



Ashwini

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1214 OF 2023**

**COLLEGE OF PHYSICIANS &
SURGEONS,
CPS House, Dr. E. Borges Road,
Parel, Mumbai 400 002**

... PETITIONER

~ VERSUS ~

- 1. GOVERNMENT OF
MAHARASHTRA,
Through the Government Pleader of
Maharashtra, (State of Maharashtra),
High Court Bombay OOCJ 400 032.**
- 2. THE SECRETARY,
Medical Education and Drugs
Department, G.T. Hospital Premises,
9th floor, Lokmanya Tilak Road, New
Mantralaya, Mumbai 400 001.**
- 3. DR PALLAVI P SAPLE,
The Administrator, Maharashtra
Medical Council, 189-A Anand
Complex, 1st Floor, Sane Guruji Marg,
Arthur Road, Naka, Chinchpokli (West)
Mumbai 400 001.**

... RESPONDENTS

WITH
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5269 OF 2023

DR GANDHAR AJIT KULKARNI,
Age : 30 years, presently residing at
988, B Ward, Raviwar Peth,
Kolhapur 416 012.

... PETITIONER

~ VERSUS ~

- 1. UNION OF INDIA,**
Through the Ministry of Health &
Family Welfare, Nirman Bhavan, New
Delhi 110 011.
- 2. NATIONAL BOARD OF
EXAMINATION,**
Medical Enclave, Ansari Nagar,
Mahatma Gandhi Marg, (Ring Road),
New Delhi 110 009.

... RESPONDENTS

APPEARANCES

**FOR THE PETITIONER
IN WP/1214/2023**

Mr Ravi Kadam, Senior Advocate,
*with Mustafa Doctor, Senior
Advocate, Narayan Sahu,
Rohan Kadam, Yogesh Chawak,
Chirag Dave & Rohan Gupta,
i/b Legasis Partners.*

**FOR THE PETITION IN
WP/5269/2023**

Mr MV Thorat.

**FOR RESPONDENT NO.
1-UOI IN BOTH WRIT
PETITIONS**

**Mr Rui Rodrigues, with Deepak
Shukla.**

**FOR RESPONDENT NO. 3 Mr Nikhil Sakhardande, Senior
Advocate.**

**FOR THE RESPONDENT- Dr Milind Sathe, Senior Advocate,
STATE IN BOTH WRIT with PH Kantharia, GP.
PETITIONS**

**CORAM : G.S.Patel &
Neela Gokhale, JJ.**

DATED : 25th April 2023

ORAL JUDGMENT (Per GS Patel J):-

1. **Rule in Writ Petition 1214 of 2023.**

2. The Petition assails a show cause notice dated 14th July 2023. The Petitioner claims that it is “a medical institution”. That may be a somewhat generous description because it is not a college in the sense that we otherwise understand it. It is a society, albeit an old one, so registered over a hundred years ago.

3. The Petitioner claims to run diploma courses. What this means, to put it as shortly as possible, is that diplomas are offered in various disciplines in medicine and these are called ‘College of Physicians & Surgeons (“CPS”) courses’. They are not taught by the Petitioner at any particular institute. They are offered through different private non-teaching hospitals. These hospitals award the diplomas.

4. To understand the scheme of this, we must have a look at the Maharashtra Medical Council Act 1965 (“**the MMC Act**”). For our purposes, it is Chapter IV that is of immediate relevance. This is captioned ‘Miscellaneous’. It is to be read with Section 16 in Chapter III which deals with the preparation of a register of Medical Practitioners. Section 28 in Chapter IV deals with the amendment of the Schedule to the Act and, therefore, entries in that Schedule of degrees, diplomas, licenses, certificates and the like. Section 28 is in two parts:

“28. Amendment of Schedule.—

(1) If it shall appear to the State Government, on the report of the Council or otherwise, that the course of study and examination prescribed by any University, College, body or institution, conferring a degree, diploma, license or certificate or any other like award, not entered in the Schedule to this Act or in any of the Schedules to the Indian Medical Council Act, 1956 (CII of 1956), is such as to secure the possession by persons obtaining such degree, diploma, licence, certificate or award of the requisite knowledge and skill for the efficient practice of their profession as medical practitioners, it shall be lawful for the State Government from time to time by notification in the *Official Gazette*, to amend the Schedule and to direct the inclusion therein of any such qualification, subject to such conditions (if any), as may be specified in respect of that qualification.

