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

+ W.P.(C) 601/2013 & CM.1138/2013

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Judgment dated 07.02.2013

SHREE BANKEY BIHARI EDUCATIONAL SOCIETY..... Petitioner

Through: Mr.Sudhanshu Batra, Sr. Advocate with
Ms.Amita Sehgal and Mr.Satinder Singh
Mathur, Advocates

versus

UNION OF INDIA AND ANR Respondent

Through: Mr.Amrit Pal Singh, CGSC and Ms.Gurjinder
Kaur, Advocate for respondent no.1
Mr.Gaurav Sharma and Ms.Surbhi Mehta,
Advocates for respondent no.2

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J. (ORAL)

1. In this case a notification was issued by respondent no.2 on 21.05.2012 laying down conditions for approval of different courses by medical colleges. The petitioner submitted an application to the Ministry of Health and Family Welfare (Dental Education Section) on 29.06.2012 for starting a MDS Course in the speciality of Oral and Maxillofacial Surgery at their dental college for the academic session 2013-14. The application was accepted by respondent no.1 on 02.07.2012. On scrutiny of the application, by a communication dated 13.07.2012 the petitioner was informed by respondent no.1 that as per the DCI Gazette notification dated 21.05.2012 in case of starting of Oral and Maxillofacial Surgery attachment with MCI approved recognized medical college within a range of 10 kilometres distance is essential.

2. On 06.08.2012 petitioner received a communication from respondent no.1 that since attachment of the petitioner with the MCI approved recognized medical college at a distance of 10 kilometres by road has not been received in the Ministry by the last date i.e. 31.07.2012, the application of the petitioner did not meet the qualifying criteria for starting of MDS course for the academic year 2013-14 and hence the application was rejected.
3. The petitioner thereafter approached the State Government and upon receiving the necessary order of attachment with Saraswati Institute of Medical Sciences, the same was filed with the respondent with a request to grant the permission to start MDS course. Learned senior counsel for the petitioner submits that petitioner received a communication on 30.11.2012 from Saraswati Institute of Medical Sciences along with a certificate of attachment with effect from 20.7.2012. Counsel also submits that the respondent without any application of mind by a communication dated 07.01.2013 rejected the application of the petitioner.
4. Counsel for the petitioner also submits that the petitioner was not aware that attachment with a recognized medical college at a distance of 10 kilometres was a mandatory requirement as the amendment in the notification was carried out for the first time in the present academic session and prior thereto there was no requirement of any attachment with MCI approved recognized medical college within a range of 10 kilometres and thus the petitioner could not submit the necessary proof along with the application form. It is further submitted that no last date has been fixed in the notification to submit the application form, thus there was no reason for the respondent to reject the same.
5. Mr.Batra, counsel for the petitioner has relied upon

WP(C)No.22268/2012 a judgment of the Kerala High Court, wherein under similar circumstances the Court had quashed the impugned order and directed the respondent to consider the case of the petitioner before the cut off date.

6. Counsel appearing for the respondents have opposed the present writ petition on the ground that admittedly the amendment was carried out in the notification and thus, it is expected that every college, who makes an application would be aware of the terms and conditions while making such an application. It is further submitted that the schedule for receipt of the applications for opening or to increase the admission, capacity in respect of under graduate (BDS) and postgraduate (MDs) dental courses and its processing by the central government and dental council of India, gives the cut-off date with respect to the receipt of the applications by the Central Government, the date of forwarding of the application by the Central Government to the Dental Council of India for technical scrutiny and thus the respondents cannot be faulted for rejecting the application of the petitioner.
7. Counsel for the respondent further submits that the aforesaid schedule makes it abundantly clear that the last date for submission of all the applications was 15th July, 2012 whereas the petitioner submitted the application form, after the permission was received on 11.12.2012, which was far beyond the cut-off date. It is also submitted by counsel for the respondent that no reasons were pointed out to the respondent for the delay in filing the necessary no objection.
8. Counsel for the respondent submits that in the absence of any special reasons pointed out by the petitioner, there was no occasion for the respondent to record any reasons for rejection of petitioner's application.
9. I have heard counsel for the parties and considered their rival contentions.

