

MANU/SC/0840/2015

IN THE SUPREME COURT OF INDIA

Writ Petition (Civil) No. 306 of 2015

Decided On: 06.08.2015

Appellants: Sree Balaji Medical College and Hospital and Ors.  
Vs.

Respondent: Union of India (UOI) and Ors.

Hon'ble Judges/Coram:  
Anil R. Dave and Kurian Joseph, JJ.

Subject: Education

Acts/Rules/Orders:

Indian Medical Council Act, 1956 - Section 10A, Indian Medical Council Act, 1956 - Section 10A (1), Indian Medical Council Act, 1956 - Section 10B, Indian Medical Council Act, 1956 - Section 11, Indian Medical Council Act, 1956 - Section 11(2); Course or Study or Training (including a Post-graduate Course of Study or Training) Regulations, 2000; Constitution of India - Article 32

Subject Category:

ADMISSION/TRANSFER TO ENGINEERING AND MEDICAL COLLEGES

Disposition:  
Petition Allowed

Industry: Education

## JUDGMENT

Kurian Joseph, J.

1. The Indian Medical Council Act, 1956 (hereinafter referred to as "the Act" specifically provides for recognition of medical qualification granted by universities or medical institutions either in India or abroad. Once a medical qualification granted by a medical institution in India is recognized by the Central Government, whether recognition is also required for the admission capacity which is increased from time to time or whether permission of the Central Government alone is required for such an increase in the admission capacity in the recognized course, is the question of law arising for consideration in this case.

2. Recognition of medical qualification granted by universities or medical institutions in India is dealt with Under Section 11 of the Act. The provision reads as follows:

11. Recognition of medical qualifications granted by Universities of medical institutions of India.-(1) The medical qualifications granted by any University or medical institution in India which are included in the First Schedule shall be recognized medical qualifications for the purposes of this Act.

(2) Any University or medical institution in India which grants a medical qualification not included in the First Schedule may apply to the Central Government to have such qualification recognized, and the Central Government, after consulting the Council, may, by notification in the Official Gazette, amend the First Schedule so as to include such qualification therein, and any such notification may also direct that an entry shall be made in the last column of the First Schedule

against such medical qualification declaring that it shall be a recognized medical qualification only when granted after a specified date.

3. Section 10A of the Act deals with the permission for establishment of new medical college, new course of study and admission capacity. To the extent relevant, Section 10A(1) of the Act reads as follows:

10A. PERMISSION FOR ESTABLISHMENT of NEW MEDICAL COLLEGE, NEW COURSE of STUDY ETC.

1. Notwithstanding anything contained in this Act or any other law for the time being in force:

1. no person shall establish a medical college; (or)

2. no medical college shall-

(i). open a new or higher course of study or training (including a postgraduate course of study or training) which would enable a student of such course or training to qualify himself for the award of any recognised medical qualification; or

(ii). increase its admission capacity in any course of study or training (including a postgraduate course of study or training),

except with the previous permission of the Central Government obtained in accordance with the provisions of this section.

Explanation 1-For the purposes of this section, "person" includes any University or a trust but does not include the Central Government.

Explanation 2-For the purposes of this section "admission capacity" in relation to any course of study or training (including postgraduate course of study or training) in a medical college, means the maximum number of students that may be fixed by the Council from time to time for being admitted to such course or training.

4. Section 10B of the Act deals with the non-recognition of the medical qualifications in certain cases. The provision reads as follows:

10B. Non-recognition of medical qualifications in certain cases.- (1) Where any medical college is established except with the previous permission of the Central Government in accordance with the provisions of Section 10A, no medical qualification granted to any student of such medical college shall be a recognised medical qualification for the purposes of this Act.

(2) Where any medical college opens a new or higher course of study or training (including a postgraduate course of study or training) except with the previous permission of the Central Government in accordance with the provisions of Section 10A, no medical qualification granted to any student of such medical college on the basis of such study or training shall be a recognised medical qualification for the purposes of this Act.

(3) Where any medical college increases its admission capacity in any course of study or training except with the previous permission of the Central Government in

accordance with the provisions of Section 10A, no medical qualification granted to any student of such medical college on the basis of the increase in its admission capacity shall be a recognised medical qualification for the purposes of this Act.

*Explanation* - For the purposes of this section, the criteria for identifying a student who has been granted a medical qualification on the basis of such increase in the admission capacity shall be such as may be prescribed.

(Emphasis supplied)

5. It is clear from the scheme of the Act, as per the relevant provisions extracted above, that recognition and permission are two different concepts. Recognition is of a medical qualification, ordinarily known as a course conducted by an institution which is also to be recognized.

