

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 7th September, 2010.

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W.P.(C) No.5767/2010

SWAWLAMBI EDUCATIONAL TRUST & ANR. PETITIONERS

Through: Mr. M.S. Vinaik & Mr. Saurabh
Shandilya, Advocates

Versus

UNION OF INDIA & ANR.

..... RESPONDENTS

Through: Ms. Sapna Chauhan, Advocate for R-1.
Ms. Surabhi Mehta & Mr. J.P.
Karunakaran, Advocates for R-2.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may
be allowed to see the judgment? No
2. To be referred to the reporter or not? No
3. Whether the judgment should be reported
in the Digest? No

RAJIV SAHAI ENDLAW, J.

1. This petition has been preferred claiming the relief of quashing the order dated 15th July, 2010 of the Ministry of Health & Family Welfare, Government of India (respondent no.1), disapproving the proposal of the petitioner no.1 for establishment of a new Dental College at Hazaribagh in Jharkhand from the academic session 2010-11; the petition also seeks a mandamus to the Government of India to grant such permission to the petitioners.

2. The petitioners had first applied for establishment of Dental College with an intake of 100 students for academic session 2007-08; the same was

disapproved and the representations of the petitioners there-against also did not meet any success. The petitioners thereafter again applied for academic sessions 2008-09 & 2009-10 but without any success. Upon being refused permission for the current academic year also, the present petition was filed.

3. The respondent no.2 Dental Council of India (DCI) on whose recommendation dated 12th June, 2010 the application of the petitioners was disapproved, has for the current academic year given the following reasons for recommending refusal of permission to the petitioner:

- (i) That there is deficiency of Principal and Professor in the department of Prosthodontics. The appointment of the Principal proposed by the petitioners was not accepted as he was found to be a full time practitioner in Pune and a mismatch was found with respect to the documents furnished in proof of his residence and his date of appointment. He was also found to have not furnished the NOC from the DCI. Similarly, the Professor, proposed in the Department of Prosthodontics, was not accepted for having not furnished the NOC from DCI.
- (ii) That there was deficiency of one Reader in the Department of Prosthodontics. The appointment proposed by the petitioners was not accepted for the reason of NOC from the DCI having not been furnished.
- (iii) That there was deficiency of one Reader in the Department of Conservative Dentistry. The appointment proposed by the petitioners was not accepted since neither was the incumbent present on the date of inspection nor any related document could be verified. With respect to him also the NOC from DCI was not furnished.

- (iv) That the hospital attached to the proposed Dental College was not accepted. The said hospital was stated to be comprising of two Blocks of which one was found to be non functional with all necessary equipments.
- (v) Two of the 25 dental chairs were found to be under repair.
- (vi) Staff quarters were stated to be in need of upgradation and new staff quarters as well as bungalow for the Principal was found to be under construction.
- (vii) Department of Anatomy and Biochemistry labs were found to be in need of upgradation.
- (viii) Biomedical waste management system was found to have not been implemented and the system for sterilization was found to be requiring improvement.
- (ix) Common room for boys and girls were found to be in need of upgradation.
- (x) X-ray room was not found as per the norms of BARC.
- (xi) The library was not found to be well equipped.

4. Though the counsel for the petitioners with reference to the reply dated 24th May, 2010 of the petitioners to the deficiency notice issued to the petitioners prior to the recommendation dated 12th June, 2010 (supra) of the DCI, sought to controvert each of the aforesaid reasons given by the DCI for making a negative recommendation but in my view all the aforesaid reasons given for refusing recommendation are factual and with respect whereto no finding either way can be given without enquiry. For instance, the counsel

for the petitioners with reference to the deficiency in the appointment of Principal has pointed out that affidavit of the Principal to the effect that he had stopped private practice had been furnished. With respect to the mismatch alleged, it was pointed out that the proof of residence in the form of mobile phone bill was furnished; the said mobile phone was obtained even prior to appointment, when he had visited the College before accepting the appointment. It is urged that there is no room for doubt in view of the said affidavit. With respect to the NOCs of other faculty members, it was stated that the same were furnished with the reply or could be furnished. Similar explanations were given with respect to other deficiencies also.

