

A SUBHARTI MEDICAL COLLEGE

v.

UNION OF INDIA AND ORS.

(Writ Petition (Civil) No. 426 of 2017)

B SEPTEMBER 08, 2017

**[DIPAK MISRA CJI, A. M. KHANWILKAR AND
DR. D. Y. CHANDRACHUD, JJ.]**

C *Education/Educational Institutions – Medical education – MBBS seat – Grant of recognition – Application by appellant-Medical College seeking enhancement of the intake capacity from 100 to 150 MBBS seats for academic session 2017-18 – On inspection, deficiencies noted by MCI regarding bed occupancy – Observations of Hearing Committee that there was no deficiency with regard to the clinical material, faculty or residents as the same was within the permissible limits, however, the Committee did not comment on the factum of bed occupancy noticed in the assessment report – Held: Direction issued to respondents, in particular the MCI, to send its Inspecting Team to the petitioner college and inform the petitioner college about the deficiencies, with option to remove the same – Petitioner college would report its compliance to MCI –*
D *Thereafter, on basis of the report by MCI, the Competent Authority would take final decision – In case the final decision is adverse to the petitioner, it would take recourse to further remedies.*

E *Melmaruvathur Adhiparasakthi Institute of Medical Sciences and Research v. Union of India and Anr. W. P. (C) No. 680 of 2017 – referred to.*

F CIVIL ORIGINAL JURISDICTION: Writ Petition (Civil) No. 426 of 2017.

Under Article 32 of the Constitution of India.

G Mukul Rohtagi, A. Sharan, Sr. Advs., Amitabh Sinha, Vivek Singh, Advs. for the Petitioner.

Maninder Singh, ASG, Vikas Singh, Sr. Adv., Saurabh Mishra, Amit Lal, Ms. Amandeep Kaur, Prateek Bhatia, Dhawal Mohan, Gaurav Sharma, Ms. Deepeika Kalia, R. K. Rathore, Vibhu Shankar Mishra, G. S. Makker, Kuldeep Chauhan, Advs. for the Respondents.

The Judgment of the Court was delivered by

A. M. KHANWILKAR, J. 1. The petitioner college made an application for grant of recognition in respect of MBBS seats (100-150) to the Ministry of Health and Family Welfare, Government of India. That application was forwarded to the Medical Council of India (for short "MCI") for assessment of requisite physical and other teaching facilities for enhancing the intake capacity from 100 to 150 MBBS seats. Pursuant thereto, the MCI deputed its Inspection Team who, in turn, submitted an assessment report dated 27th March, 2017. The report has noted deficiencies inter alia regarding the bed occupancy which was stated to be only 55.27% at 10.00 A.M. on the date of assessment. The said report noted as follows:

"1. Medical college & hospital are part of University campus alongwith other Institutions of the University. No clear-cut boundary of the medical college campus is shown in the compliance.

2. Shortage of Residents is 5.81% as detailed in the report.

3. Bed occupancy is 55.27% at 10 a.m. on day of assessment.

4. There was NIL Normal Delivery & 1 Caesarean Section on day of assessment.

5. Data of clinical material & Casualty attendance provided by Institute appear to be inflated.

6. Casualty: There was NIL patient in Triage area at 10:30 a.m. on day of assessment.

7. In Tb & Chest ward # 11, Nursing Station is blank without any medicines or papers. Deficiency remains the same.

8. Wards: All the corners of the ward are not completely visible from Nursing Stations due to pillars. Sterilized treatment trays are not available in all the wards."

2. On that basis a negative recommendation was submitted by the MCI to the Central Government. That report was placed before the Hearing Committee. The petitioner college was afforded personal hearing before the Hearing Committee on 22nd May, 2017. The Hearing Committee observed that there was no deficiency with regard to the clinical material, faculty or residents as the same was within the

A permissible limits. However, the Hearing Committee did not comment on the factum of bed occupancy noticed in the assessment report, as can be discerned from the extracted chart available in the impugned decision dated 29th August, 2016. The said chart reads thus:

Srl. No.	Deficiencies reported by MCI	Observations of hearing committee
I.	Medical college & hospital are part of University campus alongwith other Institutions of the University. No clear-cut boundary of the medical college campus is shown in the compliance.	The Medical College exists in the University campus and has been recognized as such by MCI.
II.	Shortage of Residents is 5.81% as detailed in the report.	The Shortage of residents is only marginal at 5.81% with the submission rendered by the college it seems to be brought under the permissible limit.
III	Bed Occupancy is 55.27% at 10 a.m. on day of assessment.	
I	There was NIL Normal Delivery & 1 Caesarean Section on day of assessment.	Adequacy of clinical material may have to be verified.
II	Data of clinical material & Casualty attendance provided by Institute appear to be inflated.	In view of the Committee, apparently there is no deficiency of faculty and residents, however the same cannot be said of clinical material. In the given facts, debarring the college for 2 year seem too strict.
III	Casualty: There was NIL patient in Triage area at 10:30 a.m. on day of assessment.	
IV	In Tb & Chest ward # 11, Nursing Station is blank without any medicines or papers. Deficiency remains the same.	
V	Wards: All the corners of the ward are not completely visible from Nursing Stations due to pillars. Sterilized treatment trays are not available in all the wards.	

