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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 13215/2009

% *Judgment Delivered on: 16.02.2010*SHREE BANKEY BIHARI EDUCATIONAL
SOCIETY THROUGH ITS CHAIRMAN

..... Petitioner

Through: Mr.Anil Sapra, Sr. Advocate with Mr.Rajiv
K. Garg, Advocate

versus

UNION OF INDIA AND ANR

..... Respondent

Through: Mr.Jatan Singh, Adv. for Union of India.
Mr.Gaurav Sharma, Mr.J.P. Karunakaran
and Mr.Jaspreet Singh, Advocates
for respondent No.3

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

G.S.SISTANI, J. (ORAL)

1. The brief facts of the case as set out in the petition are that the petitioner society was formed in the year 2001 with the aim and object to run and manage schools, colleges and institutions for all types of education. In the year 2003 petitioner applied for and was granted essentiality certificate by the State of U.P. with intake of 100 seats for BDS course. The petitioner submitted bank guarantee of Rs.75.0 lacs for establishing/ running of a dental college, to the State of U.P. In the year 2004 petitioner got permission /approval of the Central Government for starting a BDS course. The petitioner also received affiliation certificate from Chaudhary Charan Singh University, Meerut in August, 2004. The

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students of first batch gave final examination which was held in December, 2008. Thereafter, petitioner became eligible for starting higher studies for which petitioner requested the respondent for grant of a recognition certificate.

2. On 30.6.2009 petitioner applied for grant of permission/ approval for conducting MDS course in nine specialties and submitted the requisite application along with draft of Rs.3.0 lacs for each specialty totaling to Rs.27.0 lacs. In July, 2009 petitioner received a communication from the respondent directing the petitioner to submit the essentiality certificate and also the affiliation certificate from the University. By two communications dated 23.7.2009 and 29.7.2009 petitioner requested the respondent to grant extension of time for submitting the two certificates.
3. The Union of India is stated to have granted recognition to the petitioner on 17.08.2009 which was a date subsequent to the last date for completing all formalities i.e. 31.7.2009. The petitioner received the essentiality certificate from the State government on 30.09.2009 and the affiliation certificate from the University on 01.10.2009. Both these documents were submitted with the respondent on 06.10.2009, however, respondent declined the request of the petitioner by letter dated 28.10.2009 for starting the post graduate course, as the deficient documents could not be furnished before the last date i.e. 31.07.2009. Aggrieved by the communication dated 28.10.2009 present petition has been filed.
4. Counsel for petitioner has strongly urged before this Court that admittedly all deficiencies stood removed by 14.07.2009.

Although it is submitted that the deficiencies pointed out on 10.6.2009 were explained by the petitioner by communication dated 27.7.2009, however, for reasons best known to the respondent, respondent no.3 again repeated the same deficiencies and accepted the same explanation of the petitioner on 14.07.2009. Counsel for petitioner also submits that petitioner cannot be made to suffer on account of lapse of the respondent. Even after removal of deficiencies by 14.07.2009 the Government issued the notification for recognition only on 17.08.2009. He submits that as far as petitioner is concerned, he had completed all the formalities before the cut-off date i.e. 14.07.2009.

5. It is also contended by counsel for the petitioner that had the notification been issued by the Government within a reasonable period i.e. before 31.07.2009, the petitioner would have submitted the essentiality certificate and the affiliation certificate, both of which could only be issued after the recognition which was granted by the Government on 17.08.2009. Counsel also submits that although petitioner had requested for extension of time by communications dated 23.07.2009 and 29.07.2009, despite the power vested with the respondent, the respondents have failed to consider the request of the petitioner as per Note 2 of the Schedule.
6. Counsel for petitioner has also relied upon the schedule Regulation 4(2) of the Dental Council of India, which reads as under:

"SCHEDULE
[See Regulation 4 (2)]

Schedule for receipt of Applications for Establishment of New Dental Colleges, Opening of Higher course of Study & Increase of admission capacity in the recognized Dental Colleges and processing of the applications by the Central Government and the Dental Council of India.

