Reportable

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6001 OF 2018
(Arising out of Special Leave Petition (Civil) No.14972 of 2018)

Medical Council of India ……Appellant

Versus

N.C. Medical College and Hospital and Ors. ..…. Respondents

JUDGMENT

Uday Umesh Lalit, J.

Leave granted.

2. This appeal questions the correctness of interim order dated 29.05.2018 passed by the High Court of Punjab and Haryana in Civil Writ Petition No.13366 of 2018 and thereby permitting the Respondent Medical College to go ahead with admissions to first MBBS Course for the Academic Session 2018-19.

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Date: 2018.07.04 15:08:36 IST
Reason:

3. Shanti Devi Charitable Trust made an application for establishment of a new Medical College in the name and style of NC Medical College and

Hospital, Panipat for the Academic Sessions 2016-17. An assessment was accordingly undertaken by the assessors appointed by Medical Council of India (MCI, for short) who found as many as 25 deficiencies. By its letter dated 30.12.2015, MCI recommended to the Central Government not to issue letter of permission for establishment of said college for the Academic Year 2016-17. In compliance verification carried out by MCI on 01.04.2016 the deficiencies were still found to be existing and as such MCI vide letter dated 14.05.2016 again recommended disapproval of the scheme for the Academic Year 2016-17.

4. The Central Government accepted such negative recommendation and disapproved the scheme so proposed. However, the Supreme Court mandated Oversight Committee vide letter dated 11.08.2016 approved the scheme and as such admissions to 1st MBBS Course for the Academic Year 2016-17 with intake of 150 seats could be made by the Respondent College. Since such approval was subject to certain conditions, a further verification was undertaken by MCI on 7/8.11.2016 to assess whether those conditions were complied with or not. This assessment was again considered by the Executive Committee of MCI and in its noting dated 22.12.2016, the deficiencies were still found to be persisting. MCI by its letter dated

26.12.2016 informed the Central Government that since the Respondent College had failed to abide by the undertaking, it be debarred from admitting students for two academic sessions namely 2017-18 and 2018-19 and the bank guarantee be encashed. The Central Government approved the report submitted by MCI. The matter was again placed before the Supreme Court mandated Oversight Committee which directed that a further opportunity be given to the Respondent College and an assessment be made whether the Respondent College had complied with the conditions. The matter was again considered and the Central Government accepted the recommendations of MCI, and by its order dated 09.06.2017 debarred the Respondent College from admitting students for two years namely 2017-18 and 2018-19 and authorized MCI to encash the bank guarantee of Rs.2 crores.

5. The aforesaid order dated 09.06.2017 was questioned in this Court by way of Writ Petition No.432 of 2017 and by its order dated 01.08.2017 this Court directed the Central Government to re-consider the case and pass a reasoned order. Pursuant thereto, the Central Government by its reasoned order dated 10.08.2017 reiterated its earlier decision dated 09.06.2017. When aforesaid Writ Petition No.423 of 2017 was again listed on

09.10.2017, MCI was directed to conduct physical inspection for grant of permission for the Academic Session 2018-2019 as per MCI regulations. In compliance, the physical assessment was carried out by the assessors of MCI on 17/18.11.2017 and the report found various deficiencies of Infrastructure, Teaching Faculty, Clinical Material and other physical facilities. Executive Council of MCI therefore by its decision dated 14.12.2017 decided to recommend to the Central Government not to grant renewal permission for admitting students for the academic year 2018-2019. Said writ petition No.432 of 2017 was thereafter disposed of by this Court on 17.01.2018 directing MCI to take proper decision on or before 31.03.2018.

6. It appears that according to the Respondent College it had complied with and removed the deficiencies. The Central Government therefore directed MCI to review the case. The papers and documents submitted by the Respondent College were duly considered and on the strength of those documents themselves, it was found that deficiencies 3, 6 and 7 were still not rectified. This assessment was made by the Sub-Committee of MCI without inspection and purely on the strength of documentation submitted by the respondent. The Respondent College was therefore called upon vide letter dated 07.03.2018 to submit satisfactory compliance in respect of said

deficiencies at Serial Nos.3, 6 and 7. The Respondent College by its letter dated 24.03.2018 claimed to have rectified all the deficiencies and accordingly a compliance verification was carried out by the assessors of MCI on 13.04.2018. This verification found that the deficiencies continued to persist and therefore the Executive Committee in its Meeting held on 26.04.2018 decided to recommend to the Central Government not to grant renewal of permission for admitting students for the academic year 2018-2019. This decision was squarely put in challenge by filing writ petition No.400 of 2018 in this Court which was dismissed on 01.05.2018 leaving all questions open.

7. On 07.05.2018 and 09.05.2018 the Respondent College requested the Central Government to grant personal hearing before any adverse order could be passed. The request was however declined by the Central Government on 17.05.2018, as the Respondent College was already granted personal hearing in the matter. The respondent being aggrieved, challenged the decision dated 17.05.2018 by filing civil writ petition No.13366 of 2018 in the High Court of Punjab and Haryana.

