

IQ CITY FOUNDATION & ANR.

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v.

UNION OF INDIA & ORS.

(Writ Petition (Civil) No. 502 of 2017)

FEBRUARY 06, 2018

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**[DIPAK MISRA, CJI, AMITAVA ROY AND
A. M. KHANWILKAR, JJ.]**

Medical Council Act, 1956 – s.10-A – Petitioner-College sought renewal of permission for admission of 150 students in MBBS course for the academic year 2017-2018 – Rejected by first respondent vide order dtd. 31.05.2017 – Writ petition filed by petitioner for quashing of the said order and for issuing a direction to the said respondent to grant the permission sought by Petitioner – In view of the fact that the order passed by the first respondent was not reasoned, Supreme Court inter alia directed it to afford a further opportunity of hearing to the petitioner and thereafter take a decision – Petitioner-institution afforded an opportunity of hearing – First respondent, considering the remarks of the Hearing Committee reiterated its earlier decision dtd. 31.05.2017 not to renew the permission to admit MBBS students for the academic year 2017-18 – Held: Hearing Committee, on verification of every aspect, found that the deficiency of faculty members was 15.9 and the deficiency of Resident Doctors was 25.88 and, accordingly, it did not recommend for renewal – First respondent, in its turn, observed that the deficiency found was not compatible with the MCI guidelines – In such a situation, it is difficult to hold that there was any perversity in the action of the authorities denying the renewal to the institution – However, it is directed that the prayer for renewal shall be considered for the year 2018-19 and any bank guarantee that has been furnished shall be treated as deposit for the inspection and consideration for the next year, i.e. 2018-19 – Education – Constitution of India – Art.32.

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Disposing of the writ petition, the Court

HELD: 1.1 The petitioner-institution was afforded an opportunity of hearing by the Hearing Committee. The Central

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A **Government, considering the remarks of the Hearing Committee, passed an order. The competent authority of the Central Government, considering various aspects, had reiterated the order. After the remand, the petitioner-institution filed certain documents before the Hearing Committee.[Paras 9-11, 13][594-D-E; 595-F-H]**

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 1.2 The Hearing Committee, on verification of every aspect, found that the deficiency of faculty members was 15.9 and the deficiency of Resident Doctors was 25.88 and, accordingly, it did not recommend for renewal. The Central Government, in its turn, observed that the deficiency found by the MCI was not compatible with the MCI guidelines. In such a situation, it is difficult to hold that there was any perversity in the action of the authorities denying the renewal to the institution. Though the decision of the Central Government is approved, yet it is directed that the prayer for renewal shall be considered for the year 2018-19 and any bank guarantee that has been furnished shall be treated as deposit for the inspection and consideration for the next year, that is, 2018-19. [Para 15][596-E-H; 597-A-B]

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 E *Manohar Lal Sharma v. Medical Council of India and others (2013) 10 SCC 60 : [2013] 9 SCR 325; Medical Council of India v. Kalinga Institute of Medical Sciences (KIMS) and others (2016) 11 SCC 530 : [2016] 4 SCR 403; Royal Medical Trust (Registered) and another v. Union of India and another (2015) 10 SCC 19 – referred to.*

F **Case Law Reference**

[2013] 9 SCR 325	referred to	Para 5
[2016] 4 SCR 403	referred to	Para 5
(2015) 10 SCC 19	referred to	Para 5

G CIVIL ORIGINAL JURISDICTION: Writ Petition (Civil) No. 502 of 2017.

Under Article 32 of the Constitution of India.