(2) **If at any time it appears to the State Government, on the report of the Council or otherwise, that the course of study or the examinations prescribed by any University, College, body or institution, for any degree, diploma, licence, certificate or award which is included in the Schedule to this Act are *not* such as to secure the**

possession by persons obtaining such qualification of the requisite knowledge and skill for the efficient practice of their profession, as medical practitioners or to secure the maintenance of and adequate standard of proficiency for such practice, it shall be lawful for the State Government from time to time to direct the removal of any such qualification from the said schedule or to impose such further conditions therefore as it deems fit:

Provided that, no notification for amendment of the Schedule under sub-section (1) or sub-section (2) shall be issued by the State Government, without consulting the Council:

Provided further that, before making any recommendation to the State Government under this section to remove any degree, diploma, license, certificate or award from the Schedule, the Council shall require the University, College, body or institution to take such steps as may be directed by the Council, and within such reasonable time as the Council may prescribe, to bring the course of study or examination for such degree, diploma, licence, certificate or award, to the required standard.”

(Emphasis added)

5. CPS finds place at item 3 in the Schedule which is a direct reference to Section 16, 27 and 28. Membership of the CPS is said to be a ‘qualification’ under item 3. Then in item 27 is a listing of courses of study and examinations developed by CPS. Totally, 11 different items are listed, of which items 4 to 11 are diplomas:

“27. The following Courses of Study and Examinations prescribed by the College of Physicians and Surgeons of Mumbai, a society registered under the Societies Registration Act, 1860, namely:-

- (1) Fellowship of College of Physicians and Surgeons in Medicine [F.C.P.S. (Medicine)],
- (2) Fellowship of College of Physicians and Surgeons in Surgery [F.C.P.S. (Surgery)],
- (3) Fellowship of College of Physicians and Surgeons in Midwifery and Gynaec [F.C.P.S. (Midwifery and Gynaec)],
- (4) Diploma in Gynaecology and Obstetrics (D.G.O.),
- (5) Diploma in Child Health (D.C.H.),
- (6) Diploma in Pathology and Bacteriology (D.P.B.),
- (7) Diploma in Public Health (D.P.H.),
- (8) Diploma in Family Planning (D.F.P.),
- (9) Diploma in Anaesthesiology (D.A.),
- (10) Diploma in Transfusion Medicine (D.T.M.),
- (11) Diploma in Tropical Medicine and Health (D.T.M. and H).”

6. The show cause notice in question of 14th March 2023 has a certain factual background. The necessary correspondence in that regard is relatively recent, from January 2023 or thereabouts. It seems that in early January, CPS wrote to the Government of India, Ministry of Health and Family Welfare saying that admissions for CPS courses in Maharashtra were conducted by the Government of Maharashtra for the Academic Year 2021 and counselling was completed. But for the Academic Year 2022, while the admission process was over, the state government had not yet started the admission process for CPS courses. CPS therefore sought directions. The Union Government wrote back referring to its earlier letter of 24th May 2021 saying that the State had to do its own counselling to fill seats in CPS courses. Three years earlier, in

2021, the Central Government had observed that it was the State Government that would conduct counselling. Many courses run by CPS were not recognised under the Indian Medical Council Act 1956 but were recognised under the State Act. Counselling for CPS course admissions typically starts after the counselling for other post-graduate courses (MD, MS etc). The CPS courses are all post-graduate diploma courses.

