

CASE NO.:
Appeal (civil) 3237 of 1999

PETITIONER:
UNION OF INDIA & ORS.

Vs.

RESPONDENT:
ALL INDIA CHILDREN CARE & EDUCATIONAL DEVELOPMENT SOCIETY, AZAMGARH & ANR.

DATE OF JUDGMENT: 11/03/2002

BENCH:
S. Rajendra Babu & Ruma Pal

JUDGMENT:

[WITH C.A. NO 1992 OF 2002 (arising out of Special Leave Petition (C) No. 13876/1999)]

J U D G M E N T

RAJENDRA BABU, J. :

Leave granted in SLP (C) No. 13876/1999. This appeal is also heard along with Civil Appeal No. 3237/1999.

In Civil Appeal No. 3237/1999 the challenge is to an order made by the High Court in a writ petition filed assailing two orders dated 8.5.1998 and 22.5.1998 and seeking for a direction not to interfere with the peaceful establishment and running of a medical college at Azamgarh by the respondent society.

The High Court took the view that there is a deemed approval of the Central Government in respect of the scheme submitted by the respondent society in terms of Section 10A(5) of the Indian Medical Council Act, 1956 [hereinafter referred to as 'the Act'] and on that basis the orders dated 8.5.1998 and 22.5.1998 stood quashed. The appellants contended before the High Court that the respondent society does not fulfil the statutory pre-conditions required to be fulfilled before making an application to attract the deemed approval of Section 10A(5) of the Act. They submitted that a scheme of making of an application purported to be under Section 10A(2) of the Act by itself is not a proper and valid application because it has got to fulfil all the conditions requisite for the same. According to the appellants, there is no complete application at the relevant time and such an application came only in the year 1997 and that a mere proposal to establish a medical college would not amount to making of a scheme and that on 9.1.1998, the Executive Committee of the Medical Council of India [hereinafter referred to as 'the Council'] had recommended issuance of a letter of intent in favour of respondent society to start a medical college at Azamgarh for 50 admissions annually. Thereafter, several inspections took place but there was no fulfilment of the requirements at all.

Under Section 10A(1) of the Act, it is provided that no person shall establish a medical college or shall open a new or higher course of study or training or increase its admission capacity in any course of study or training except with the previous permission of the Central Government obtained in accordance with the provisions of the section. Clause (a) of sub-section (2) of Section 10A of the Act provides that every person or

medical college shall, for the purpose of obtaining permission under sub-section (1), submit to the Central Government a scheme in accordance with the provisions of clause (b) and the Central Government shall refer the scheme to the Council for its recommendations. Under clause (b) of Section 10A(2) it is laid down that the scheme referred to in clause (a) shall be in such form and contain such particulars and be preferred in such manner and be accompanied with such fee as may be prescribed. In terms of Section 10A(3) of the Act, the Council, on receipt of a scheme under sub-section (2), may obtain such other particulars as may be considered necessary by it from the person or the medical college concerned and thereafter it may, if the scheme is defective and does not contain any necessary particulars, give a reasonable opportunity to the person or the medical college concerned for making a written representation and it shall be open to such person or medical college to rectify the defects, if any, specified by the Council and may also consider the scheme, having regard to the factors referred to in sub-section (7) and submit the scheme together with its recommendations thereon to the Central Government. Section 10A(4) of the Act provides that the Central Government may, after considering the scheme and the recommendations of the Council and after obtaining where necessary such other particulars as may be considered necessary by it from the person or college concerned, and having regard to the factors referred to in sub-section (7), either approve, with such conditions, if any, as it may consider necessary, or disapprove the scheme and any such approval shall be a permission under sub-section (1). However, in the first proviso to sub-section (4) it is prescribed that no scheme shall be disapproved by the Central Government except after giving the person or college concerned reasonable opportunity of being heard and in the second proviso it is laid down that even if a scheme has been disapproved, the same shall not prevent any person or medical college whose scheme has been disapproved to submit a fresh scheme and the provisions of the section shall apply to such scheme as if such scheme has been submitted afresh. Section 10A(5) provides that if within a period of one year from the date of submission of the scheme to the Central Government under sub-section (2), no order passed by the Central Government has been communicated to the person or college submitting the scheme, such scheme shall be deemed to have been approved by the Central Government in the form in which it had been submitted and accordingly the permission of the Central Government required under sub-section (1) shall also be deemed to have been granted. However, in computing the time-limit specified in sub-section (5) the time taken by the person or college concerned submitting the scheme, in furnishing the particulars called for by the Council shall be excluded.