H Mukul Rohatgi, Ajit Kumar Sinha, Vikas Singh, Sr. Advs., Kunal Vajani, Nikhil Rohatgi, Pranaya Goyal, Chiranjivi Sharma, Abhirath Thakur, Vipin Kumar, R. K. Rathore, G. S. Makker, Gaurav Sharma,

Ms. Amandeep Kaur, Prateek Bhatia, Dhawal Mohan, Advs. for the appearing parties. A

The Judgment of the Court was delivered by

DIPAK MISRA, CJI 1. The present writ petition, as the circumstances would have it, witnesses a second verdict. The first one was disposed of by us on 1st August, 2017. At that time, we had noted the facts to the effect that the petitioners had prayed for issue of a writ of certiorari for quashment of the order dated 31.05.2017 passed under Section 10-A of the Indian Medical Council Act, 1956 (for brevity, ‘the Act’) by the Secretary, Ministry of Health and Family Welfare, the 1st respondent herein, and further issue a direction to the said respondent to grant permission to the petitioner-College for 4th renewal for the academic year 2017-2018 to facilitate admission of the 5th batch (150 students) MBBS Course. B C

2. The essential facts which have been noted in the earlier judgment are that the Medical Council of India (MCI) had conducted an inspection and granted the Letter of Permission (LOP) on 15.07.2013 for the establishment of the new medical college at Burdwan, West Bengal with an annual intake of 150 students with effect from the academic year 2013-14. Vide letters dated 04.07.2014, 10.06.2015 and 15.12.2015, renewals of permission for the 2nd (1st renewal), 3rd (2nd renewal) and 4th (3rd renewal) batches of MBBS students at the petitioner-College for the academic years 2014-15, 2015-16 and 2016-17 respectively were granted by the respondent No. 1. On 06.07.2016, the petitioner-College submitted its scheme along with the requisite fees for the 4th renewal for the academic year 2017-18 which pertains to admission of the 5th batch of 150 students in MBBS course. On 09.07.2016, the 2nd respondent informed the College that the assessment for renewal of permission for the academic year 2017-18 would be undertaken by the Assessors appointed by it at any time after 15.07.2016 and the petitioners were asked to fill in the Standard Inspection Form A, Form B and Declaration Form for the academic year 2017-18 and keep them ready for scrutiny at the time of assessment. There was also a direction for submission of the soft copies of the said Forms. As averred, the petitioners duly submitted a compact disc containing soft copies of Form A, Form B and Declaration Form and upon receipt of the necessary documents, the 2nd respondent constituted a team of Assessors and directed them to carry out the assessment inspection of the College. The inspection team, that D E F G H

A is, the Assessors, conducted a surprise inspection of the College on 03.11.2016 and 04.11.2016. The Assessors pointed out certain deficiencies to the College and noted the same in the assessment report dated 04.11.2016. It is put forth that in the Regular Inspection Report, the shortfall in Teaching Faculty and Resident Doctors were only 4.5% and 3.50% respectively which were well within the prescribed limit. Two other deficiencies that were pointed out, as asserted, were completely remediable and were duly remedied by the College. On 22.12.2016, the Executive Committee of the respondent No.2 considered the Assessment Report of the Assessors and decided to recommend to the respondent No.1 not to renew the permission to the College for the 4th renewal for the academic year 2017-18. It was also noted that the 1st respondent, by its letter dated 03.02.2017, communicated to the College the recommendation dated 28.01.2017 of the respondent No. 2 for disapproving the permission to the College for the 4th renewal for the academic year 2017-18 and called upon the College to submit a detailed point-wise compliance with documentary evidence. The College was further intimated about the hearing that was to be held on 09.02.2017 before the Hearing Committee. A team of representatives of the College appeared before the Hearing Committee on the date fixed and submitted the compliance report keeping in view the remarks and observations made by the Assessors of the respondent No. 2. In the second week of March, 2017, the petitioners received a copy of the order dated 01.03.2017 issued by the 1st respondent recording the recommendations/ order passed by the Hearing Committee of the respondent No. 1 under Section 10-A(4) of the Act. The recommendation of the Hearing Committee was to the effect that the deficiencies pointed out by the 2nd respondent were not such to warrant disapproval at that stage. Despite the aforesaid findings of the Hearing Committee, the 1st respondent, instead of taking a final decision, referred the matter back to the respondent No.2 to review the same in the light of the recommendations/ findings of the Hearing Committee along with documents submitted by the petitioners and to furnish its recommendation.

