

A MEDICAL COUNCIL OF INDIA
v.
JSS MEDICAL COLLEGE & ANR.
(Civil Appeal No. 274 of 2012)

JANUARY 11, 2012

B [H.L. DATTU AND CHANDRAMAULI KR. PRASAD, JJ.]

Interim order: Maintainability of - Writ petition by medical college seeking increase of seats for MBBS course from 150 to 200 for the academic year 2011-12 - High Court passing an interim order granting permission to increase the intake of MBBS students from 150 to 200 for the academic year 2011-12 - Correctness of - Held: High Court erred in permitting increase in seats by interim order - It ought to have realized that granting such permission by an interim order would have a cascading effect - By virtue of such order, students are admitted and though many of them would take the risk knowingly but few may be ignorant - In most of such cases when finally the issue is decided against the college, the welfare of the students is seriously effected - If on ultimate analysis it is found that the college's claim for increase of seats is untenable, in such an event the admission of students with reference to the increased seats shall be illegal - There cannot be anything more destructive of the rule of law than a direction by the court to allow continuance of such students, whose admissions is found illegal in the ultimate analysis - Courts cannot by its fiat increase the seats, a task entrusted to the Board of Governors, a body vested with the power to carry out the functions and duties of Medical Council of India and that too by interim order - The interim order passed by the High Court is set aside - Education.

The Board of Governors, a body vested with the power to carry out the functions and duties of Medical Council of India rejected the application filed by the

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respondent-medical college for increasing the seats for MBBS course from 150 to 200 for the academic year 2011-12. The respondent-college filed a writ petition before the High Court. The High Court passed an interim order granting permission to increase the intake of MBBS students from 150 to 200 for the academic year. The instant appeal was filed challenging the interim order of the High Court.

Allowing the appeal, the Court

HELD: 1. The High Court erred in permitting increase in seats by interim order. In normal circumstances the High Court should not issue interim order granting permission for increase of the seats. The High Court ought to realize that granting such permission by an interim order has a cascading effect. By virtue of such order students are admitted as in the instant case and though many of them had taken the risk knowingly but few may be ignorant. In most of such cases when finally the issue is decided against the College the welfare and plight of the students are ultimately projected to arouse sympathy of the Court. It results in very awkward and difficult situation. If on ultimate analysis it is found that the College's claim for increase of seats is untenable, in such an event the admission of students with reference to the increased seats shall be illegal. There cannot be anything more destructive of the rule of law than a direction by the court to allow continuance of such students, whose admissions is found illegal in the ultimate analysis. This Court is entrusted with the task to administer law and uphold its majesty. Courts cannot by its fiat increase the seats, a task entrusted to the Board of Governors and that too by interim order. In a matter like the present one, decisions on issues have to be addressed at the interlocutory stage and they can not be deferred or dictated later when serious complications

A might ensue from the interim order itself. The interim order passed by the High Court is unsustainable. [Paras 10, 11] [143-B-F; 144-D]

B *Medical Council of India v. Rajiv Gandhi University of HealthSciences*, (2004) 6 SCC 76 : 2004 (3) SCR 1119 - relied on.

Case Law Reference:

2004 (3) SCR 1119 referred to Para 10

C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 274 of 2012.

D From the Judgment & Order dated 24.08.2011 of the High Court of Karnataka at Bangalore in Writ Petition (Civil) No. 31587 of 2007.

Nidesh Gupta, Amit Kumar, Rekha Bakshi, Ashish Kumar, Avijit Mani Tripathi, Jawahar Narang for the Appellant.

E K.K. Venugopal, Vishvanath Shetty, S. Udaya Kumar Sagar, Bina Madhavan, Sashikiran Shetty, Vinita Sasidharan, Praseena E. Joseph, Lawyer's Knit & Co. for the Respondents.

The Judgment of the Court was delivered by

F **CHANDRAMAULI KR. PRASAD, J.** 1. Medical Council of India, aggrieved by the interim order dated 24th August, 2011 passed by a Division Bench of the Karnataka High Court in Writ Petition No. 31587 of 2011 whereby it had permitted JSS Medical College, Respondent No. 1 herein, to increase the seats for MBBS Course from 150 to 200 for the academic year 2011-2012, has preferred this special leave petition.

G 2. Leave granted.

H 3. In view of the order which we propose to pass in this appeal it is inexpedient to give in detail the facts of the case.

