

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 24.05.2011

Judgment delivered on: 26.05.2011

W.P.(C) No.3549/2011 and C.M.No.7434/2011

Shree Chhatrapati Shivaji Education Society Petitioner

Through: Mr.S.N.A.Kazmi, Sr. Advocate with
Mr.Rajshekhar Rao, Advocate.

Vs.

Medical Council of India & Ors. Respondents

Through: Mr.Amit Kumar, Advocate for
the Respondent No.1-MCI.
Mr.Neeraj Chaudhari, CGSC
with Mr.Mohit Auluck,
Advocate for the
Respondent No.2.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

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

KAILASH GAMBHIR, J.

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+C.M.Nos.7435-7436/2011 (Exemption)

Allowed, subject to all just exceptions.

Application stands disposed of accordingly.

**+W.P.(C) No.3549/2011 and C.M.Nos.7434/2011
(interim relief)**

1. By this petition filed under Article 226 of the Constitution of India, the petitioner seeks directions to set aside the letters dated 08.02.2011 and 27.04.2011 issued by the MCI, respondent No.1 herein and after setting aside the said letters to direct the respondent No.1-MCI to approve the application of the petitioner for establishment of a new medical college after completing the necessary formalities before 15.07.2011.

2. Notice. Mr.Amit Kumar, Advocate accepts notice on behalf of the respondent No.1-MCI. Mr.Mohit Auluck, Advocate accepts notice on behalf of the

respondent No.2. With the consent of counsel for the parties, the writ petition is taken up for final disposal today itself.

3. The case of the petitioner is that the petitioner is a society registered under the Societies Registration Act, 1860 and owns and manages a 340 bedded running rural hospital i.e. Rural Institute of Medical Sciences in Vidyagiri, Mayani, Taluka Khatav, District Satara, Maharashtra. It is further stated that the petitioner has completed the infrastructure of a new rural medical college i.e. Institute of Medical Sciences and Research at Mayani, Taluka Khatav, District Satara on a land of 20 acres with hospital and college buildings, necessary equipments and teaching faculty after investing a huge sum of Rs.32 crores, out of which a sum of Rs.10 crore was funded by a commercial loan obtained from the Bank of India, Mayani Branch. It has been further stated that the petitioner had addressed a letter dated 27.10.2009 to the Maharashtra University of Health Sciences (MUHS), Nasik in the prescribed format to seek affiliation of their new medical college along with prescribed fee of Rs.7 lacs. It has also been

stated that on 29.12.2009, Maharashtra University of Health Sciences made recommendations to the Government of Maharashtra for issuance of the Essentiality Certificate to the petitioner under Section 64(5) of the MUHS Act, 1998. It has been further stated that in September, 2010, on the recommendation of the MUHS, the State Government had inspected the said institute of the petitioner so as to determine whether the Essentiality Certificate should be issued in favour of the petitioner or not. On 20.09.2010, the petitioner had addressed a letter to the MCI proposing to start a 100 seat Medical college in rural Maharashtra attached to the 340 bedded running hospital so as to provide quality education to the aspiring students from the rural population. The petitioner had also deposited the prescribed fee of Rs.7 lacs for establishment of new medical college which amount was stated to have been received by the MCI. It is also the case of the petitioner that after inspection by the Committee appointed by the Directorate of Medical Education and Research, they had recommended the case of the

petitioner to the Government of Maharashtra on or about 01.10.2010 for issuance of the Essentiality Certificate and the said file as per the petitioner was also forwarded to the Minister for Medical Education on or about 12.10.2010. It is further stated that unfortunately due to certain political turmoil in the State caused by Adarsh Societies' scam in Mumbai, the Essentiality Certificate in favour of the petitioner was not issued by the State Government before the laid down cut-off date of 30.11.2010. It is further stated that on 27.11.2010, the petitioner through email communication was informed by the MCI requiring the petitioner to furnish certain documents including the Essentiality Certificate and the Affiliation Certificate on or before 30.11.2010. It has also been stated that on 29.11.2010 a letter was sent by the petitioner to the MCI furnishing the required information, but so far the submission of the Essentiality Certificate and consent of the affiliation was concerned, the petitioner brought to the notice of the MCI that due to uncertain political situation in the State Government of Maharashtra,