G 3. On the earlier occasion, it was asserted that the 2nd respondent, on 17.03.2017, constituted a team to carry out a Compliance Verification Assessment of the College. The team of Assessors, instead of carrying out a compliance verification, conducted a regular inspection on 21.03.2017 in a random manner and proceeded to make a different kind

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of assessment instead of limiting to their scope of reviewing the compliance of the remarks/observations of the Hearing Committee. At this juncture, it was contended that though the Compliance Inspection Report was submitted, yet the Assessors required the College to submit a representation and, accordingly, the College submitted the necessary representation to the respondent No. 2. The Assessors, as per the stand of the petitioners, noted certain deficiencies in their Compliance Verification. The Executive Committee of the respondent No. 2 held its meeting on 28.04.2017 but the minutes of the meeting were not uploaded on the official website of the respondent No. 2 until 29.05.2017 and were not communicated to the petitioners.

4. On earlierst occasion, it was submitted that the petitioner had approached the 1st respondent on 20.5.2017 and submitted a detailed representation with regard to compliance verification of the deficiencies found by the assessors as pointed by the Respondent No. 2. Despite the same, the 1st respondent, vide order dated 31.5.2017, accepted the recommendation of the 2nd respondent and rejected the scheme of permission for the 4th renewal (Admission of the 5th batch of 150 students in MBBS course) for the academic year 2017-2018. It was urged that the order dated 31.5.2017 was communicated to the college on 30.6.2017. That apart, it was highlighted that the entire approach of the MCI was contradictory to the Act and the Establishment of Medical College Regulations, 1999 (for short, 'the Regulations') and further when the Central Government had sent back the matter to the MCI to have a relook at certain aspects, it could not have proceeded for a fresh compliance inspection.

5. The contentions raised by the petitioners were opposed by the MCI. This Court, referring to the decisions in *Manohar Lal Sharma v. Medical Council of India and others*¹, *Medical Council of India v. Kalinga Institute of Medical Sciences (KIMS) and others*² and *Royal Medical Trust (Registered) and another v. Union of India and another*³ and thereafter referring to Section 10-A of the Act and the Regulations, opined thus:-

“29. On a reading of Section 10-A of the Act, Rules and the Regulations, as has been referred to in *Manohar Lal Sharma*

¹(2013) 10 SCC 60

²(2016) 11 SCC 530

³(2015) 10 SCC 19

A (supra), and the view expressed in *Royal Medical Trust* (supra),
it would be inapposite to restrict the power of the MCI by laying
down as an absolute principle that once the Central Government
sends back the matter to MCI for compliance verification and the
Assessors visit the College they shall only verify the mentioned
B items and turn a Nelson's eye even if they perceive certain other
deficiencies. It would be playing possum. The direction of the
Central Government for compliance verification report should not
be construed as a limited remand as is understood within the
framework of Code of Civil Procedure or any other law. The
distinction between the principles of open remand and limited
C remand, we are disposed to think, is not attracted. Be it clearly
stated, the said principle also does not flow from the authority in
Royal Medical Trust (supra). In this context, the objectivity of
the Hearing Committee and the role of the Central Government
assume great significance. The real compliant institutions should
not always be kept under the sword of Damocles. Stability can be
D brought by affirmative role played by the Central Government.
And the stability and objectivity would be perceptible if reasons
are ascribed while expressing a view and absence of reasons
makes the decision sensitively susceptible.”

E 6. After so holding, the Court took note of the fact that the order
passed by the Central Government is not a reasoned one and in that
backdrop, this Court directed:-

F “It is obligatory on its part to ascribe reasons. For the said purpose,
we would like the Central Government to afford a further
opportunity of hearing to the petitioners and also take the assistance
of the newly constituted Oversight Committee as per the order
dated July 18, 2017 passed by the Constitution Bench in Writ
Petition (Civil) No. 408 of 2017 titled *Amma Chandravati
G Educational and Charitable Trust and others v. Union of India
and another* and thereafter take a decision within two weeks.
Needless to say, the decision shall contain reasons. We repeat at
the cost of repetition that the decision must be an informed one.”

