

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

Civil Appeal No.3340 of 2019
(Arising out of SLP (C) No.5964 of 2019)

BOARD OF GOVERNORS IN SUPERSESSION OF
MEDICAL COUNCIL OF INDIA

.... Appellant(s)

Versus

NATIONAL INSTITUTE OF MEDICAL SCIENCES
AND RESEARCH & ANR.

.... Respondent (s)

J U D G M E N T

L. NAGESWARA RAO, J.

Leave granted.

1. The Appellant has approached this Court aggrieved by the direction given by the High Court of Rajasthan to conduct inspection of Respondent No.1-Institute for enhancement of seats in M.S. (Orthopedics) and M.D. (Radio Diagnosis). The Appellant was further directed to submit its report before 28.02.2019 which would be dealt

with by the Second Respondent-Union of India in accordance with law.

2. The First Respondent-Medical College was established in the year 2004. In the year 2011, a letter of permission was granted to the First Respondent to start M.D. (Radio Diagnosis) course with an annual intake of one student from the academic year 2011-2012. The First Respondent was informed that the permission would be valid till such time as the first batch of students admitted against the said course appear for the final examination. The College was directed to take up the matter for recognition of the qualifications under Section 11(2) of the Indian Medical Council Act, 1956 (hereinafter referred to as '*the Act*') at the time the students appear for the final year examination. Permission was also granted in 2011 for starting M.S. (Orthopedics) course with an annual intake of two students. The First Respondent applied for recognition on 18.07.2013. Thereafter, several inspections were conducted by the Appellant and deficiencies were pointed out to the First Respondent. Compliance reports were sent by the College with which the Appellant was not

satisfied. Ultimately, a decision was taken that Post Graduate courses in M.S. (Orthopedics) and M.D. (Radio Diagnosis) cannot be conducted in the First Respondent Institute as the requirement of the Post Graduate Medical Education Regulations, 2000 (hereinafter referred to as '*the Regulations*') in respect of clinical material, human resources, and infrastructure were not fulfilled. As students admitted during the academic years 2011-2012, 2012-2013, and 2013-2014 in M.S. (Orthopedics) and M.D. (Radio Diagnosis) have completed their courses it was decided by the Appellant that the qualifications awarded by the First Respondent in favour of such students should be recognized and included in the First Schedule to the Act.

3. The Committee also decided on 07.03.2017 that the Respondent shall be restrained from making any application for starting the M.S. (Orthopedics) and M.D. (Radio Diagnosis) courses for a period of five years. On 14.04.2017, the Appellant recommended to the Second Respondent-Union of India to notify the qualifications of the students who have completed M.S. (Orthopedics) and

M.D. (Radio Diagnosis) in the First Respondent-Institute during the years 2011-2012, 2012-2013 and 2013-2014. The Post Graduate Medical Education Committee (hereinafter referred to as '*the Committee*') decided that the admissions made by the First Respondent-Institute to M.S. (Orthopedics) and M.D. (Radio Diagnosis) after 2014 were in violation of Regulations 6(2) and (3) of the Regulations.

4. The Second Respondent issued a notification on 07.06.2017 including the Post Graduate courses of M.S. (Orthopedics) and M.D. (Radio Diagnosis) of the First Respondent-Institute in the First Schedule to the Act. It was categorically mentioned in the said notification that students who were admitted for the academic years 2011-2012, 2012-2013 and 2013-2014 and trained at the First Respondent-Institute "on or after 2014" shall be entitled for a recognized medical qualification. In the note to the said notification, it was stated that the recognition granted to the Post Graduate courses shall be for a maximum period of five years after which it shall have to be renewed. It is relevant to note that the notification dated 07.06.2017

is not restricted to the First Respondent-Institute but applied to other colleges as well. The First Respondent had filed a Writ Petition questioning the proceedings dated 14.04.2017 of the Appellant insofar as it pertained to refusal to recognize certain courses. A further relief that was sought in the said Writ Petition filed in the High Court of Delhi was to set aside the bar imposed on the First Respondent-Institute from admitting students for future academic years. However, the First Respondent withdrew the said Writ Petition with liberty to approach the Court at a later stage. Later, a corrigendum was issued by the Second Respondent to the notification dated 07.06.2017 and the words "on or after 2014" were removed. After the removal of the above portion from the notification, Column 3 pertaining to M.D. (Radio Diagnosis) and M.S. (Orthopedics) of the First Respondent-Institute reads as follows:

"Doctor of Medicine (Radio Diagnosis).

