

CASE NO.:
Special Leave Petition (civil) 21390-21442 of 2003

PETITIONER:
Medical Council of India

RESPONDENT:
Rajiv Gandhi University of Health Sciences & Ors.

DATE OF JUDGMENT: 12/04/2004

BENCH:
S. RAJENDRA BABU , DR. AR. LAKSHMANAN & G.P. MATHUR.

JUDGMENT:
JUDGMENT

RJAENDRA BABU, J. :

[with S.L.P. Nos. 21464-21552/2003 &
20385/2003]

SPECIAL LEAVE PETITIONS (C) NOS. 21390-
21442 OF 2003, SPECIAL LEAVE PETITIONS Nos.
21464-21552/2003

A writ petition bearing No. 39772/2002 is filed before the High Court of Karnataka for a direction that the Union of India should be directed to grant renewal of permission to the institution run by the first and second respondents. They also sought for direction to make selection for admissions into the institution for the academic session 2002-03 and to allocate students to enable continuation of imparting education in the said institution.

A permission has been granted to the first and second respondent's institution in terms of Section 10-A of the Medical Council Act and also renewed for the subsequent year. As it was not renewed in time for the academic year 2002-03, they filed writ petition No. 39772/2002. The High Court by an interim order dated 4.11.2002 directed the Medical Council of India (for short 'Council') to complete the inspection by 11.11.2002 and send a report/recommendation immediately to the Central Government for passing appropriate orders. In pursuance of the above said order, the Council had sent its report to the Central Government on 11.11.2002. However, till 15.11.2002, no order had been made by the Central Government. As the renewal for permission was not granted to the institution concerned, MBBS seats of the institution were not included in the seat matrix which had to end on 15.11.2002 and, therefore, in the absence of the institution not being notified no admission had been done. Having regard to the fact that the permission had been granted earlier and renewed for the previous years, the Council had also sent a report regarding renewal for the current year,

but unfortunately, the Central Government did not act with necessary expedition as was needed in the said case. As the counselling of Common Entrance Test is coming to end on 15.11.2002 and even if renewal was granted by the Central Government after that date, 100 seats would go waste. The High Court, by an order made on 15.11.2002, directed the Government to include the seats of the respondent's institution in the seat matrix to allocate the same to the deserving students in accordance with rules. By another order made on 03.12.2002, after advertizing to the decision of this Court in Union of India vs. Era Educational Trust & Anr., 2000 (5) SCC 57, the learned single Judge of the High Court passed further orders imposing conditions to the following effect :-

- i) The Central Government on consideration of the recommendations of the Medical Council of India would grant the renewal of permission if the petitioner-institution satisfies all the legal requirements within seven days from the date of receipt of such recommendations.
- ii) Pending receipt of such permission being granted, the 4th respondent-State Government is directed to issue seat matrix for 50 seats for the petitioner-institution for the academic year 2002-2003 forthwith.
- iii) The 5th respondent CET Cell shall issue necessary advertisement and complete the counselling and allot 50 seats included in the seat matrix to the eligible students on or before 20th of December, 2002
- iv) As the students are admitted to the college in pursuance of the interim order passed by this Court, even before the permission is granted by the Central Government, it is made clear that this will not give any right to the students or the college to claim credit for the classes conducted after the commencement of the course till the permission from the Central Government under Section 10-A is accorded.
- v) Students are not entitled to appear in any examination until they complete the prescribed minimum period of studies after the permission is granted under Section 10-A
- vi) No further admission would be made to the first batch of MBBS course of the petitioner institution except on vacancies arising from any of the students now allotted or refusing to pursue their studies.
- vii) If any student who has been admitted to the petitioner college refused to join the course, the petitioner college shall duly intimate the 5th respondent-CET Cell and after confirming the same, is at liberty to admit the students to those vacancies. Admission for such vacancies shall be filled up on or before 23rd December, 2002.
- viii) In the event of the petitioner failing to obtain the necessary permission from the Central Government under Section 10-A, this order will not aid any equities in favour of the petitioner institution or those students who have been admitted in pursuance to the interim order

passed by this Court.

ix) In the event of the Central Government declining to grant permission under Section 10-A, the petitioner institution shall refund to the students admitted in pursuance of this order, the entire fee collected by them and similarly the students shall not claim any right to pursue the studies in the even of refusal of such permission. The petitioner institution shall file an undertaking to this effect before 10.12.2002, and all the students who are to be admitted in pursuance of the interim order also shall give an undertaking to the CET Cell before collecting the admission order.

x) In so far as the payment of fee is concerned, the students shall pay the fee as prescribed by the Government to the free seats, payment seats and the fee payable by the student is subject to the same being worked out in terms of eleven member judgment of the Supreme Court in T.M.A. Pai's case.

xi) The petitioner institution shall on production of the admission order issued by the CET Cell shall admit the students without raising any objections.

xii) It is made clear that having regard to the exceptional circumstances this order is passed and it is further made clear that it shall not be precedent to any institution approaching this Court.

xiii) The Central Government is directed to consider the request of the petitioner for renewal of the permission which is pending before them within fifteen days from today.