7. To appreciate the controversy, we may first record the letter
dated 21.3.2017 before the order of remand. The said letter written by
the petitioner to the MCI reads thus:-

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“In connection with the above subject I would like to submit the following paragraph for your kind consideration. A

1. That during the last MCI inspection held on 3rd and 4th Nov 2016 our Faculty & Resident deficiency was 2.18 and 3.38 respectively. However on 21.03.2017 surprise inspection and due to their personal commitment they could not come by 11 AM and could not appear before the assessors. B

2. Secondly, the State NEET Post Graduate counseling and the Diplomat in National Board (DNB) counseling in process, many of the senior and Junior Residents and few faculty members had gone to KOLKATA for their counseling hence were not able to appear in the inspection conducted on 21.03.2017. C

3. Thirdly most of these faculties and residents are working with us since long time and kind of documentary proof for the same can be submitted, but because of the counseling they were unable to make it. D

4. It will not be out of place to mention here that our faculties and residents had gone to attend medical camps in suburban areas as such they could not reach by 11 AM to appear before the assessors.

Hence their absence may kindly be considered to offset the faculty and resident deficiency.” E

8. Another letter was issued on 10.4.2017. The relevant part of the said communication reads thus:-

“(3)th That for our 4th renewal inspection we were inspected on 3rd & 4th November 2016 & a subsequent compliance inspection was conducted on 21st March, 2017. F

(4) That on 21st March when the surprise compliance inspection was conducted, few of our facility & residents were on deputation for attending our regular Medical camps on the rural areas. In view of the inspection these facilities & residents were called back to the hospital & college but by the time they arrived the time for signing the attendance sheet was over i.e. 11 a.m. They were denied signing in the attendance sheet and were not considered during the head count which lead to deficiency of faculty and residents – 15.99% and 25.88% respectively, even G

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A though our deficiency was less than 5% for both categories in the inspection held on 3rd and 4th November 2016.

(5) That on 22nd March 2017 we also sent one representation letter along with photograph of few of our medical camps which were going on vide letter no IQMC/2016-17/09 dated 21/03/2017.

B The photographs are once again enclosed.

(6) That we are an established running medical college and hospital with more than thousand employees working having all the requisite infrastructure, faculties and residents and clinical materials as per the council norms.”

C And again:-

“Hence, it is requested that our faculty & resident deficiency on the day of the inspection may kindly be considered sympathetically and permission may be accorded to us to admit the 5th batch of 150 students and continue our services in Medical Education & Health Care Services.”

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9. As the facts would show, the petitioner-institution was afforded an opportunity of hearing by the Hearing Committee which, thereafter, recorded the following findings:-

E “1. On detailed examination of the documents, the deficiency of the faulty still persisting. Hence not acceptable.

2. The shortage of Residents is 25.88% (maximum acceptable is 5%).

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3. It has been recorded in the Minutes of the MCI meeting that the Assessor resorted to only random checking of OPDs in just three Departments, namely TB & Respiratory, ENT and Psychiatry Department and has arrived at a figure without counting the total number of patients registered in all the Departments, which seems unreasonable and inaccurate.

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4. Student hostel: The college authorities are producing the Chartered Architect Certificate on completion and occupancy of the hostel (to be verified).

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5. The Anatomy Department had the requisite number of mounted/unmounted specimens on the date of inspection and is being treated as complied with.

