

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

Date of decision: 1st June, 2012

+ **LPA No.438/2012**

% **MUZAFFARNAGAR MEDICAL COLLEGE Appellant**
Through: Mr. Aseem Mehrotra, Adv.

Versus

**BOARD OF GOVERNORS IN SUPERSESSION
OF MEDICAL COUNCIL OF INDIA & ANR. Respondents**
Through: Mr. Amrit Pal Singh, CGSC for R-2.

AND

+ **LPA No.454/2012**

% **BOARD OF GOVERNORS IN SUPERSESSION
OF MEDICAL COUNCIL OF INDIA Appellant**
Through: Mr. Amrit Pal Singh, CGSC

Versus

**MUZAFFARNAGAR MEDICAL
COLLEGE& ANR. Respondents**
Through: Mr. Aseem Mehrotra, Adv. for R-2.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

JUDGMENT

RAJIV SAHAJ ENDLAW, J.

1. Both parties i.e. the Medical College as well as the Board of Governors in supersession of Medical Council of India (MCI) are

dissatisfied with the order dated 25th May, 2012 of the learned Single Judge disposing of W.P.(C) No. 3239/2012 preferred by the Medical College.

2. The Medical College had applied to MCI for starting Post-graduate courses. The same was declined vide communication dated 1st January, 2012. Impugning the same, earlier W.P.(C) No. 203/2012 was preferred by the Medical College. Vide interim order dated 13th March, 2012 in the said writ petition, the MCI was directed to carry out inspection of the Medical College. Pursuant to the said inspection, permission was granted to start Post-graduate course in one subject but the Medical College was found deficient for imparting Post-graduate education in other subjects. A letter dated 31st March, 2012 was issued to the said effect.

3. The Medical College filed W.P.(C) No. 166/2012, directly in the Supreme Court impugning the letter dated 31st March, 2012 (supra) of rejection, on the ground that similar issue as had arisen was pending consideration in the Supreme Court. Notice of the said writ petition was issued but no interim relief sought by the Medical College, granted.

4. The Medical College thereafter on 2nd May, 2012 withdrew W.P.(C) No. 203/2012 of this Court, vide interim order in which inspection was carried out.

5. The hearing in the writ petition preferred by the Medical College in the Supreme Court, though commenced, but remained part heard till the advent of summer break. The Medical College filed an application therein for a direction, either for consideration by the MCI of the representation of the Medical College against the communication dated 31st March, 2012

(supra) or for withdrawal of that writ petition with liberty to approach this Court. On the said application, the Supreme Court vide order dated 22nd May, 2012 allowed the Medical College to withdraw the writ petition with liberty to approach this Court.

6. Thereafter W.P.(C) No. 3239/2012 from which this appeal arises was preferred. At the time of hearing of the said writ petition, though filed impugning the communication dated 31st March, 2012 of rejection of permission to start Post-graduate courses, the relief was confined to a direction to the MCI to consider the representation of the Medical College against the letter dated 31st March, 2012. The said request of the Medical College was accepted by the learned Single Judge notwithstanding the opposition of the MCI and the writ petition disposed of with a direction to MCI to, within three months, after affording opportunity of hearing decide the representation of the Medical College and to communicate decision thereon.

7. The grievance of the Medical College in LPA No.438/2012 is to the time of three months granted for consideration and decision of the representation. It is stated that such a long time of three months would defeat the very purpose of filing the writ petition in as much as the Medical College, even if its representation was favourably considered, would not be able to admit students in the current academic year. The relief sought in the appeal is to direct the MCI to decide the representation immediately.

8. One of the grievances of the MCI in LPA No.454/2012 preferred by it is that even such a direction for considering and deciding the representation ought not to have been issued. It is argued that the request of the Medical

College stood rejected as far back as on 1st January, 2012; W.P.(C) No. 203/2012 impugning the said rejection stood unconditionally withdrawn; that the inspection of the Medical College was pursuant to the interim order dated 13th March, 2012 in the said writ petition and which interim order also lapsed on withdrawal of the said writ petition and the inspection in pursuance thereto was of no avail and thus the question of making representation thereagainst did not arise.

9. We do not find any merit in the contention aforesaid of the MCI. The fact of the matter is that in pursuance to the said inspection, permission was granted by the MCI to the Medical College for starting Post-graduate course in at least one subject. The letter dated 31st March, 2012 of the MCI rejecting permission for other courses thus constituted a fresh cause of action for which a fresh writ petition could have been filed. Such a writ petition was indeed filed in the Supreme Court and notice thereof also issued; however the same was withdrawn with liberty to approach this Court. Thus the writ petition from which this appeal arises cannot be said to be not maintainable for the reason of withdrawal of earlier writ petition (WP(C) No.203/2012) and which was also withdrawn after notice in writ petition preferred in Supreme Court had been issued.

10. The senior counsel for the MCI further contends that no purpose will be served by directing consideration of any representation of the Medical College in as much whatever minimum time even is to be given therefor is of no relevance, the time schedule for admissions as laid down by the Supreme Court having expired. It is stated that there is thus no possibility of the Medical College making any admissions in the current academic year.

Attention is invited to the recent judgment dated 8th May, 2012 of the Apex Court in Civil Appeal No.4318/2012 titled ***Priya Gupta v. State of Chhatishgarh*** MANU /SC/ 0437/2012 where the Supreme Court has again advised all Courts to ensure strict adherence to the prescribed time schedule, process of selection and to the rule of merit.

11. The counsel for the Medical College though not disputing the aforesaid has invited our attention to the true copy of the order of the Apex Court in certain other proceedings extending the time beyond that prescribed. On the basis thereof it is argued that the Court is empowered to extend the time.

12. We are however of the opinion that in view of the reasoned recent judgment in ***Priya Gupta*** (supra) advising the High Courts against granting such extensions, it is not for this Court to grant any extension. The orders relied upon by the counsel for the Medical College besides not qualifying as “judgment” are of the Supreme Court and the powers of extension of time, beyond that prescribed by the Supreme Court itself, cannot be exercised by this Court.

13. We therefore dismiss LPA No.438/2012 preferred by the Medical College and allow LPA No.454/2012 preferred by the MCI and accordingly set aside the order dated 25th May, 2012 of the learned Single Judge; axiomatically W.P.(C) No. 3239/2012 preferred by the Medical College stands dismissed.

14. The counsel for the Medical College at this stage states that a direction be given to the MCI to consider the application of the Medical

College for grant of permission for the Academic Year 2013-14. The counsel for the MCI states that the time prescribed for making such application also has expired. The counsel for the Medical College states that such an application has been made within prescribed time. We accordingly direct that if application has been made within prescribed time, the same be dealt with in accordance with law/rules.

No order as to costs.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

JUNE 1, 2012

‘pp’