Copy of this interim order shall be handed over to the learned counsel appearing for all the parties forthwith."

As a consequence of this order having been made, some of the students on not being permitted to take first year examination scheduled to be held in the month of September, 2003 they filed writ petitions before the High Court. The High Court, by an order made on 28.08.2003, directed that they may be permitted to take the examinations for the first year MBBS scheduled to commence in the month of September, 2003 by accepting the examination fee tendered by them on or before 29.08.2003 or such other date as the University may fix subject to the result of the said writ petition. As against that order writ appeals were filed before the High Court. The Division Bench of the High Court in W.A. No. 6568-6619/03 and W.A. 6791/03, pending the admission of the appeal, granted an interim relief. The High Court noted that it could not allow the concerned institutions to perpetuate the illegality, but in the circumstances of the case, declined to interfere with the order of the learned Single Judge permitting the students to appear for the examination, which was scheduled to be held from September 23, 2003 without making the decision of the learned Single Judge a precedent.

It is against this order dated 22.09.2003 passed in the writ appeals these petitions have been filed.

Inasmuch as the Council has not challenged the orders of the High Court by which students were admitted and to which we have adverted to earlier and these matters are still pending before the High Court for final consideration, we do not think, this is a fit case in which we should interfere.

We once again emphasize that the law declared by this Court in Union of India vs. Era Educational Trust & Anr. (supra) that interim order should not be granted as a matter of course, particularly in relation to matter where standards of institutions are involved and the permission to be granted to such institutions is subject to certain provisions of law and regulations applicable to the same, unless the same are complied with. Even if the High Court gives certain directions in relation to consideration of the applications filed by concerned educational institutions for grant of permission or manner in which the same should be processed should not form a basis to direct the admission of students in these institutions which are yet to get approval from the concerned authorities or permission has not been granted by the Council.

Now, in the present case such orders have led to a stage on which the examination was to take place and students have appeared in such examination and matters are still pending final consideration by the High Court, we do not think it necessary to say anything further in this matter.

The petitions shall stand disposed of subject to the observations made by us.

SPECIAL LEAVE PETITION (C) No. 20385/2003

Respondent No. 1 had established a Medical College and hospital, respondent No. 2. The college was granted permission as provided under Section 10-A of the Medical Council Act for the academic year 2001-02 to enable the college to make admissions of first batch of students in the first year of the MBBS. However, on 4th and 5th June, 2002 the Inspectors of the Council conducted an inspection of the respondent college for the purpose of renewal of permission for the academic year 2002-03. On account of certain deficiencies the respondent college was not granted renewal of permission for admission of 2nd batch of students of the college for the academic session 2002-03. The inspection report of 4th and 5th June 2002 was considered by the Executive Committee of the Council in its meeting held on 24.6.2002 and due communication thereof was made to the respondents. On 2.7.2002, respondent Nos. 1 and 2 made a communication stating that they have complied with the deficiencies pointed out in the inspection report. By a communication dated 22.08.2002 the compliance report sent by respondents Nos. 1 and 2 was disputed by the Council. Another inspection for compliance

verification was carried out by the Council on 11th and 12th October, 2002 and deficiencies found in the said inspection report the Executive Committee of the Council which met on 31.10.2002 did not recommend renewal of permission for admission of 2nd batch of MBBS students. A communication dated 5.11.2002 was sent to this effect which also indicated the deficiencies pointed out in the inspection report. The respondents were also advised by a communication sent on 6.11.2002 not to admit fresh batch of students till the deficiencies are rectified.

A writ petition No. 42277/2002 was filed in the High Court praying for a direction that the petitioners herein be directed to grant renewal of permission for admission for the academic session of 2002-03 and that writ petition is still pending adjudication before the High Court.

On 3.12.2002 a learned Single Judge of the High Court directed inclusion of the annual intake capacity of the respondent college for the grant of admissions to the first year of the MBBS course through CET for the year 2002-03. The learned Single Judge after advertiring to the decision of this Court in Union of India vs. Era Educational Trust & Anr. (supra) made an order granting permission for admission to the second batch of students in the 1st year of the MBBS course; stipulating that in the event the Government of India declined to grant permission in terms of Section 10-A of the Medical Council Act, the students should not claim equities to pursue further studies and students who wanted to be admitted in such colleges also had to give an undertaking to this effect. The learned Single Judge also granted an interim order staying the operation of the communication of the Government of India dated 6.12.2002 and the matter was carried in appeal before the Division Bench of the High Court in Writ Appeal No. 1603/2003. However, the writ appeal filed by the Council challenging the orders dated 3.12.2002 and 4.12.2002 passed in the writ petitions referred to earlier was dismissed as having become infructuous on the ground of subsequent interim orders having been passed by the learned Single Judge.