From a perusal of the scheme contained in Section 10A of the Act, it is evident that an application submitted in full compliance with the statutory and mandatory pre-conditions laid down under Section 10A of the Act alone would be entitled to the benefit of deeming approval. In the present case, respondent society had to fulfil the requirement of owning and managing 300 beds hospital and details whereof shall be incorporated in the application as made under Section 10A(2) of the Act to the Central Government. The respondent has not till date fulfilled all the requirements, which it is under an obligation to fulfil on the date of making of the application. On the date of submission of the application, the respondent society did not own and possess a hospital of 300 beds apart from not having sufficient staff and enough clinical facilities. The High Court lost sight of the fact that there was mere proposal from the respondent society for grant of permission for establishing a new medical college. At that stage, examination of the claims for approval had not been made and the Central Government had asked for proof relating to the ownership and management of 300 bedded hospital as also the required land and, therefore, a letter was sent on 4.10.1996 by the Central Government to the respondent society to submit the proof in this regard and there was no response to that letter till 17.2.1997, when the Central Government received a reply from the respondent society

indicating that the Department of Health, State of U.P. was willing to create an arrangement by providing the District Hospital, Azamgarh for the purpose of teaching hospital on certain conditions. But the norms of the Council was that the teaching hospital should be owned and managed by the applicant. On 21.3.1997, the Central Government was informed that the arrangement sought to be made between the Department of Health, State of U.P. and the respondent society was revoked. Thus when there was no fulfilment of the condition required under the Act and that aspect not having been examined by the High Court, we cannot sustain the order made by the High Court. However, at this stage, it is pertinent to state that considering the fact that a large number students will be affected, this Court by an order made on 4.5.2001 stated as follows:

"Having perused the statements furnished by the College and the Medical Council of India and also the letter of the Director General of the Medical College of the State of U.P. in regard to compliance of requirements of 1993 Regulations, we are of the opinion that it would be just and appropriate to permit the College to start after making due arrangements, imparting institution to the existing students who have passed 1st year of the MBBS course within two weeks from today. The College shall be inspected by the Medical Council of India with reference to the deficiencies pointed out as per the standards fixed in 1993 Regulations in the first week of August 2001 after due notice to the applicant-respondent College. The report whereof shall be submitted in this Court in the 2nd week of August 2001 by the MCI. Further orders on the I.As will be passed on the basis of inspection report of MCI. However, we make it clear that if the college does not come up to the standards fixed under 1993 Regulations, we will be constrained to consider the question of ordering closure of the College and at that stage appropriate order for the absorption of the students in other colleges of Uttar Pradesh will be passed, if considered necessary. We also make it clear that this arrangement is without prejudice to the contentions raised by the Medical Council of India in the appeal."

Even thereafter, it is submitted that inspection was not allowed by the respondent society on one specious reason or the other. In the circumstances, when the respondent society has not fulfilled the requirements nor has allowed the appellants to conduct the appropriate inspection, we have no option but to set aside the order made by the High Court and dismiss the writ petitions filed by the respondent society.

Both appeals shall stand allowed accordingly. No costs.

...J.
[S. RAJENDRA BABU]

...J.
[RUMA PAL]

MARCH 11, 2002.