MD (Radio Diagnosis)

(This shall be a recognized medical qualification when granted by NIMS University (Deemed University) in respect of students admitted for the academic session 2011-12, 2012-13 & 2013-14 only and trained at National Institute of Medical Sciences, Jaipur.)

Master of Surgery (Orthopedics)

MS (Orthopedics)

(This shall be a recognized medical qualification when granted by NIMS University (Deemed University) in respect of students admitted for the academic session 2011-12, 2012-13 & 2013-14 only and trained at National Institute of Medical Sciences, Jaipur.)"

Further, it was mentioned that the note contained in the notification dated 07.06.2017 does not apply to the Courses mentioned in the corrigendum. The First Respondent filed a Writ Petition in the High Court of Delhi questioning the corrigendum dated 09.04.2018 and for a direction to the Appellant to accord recognition to the Post Graduate courses in M.S. (Orthopedics) and M.D. (Radio Diagnosis) from the academic year 2014-2015. By an order dated 03.08.2018, the Delhi High Court issued notice in the said Writ Petition but refused to grant interim relief.

5. Thereafter, the First Respondent approached the High Court of Rajasthan by filing a Writ Petition seeking a direction to the Appellant to conduct an inspection for enhancement of seats in M.S. (Orthopedics) and M.D. (Radio Diagnosis) courses for the academic year 2019-2020. As the Advocates were on strike, the President of

the Petitioner- Institute (First Respondent) appeared on 21.02.2019 and submitted that the deadline for granting permission was 28.02.2019 and hence, urgent interim order was required to be passed in the Writ Petition. By recording a *prima facie* finding in favour of the First Respondent that the recommendation made by the Appellant baring admissions in the First Respondent-Institute was not accepted by the Second Respondent-Union of India and that it was incumbent on the Appellant to conduct inspection, the High Court directed the Appellant to conduct an inspection and submit a report to the Second Respondent before 28.02.2019. The Second Respondent was directed to take suitable action in accordance with law for enhancement of the seats in M.S. (Orthopedics) and M.D. (Radio Diagnosis) courses in the First Respondent-Institute.

6. We have heard Mr. Vikas Singh, learned Senior Counsel for the Appellant and Mr. Niraj Kishan Kaul and Mr. Ranjit Kumar, learned Senior Counsels for the First Respondent-Institute. Mr. Vikas Singh submitted that the proceedings dated 14.04.2017 along with the corrigendum

dated 09.04.2018 would disclose that the First Respondent was restrained from making admissions to M.S. (Orthopedics) and M.D. (Radio Diagnosis) courses for a period of five years. According to him, the ambiguity in the notification dated 07.06.2017 was clarified by the corrigendum dated 09.04.2018. The corrigendum recognized the courses in respect of students admitted in the First Respondent-Institute for the academic years 2011-2012, 2012-2013 and 2013-2014 only. He further submitted that any ambiguity in the interpretation of the note attached to the notification dated 07.06.2017 was also cleared by the non-applicability of the note to the aforementioned courses. He submitted that the First Respondent had indulged in forum shopping by approaching the Rajasthan High Court as the earlier Writ Petitions were filed by the First Respondent in the Delhi High Court. He submitted that the High Court was not right in holding that the recommendations made by the Appellant were not accepted by the Second Respondent. He stated that the decision taken by the Committee constituted under Section 20 of the Act had become final

as it was accepted by the Appellant Council. He further urged that there would be no surprise element in the inspection which was directed to be conducted by the High Court within a period of one week.