5. I am afraid this Court in writ jurisdiction cannot enter into the aforesaid disputed questions of fact. A procedure has been prescribed for granting permission for establishment of Dental Colleges. The said decision entails detailed enquiry by the experts. Once the said experts after issuing deficiency notice and considering the reply thereto by the petitioners have found the petitioners not equipped to establish the College, this Court cannot substitute its own opinion for that of the experts. The experts had physically visited the proposed College and hospital and had given their recommendations thereafter. The recommendation of the experts after ocular inspection cannot be substituted with the orders sought by the petitioners from this Court on the basis of the same documents which were also produced before the experts. The petitioners have been unsuccessful in showing any error in the decision making process and otherwise also no case for interference by this Court is made out.

6. The counsel for the petitioners relies on *Al-Karim Educational Trust Vs. State of Bihar* (1996) 8 SCC 330 where the Supreme Court from the manner in which the deficiencies were pointed out from time to time; each time the old deficiencies were shown to have been removed, new

deficiencies were shown formed an impression that the affiliation was being unnecessarily delayed. It was further observed that once the Institution feels secure on the question of affiliation, it would remove the minor deficiencies remaining and for taking such further steps the grant of affiliation need not wait. The counsel for the petitioners has contended that in the present case also year after year deficiencies were being pointed out.

7. Though undoubtedly the application of the petitioners has remained pending since the year 2007 but from the facts, it appears that the petitioners applied for permission first when they did not even meet the requisite criteria. Merely because an Institution applies for permission / recognition immediately on conceiving the project and is rejected several times would not entitle it to after a few years contend that now it must be granted permission / recognition. The institution is itself to blame for making half hearted attempts for permission / recognition. The deficiencies pointed out in the current year and on the basis whereof negative recommendation was made cannot be said to be minor. If the head of the Institution i.e. the Principal who has a very important role is not satisfactory, as found by the experts in the present case, it cannot be said that the Institution should be allowed to be established. There appear to be other infrastructural deficiencies also. I am therefore not inclined, in the facts of the present case, to grant the relief claimed to the petitioners.

8. The Supreme Court in *Union of India Vs. Era Educational Trust* (2000) 5 SCC 57 has held that the High Court in exercise of jurisdiction under Article 226, by granting interim relief to run Medical College despite the fact that the Central Government rejected such permission had violated norms of grant of interim relief.

9. However one thing has struck me as odd, neither the DCI nor the Government have given any reasons, though the recommendation dated 12th June, 2010 (supra) was made after issuing deficiency notice to the petitioners and considering the reply thereto of the petitioners but does not deal with the reply and does not disclose as to why the said reply was not satisfactory. Similarly though the role of DCI was only recommendatory and the decision was taken by the Government, the communication dated 15th July, 2010 of the Government also does not contain any reason. It does appear that at least now the Dental College exists; the recommendation dated 12th June, 2010 has not found any deficiencies other than those listed out herein above. The counsel for the petitioners has also contended that in other cases permission has been granted subject to compliance of deficiencies regarding documents etc. and the same could have been done in the present case also.

10. It was therefore enquired from the counsels as to what safeguards can be imposed to ensure that the petitioners in its application for the next academic year at least has a fair assessment. However, no suggestions have been forthcoming. In my opinion, the respondents should not only process the applications for establishment of Dental College of Institutions such as the petitioners whose application for earlier year has been rejected well before the next academic year but also point out the deficiencies well in time to enable the applicants to remove the deficiencies and offer fresh inspection to satisfy DCI of the same. Similarly decision on such application should also be taken well in time so that the applicants, if aggrieved, can avail all their remedies well in time before the commencement of the academic session. The recommendation of the DCI and the decision taken by the Central Government affect the rights of the applicants. The applicants who have undoubtedly made huge investments for establishment of Institutions are bound to suffer if made to wait for an additional year. The right to be

furnished reasons for an adverse decision is now well entrenched as an ingredient of natural justice. The applicants such as the petitioners thus have a right to know as to why their explanations to the deficiency notice issued have not been accepted. The same would also give them a chance to be prepared for the next academic year.

11. Thus while dismissing the petition, subject to the petitioner making the necessary application at the earliest, the respondents to process the said application of the petitioners for the next academic year in accordance with the observations aforesaid. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

7th September, 2010

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(Corrected and released on 23rd September, 2010)