7. What this structuring tells us is that medical students who do not gain admission to the regular post-graduate degree (or diploma) courses taught at teaching institutes, can then go through the counselling rounds for admission to CPS Diploma courses at non-teaching institutes.

8. On 23rd January 2023, the Secretary in the Medical Institution Drugs Department wrote to the Secretary of the Government of India pointing out that following an inspection of hospitals running CPS courses, it was found that of the 120 hospitals visited, two were entirely closed, and another 74 refused to subject themselves to inspection. Severe deficiencies were noted in another 44 regarding infrastructure and faculty, thus violating National Medical Commission (“NMC”) minimum standard requirements. The Secretary also enclosed copies of orders of 18th July 2018 of this Court about complaints and High Court matters arising out of the CPS admission process. She expressed the view that admitting students would be detrimental to the students themselves and for the health system in general, and sought further guidance. The Deputy Secretary to the Government of Maharashtra’s Medical Education Department then wrote to CPS

on 23rd January 2023 calling for certain information. The letter reads:

“Government of Maharashtra
Medical Education and Drugs Department,
G.T. Hospital Premises, 9th Floor,
Lokmanys Tilak Road, New Mantralaya,
Mumbai 400 001.

No. MED-2023/Cr.37/23/Edu-2 Date: 23/01/2023

To,
The President/Registrar,
College of Physicians and Surgeons,
CPS House, Dr. E. Borges Road,
Parel, Mumbai 400 012.

Subject:-CPS admission process 2022-23.

Ref:- Ministry of Health and Family Welfare, Government of India, New Delhi, letter F.NO.U-12021/05/2021-MEC {8106626}, dated 13/01/2023.

Sir,

With reference to the Govt of India letter dated 13/01/2023, the following information be kindly submitted to this office:-

Coursewise details of seats in the Government/Private Institutes, where the CPS courses are offered.

Permission given by State/Central Government to the Private Institutes for running the CPS courses.

MoU signed between CPS and Private Institutes regarding the fee structures.

List of Recognised teachers institute wise.

Yours Sincerely,

(Ajit Sasulkar)

Deputy Secretary to the Government of
Maharashtra

9. CPS replied on 31st January 2023 (page 137). It said that it was in the process of collating that information and that it would revert in due course. The Deputy Secretary sent another letter on 3rd February 2023 (page 138) saying that the information had not yet been received. On 6th February 2023, CPS did send a reply in which it said that the details of seats had already been provided and as to permission, CPS would be functioning as an examining and affiliation body and therefore CPS could not 'recognise' teaching institutions etc. There was no Memorandum of Understanding ("MoU") between CPS and any private institution regarding fees. A list of recognised teachers was annexed. In addition, CPS referred to two reviews of CPS courses by two committees and claimed that those two reviews had accepted and endorsed CPS methodology. It also contended that no question of requiring 'permission' was ever contemplated.

10. There followed the impugned communication of 14th March 2023.

11. By this communication, apart from noting the apparent deficiencies on inspection, the Secretary invoked Section 28(2) of the MMC Act, calling for an explanation as to why the CPS courses should not be removed from the Schedule.

12. Mr Kadam has many complaints. Not all of them need detain us. His first attack on the report of the deficiencies is that it is done

by a person with no authority — the administrator of the Maharashtra Medical Council holding charge between the Council's elections. We are concerned with the factual aspects of deficiencies, and will not accept such an argument that seeks to altogether elide the deficiencies.

13. Second, he alleges bias by the Secretary. Her correspondence may be strongly worded but we see no bias sufficient to dislodge an action.

14. What is really being asked for is something that is manifestly in the interest of post-graduate students of medicine, whether studying diploma courses or otherwise. What the government wants to know is, for every CPS diploma course in the Schedule, the name of the private institution that is offering the diploma, who is going to conduct the teaching, the qualifications of such a person and the facilities in that institution to impart education and training including practical training and experience. Obviously, the endeavour is to see that it is not some hole in the wall self-proclaimed 'institute' that claims to offer a 'CPS course' without actually doing anything in the direction of education, and merely hands out diplomas with no education behind them.