S.No.	Stage of Processing	Time Schedule for BDS	Time Schedule for MDS
1.	Receipt of applications by the Central Govt.	From 1 st August to 30 th September (both days inclusive) of any year	From 1 st May to 30 th June (both days inclusive) of any year
2.	Forwarding of applications by the central Government to the Dental Council of India for technical scrutiny.	Upto 31 st December	Upto 31 st July.
3.	Recommendation of DCI to the Central Government	Upto 15 th June	Upto 28 th February.
4.	Issue of Letter of Permission by Central Government	Upto 15 th July	Upto 31 st March.

Note:-

1. If any clarification is sought by the Central Government on the recommendation of the Council, the same will be furnished by the Council forthwith, if necessary, after conducting inspection.
2. The time-schedule indicated above may be modified by the Central Government, for reasons to be recorded in writing, in respect of any class or category of applications."

7. Counsel for petitioner also submits that bare reading of the order dated 28.10.2009 would show that the order has been passed without any application of mind and in a stereotype fashion without taking into consideration the facts of this case. It is contended that the Government of India has failed to consider in its order that all formalities stood completed by the petitioner on 14.07.2009 and delay, if any, can only be attributed to the Government of India, thus while passing the order dated

28.10.2009, the respondent should have considered the necessary facts which resulted in delay. It is also contended that it is a fit case where the respondent should have exercised its discretion and the time schedule should have been modified.

8. Counsel for petitioner submits that the regulation 4, Sub-clause 2 was introduced in the year 2006, after the decision rendered by the Supreme Court in the case of **Mridul Dhar (Minor) & Anr. Vs. Union of India & Ors.** (2005) 2 SCC 65, which is sought to be relied upon by respondent, to show that the time schedule for establishment of new college or to increase intake in the existing college was to be adhered to by all concerned. Counsel also submits that regulations 4, Sub-clause 2 having been introduced on 16.01.2006 after passing of the judgment would show that in special cases, for the reasons to be recorded in writing the time schedule could be modified. Learned counsel further submits that the decision rendered by the Apex Court in **Mridul Dhar (Minor) & Anr. (Supra)** was in fact an interim order which had been passed while dealing with timely declaration of the examination results and not for cases in which a new course was to be added. In support of this submission, counsel for petitioner relies on para 7 of the judgment which is reproduced below:

"7. It is a matter of anguish that despite various decisions of this court and laying down of a time schedule for completion of admission process, the time schedule has not been adhered to at various stages by various authorities resulting in otherwise avoidable discontentment and hardship to the candidates. The observance of the time schedule is paramount for effective utilization to all-India quota of medical and dental seats. The denial of a seat in the college of choice on the basis of one's merit position

leads to frustration and results in injustice to the young students. The admission to a professional course based on merit position is paramount for the career of a student. The omission and commission in respect of admissions this year, as is evident from the orders aforementioned, adversely affected the career of meritorious students in their not getting admission in the college of their choice. Any frustration and feeling of injustice at an impressionable age at which the students compete in all-India competition is neither desirable from the point of view of either the young students nor for the country's future. We are concerned with the career of those bright candidates who complete in a tough all-India competition. In this background, it is necessary to examine the acts of omission and commission at various levels, the suggestions that have been made and submissions put forth, to consider the issuance of directions for streamlining admissions from the next academic year in MBBS/BDS courses."

9. Present petition has been opposed by the counsel appearing for Dental Council of India as well as by the Union of India. Both the counsel submit that the petitioner was given repeated opportunities to clear the deficiencies and the petitioner could clear the deficiencies only by 14.07.2009. Counsel for respondent no.3 submits that no relief can be granted to the petitioner for the reasons that the application was filed by the petitioner on 30.06.2009, which was the last day for submitting the application and that the application filed by the petitioner was incomplete.
10. It is further contended that the judgment of the Supreme Court would be applicable with all force in view of the fact that as per direction no.14 of the judgment, the time schedule for establishment of new college or to increase intake in existing college, are to be adhered strictly by all concerned. It is submitted that introduction of a new course can be equated to establishment of a new college, as it would have the same effect.

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Counsel also relied upon direction 15 of the judgment wherein the Apex Court has directed the time schedule provided in the Regulation shall be strictly adhered to by all concerned, failing which the defaulting party would be liable to be personally proceeded with.