Conclusion: The deficiency of faculty found by assessor was 15.9% and was accepted by the College. The reasons provided by the college for this deficiency are not compatible with MCI guidelines of acceptable leave. Also the deficiency of Residents was 25.88%. Therefore, renewal is not recommended.” A

10. The Central Government, considering the remarks of the Hearing Committee, passed an order which is to the following effect:- B

“10. Now, therefore, in compliance with the above direction of Hon’ble Supreme Court, the Ministry granted hearing to the college on 22.08.2017. A Member of the newly constituted Oversight Committee also attended the Hearing Committee meeting. The Hearing Committee submitted its report to the Ministry with the following conclusion:- C

The deficiency of faculty by assessor was 15.9% and was accepted by the College. The reasons provided by the College for this deficiency are not compatible with MCI guidelines of acceptable leave. Also the deficiency was 25.88%. Therefore, renewal is not recommended. D

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

11. Accepting the recommendations of the Hearing Committee, the Ministry reiterates its earlier decision dated 31.05.2017 not to renew the permission to admit MBBS students at IQ City Medical College, Burdwan for the academic year 2017-18.” E

11. Thus, it is demonstrable that the competent authority of the Central Government, considering various aspects, had reiterated the order. F

12. We have heard Mr. Mukul Rohatgi and Mr. P.S. Patwalia, learned senior counsel for the petitioners, and Mr. Ajit Kumar Sinha, learned senior counsel for the 1st respondent, and Mr. Vikas Singh, learned senior counsel along with Mr. Gaurav Sharma, learned counsel for the 2nd respondent, MCI. G

13. We may note here with profit that after the remand, the petitioner-institution filed certain documents before the Hearing Committee on 22.8.2017.

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A 14. The petitioner-institution also filed salary slips of the teaching
faculty and salary slips of Senior Resident Doctors and Junior Resident
Doctors before the Hearing Committee. The said documents have also
been brought on record. Paragraph 14 of the letter dated 22.8.2017 by
the petitioner-institution to the Secretary, Ministry of Health and Family
Welfare, Government of India reads as under:-

B “It needs to be mentioned that our Teaching Hospital has received
C accolades from a team of 7 International Doctors headed by Dr.
Partha Sadhu and Dr. Klas Erik Kaspersson of “SMILE” and
“INGA-International Foundation” who are carrying out a major
camp for corrective surgery of Cleft Lip/Cleft Palate in our Medical
College & Hospital from 16th August, 2017 to 24th August, 2017
under the name and style called “OPERATION SMILE”. A total
of 87 corrective surgeries for Cleft Lip and Cleft Palate have
already been performed as of date in our Hospital during the said
period. The Operation Smile and INGA International Foundation
D have till date conducted more than 100 such camps and performed
more than 29,000 surgeries, Pan India. The said “SMILE” and
“INGA- International Foundation” have issued a letter of
appreciation to our College and Hospital stating that it is rare to
find such outstanding “State-of-the-Art” Medical and
E infrastructure facilities.”

F 15. That apart, the details of OPD patients between 15.3.2017 to
29.3.2017 have also been filed before the Hearing Committee as well as
this Court. The grievance that has been vehemently agitated is that, had
the Hearing Committee scrutinized the documents and appreciated the
stand of the institution in proper perspective, the opinion of the Hearing
Committee would have been quite different and as a corollary, the view
of the Central Government would have been guided in an affirmative
way in favour of the institution. The aforesaid submission, on a first
blush, looks quite attractive but, on a keener scrutiny, pales into total
insignificance. We are disposed to think so inasmuch as the Hearing
G Committee, on verification of every aspect, found that the deficiency of
faculty members was 15.9 and the deficiency of Resident Doctors was
25.88 and, accordingly, it did not recommend for renewal. The Central
Government, in its turn, observed that the deficiency found by the MCI
was not compatible with the MCI guidelines. In such a situation, it is
difficult to hold that there has been any perversity in the action of the
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authorities denying the renewal to the institution. Though we have given A
the stamp of approval to the decision of the Central Government, yet we
are inclined to direct that the prayer for renewal shall be considered for
the year 2018-19 and any bank guarantee that has been furnished shall
be treated as deposit for the inspection and consideration for the next
year, that is, 2018-19. Be it clearly stated, our opinion is restricted to the B
non-granting of renewal for the year 2017-18 and not an expression of
opinion with regard to the consideration of the prayer for 2018-19.

16. The writ petition is accordingly disposed of without any order
as to costs.

Divya Pandey

Writ Petition disposed of.