6. Section 11(2) of the Act provides that the medical qualifications and the institutions thus recognized are to be notified in the First Schedule. The First Schedule is titled as "RECOGNITION of MEDICAL QUALIFICATIONS GRANTED BY THE UNIVERSITIES OR MEDICAL INSTITUTIONS IN INDIA".

7. Section 10A of the Act deals with permission for establishment of a new medical college and a new course of study. No person shall establish a medical college and no medical college shall open a new or higher course of study or training for the award of any recognized medical qualification and no person shall increase the admission capacity in any course of study or training, except with the prior permission of the Central Government obtained in accordance with the scheme provided in the Section. Admission capacity, as per Explanation 2 to Section 10A, in relation to any course of study or training in a medical college means the maximum number of students that may be fixed by the Medical Council from time to time for being admitted to such course or training.

8. In short, permission of the Central Government is required-(1) to establish a medical college, (2) to open a new course of study or training other than the recognized course and (3) to increase the admission capacity in any course of study or training. However, recognition of the Central Government is also required for the medical college and the course of study for the purpose of the medical qualification. Once a medical college is recognized Under Section 11 of the Act along with medical qualification, thereafter, for increase in the admission capacity in any course of study or training that is recognized Under Section 11 of the Act, only permission from Central Government as per the scheme Under Section 10A of the Act is required. But there are three Exceptions to this. Those Exceptions are provided Under Section 10B:

(i) The medical qualification granted to any student of a medical college established without permission of the Central Government;

(ii) Medical qualification granted to any student in any recognized medical college where the new or higher course of study or training is conducted without the previous permission of the Central Government;

(iii) Where a medical college increased its admission capacity in any recognized course of study or training without the previous permission of the Central Government, and in such a case, the medical qualification granted to those students of such recognized medical colleges on the basis of the increased admission capacity, which is unauthorized, shall not be a recognized medical qualification for the purpose of the Act.

9. As a matter of fact, Exceptions (i) and (ii) Under Section 10B of the Act, in any way, are redundant since any course or training conducted in any medical college, if not included in the First Schedule as per Section 11 of the Act, will not be a recognized medical qualification. However, the third Exception is in respect of a student (s) admitted in excess of the admission capacity provided Under Section 10A of the Act by the Central Government.

10. It is vehemently contended on behalf of the Medical Council of India and the Central Government that the admission capacity also requires recognition in addition to the permission by the Central Government. The position canvassed is that once a course is sanctioned (If it is M.B.B.S. 5-years course; if it is a P.G. course-may be 2 or 3-years course), the recognition is granted only when the course is completed.

11. Under the scheme of the Act, permission is for the admission capacity and recognition is for the course and the institution. Once a course and an institution is notified in the First Schedule as per Section 11 of the Act as a recognized course and a recognized institution, the admission capacity or its increase in any recognized course needs only the permission of the Central Government as per the scheme Under Section 10A of the Act.

12. Having analysed the legal position, we shall now deal with the factual matrix of the present case. The Petitioner medical college was granted permission to establish a new medical college and it was recognized by Notification dated 17.02.2009. For the purposes of easy reference, we shall extract the relevant portion of the Notification published in the Gazette of India dated 17.02.2009, which reads as under:

#### NOTIFICATION

S.O. In exercise of the powers conferred by Sub-section (2) of the Section 11 of the Indian Medical Council Act, 1956 (102 of 1956), the Central Government, after consulting the Medical Council of India, hereby makes the following further amendments in the First Schedule to the said Act, namely:

In the said First Schedule after "Bharathidasan University" and entries thereto "Bharath University, Chennai, Tamil Nadu" shall be added and against "Bharath University, Chennai, Tamil Nadu" under the heading 'Recognised Medical Qualification' [hereinafter referred to as column (2)], and under the heading 'abbreviation for Registration' [hereinafter referred to as column (3)], the following shall be inserted, namely:



13. As per Order dated 15.07.2013, the Petitioner was given permission to increase the seats for M.B.B.S. from 100 to 150 for the Academic Session 2013-2015 and that is not in dispute also (Annexure-A4 in I.A.-2 of 2015).

