolu, Ex-principal of MNR College and presently Principal of the petitioner College had admitted that it was a forged document.

3. It is relevant to note that in the meantime, the petitioner in terms of the directions of the Supreme Court in ***Hind Charitable Trust Shekhar Hospital Pvt. Ltd Vs. Union of India & Ors., W.P.(C) No.469/2014*** dated 18<sup>th</sup> September, 2014 made admissions for the Academic Year 2014-15 after satisfying the conditions imposed by the Supreme Court. Having taken note of the said fact, the Central Government by letter dated 05.01.2015 called for fresh recommendations from the MCI for the Academic Year 2015-16. The MCI replied on 21.01.2015 reiterating its decision dated 03.09.2014. It was further stated by MCI that since the petitioner College has made admissions for Academic Year 2014-15, the MCI has now decided to

recommend to the Central Government to debar the College from admitting students for the Academic Years 2015-16 and 2016-17.

4. In response to the same, the Central Government by letter dated 30.03.2015 directed the MCI to conduct fresh inspection and submit its report to the Ministry pointing out that the earlier letters of the Council were about the proposal for renewal permission for the Academic Year 2014-15 basing on the inspection that was held in May, 2014 whereas the College has already been allowed renewal for the year 2014-15 by the Supreme Court.

5. The MCI declined to conduct fresh inspection and conveyed the same to the Central Government by letter dated 11.05.2015 reiterating its earlier decision to recommend for debarring the petitioner College from admitting students for the Academic Years 2015-16 and 2016-17. Pursuant thereto the impugned order of rejection dated 15.06.2015 came to be passed by the Central Government.

6. It is contended by Sh.Nidhesh Gupta, the learned Senior Counsel appearing for the petitioners that the action of MCI in declining to undertake a fresh inspection for considering the renewal for the Academic Year 2015-16 in spite of the specific directions from the Central Government is contrary to the scheme of Section 10A of the Indian Medical Council Act, 1956 (for short 'the Act'). It is also submitted by the learned Senior Counsel that the alleged production of forged/fabricated documents with regard to the experience of Dr.D.Arana, Senior Resident employed by the petitioner College cannot form the basis for applying the proviso (d) to Regulation 8(3)(1) since the Ethics Committee of the Council is seized of the said issue and the proceedings are still pending. That apart, the petitioner College has already terminated the service of both Dr.D.Arana and Dr.Chandrakant

Shiroli and they are no longer associated with the petitioner College. Therefore, the learned Senior Counsel submits that the MCI is not justified in declining to conduct a fresh inspection as requested by the Central Government for the purpose of renewal for the Academic Year 2015-16.

7. Sh.Vikas Singh, the learned Senior Counsel appearing for the MCI placing reliance upon the decision of the Division Bench of this Court in **W.P.(C) No.5041/2015** titled ***Shree Chhatrapati Shivaji Education Society and Ors. Vs. Union of India & Anr.*** contended that the issue involved in the present petition is squarely covered by the said judgment and, therefore, the petition is liable to be dismissed in limine. It is also contended that in terms of the proviso (d) to Regulation 8(3)(1), the MCI has rightly recommended not to grant renewal for the current and the ensuing Academic Year.

8. However, it is contended by the learned Senior Counsel appearing for the petitioner that the decision in ***Shree Chhatrapati Shivaji*** requires reconsideration in the light of the ratio laid down by the Supreme Court in ***Swamy Devi Dayal Hospital & Dental College Vs Union of India & Ors. (2014) 13 SCC 506***. It is pointed out by the learned Senior Counsel that the decision of the Supreme Court in ***Swamy Devi Dayal (Supra)*** was not cited before the Division Bench while deciding ***Shree Chhatrapati Shivaji***. It is also brought to our notice by the learned Senior Counsel that the ratio laid down in ***Swamy Devi Dayal (supra)*** has been reiterated by a three judge Bench in a recent decision in ***Royal Medical Trust (Regd.) & Anr. Vs. Union of India & Anr., W.P.(C) No.705/2014*** dated 20.08.2015.