Suffice it to say that JSS Medical College, Respondent No. 1 herein (hereinafter referred to as 'the College'), is recognized for imparting MBBS education with intake capacity of 150 students. On 27th of November, 2010, the College submitted an application for increase of intake capacity for the MBBS Course from the academic year 2011-2012 from 150 to 250. The Board of Governors, the body to which power has been vested to carry out the functions and duties of the Medical Council of India (hereinafter referred to as 'the Board of Governors') appointed assessor by order dated 23rd of February, 2011 to assess the physical and other teaching facilities available for grant of letter of permission for the increase of MBBS seats from 150 to 250 to the College for the academic year 2011-2012.

4. In the light of the aforesaid order the assessor visited the College and made assessment of the physical and other teaching facilities available for grant of letter of permission for increase of MBBS seats from 150 to 250 and submitted its report. The assessment report was considered by the Board of Governors which decided not to issue letter of permission for increase of seats as the infrastructure facilities, clinical material and faculty were inadequate. It also found deficiency in equipments and other deficiencies as pointed out in the assessment report. Accordingly, the Board of Governors by its letter dated 5th of May, 2011 called upon the College to submit its response as to why its proposal for increase of seats be not disapproved and returned. The College by its letter dated 21st May, 2011 submitted its response and claimed that it has adequate infrastructure, clinical material and teaching facilities to meet the teaching and training requirement for the enhanced intake of 250 students and, at the same time, wrote that in the event of the Board of Governors finding that the same are not adequate for granting increase of seats to 250, the request may be considered for enhanced intake from 150 to 200 seats. The compliance report submitted by the College along with assessment reports of the assessor were forwarded by the

A Board of Governors to the assessor by letter dated 1st of June, 2011 for their perusal and for carrying out the assessment for increase of MBBS seats from 150 to 250. It is relevant here to state that the College by its letter dated 3rd of June, 2011 wrote to the Coordinator of the assessment team "to revise the assessment for increase of MBBS seats from 150 to 200 admissions instead of 250 seats". By the said letter the College claimed that it had infrastructure facilities, clinical materials and teaching facilities including the instruments for 200 admissions for MBBS Course.

C 5. The claim for increase of seats from 150 to 250 was considered and the Board of Governors decided "to return the applications as disapproved for increase of seats from 150 to 250" for the academic year 2011-2012 by its letter dated 30th of June, 2011. The College by its letter dated 8th of July, 2011 made request for reconsideration of increase of seats from 150 to 200 inter alia stating that "the team of assessors who visited the College on 3rd of June, 2011 after assessing the seats have not only recommended for continuation of 150 seats but also have recommended for additional 50 seats intake taking into account adequacy of additional facilities, book space, equipment and other facilities". The Board of Governors reconsidered the claim of the College with regard to increase of seats in MBBS Course from 150 seats to 200/250 seats and decided to reiterate its earlier decision as the cut of date for issuance of letter of permission, i.e., 30th of June, 2011 is already over.

G 6. Aggrieved by the same, the College filed the writ petition inter alia praying for quashing the decision of the Board of Governors dated 30th of June, 2011 and 5th of August, 2011 by issuance of a writ in the nature of certiorari or any other appropriate writ and further prayed for issuance of a writ in the nature of mandamus directing the Medical Council of India for issuance of letter of permission for increase of intake in its MBBS Course from 150 to 200 for the year 2011-2012 as also

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to admit 200 students. By way of interim relief the petitioner made the following prayer : A

“Pending disposal of the above writ petition, it is prayed that this Hon’ble Court may be pleased to permit the petitioner institution to admit to an intake of 200 students for its MBBS course as per recommendation of its expert body, subject to further orders of this Hon’ble Court in the interest of justice and equity” B

By the order impugned the High Court passed the following interim order : C

“The petitioner institution is permitted to increase the intake of MBBS students from 150 to 200 for the academic year 2011-2012. Medical Council of India is at liberty to indicate any deficiency if it comes across for the intake of 200 seats in MBBS for the academic year 2011-2012 and direct compliance of the same within three months from the receipt of their communication. D

This order is subject to final result in the writ petition”. E

7. Mr. Nidesh Gupta, Senior Advocate appears on behalf of the appellant whereas Respondent No. 1 is represented by Mr. K.K. Venugopal, Senior Advocate. To put the record straight Senior Counsel representing the parties had addressed us in detail and invited us to finally pronounce the judgment on all issues. At one stage we were inclined to do that but finding that the present appeal is against an interim order and the High Court is yet to finally pronounce the judgment on merits, we declined to take the final call and intend to decide the validity of the interim order only. F G