14. The Petitioner-medical college submitted an application dated 25.09.2013 for permission to increase the admission capacity from 150 to 250 for the Academic Session 2014-2015. In that regard, they have also fled a writ petition before the Madras High Court leading to judgment dated 29.04.2014 (Annexure-P1). The Central Government was directed to consider the application of the Petitioner and pass orders on merits on or before 31.05.2014. The writ appeal fled by the Medical Council of India was dismissed by judgment dated 09.06.2014 in Writ Appeal No. 728 of 2014. The Medical Council of India approached this Court leading to Order dated 18.07.2014 in Civil Appeal No. 6564 of 2014. The operative portion of the Order reads as follows:

... Heard the learned Counsel appearing for the parties.

Looking at the facts of the case, in our opinion it would be just and proper to treat the application fled by the applicant to the Medical Council of India for getting additional seats for the academic year 2015-2016 instead of 2014-15.

The Medical Council of India is directed to complete the inspection of the applicant-College before 31st October, 2014....

15. The Medical Council of India filed I.A. No. 3 of 2014 for modification of order dated 18.07.2014 contending that only if the intake of 150 (increased strength of 50) is recognized by the Central Government, the request for further increase can be considered. On 17.10.2014, this Court directed the Medical Council of India to complete the inspection in respect of the application for the intake of 250 students by 15.11.2014. Accordingly, the inspection was conducted and the report is produced as Annexure-P8. It is fairly admitted by the Medical Council of India and the Central Government that the Petitioner-medical college satisfies all the requirements for increase of admission capacity from 150 to 250, as per the report, I.A. No. 3 of 2014 for modification of the Order dated 18.07.2014 in Civil Appeal was disposed of on 17.11.2014. The operative portion of the order reads as follows:

...In pursuance of the query raised by us, it has been submitted by Mr. P.S. Patwalia, learned Additional Solicitor General, appearing on behalf of Appellant, that as directed by this Court, inspection has already been completed before 15th November, 2014.

The Authorities shall take appropriate decision on the basis of the report of inspection and other relevant facts. No other direction is given to the Authorities.

Interlocutory Application No. 3 for clarification/modification of Court's order is disposed of accordingly.

16. Despite all these developments, surprisingly, if not shockingly, the Medical Council of India, at its Meeting held on 20.11.2014, decided that "... since Sree Balaji Medical College and Hospital, Chennai is not recognized for 150 admissions, it is not eligible for further increase from 150 to 250 as per the earlier decision dated 14.03.2014"(Annexure-A9 of I.A. 2 of 2015).

17. The decision dated 14.03.2014 is one taken by the Committee not to increase the strength in any medical college unless the existing strength is recognized by the Central Government (Annexure-A8 of I.A. -2 of 2015). As we have discussed herein above, the Act does not provide for recognition of the admission capacity in a recognized medical college for a recognized course. The Regulations, "The Opening of a New or Higher Course of Study or Training (including Post-graduate Course of Study or Training) and Increase of Admission Capacity in any Course or Study or Training (including a Post-graduate Course of Study or Training) Regulations, 2000", also does not contemplate such a requirement. Therefore, there is no legal basis for the decision dated 14.03.2014 and it is only to be ignored.

18. It is also seen from the pleadings that in case of two medical colleges (1) S.P. Medical College, Bikaner, Rajasthan and (2) Maulana Azad Medical College, New Delhi, permission was granted for increasing admission capacity without recognition of the existing capacity, as increased from time to time.

19. In the above circumstances, we do not find any justification whatsoever in denying relief to the Petitioner. Learned Counsel appearing for the Medical Council of India raised an objection regarding maintainability of the petition placing reliance on the recent judgment of this Court in Writ Petition (Civil) No. 441 of 2015 and connected cases decided on 23.07.2015. Our attention was invited to Paragraph-27 of the Judgment, which reads as follows:

27. Under Article 32 of the Constitution, this Court is not supposed to go into finding of facts recorded by the authorities and to come to a different conclusion. Moreover, having regard to the law settled by Constitution Bench of this Court in number of decisions, in our considered opinion, the rights so claimed by the Petitioners are not fundamental rights; hence the same cannot be agitated directly before this Court Under Article 32 of the Constitution.

20. We do not find any substance in the objection. In the background of the facts narrated by us, only this Court could have entertained the grievance of the Petitioner. Moreover, there are no disputed facts at all in the present case. All the material facts stated in the writ petition are

admitted. The dispute is only on question of law. The present petition is only in continuation of the earlier proceedings before this Court.

21. In the above circumstances, the Writ Petition is allowed. The impugned orders are quashed. The Respondents are directed to process and consider afresh the application for the increase of seats from 150 to 250 for the M.B.B.S. course for the Academic Session 2015-2016 and pass orders thereon positively within a period of two weeks from today.

22. There shall be no order as to costs.

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