11. Counsel for respondent has further submitted that no fault can be fastened on the respondent as the essentiality certificate and affiliation certificate was not provided before the last date which was on 31.07.2009. Counsel also submits that petitioner cannot take advantage of his own wrong, as admittedly the petitioner was entitled to make the application between 01.05.2009 upto 30.06.2009, however, petitioner made the application on the last date i.e. 30.06.2009. Repeated communications were sent to the petitioner, including letters dated 13.01.2009, 06.05.2009, 29.05.2009, 10.06.2009 and 13.07.2009, to remove the deficiencies, but the petitioner did not do so.
12. I have heard counsel for parties and perused the record. As per Regulation 4, Sub-clause 2 of the Schedule of the Dental Council of India the last date for submitting of documents was admittedly 31.07.2009. Admittedly, the petitioner had failed to submit essentiality certificate, which was to be issued by the State Government as also the affiliation certificate which was to be issued by the University. It is also not in dispute that these two certificates could only have been issued upon a notification having been issued by the Union of India, granting recognition to the petitioner. Documents placed on record would show that the

notification was issued by the respondent no.2 granting recognition to the petitioner on 17.08.2009, which is a date beyond the last date as fixed by the Government itself. It is also not in dispute that before the final order rejecting the application of the petitioner was passed, both the essentiality certificate as well as the affiliation certificate were submitted by the petitioner on 06.10.2009. The impugned order dated 28.10.2009 is reproduced below:

"F.No.V.12017/16/2009-DE
GOVERNMENT OF INDIA
Ministry of Health & Family Welfare
(Dental Education Section)

Nirman Bhawan New Delhi
Dated the 7th September, 2009

28.10.2009

To,

The Principal,
Shree Bankey Bihari Dental College
& Research Centre,
N.H. 24, Masuri Canal, Masuri,
Ghaziabad (U.P.)

Subject: Application for starting of MDS course in the specialties of (i) Orthodontics & Dentofacial (ii) Public Health Dentistry (iii) Periodontics (iv) Prosthodontics (v) Paedodontics (iv) Oral Medicine & Radiology (vii) Conservative Dentistry & Endodontic (viii) Oral & maxillofacial Surgery (ix) Oral Pathology from the academic session 2010- 11 at Shree Bankey Bihari Dental College & Research Centre, Ghaziabad (U.P.) reg.

Sir.

1. I am directed to refer to your proposal on the above subject and to say that inspite of giving enough opportunity, you have not furnished the deficient documents by 31st July, 2009 which was

the last date as per the Time Schedule given in the Dental Council of India (Establishment of New Dental Colleges) Regulations, 2006 for forwarding of MDS applications to Dental Council of India for considering the same for the academic year 2010-11. Hence, it is not possible to consider your above application for the academic year 2010-11.

2. IN view of above, your application to (illegible) along with Demand Draft bearing No.737030 to 7377038 dated 29.6.2009 for Rs.27.00 lakhs (Rs.3 lakhs each as returned herewith). However, you are hereby advised to submit the application afresh complete in all respects between 1st May to 30 June, 2010 for considering your application for the academic year 2011-12 if you so desire."

13. A bare reading of the order would show that while declining the request of the petitioner, the respondent has failed to take into consideration the request of the petitioner vide letter dated 23.07.2009 and 29.07.2009, seeking extension of time. Letters dated 23.07.2009 and 29.07.2009 are reproduced below:

"Shree Bankey Bihari Dental College & Research Centre
An Institution with values, character and commitment

SBBDC/2009/6776

23.07.09

To,

**Under Secretary to the govt. of India
Ministry of Health & Family Welfare
Dental Education, Nirman Bhawan,
New Delhi.**

Subject: Submission of University Affiliation Certificate
and
Essentiality Certificate.

Sir,

In reference to the subject cited above and your letter no.F.No.V.12017/16/2009-DE dated 17th July, 2009, we want to bring to your kind notice that the meeting of empower committee, Govt. of Uttar Pradesh is scheduled on 24th July, 2009, thereafter we will get the essentiality certificate. The University affiliation certificate is under process as

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recognition letter is due to issue from Govt. of India, Ministry of Health & Family Welfare. Both the certificate will be received very shortly.

Therefore considering all facts and circumstances you are requested to please extend the date of submission of the above certificates.