8. By its order dated 29.05.2018, the High Court directed MCI to undertake another inspection within two weeks and permitted the Respondent College to go ahead with provisional admissions for the academic session 2018-2019. One of the conditions stipulated by the High Court was that all the students would be put to notice while granting admission about the pendency of the writ petition. The High Court was of the view that only three deficiencies were found to be persisting by MCI on 07.03.2018 and as such the report of the Verification Inspection undertaken on 13.04.2018 was not justified. The observations of the High Court in that behalf were as under:-

> "Learned counsel for the petitioner further contends that once on 07.03.2018 the deficiencies had been narrowed down to only 3 which he has since removed, the report by the Verification Committee of Inspection on 13.04.2018 can not be said to be justified for the simple reason that barely a month back they themselves on an Inspection in March, 2018 established only 3 deficiencies."

9. This direction of allowing the Respondent College to go ahead with admissions to first MBBS course for the academic session 2018-2019 has been challenged in the present matter by MCI. Appearing for the Appellant, Mr. Maninder Singh, learned Additional Solicitor General submitted that the compliance verification undertaken on 07.03.2018 was purely on the basis of

documentation submitted by the Respondent College and there was no physical verification whether the assertions made by the respondent about alleged compliance were correct or not. In his submission the actual physical verification was undertaken on 13.04.2018 where such assertions were found to be completely unsustainable. As such, the report of the Verification Committee on 13.04.2018 was fully justified and there was no reason for the High Court to entertain any prayer for any interim direction. In any case according to him the law laid down by this Court is very clear that admissions ought not to be allowed to be effected on the strength of interim directions.

Mr. Govind Goel, learned Advocate appearing for the Respondent College sought to support the order passed by the High Court. In his submission several safeguards were put by the High Court while passing such interim directions.

10. On 14.06.2018 this matter was heard alongwith another matter where similar interim order was passed by the High Court of Rajasthan. Both the matters were reserved for judgment and following order was passed:-

> "Heard learned counsel. In both these matters, the High Courts have permitted the concerned medical colleges to go ahead with admissions. The correctness of those orders passed at an interim stage is under challenge at the instance of the Medical College of India. We have been given to understand

by the learned counsel appearing for both the medical colleges that till this date, no admissions have been effected despite the interim orders passed by the High Court in their favour. The statement is taken on record.

We reserve the judgment and till the judgment is pronounced, no admission shall take place in respect of both the institutions to the course of 1st MBBS for the ensuing academic session 2018-2019.

Permission is granted to place on record requisite documents by 16.06.2018."

11. The facts on record disclose:-

a) Even at the initial stage, the physical inspection was undertaken twice and since the deficiencies were found, the scheme was not approved by MCI and the Central Government. It was only because of the approval accorded by the Supreme Court mandated Oversight Committee that the Respondent College was permitted to make admissions for the academic year 2016-2017.

b) The conditions subject to which said approval was accorded were not found to have been complied and the deficiencies were found to be persisting. The matter was considered twice by MCI and the Central Government and it was decided to debar the Respondent College for two years.

c) The physical verification in compliance of the order of this Court again found deficiencies. The matter was again considered but resulted in negative recommendation.

d) The assertion that there had been compliance was, on the strength of documentation itself, found to be inaccurate and wanting in three areas. The subsequent inspection found such assertion completely inaccurate and therefore resulted in negative recommendation.

e) While the contest was pending at the level of the Central Government, the present Writ Petition was filed in which the interim direction has been issued.

12. In the face of repeated failures on part of the Respondent College to remove the deficiencies, no permission to make admissions for the current academic session could have been granted unless and until on physical verification everything was found to be in order. A condition such as making students aware about the pendency of the matter and stating that their admissions would be subject to the result of pending litigation, is not a sufficient insulation. We have repeatedly seen cases where after making such provisional admissions the Colleges have been denied permission upon physical verification. Questions then come up as to what is the status of such students and how best their interest can be protected. Theoretically, in

terms of conditions of Essentiality Certificate the concerned State Government is obliged to take care of interest of such students. But the harsh reality is such students cannot be accommodated because in normal circumstances all the seats in every Medical College are filled up. It then becomes a case of impossibility of accommodating such students in any existing College. The entire exercise may thus result in great hardship and wastage of academic years of the concerned students. It is for this reason that while granting any interim relief very cautious approach needs to be adopted. It may be possible to expedite the process of physical verification in a given case but to allow provisional admissions and make them subject to the result of the petition may entail tremendous adverse consequences and prejudice to students.

13. At this juncture we may advert to certain decisions of this Court where the issues regarding propriety and correctness of similar such interim order were put in question.