9. Having taken note of the law laid down in ***Swamy Devi Dayal & Royal Medical Trust (Supra)***, by order dated 11.09.2015 passed in the present petition, we have referred to a Full Bench for consideration of the

issue whether an opportunity of being heard need be given to the applicant in cases which fall within the ambit of the provisos (a) to (d) to Regulation 8(3)(1) of the Regulations. After considering the issue in detail and following the ratio laid down in *Swamy Devi Dayal (supra)* and *Royal Medical Trust (Regd.) & Anr. Vs. Union of India & Anr., W.P.(C) No.705/2014* dated 20.08.2015, the Full Bench by judgment dated 29.09.2015 held:-

“51. Therefore, we are of the view that it is not open to MCI and/or Central Government to deny an opportunity to the applicant/institute concerned to rectify the deficiencies specified by MCI even in cases which fall within the ambit of the provisos (a) to (d) of Regulation 8(3)(1) of the Regulations. However, it is essential for both MCI and Central Government to observe the time schedule as held in *Royal Medical Trust (supra)*.

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)*.

53. The reference is answered accordingly.”

10. In the light of the legal position noticed above, we are of the view that the impugned action of rejection of renewal of permission to the petitioner No.1 College for the Academic Year 2015-16 is illegal and unsustainable.

11. At the cost of repetition, it may be mentioned that this is a case where

the MCI recommended for rejection of renewal on the basis of the inspection conducted during the Academic Year 2014-15. In spite of being asked by the Central Government to conduct a fresh inspection for the Academic Year 2015-16, MCI declined to do so contending that on application of proviso (d) to Regulation 8(3)(1), the institution is barred for renewal for two academic years and that the same being an absolute bar, the question of fresh inspection does not arise.

12. The contention of MCI that on application of the provisos (a) to (d) to Regulation 8(3)(1), there is no need to undertake inspection for compliance verification, cannot be accepted in the light of the judgment of the Full Bench dated 29.09.2015.

13. Having held so, in the normal course, we would have directed fresh inspection by MCI so as to enable the Central Government to consider the petitioner's request for renewal of permission for the Academic Year 2015-2016. However, as per the time Schedule for the Academic Year 2015-16, the time for inspection expired long back and there is no possibility to undertake an inspection at this point of time.

14. The learned Senior Counsel for the petitioner therefore requested that the petitioner may be permitted to provisionally admit the students subject to grant of permission by the Central Government under Section 10-A of the Medical Council Act. It is also brought to our notice that the High Court of Bombay and High Court of Karnataka have issued directions in similar circumstances for admitting the students provisionally.

15. On a perusal of the report of MCI in respect of the last inspection conducted on 27<sup>th</sup> and 28<sup>th</sup> May, 2014 it appears to us that apart from the allegation that the experience certificate produced by one of the Senior

Residents is a forged document, all other alleged deficiencies are minimal. Even the alleged production of forged/fabricated experience certificate of one of the Senior Residents is subject matter of the proceedings before Ethics Committee of Council. It is a matter of record that in spite of MCI's recommendation not to renew the permission for the Academic Year 2014-15 on the basis of the very same inspection held in May, 2014, the Supreme Court in Hind Charitable Trust (Supra) passed the order dated 18.09.2014 directing MCI to grant permission to all the medical colleges, including the petitioner College, for the Academic Year 2014-15 subject to complying with the conditions specified therein and accordingly the petitioner admitted the students for the Academic Year 2014-15.

16. It may also be stated that the petitioner College is an existing college and has been successfully running the MBBS Course with intake capacity of 150 students from the Academic Year 2012-13 onwards. Under these circumstances, we consider it appropriate to dispose of the writ petition with the following directions:

- i) The impugned order of rejection dated 15.06.2015 shall stand set aside.
- ii) The Central Government shall now re-consider the petitioner's request for renewal of permission for the Academic Year 2015-16 after calling for a fresh inspection report from MCI. Such exercise shall be completed within two weeks from today.
- iii) In the meanwhile, the Central Government shall grant provisional permission to the petitioners to conduct the course for the Academic Year 2015-16 which shall be subject to further orders to be passed by the Central Government.

- iv) The admissions shall be made subject to the fresh order to be passed by the Central Government in terms of direction No.(ii).
  - v) The allotment and admission of students shall be made after giving information to the students in writing that the admission will be subject to the fresh order to be passed by the Central Government.
  - vi) Neither the petitioners nor the students will claim any equity on the basis of the provisional admission.
17. Accordingly, the Writ Petition is disposed of

**CHIEF JUSTICE**

**JAYANT NATH, J**

**SEPTEMBER 30, 2015/anb**