8. Power to grant final relief implies within itself power to grant interim relief unless it is specifically prohibited by law. However, in the facts and circumstances of the case we are of the opinion that the High Court erred in permitting the increase of the seats by an interim order. It is not in dispute that the Board H

A of Governors for exercise of its statutory power under Section
 10.A of the Medial Council of India Act, 1956 has fixed various
 schedules including last date for submission of the application
 for increase in the seats as also the date till when the Board of
 Governors had to take the decision. It is an admitted position
 B that the College had made request for increase of seats from
 150 to 250 within the time prescribed. It had not filled
 application for increase from 150 seats to 200 seats within the
 time stipulated but made request for increase of 200 seats after
 the assessor's report. It is not on prescribed format but by
 C means of a letter. By that time the schedule fixed for increase
 of seats by the Board of Governors had already expired.

9. In view of these facts, following questions arise for
 consideration:

- D 1. Whether or not the application filed by the College
 later on for consideration of its claim for the reduced
 seat of 200 after the expiry of period will date back
 to the date of original application?
- E 2. Whether or not the application for increase filed
 after the scheduled date is required to be
 considered?
- F 3. Whether or not the assessors exceeded in its
 jurisdiction to consider the claim of the College for
 increase of 200 seats, when undisputedly they were
 assigned the task of assessing the College's claim
 for increase of 250 seats?
- G 4. Whether or not the Board of Governors was right
 in rejecting the claim of the College on the expiry
 of the outer limit by which the decision to increase
 the number of seats was to be taken by it?
- H 5. Whether or not the High Court while exercising the
 power under Article 226 and 227 of the Constitution
 of India could straightaway permit increase of seats

or direct for consideration of the claim by the competent authority? A

10. Without adverting to the aforesaid issues and many other issues which may arise for determination, the High Court, in our opinion, erred in permitting increase in seats by interim order. In normal circumstances the High Court should not issue interim order granting permission for increase of the seats. High Court ought to realize that granting such permission by an interim order has a cascading effect. By virtue of such order students are admitted as in the present case and though many of them had taken the risk knowingly but few may be ignorant. In most of such cases when finally the issue is decided against the College the welfare and plight of the students are ultimately projected to arouse sympathy of the Court. It results in very awkward and difficult situation. If on ultimate analysis it is found that the College's claim for increase of seats is untenable, in such an event the admission of students with reference to the increased seats shall be illegal. We cannot imagine anything more destructive of the rule of law than a direction by the court to allow continuance of such students, whose admissions is found illegal in the ultimate analysis. This Court is entrusted with the task to administer law and uphold its majesty. Courts cannot by its fiat increase the seats, a task entrusted to the Board of Governors and that too by interim order. In a matter like the present one, decisions on issues have to be addressed at the interlocutory stage and they can not be deferred or dictated later when serious complications might ensue from the interim order itself. There are large number of authorities which take this view and instead of burdening this judgment with all those authorities it would be sufficient to refer to a three Judge Bench decision of this Court in the case of *Medical Council of India v. Rajiv Gandhi University of Health Sciences*, (2004) 6 SCC 76, in which it has been held as follows: B
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"14. In the normal circumstances, the High Court ought not to issue an interim order when for the earlier year H

A itself permission had not been granted by the Council. Indeed, by grant of such interim orders students who have been admitted in such institutions would be put to serious jeopardy, apart from the fact whether such institutions could run the medical college without following the law.
B Therefore, we make it clear that the High Court ought not to grant such interim orders in any of the cases where the Council has not granted permission in terms of Section 10-A of the Medical Council Act. If interim orders are granted to those institutions which have been established without
C fulfilling the prescribed conditions to admit students, it will lead to serious jeopardy to the students admitted in these institutions."

11. For all these reasons we are of the opinion that the interim order passed by the High Court is unsustainable. Any
D observation made by us in this judgment is for disposal of the present appeal and shall have no bearing on the merits of the case. Further, as the matter pertains to increase in seats in educational institution, we deem it expedient that the High Court considers and disposes of the case on merit expeditiously.

E 12. Resultantly, we allow this appeal, set aside the impugned interim order of the High Court with the observation aforesaid. However, there shall be no order as to costs.

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Appeal allowed.