the request of the petitioner for the grant of Essentiality Certificate was still pending consideration with the State Government. It is also the case of the petitioner that after much follow up, the Essentiality Certificate was issued by the State Government on 23.12.2010 and on 11.01.2011 the provisional Affiliation Certificate was also issued in favour of the petitioner by MUHS for the proposed institute of medical sciences and research. Immediately upon receipt of the said documents, the petitioner forwarded the same to the MCI with a covering letter dated 12.01.2011. The petitioner thereafter through various letters took up the matter with the MCI and with the Central Government and the petitioner vide letter dated 08.02.2011 was informed by the Board of Governors (which superseded the Medical Council of India), that the application of the petitioner seeking establishment of a new medical college at Mayani, Taluka Khatav, District Satara, Maharashtra was being returned as the application made by the petitioner was found to be incomplete in terms of the qualifying criteria. The said decision was reiterated by the

respondent-MCI vide their communication dated 27.04.2011 when they informed the petitioner that the request of the petitioner was re-considered by the Board of Governors and they had taken a decision to reiterate their earlier decision of 08.02.2011 as the petitioner did not submit the Essentiality Certificate and Affiliation Certificate within the laid down cut off date. Aggrieved with the said decision of the MCI, the petitioner has approached this Court to seek setting aside of the said letters and to seek approval of their medical college.

4. Arguing for the petitioner, Mr.S.N.A.Kazmi, learned Senior counsel submits that the petitioner made all efforts to obtain the Essentiality Certificate and Affiliation Certificate, but the same were not issued by the concerned authorities due to the political turmoil in the State on account of Adarsh Societies' scam due to which even the Chief Minister had to step down. Counsel for the petitioner further submits that in any case, the petitioner could obtain the said certificates on 23.12.2010 and 11.01.2011 respectively i.e.

much prior to the consideration of the case of the petitioner by the Board of Governors of MCI. Counsel has also placed reliance on sub-para 4 of para 35 of the judgment of the Hon'ble Apex Court in the case of ***Mridul Dhar (Minor) and Another vs. UOI (2005) 2 SCC 65*** which mandates all the State Governments to ensure compliance with the directions of the court to undertake setting up of new colleges within the requisite time schedule, otherwise to face penal consequences. Counsel has also placed reliance on Regulation 7 of Medical Council of India, Establishment of Medical College Regulations, 1999 to contend that the Central Government can always re-consider the application filed by the petitioner after taking into consideration the new or additional facts. The contention of counsel is that with the filing of the said Essentiality Certificate and Affiliation Certificate although after the cutoff date, certainly it called for re-consideration of the case of the petitioner as it was no fault of the petitioner for delayed submission of these certificates. Counsel also submitted that the respondent-MCI

had itself changed the dead line for the submission of application from 30.09.2010 to 30.11.2010 and accordingly it was incumbent upon them to have deferred the further schedule accordingly. Counsel for the petitioner has also placed reliance on the schedule illustrated by the petitioner in para-6(o) of the writ petition which change would have followed as a consequence of the change in the last date of submission of the application from 30.09.2010 to 30.11.2010. Counsel thus submits that to meet the unusual situation it was well within the discretion of the respondent-MCI to entertain the said certificates beyond the dead line, when in fact they had already changed it for submission of the application form by various hospitals, colleges and institutes. Counsel also submits that the academic session of 2011-12 will start from 01.08.2011 and the last date of admission for MBBS students is 30.09.2011 and, therefore, there is no likelihood of any adverse affect on the academic session. In support of his arguments, counsel for the petitioner has placed reliance on the judgment of the Madras High Court in ***Medical Council***

of India repd.by its Secretary Vs. Karpaga Vinayaga Institute of Medical Sciences and Research Centre(MANU/TN/0781/2008) with special emphasis on para 14 of the same.