3. Presumably, because of the deficiencies amongst other regarding bed occupancy; the Competent Authority of the Central Government passed an order on 31st May, 2017, debarring the petitioner college from admitting students for two academic years 2017-18 & 2018-19 and authorising the MCI to encash the bank guarantee of Rs.2 crore offered by the petitioner. Since the order passed by the Competent Authority on 31st May, 2017 was bereft of reasons, this Court vide order dated 1st August, 2017 directed the Competent Authority of the Central Government to give fresh opportunity to the petitioner college and then pass a reasoned order. Pursuant thereto, the Competent Authority of the Central Government has passed a fresh order on 29th August, 2017, which, however, is founded on the recommendation made by the Hearing Committee. It appears that the Central Government had placed the matter before the Hearing Committee in which a member of the newly constituted Oversight Committee (for short, "OC"), constituted by this Court was present. The Hearing Committee could not arrive at any conclusive opinion concerning the bed occupancy deficiency, for it was of the view that physical verification was essential in that regard. Despite such inconclusive findings submitted by the Hearing Committee, the Competent Authority mechanically proceeded to pass the impugned order dated 29th August, 2017. It may be apposite to reproduce the said order:

"13. Whereas in compliance with the above direction of Hon'ble Supreme Court dated 1.8.2017, the Ministry granted hearing to the college on 22.8.2017. A Member of the newly constituted Oversight Committee also attended the Hearing Committee Meeting. The Hearing Committee submitted its second and final report after reviewing all facets of the case on 29.08.2017 to the Ministry with the following conclusion:-

'The Hearing Committee is of the view that the bed occupancy as claimed by the college cannot be validated by this Committee and requires physical verification.'

A copy of the Hearing Committee report containing their observations is enclosed.

14. Now, considering the findings of the Hearing Committee, the Ministry reiterates its earlier decision dated 31.5.2017 to debar the Subharti Medical College, Meerut from admitting students against increased intake i.e. from 100-150 for two

A *academic years i.e. 2017-18 & 2018-19 and authorize the MCI to encash the Bank Guarantee of Rs. 2.00 Crore."*

4. We have heard Mr. Mukul Rohatgi, learned senior counsel appearing for the petitioner college, Mr. Vikas Singh, learned senior counsel appearing for MCI and Mr. Maninder Singh, learned Additional Solicitor General appearing for Union of India. The learned senior counsel for the petitioner has made diverse submissions, including that there is serious doubt about the manner in which the matter proceeded before the Hearing Committee. In that, the Hearing Committee had already concluded the hearing on 22nd August, 2017 but submitted its second and final report after reviewing all facts of the case on 29th August, 2017. This contention has been justly refuted by the learned counsel for the respondents by pointing out that the hearing was concluded on 22nd August, 2017. On that date there was no OC in place. Soon thereafter, the OC was re-constituted by this Court and for that reason, the Competent Authority thought it appropriate to submit the second and final report after reviewing all facets of the case on 29th August, 2017, to which a member of the newly constituted OC was party.

5. The learned counsel for the petitioner college also invited our attention to the relevant record, in particular, the averments in paragraph 18 of the I.A., to buttress his contention that bed occupancy in the petitioner college has never been in doubt. The occupancy position noted in assessment report of March, 2017 was, therefore, unreliable. This argument though attractive at the first blush does not take the matter any further, inasmuch as on the earlier occasion also, the Hearing Committee did not note any finding or observation regarding the bed occupancy deficiency one way or the other. That deficiency being beyond permissible limit, it will not be safe to accede to the request of the petitioner to grant any relief or justify issue of directions to the respondents to allow the petitioner to increase the intake capacity of the college for academic session 2017-18 without proper verification.

6. In another case decided today i.e. *Melmaruvathur Adhiparasakthi Institute of Medical Sciences and Research Vs. Union of India and Anr.*¹, we have come across a similar situation where the Hearing Committee did not give a conclusive opinion/finding regarding the deficiency pertaining to bed occupancy noticed in the

H ¹ W.P.(C) No.680 of 2017

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assessment report dated 21st March, 2017. For the same reasons, we may observe that even though the impugned order cannot stand the test of judicial scrutiny, however, the appropriate course would be to direct the respondents, in particular the MCI, to send its Inspecting Team to the petitioner college within a period of three months and inform the petitioner college about the deficiencies if any, with option to remove the same within the time limit as may be specified in that regard. The petitioner college shall then report its compliance and communicate the removal of deficiencies to MCI, whereafter it will be open to the MCI to verify the position and then prepare its report to be placed before the Competent Authority for being processed further in accordance with law. Final decision be taken by the Competent Authority within one month from receipt of the report from MCI. In the event the final decision is adverse to the petitioner, it will be open to them to take recourse to further remedies as may be available in law.

7. We make it clear that the inspection to be done will be for considering the proposal for enhancement of intake capacity from 100 MBBS seats to 150 seats and if approved, the same be given effect to in academic session 2018-19. In other words, the proposal/application submitted by the petitioner for the academic session 2017-18 be treated as if having been made for academic session 2018-19. The bank guarantee furnished by the petitioner shall not be encashed but the same shall be kept alive until further orders to be passed by the Competent Authority of the Central Government in that behalf.

8. Writ petition is disposed of in the aforementioned terms. No order as to costs.

Nidhi Jain

Writ Petition disposed of.