

‘REPORTABLE’

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO.26278 OF 2015

SARASWATI MEDICAL COLLEGEPETITIONER(S)

VERSUS

UNION OF INDIA AND ANR.RESPONDENT(S)

ORDER

M. Y. EQBAL, J.

The petitioner-College has preferred this special leave petition against the impugned judgment and order dated 02.09.2015 passed by the Delhi High Court in Writ Petition (Civil) No. 8385 of 2015 whereby the High Court dismissed the said writ petition following the judgment dated 20th August, 2015 in ***Jamia Hamdard (Deemed University) vs. Union of India*** and the judgment dated 1st September, 2015 in ***Kanchan Islamic Education Trust (R) vs. Union of India.***

2. In the aforesaid writ petition, the petitioner challenged the communication dated 15.06.2015 of respondent no.1 – The Ministry of Health and Family Welfare (for short 'UOI') disapproving the application of the petitioner for establishment of a new medical college with effect from the academic year 2015-16. A further direction was sought for by the petitioner in the writ petition directing respondent no.1-Union of India to grant Letter of Permission (LOP) to the petitioner for starting of a new Medical College with 150 admission capacity in MBBS course at Unnao, Uttar Pradesh for the academic year 2015-16.

3. It appears that in August, 2014, the Chhatrapati Shahuji Maharaj University, Kanpur, on the report of the Local Enquiry Committee, gave affiliation for the proposed course of MBBS with a total intake of 150 seats. The essentiality certificate for starting MBBS course at petitioner's institution was also issued by the Government of Uttar Pradesh in August, 2014. The Medical Council of India conducted the inspection of the medical college in January, 2015 through an Assessor and pointed out

certain deficiencies in regard to the Faculty, Resident Doctors, Bed occupancy, Clinical material, Lecture Theatre, Hostels, Residential Quarters etc. and the respondent no.2-MCI decided to return the application for establishment of a new medical college with a direction to submit compliance of the deficiencies along with documentary evidence within a month. The petitioner submitted the compliance report with documentary evidence to Medical Council of India. Thereafter the respondent-MCI conducted compliance assessment of the petitioner's institution and submitted a report. It is alleged by the petitioner that though it had removed all the shortcomings and deficiencies that were pointed out in the earlier assessment but the Assessors of the MCI once again pointed out new deficiencies in the college i.e. shortage of Resident Doctors, non-staying of all Resident Doctors in campus, non-functional hostel rooms. The Assessors found that the faculty deficiency has been rectified from 56% to meager 6.6% and for residential quarters, 16 quarters are available against requirement of 20 as per Regulation for Non-Teaching Staff. The Petitioner also submitted

representation to the MCI clarifying its stand regarding the alleged new deficiencies.

4. The Union of India consequently by letter dated 15.06.2015, communicated to the petitioner its decision to disapprove the scheme submitted by the petitioner for establishment of new medical college on the basis of the recommendations made by the MCI. The said decisions of the respondents were assailed by filing a writ petition before the High Court. The High Court by impugned order dated 2.9.2015 dismissed the writ petition in continuation of the order dated 1.9.2015 passed by it in another Writ Petition (Civil) No.7128 of 2015.

5. Mr. Nidhesh Gupta, learned Senior Counsel appearing for the petitioner, submitted that all deficiencies which were pointed out by the respondent-MCI after conducting inspection have been rectified and all defects were removed which is evident from the compliance verification done by the respondent-MCI. The deficiencies subsequently pointed out by the respondent-MCI on surprise inspection, were

never shown in the earlier report. According to Mr. Gupta, learned Senior Counsel, there is no deficiency of faculty and all Resident Doctors are residing in campus in their pre-allotted accommodations. The resident hostels have fully functional attached toilets in each room. On the day of inspection, 24 Junior Residents, 18 Senior Residents and 58 faculty members were physically present in the campus and the biometric attendance for the month of March, 2015 including the day of inspection was submitted to the MCI. It has been further contended on behalf of the petitioner that on the day of inspection there were four patients in the ICCU, 4 patients in the SICU, 3 babies in the NICH and two children in the PICU and there is no deficiency in Histopathology and Cytopathology work and on an average 3-4 Histopathologies and 10-12 Cytopathologies are performed per day.

6. Mr. Gupta, learned Senior Counsel, contended that neither the inspection was conducted in accordance with the procedure prescribed in the Acts and Regulations nor the respondent-MCI team in the surprise inspection visited

different departments and wards of the hospital. Further in terms of Section 10A(3)(a) & (4) after compliance verification of the first inspection opportunity of hearing ought to have been given to the petitioner.

7. On the other hand, Mr. Vikas Singh, learned Senior Counsel appearing for the respondent-MCI, at the very outset, submits that in the surprise inspection, many deficiencies were found in the hospital which have been pointed out distinctly in the report. The report so prepared by the team of the respondent-MCI has been countersigned by the petitioner. Mr. Vikas Singh, learned Senior Counsel appearing for the respondent-MCI, therefore, contends that the petitioner's institution has been inspected twice but the deficiencies pointed out in the first inspection were still found there.

8. We have gone through the rival contentions made by the learned counsel appearing for the parties. In our considered opinion, neither the petitioner removed all the deficiencies nor the respondent-Medical Council of India

strictly followed the procedure and the requirements contained in the Act and the Regulations.

9. In the facts and circumstances, we direct the respondent-Medical Council of India to conduct fresh inspection in accordance with the procedure provided in the Act and the Regulations within a period of two months from today and submit the report. If any deficiency is still found, then also to consider whether that is remediable or not. On receipt of the final report, the Union of India shall take a decision within a month thereafter to enable the petitioner to start the process for the academic year 2016-2017.

10. With the aforesaid directions this Special Leave Petition stands disposed of.

.....J
[M. Y. EQBAL]

.....J
[C. NAGAPPAN]

NEW DELHI;
SEPTEMBER 30, 2015.

SUPREME COURT OF INDIA



JUDGMENT