5. Opposing the present petition, Mr.Amit Kumar, counsel appearing for the respondent No.1-MCI submits that the time schedule mentioned in the regulation is mandatory in character. Counsel also submits that the petitioner was not eligible since it failed to fulfill the basic qualifying criteria of submitting the Essentiality Certificate as well as Affiliation Certificate from the University. Counsel thus submits that in the absence of these documents, the application made by the petitioner could not be considered by the MCI under Section 10-A of the Indian Medical Council Act. Counsel further submits that it is not within the domain of the MCI to extend the time schedule as the Apex Court in the case of ***Mridul Dhar (supra)*** has given very strict directions that the time schedule for establishment of a new medical college shall be adhered strictly by all concerned. Counsel for the respondent

has also placed reliance on the Division Bench judgment of the Punjab and Haryana High Court in ***The Medical Council of India through its Deputy Secretary Vs. Gold Field Siksha Sanstha and others, LPA No.788/2010.***

6. I have heard learned counsel for the parties at the stage of notice and given my thoughtful considerations to the arguments advanced by them.

7. The petitioner herein is seeking directions to direct the respondent No.1-MCI to approve the application of the petitioner for establishment of a 100 seat medical college at Vidyagiri, Mayani, Taluka Khatav, District Satara, Maharashtra so as to provide quality education to the aspiring students from the rural population of the nearby districts. It is not in dispute between the parties that for setting up of any new medical college, prior permission of the Central Government is a pre-requisite in terms of Section 10-A of the Indian Medical Council Act, 1956. The Medical Council of India in exercise of the powers conferred on it by Section 10A read with Section 33 of the Indian Medical Council Act, 1956

vide notification dated 30.07.1999 promulgated regulations referred to as the Establishment of Medical College Regulations, 1999. The qualifying criteria to apply for permission to establish a new medical college has been laid down in regulation 2 of the same which is reproduced as under:-

"2. QUALIFYING CRITERIA-

The eligible persons shall qualify to apply for permission to establish a medical college if the following conditions are fulfilled:-

1. that medical education is one of the objectives of the applicant in case the applicant is an autonomous body, registered society or charitable trust.
2. that a suitable single plot of land measuring not less than 25 acres is owned and possessed by the person or is possessed by the applicant by way of 99 years lease for the construction of the college.
3. that Essentiality Certificate in Form 2 regarding No objection of the State Government/Union Territory Administration for the establishment of the proposed medical college at the proposed site and availability of adequate clinical material as per the council regulations, have been obtained by the person from the concerned State Government/ Union Territory Administration.
4. that Consent of affiliation in Form-3 for the proposed medical college has been obtained by the applicant from a University.
5. that the person owns and manages a hospital of not less than 300 beds with necessary infrastructural facilities capable of being developed into teaching institution in the campus of the proposed medical college."

The time schedule for receipt of the applications for establishment of a new medical college and processing of the applications by the Central Government and the Medical Council of India is fixed in the schedule annexed to the said 1999 regulations and the same is reproduced as under:-

"SCHEDULE FOR RECEIPT OF APPLICATIONS FOR ESTABLISHMENT OF NEW MEDICAL COLLEGES AND PROCESSING OF THE APPLICATIONS BY THE CENTRAL GOVERNMENT AND THE MEDICAL COUNCIL OF INDIA

S. No.	Stage of processing		Last Date
1.	Receipt of applications by the Central Govt.		From 1st August to 31st August (both days inclusive) of any year
2.	Receipt of applications by the MCI from Central Govt.		30th September
3.	Recommendations of Medical Council of India to Central Government for issue of Letter of		15th December

	Intent		
4.	Issue of Letter of Intent by the Central Government.		15th January
5.	Receipt of reply from the applicant by the Central Government requesting for Letter of permission.		15th February
6.	Receipt of Letter from Central Government by the Medical Council of India for consideration for issue of Letter of Permission.		1st March
7.	Recommendation of Medical Council of India to Central Government for issue of India to Central Government for issue of Letter of Permission.		15th May
8.	Issue of Letter of Permission by the Central Government.		15th June

Note: (1) The information given by the applicant in Part-I of the application for setting up a medical college that is information regarding organization, basic infrastructural facilities, managerial and financial capabilities of the applicant shall be scrutinised by the Medical Council of India through an inspection and thereafter the Council may recommend issue of Letter of Intent by the Central Government.