A. In **Medical *Council of India*** v. ***Rajiv Gandhi University of Health Sciences and others***[1]**,** it was observed **:- :**

> **"14.** In the normal circumstances, the High Court ought not to issue an interim order when for the earlier year itself permission had not been granted by the Council. Indeed, by grant of such interim orders students who have been admitted in

[1](2004) 6 SCC 76

such institutions would be put to serious jeopardy, apart from the fact whether such institutions could run the medical college without following the law. 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 fulfilling the prescribed conditions to admit students, it will lead to serious jeopardy to the students admitted in these institutions."

B. In ***Medical Council of India*** v. ***JSS Medical College and another***[2]**,** this Court stated **:-**

"…..12. 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 an 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 realise 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 a 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.

13. This Court is entrusted with the task to administer law and uphold its majesty. Courts cannot by its fiat increase the

[2] (2012) 5 SCC 628

seats, a task entrusted to the Board of Governors and that too by interim order ….”

C. The observations in ***Medical Council of India*** v. ***Kalinga Institute of Medical Sciences (KIMS) and others***[3]**,** were

> **“27.** That apart, we are of the opinion that the High Court ought to have been more circumspect in directing the admission of students by its order dated 25-9-2015[4]. There was no need for the High Court to rush into an area that MCI feared to tread. Granting admission to students in an educational institution when there is a serious doubt whether admission should at all be granted is not a matter to be taken lightly. First of all the career of a student is involved — what would a student do if his admission is found to be illegal or is quashed? Is it not a huge waste of time for him or her? Is it enough to say that the student will not claim any equity in his or her favour? Is it enough for student to be told that his or her admission is subject to the outcome of a pending litigation? These are all questions that arise and for which there is no easy answer. Generally speaking, it is better to err on the side of caution and deny admission to a student rather than have the sword of Damocles hanging over him or her. There would at least be some certainty.
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> **28.** Whichever way the matter is looked at, we find no justification for the orders passed by the High Court, particularly the order dated 25-9-2015 and order dated 4-3-2016[5].”

D. Further, in ***Dental Council of India*** v. ***Dr Hedgewar Smruti Rugna Seva Mandal Hingoli and Others***[6]**,** it was observed **:-**

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[3] (2016) 11 SCC 530

[4] Kalinga Institute of Medical Sciences v. Unions of India, WP (C) No.15685 of 2015, order dated 25.09.2015 (ori).

[5] Kalinga Institute of Medical Sciences v. Union of India, 2016 SCC Online Ori 134

[6] (2017) 13 SCC 115

"22. From the aforesaid authorities, it is perspicuous that the court should not pass such interim orders in the matters of admission, more so, when the institution had not been accorded approval. Such kind of interim orders are likely to cause chaos, anarchy and uncertainty. And, there is no reason for creating such situations. There is no justification or requirement. The High Court may feel that while exercising power under Article 226 of the Constitution, it can pass such orders with certain qualifiers as has been done by the impugned order, but it really does not save the situation. It is because an institution which has not been given approval for the course, gets a premium. That apart, by virtue of interim order, the Court grants approval in a way which is the subject-matter of final adjudication before it. The anxiety of the students to get admission reigns supreme as they feel that the institution is granting admission on the basis of an order passed by the High Court. The institution might be directed to inform the students that the matter is sub judice, but the career oriented students get into the college with the hope and aspiration that in the ultimate eventuate everything shall be correct for them and they will be saved. It can be thought of from another perspective, that is, the students had deliberately got into such a situation. But it is seemly to note that it is the institution that had approached the High Court and sought a relief of the present nature. By saying that the institution may give admission at its own risk invites further chaotic and unfortunate situations.

23. The High Court has to realise the nature of the lis or the controversy. It is quite different. It is not a construction which is built at the risk of a plaintiff or the defendant which can be demolished or redeemed by grant of compensation. It is a situation where the order has the potentiality to play with the career and life of young peoples. One may say, "… life is a foreign language; all mispronounce it", but it has to be borne in mind that artificial or contrived accident is not the goal of life.

……."

14. In the backdrop of the law laid down by this Court, the High Court was not justified in passing interim directions and permitting the Respondent College to go ahead with provisional admissions for the Academic Session 2018-19. We, therefore, allow this appeal and set aside the order dated 29.05.2018 passed by the High Court.

15. We have stated the facts only by way of pure narration of events. Since the matter is pending in the High Court we make it clear that we have not and shall not be taken to have dealt with factual controversy in any manner and the matter shall be considered purely on merits in the pending writ petition. The order under appeal directed that the matter be listed on 11.07.2018. If the case is made out, the High Court may expedite the matter and hear it finally.

16. With these observations the present appeal is allowed and the order under appeal is set aside without any order as to costs.

……..……J.
(Uday Umesh Lalit)

..……J.
(Deepak Gupta)

New Delhi,
July 04, 2018