15. Mr Kadam says there is no question of de-recognising the course and that recognising or de-recognising an institution is not CPS's concern. We disagree. We do not see how CPS can then have a cause of action in the Writ Petition at all, because if it is not concerned with the institutions then it merely had to say so and it

would not be concerned with the show cause notice either. If its intention is that CPS diploma courses must be allowed to run, then they have to be run in a manner that is both meaningful and does not do violence to the statutory intent. Those courses are post graduate diplomas available where attempts at regular post graduate admissions have failed. Hence there is a separate round of counselling for the CPS diploma courses. It can hardly be suggested that CPS, which designs and programs the courses, has no concern with where they are being taught, or how they are being taught, or even if they are being taught at all, or that these are matters of complete irrelevance or indifference to CPS. Surely if it is a CPS course and recognised as such, then CPS must know — and must demand to know and have a record — of who is running that course that bears the CPS name, where that course is being offered, and with what capability. That is surely not too much to ask.

16. It is also not unreasonable to say that if a CPS course is not being run or cannot be run then it should be reduced from the Schedule in question. It is not as if the schedule contains only CPS courses. Every one of the items from 4 to 11 will find place somewhere or the other in the schedule.

17. We are unable to understand the resistance of the Petitioner to answer the show cause notice with the material that it has and to render an explanation. The only thing we are told is that there is bias, there is no possibility of removal of CPS courses from the schedule, that two committees have recommended CPS methodology and therefore none can ask questions of any kind to CPS. That is an unacceptable position.

18. The next point is that the notice is vague and insufficiently particularised. The Petitioner has by now received information about each one of the institutes running CPS courses and why they are said to be inadequate for one reason or the other. We need not get into those details. That is a matter for the show cause notice.

19. Mr Kadam submits that it is not for CPS to establish why the courses should be recognised but that the structure of Section 28 is exactly the other way. He has to only show cause why the CPS course should not be removed from the Schedule and it is for the authorities to show reason for the removal. As we have noted above, this seems to us to put the cart before the horse. What is being lost sight of here is that it is not the interest of the CPS that concerns us in the least. It is the interest of students taking CPS courses or being offered CPS courses. Surely the least one can expect from all concerned, i.e., from the Secretary of the Education Department to the Maharashtra Medical Council and CPS itself is that the standards of medical education be maintained at as high a level as possible without any compromise. This is not achieved, in our estimation, by going about things in the manner CPS suggests, i.e., without any regard whatsoever to the actual on site facilities, conditions, training and education.

20. This is exactly the purport of Section 28(2), set out above. If the course of study or the examinations for any diploma etc included in the Schedule are insufficient to properly qualify students for a medical practice, to impart to them the necessary standards of competence and proficiency, then, subject to the two provisos, the State Government has the power to remove the courses from the

Schedule. What CPS suggests is that these standards of medical education are not its concern. It does not matter whether a non-teaching hospital does or does not have staff, faculty, facilities, or even if it is running: the course cannot be removed. It is somehow immutable and written in stone. That argument is only to be stated to be rejected. We are not prepared to endorse a descent into greater mediocrity and incompetence.

21. Mr Kadam says that the noting is that the Maharashtra Medical Council norms are not followed but does not show why they are not followed or which norms are not followed. This is in the column 4 the training programme. To this limited extent, Mr Kadam may be correct in that before the hearing on the show cause notice, the Secretary will no doubt have to provide the Petitioner with details of the norms said not to be followed. Other than this, we see no reason to interfere.

22. Rule is discharged. There will be no order as to costs.

23. In view of this, Writ Petition No 5269 of 2023 will not survive and is disposed of as such.

(Neela Gokhale, J)

(G. S. Patel, J)