(2) Renewal of permission shall not be granted to a medical college if the above schedule for opening a medical college is not adhered to and admissions shall not be made without prior approval of the Central Government."

The above Schedule has been substituted in terms of Notification published on 26.08.2009 in the Gazette of India

8. As per the petitioner, they had applied to the Maharashtra University of Health Sciences (MUHS) vide their letter dated 27.10.2009 for the grant of affiliation to its said new medical college along with prescribed fee of Rs.7 lacs vide demand draft No.017135 dated 27.10.2009. As per the petitioner, the Maharashtra University of Health Sciences vide their recommendatory letter dated 29.12.2009 recommended to the Government of Maharashtra to issue the Essentiality Certificate in favour of the petitioner under Section 54(5) of the MUHS Act, 1998. It is also the case of the petitioner that in September, 2010 i.e. nearly one year after the recommendation made by MUHS, the concerned authorities carried out the inspection of the site where the petitioner proposed to set up the new 100 seat medical college. Vide application dated 20.09.2010, the petitioner had

submitted the application to the respondent No.1-MCI along with a demand draft of a sum of Rs.7 lacs to seek permission of the Central Government to set up the said 100 seat medical college in terms of 1999 regulations and Section 10A of the Indian Medical Council Act. It is an admitted case between the parties that along with the said application, the petitioner did not submit the said 'Essentiality Certificate' and the 'Affiliation Certificate' and manifestly so because the same were not yet granted by the State Government of Maharashtra and the Maharashtra University of Health Sciences in favour of the petitioner. In the meanwhile, due to the supersession of the Medical Council of India, the said cut off date of 30.09.2010 as laid down in terms of 1999 regulations was extended to 30.11.2010. The petitioner could not forward the said Essentiality Certificate and the Affiliation Certificate even till the said extended date as the Essentiality Certificate was granted by the State Government in favour of the petitioner on 23.12.2010, while the Affiliation Certificate was granted by the Maharashtra University of Health

Sciences on 11.01.2011. The said non-submission of the Essentiality Certificate and the Affiliation Certificate by the petitioner before the cut off date of 30.11.2010 led the respondents to reject the case of the petitioner to establish the 100 seat medical college. It is also not in dispute that vide email dated 27.11.2010, the petitioner was called upon to rectify the deficiencies and one of the main deficiencies conveyed to the petitioner was non-submission of the Essentiality Certificate and Affiliation Certificate. As per the petitioner, it had taken all steps to seek the said Essentiality Certificate and Affiliation Certificate, but it was only due to uncertain political situation and upheavalness in the Maharashtra State Government, caused by Adarsh Societies' scam in Mumbai that the proposal for the grant of the Essentiality Certificate could not be processed by the State Government. The petitioner has further stated that despite having pursued the matter diligently, the said Essentiality Certificate could be issued by the State Government only on 23.12.2010 and the Affiliation Certificate by the concerned

university on 11.1.2011. The petitioner in para-I of the writ petition has also pointed out that for about 70 days from 12.10.2010 to 22.12.2010 the political situation in the Maharashtra State was fluid.

9. The Hon'ble Apex Court in sub para 14 of para 35 in ***Mridul Dhar case (supra)*** has given a clear mandate that the time schedule for establishment of a new college or to increase intake in existing college, shall be adhered strictly by all concerned. In sub para 4 of para 35 of the said judgment, the Hon'ble Supreme Court has further held that it shall be the responsibility of all concerned, including the Chief Secretaries of each State, to ensure compliance with the directions of the court and non-compliance thereof would make them liable for requisite penal consequences. It would be apt to reproduce the said para as under:-

"35. Having regard to the aforesaid, we issue the following directions:

.....