Yours faithfully,

For Shree Bankey Bihari Dental College & Research Centre

[Dr. Kishan Singh]
Principal"

"Shree Bankey Bihari Dental College & Research Centre
An Institution with values, character and commitment

SBBDC/2009/
29.07.09

To,

The Joint Secretary (ME)
Govt. of India
Ministry of Healthy & Family Welfare
Dental Education Section,
Nirman Bhawan, New Delhi.

Subject: Relaxation of time to submit the Essentiality Certificate & University Affiliation Certificate to start the MDS (PG Course) in 9 specialties from the academic session 2010-11.

Sir,

In reference to the subject cited above and your letter no.F.No.V.12017/1616/2009-DE, dated 17th July, 2009, we are requesting you to extend the date to submit the Essentiality Certificate and University Affiliation Certificate up to one month due to following reasons.

1. Recognition letter is about to issue from Ministry of Health & Family Welfare, as recognition inspection had been conducted on 26th & 27th December 2008 by DCI, But the DCI General body meeting was held on 18th & 19th July, 2009. The General Body has recommended our college for recognition and the recommendations also has been sent to Ministry of Health & Family Welfare, Dental Education Section,

Govt. of India.

2. We have submitted application to start MDS in all 9 specialties to Ministry of Health & Family Welfare within time on 30th June 2009.
3. To get essentiality certificate from U.P. State Govt. & letter of Affiliation from CCS University, Meerut, we require one month time i.e. up to 31st August, 2009. Such type of relaxation to submit the Essential Certificate & Affiliation Certificate had been granted earlier also.
4. We have already submitted application for Essentiality Certificate to UP State Govt. Lucknow.

Therefore considering the future of students, doing internship in 2009-10, we are hereby request to you kindly relax the date of submission of above two certificates up to one month (31 August 2009), henceforth please make it possible to start MDS PG Course in 9 specialties at our college from the academic session 2010-11. This is for your very kind consideration.

Yours faithfully,

For Shree Bankey Bihari Dental College & Research Centre

[Manoj Kumar Gupta]
General Secretary"

14. Although in the judgment rendered by the Supreme Court in the case of Mridul Dhar (Minor) & Anr. (Supra) had issued directions for time schedule for establishment of new college or increase intake of new college are to be adhered strictly by all concerned, the Union of India considered it appropriate to introduce regulations 4(2) in 2006 which has been reproduced above and as per Note 2 where in certain suitable cases for reasons to be recorded in writing, the time schedule could be modified. While passing the impugned order dated 28.10.2009

the respondents have failed to consider the prayer made by the petitioner for grant of extension of time, as per letters dated 23.07.2009 and 29.07.2009 and more particularly as all the deficiencies stood cleared by 14.07.2009 and the essentiality certificate and affiliation certificate to be granted were a mere formality. There is no explanation rendered by counsel for respondents as to why after the decision rendered by the Supreme Court in Mridul Dhar (Minor) & Anr. (Supra), respondents introduced Note 2 to the Regulation 4(2) of the Dental Council of India. The only explanation rendered is that in *force majeure* cases, said Rule is to be relied upon. Since abovesaid two letters, which have been reproduced above, were written by the petitioner to respondent for extension of time, the respondents were duty bound to consider the request for extension of time.

15. Reading of the order dated 28.10.2009 would show that the request of the petitioner for extension of time has not been considered at all at the time of passing the impugned Order dated 28.10.2009.
16. In the proceedings under Article 226 of the Constitution, this Court is really concerned with the decision making process and not the decision itself. Accordingly, the impugned communication dated 28.10.2009 is set aside. Respondents no.1 and 2 are directed to consider the request of the petitioner, in the light of the Note 2 of Regulation 4(2) of the Dental Council of India and in the facts and circumstances of this case, and thereafter pass appropriate orders

in accordance with law within a period of one week from the date of receipt of this order. College is directed to produce the entire record before respondent no.2 India within two days from today, to enable respondent no.2 to arrive at a decision.

17. Petition stands disposed of in above terms. DASTI to counsel for parties under the signatures of the Court Mater.

CM.No.14387/2009 (STAY)

18. In view of order passed in the writ petition, nothing further survives in this application. Dismissed.


G.S. SISTANI, J.

February 16, 2010
'ssn'