When the matter stood thus, even in terms of the order made by the learned Single Judge on 3.12.2002 in Writ Petition no. 42277/2002, the requirements having not been fulfilled in terms of the Medical Council Act, the college should have discharged the students admitted for the academic session 2002-03 in terms of the orders of the High Court itself as the Central Government has not as yet granted permission to the respondent college renewing permission admitting the students. But that part of the matter is not before us. What is pointed out now is that when the respondent college sought for renewal of permission for the subsequent year 2003-04; that when the said college was not entitled even for admission for the academic session 2002-03, the High Court granted identical orders;

that when the issue of admissions of students for the academic session 2002-03 was still pending to be decided; that according to the Council such admissions are contrary to law; that in terms of direction issued in the interim order dated 3.12.2002 the students have to be discharged and the Government of India had passed an order on 13.6.2003 declining permission to the respondent college, another interim order should not have been passed on 12.09.2003 directing admissions of another batch of students for the academic session 2003-04 once again completely disregarding the provisions of the Act and regulations made thereunder and the decisions of this Court.

Aggrieved by the order made on 12.09.2003 by the learned Single Judge in identical terms that had been done on previous occasion in Writ Petition 42277/2002 the petitioners preferred a writ appeal No. 33442-32443/2003 which was dismissed by the Division Bench of the High Court. The High Court while dismissing the said writ appeal noticed as follows :-

"We find that the first respondent has been permitted by the Government of India to establish a new college on 18.5.2001 and the college is running and admissions have been made for 2001-2002 and 2002-2003. We also find that the terms under which learned Single Judge has granted interim relief is practically in terms of the conditions imposed by the Supreme Court in para 11 of the decision in Union of India v. Era Medical Educational Trust & Anr. 2002 (5) SCC 57. We find that learned Single Judge has also taken care to ensure that no equities can be claimed in the event of college not getting renewal for the year 2003-2004. In view of the submissions made by learned counsel for the Medical Council of India, the counsel for the institutions/medical college submitted that any other reasonable further condition may be imposed to safeguard the students who may be admitted."

Thereafter, the High Court continued the order adding further conditions.

There is serious dispute between the parties as to what are the requirements to be fulfilled to get necessary permission. Whether majority of the requirements have already been fulfilled or not; whether all the primary conditions that have been provided have been fulfilled or not; whether non-fulfilment of certain other requirements which are of minor character should not come in the way of grant of permission, are all such matters to be decided in the course of the writ proceedings before the High Court rather than in these proceedings. Therefore, we do not wish to enter upon the controversy in this regard at this stage.

Law is well settled that Section 10-A of the

Medical Council Act which provides for terms and conditions have to be fulfilled before starting or establishing a medical college or starting higher courses making it clear that what is postulated thereunder is evaluation of application made by the institution concerned by the Central Government in the first instance and then forwarding the same to the Medical Council of India for its further examination. There are various steps envisaged under the Scheme such as (a) issuance of letter of intent by the Central Government on the recommendation of the Council; (b) issuance of letter of permission by the Central Government on the recommendation of the Council for starting admissions; (c) issuance of annual renewal to be granted by the Central Government on the recommendation of the Council; (d) at the stage of 1st batch of students admitted in MBBS course go for final year examination, grant of formal recognition by the Central Government on the recommendation of the Council; (e) if at any stage after the grant of initial permission entitling permission of 1st batch of students any college fails to fulfil the minimum norms in any successive year, as per the statutory regulations, further admissions are liable to be stopped at any stage.

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 such institutions would be put to serious jeopardy, apart from the fact that 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.

Arguments have been advanced before us that there should be transparency in the matter of granting permission by the Central Government and Medical Council of India for starting or continuing colleges; that the Council has to objectively look at the matters in the matter of grant of permission and not withholding the same on unnecessary or flimsy reasons; that the Council should also bear in mind that when an institution has been established and initial permission has been granted and thereafter large expenditure has been incurred by such institution, the same should not be allowed to be withered away; that the Council should be helpful for starting and establishing medical colleges which are absolutely needed in this country and their attitude should be positive and not negative.

It is unnecessary for us to examine all these aspects in the present case because these matters

arise out of interim orders passed by the High Court. All that we need to emphasise in the present proceedings is that the High Courts should be very cautious in the matter of issuing interim orders in such matters. If for one year students are not admitted and writ petitions seeking for grant of permission or renewal are considered by the High Courts quickly and appropriate directions are issued to the Council by the High Courts to process such applications and decision to give or refuse permission to continue such institutions should be taken finally and it is only thereafter if further difficulties arise, the same could be sorted out and not to grant permission to the colleges year after year when only initial permission has been granted to such educational institutions.

Subject to these observations, these petitions stand disposed of.

We direct that the observations made by us shall be communicated to all the High Courts to be placed before the concerned Hon'ble Judges to take note of the same.

The special leave petitions stand disposed of accordingly.