4. It shall be the responsibility of all concerned including Chief Secretaries of each State/Union Territory and/or Health Secretaries to ensure compliance with the directions of this Court

and requisite time schedule as laid down in the Regulations and non-compliance would make them liable for requisite penal consequences.

.....

14. Time schedule for establishment of new college or to increase intake in existing college, shall be adhered to strictly by all concerned."

The strict adherence to the laid down schedule in the regulations is thus held to be imperative by the Supreme Court, and rightly so, because any laxity or leverage in the said schedule would play havoc to the entire scheme involving various stages of processing of applications of various colleges and institutes. The Division Bench of Punjab & Haryana High Court in the matter of ***The Medical Council of India through its Deputy Secretary Vs. Gold Field Siksha Sanstha and others*** (supra) has also taken the same view stating that it is not for this Court to relax the mandatory provisions of the scheme and the directions given by the Hon'ble'ble Supreme Court in ***Mridul Dhar's case (supra)*** cannot be disregarded and hence the timeframe

stipulated has to be strictly followed. Relevant para of the said judgment is reproduced as under:-

"15. Further more, even if there are certain directions in given cases permitting the relaxation of the said mandatory schedule approved in Mridul Dhar's case (supra) by the Hon'ble Supreme Court, it is not for this Court to relax the mandatory provisions of the scheme as this Court does not have the powers of the Hon'ble Supreme Court under Article 142 of the Constitution of India. The mandatory directions pursuant to the judgment of the Hon'ble Supreme Court in Mridul's case (supra) cannot be disregarded and the prescribed timeframe has to be followed".

In view of the aforesaid settled legal position, this Court does not subscribe to the view taken by the Madras High Court in the case of *Medical Council of India repd.by its Secretary Vs. Karpaga Vinayaga Institute of Medical Sciences and Research Centre (supra)*.

10. Now coming to the stand taken by the learned Senior counsel for the petitioner that there was political uncertainty in the State of Maharashtra due to which the State Government did not issue the Essentiality Certificate before the said cut off date looked attractive at the first blush,

but going deeper into the detailed facts as set out in the present petition, the argument deserves outright rejection. As per the own case of the petitioner it had applied to the State Government to seek affiliation with the concerned University vide their letter dated 27.10.2009 and hence the MUHS on 29.12.2009 recommended to the Government of Maharashtra for issuing of the Essentiality Certificate to the petitioner. No material has been placed on record by the petitioner to show that any follow up was made by the petitioner with the concerned authorities to expedite the process for seeking the said Essentiality Certificate and the Affiliation Certificate. Not even a single letter has been placed on record by the petitioner to this effect. Even the letter dated 27.10.2009 clearly shows that the petitioner had not yet purchased the requisite 25 acres of land and they merely forwarded the information regarding 10 acres of land and conceivably the same might have been the cause for the State Government not to give the said Essentiality Certificate to the petitioner.

11. Be that as it may, the stand of the petitioner that it could not obtain the Essentiality Certificate because of uncertain political atmosphere in the State Government of Maharashtra for a period of 70 days cannot impress this Court as the petitioner had ample time to pursue the grant of Essentiality Certificate and Affiliation Certificate from the date of submission of its letters dated 27.10.2009 and 20.10.2010. Even otherwise, it is not the case of the petitioner that the State Government was not in place during the relevant period and if such a ludicrous argument is accepted then many such applicants would come out with such excuses of political turbulence in various other States and Union Territories. This Court, therefore, does not find any merit in the contentions raised by learned Senior Counsel for the petitioner that due to no fault of the petitioner in delay in submission of the Essentiality Certificate and the Affiliation Certificate, it cannot be deprived of the permission to run the said new medical college.

12. In the light of the above discussion, there is no merit in the present petition and the same is accordingly dismissed.

May 26, 2011
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KAILASH GAMBHIR, J