7. It was submitted by the learned Senior Counsel appearing for the First Respondent that there is no complaint of lack of infrastructure and other facilities in respect of the College which has been running Under Graduate courses from the year 2004. Permission was granted to start Post Graduate courses and seats were enhanced for M.S. (Ophthalmology) and M.D. (General Medicine). It was submitted that from 2014 onwards, the First Respondent-Institute was being harassed by the Appellant by not accepting the compliance reports submitted by the First Respondent regarding the deficiencies pointed out. Mr. Kaul submitted that admissions made to the PG courses after the year 2014 were being regularly intimated to the Appellant. He submitted that the recommendation made by the Appellant Council to restrain the First Respondent from making admissions for five years by the proceedings dated

14.04.2017 was not accepted by the Second Respondent. The notification dated 07.06.2017 dealt with recognition of the qualifications in respect of the students who were admitted for the academic years 2011-2012, 2012-2013 and 2013-2014 and trained in the First Respondent-Institute "on or after 2014". He submitted that the words "on or after 2014" are significant and such of those students who were trained after the year 2014 were also entitled for a recognized medical qualification. He relied upon a note to the notification dated 07.06.2017 to argue that the recognition granted to the Post Graduate courses shall be for a maximum period of five years after which it shall have to be renewed. In response to the allegation of forum shopping, he submitted that the First Respondent is situated in Jaipur and there was no bar on filing a Writ Petition in the Rajasthan High Court. Mr. Kaul urged that the First Respondent cannot be accused of forum shopping for approaching Rajasthan High Court merely because the earlier two Writ Petitions were filed at the Delhi High Court.

8. Mr. Ranjit Kumar submitted that there is no shortage of the requisite facilities and the First Respondent-Institute

fulfils the minimum requirements which is evident from the fact that the Appellant conducted inspections for the other P.G. courses. He stated that the application filed for enhancement of seats on 06.04.2018 has not been considered by the Appellant and having no other alternative, the First Respondent approached the High Court as the last date for grant of permission was 28.02.2019. The learned Senior Counsel urged that the interim order passed by the High Court does not warrant interference.

9. The interim order passed by the High Court on 21.02.2019 is on the basis that the recommendation made on 14.04.2017 by the Appellant to bar admissions for five years to M.S. (Orthopedics) and M.D. (Radio Diagnosis) courses has not been accepted by the Second Respondent. Consequently, the High Court was of the opinion that the Appellant was obliged to conduct an inspection. The High Court failed to examine the notification dated 07.06.2017 and the corrigendum dated 09.04.2018 before passing the impugned order. No notice was issued to the Appellant before the interim order was passed by the High Court.

The direction to conduct an inspection within a period of one week ought not to have been passed by the High Court as the surprise element of the inspection would not be there. In ***Manohar Lal Sharma v. Medical Council of India***¹, this Court observed: “Surprise inspection naturally contemplates no notice, if the notice is given in advance, it would not be a surprise inspection and will give room for the College to hoodwink the assessors by springing a surprise, by making perfect what was imperfect.” The Three Judge Bench in ***Royal Medical Trust v. Union of India***² while laying down guidelines regarding medical college admissions emphasized that there must be a surprise element in the inspection conducted by the MCI.

10. Having challenged the corrigendum dated 09.04.2018 before the Delhi High Court, any further direction in connection with the enhancement of seats to the PG courses should have been sought by the First Respondent only in the Delhi High Court. We are refraining ourselves from entering into the merits of the matter pertaining to the interpretation of the proceedings dated 14.04.2017,

¹ (2013) 10 SCC 60, Para 23

² (2015) 10 SCC 19, Para 31 (B)

the notification dated 07.06.2017, and the corrigendum dated 09.04.2018 as it is the subject matter of a Writ Petition pending in the Delhi High Court. The High Court ought to have given an opportunity of hearing to the Appellant before passing the impugned order. *Prima facie* satisfaction of the High Court in favour of the First Respondent is without appreciation of the entire material pertaining to the dispute. Moreover, no useful purpose will be served by an inspection before the adjudication of the dispute relating to the bar imposed on the First Respondent from making admissions to the M.S. (Orthopedics) and M.D. (Radio Diagnosis) courses. In any event, the inspection which was directed to be conducted within a period of one week will not show the correct picture pertaining to the infrastructure and other facilities.

11. For the aforementioned reasons, the interim direction of the High Court to conduct inspection of the First Respondent-Institute is set aside. Accordingly, the appeal is allowed.

.....J.
[L. NAGESWARA RAO]

New Delhi,
April 01, 2019

.....J.
[M.R. SHAH]