On 29.06.2012 the petitioner submitted an application to the Ministry of Health and Family Welfare (Dental Education Section) for starting a MDS course in the speciality of Oral and Maxillofacial Surgery in their dental college for the academic session 2012-13. By a communication dated 13.07.2012 the Under Secretary of the Government of India informed the petitioner that as per DCI Gazette Notification dated 21.05.2012 for starting an Oral and Maxillofacial Surgery attachment of MCI approved / recognized medical college within a range of 10 kilometres distance is essential and in the absence of such proof of attachment, the application cannot be considered. The petitioner was also requested to furnish proof of attachment of MCI approved recognized medical college, within a range of 10 kilometres distance immediately for processing the application. By another communication dated 06.08.2012 it was again brought to the notice of the petitioner that as per gazette notification dated 21.05.2012 the attachment of MCI approved / recognized medical college at a distance of 10 kilometres by road is an essential qualifying criteria and the original application along with demand draft of Rs.3.0 lacs was returned.

10. It is the case of the petitioner that petitioner received a communication from Saraswati Institute of Medical Sciences along with a certificate of attachment w.e.f. 20.07.2012. Accordingly, by a communication of 11.12.2012 the petitioner intimated to the respondent no.1 that petitioner had received the attachment from Saraswati Institute of Medical Sciences, and thus, the petitioner fulfilled the requirements of DCI gazette notification. The respondent no.1 by a communication of 07.01.2013 informed the petitioner that the last date for forwarding the complete application for starting / increase of seats in MDS course to the Dental Council of India was 31.07.2012 for the academic session 2013-14 and

since the request document was not received in the Ministry by the last date i.e. 31.07.2012, it was not feasible for the Ministry to consider the application for the academic session 2013-14, which has led to the filing of the present writ petition.

11. The first submission of Mr.Batra, learned senior counsel for the petitioner is that the requirement of attachment with an MCI approved medical college has been introduced for the first time in the present academic session and prior thereto there was no such requirement and thus, the petitioner cannot be blamed for not producing the certificate of attachment of a recognized medical college with the petitioner. This submission of learned senior counsel for the petitioner is without any force, as it is expected that an institute, who has made an application for approval would be well-versed with the terms and conditions for making such an application.
12. The second submission of Mr.Batra, is that no last date was fixed in the notification and thus, the application of the petitioner could not have been rejected. This submission of counsel for the petitioner is also unacceptable for the reason that the schedule for receipt of applications for opening or increase the admission capacity has laid down the schedule. The relevant portion reads as under:

“SCHEDULE
SCHEDULE
[(see regulation 4(2)]

Schedule For Receipt Of The Applications For Opening Or To Increase The Admission, Capacity In Respect Of Under Graduate (BDS) And Postgraduate (MDs) Dental Courses And Its Processing By The Central Government And Dental Council Of India

Sl. No.	State of Processing	Time Schedule for BDS	Time Schedule for MDS
1.	2	3	4

1	Receipt of applications by the Central Govt.	From 1 st Aug. 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 application by the Central Government to the Dental Council of India for technical scrutiny	Upto 31 st December	Upto 31 st July
3.	xx		
4.	xx		

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.”

13. The petitioner cannot plead ignorance of this schedule, which has in fact been filed along with the writ petition, which clearly lays down the last date for receipt of applications. Another submission made by Mr.Batra, learned senior counsel for the petitioner while relying on note 2 of the schedule, which has been reproduced above, is that the Central Government could have modified the time schedule, as envisaged in note no.2. This submission of Mr.Batra, is also without any force, in view of the fact that the communication dated 11.12.2012 addressed by the petitioner to the respondent attaching the letter from Saraswati Institute of Medical Sciences is devoid of any reason whatsoever, nor the letter seeks condonation of delay in accepting the application. Letter dated 11.12.2012 is reproduced below:

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

To

Under Secretary
Govt. of India
Ministry of Health & Family Welfare
DE-Section Nirman Bhawan
Maulana Azad Road
New Delhi-110011

Sub. **Application of Shree Bankey Bihari Dental College & Research Centre for starting of MDS course in the specialty of Oral & Maxillofacial Surgery at from the academic session 2013-14 – reg.**

Respected Madam,

With reference to your letter No. V.12017/16/2009-DE (pt) dated 13th July 2012 for the subject cited above I am hereby submitting attachment letter of Saraswathi Institute of Medical Sciences, Village-Anwarpur, Dist-Panchsheel Nagar (Hapur) (MCI Approved Medical College) – letter attached, to start MDS course in the specialty of Oral & Maxillofacial Surgery from the academic session 2013-14.

Further we have applied for an intake of three (3) Seats for the academic year 2013-14 in the specialty of Oral & Maxillofacial Surgery.

Please acknowledge for the same.

Thanking You

Yours truly.

For Shree Bankey Bihari Dental College & Research Centre
Sd/-

[Dr. Kishan Singh]
Principal
S.B.B. Dental College & Hospital
Masuri Ghaziabad

Ends: As above
One Demand Draft of Rs.3,00,000/-
DD No. 010403 dated 29.06.2012
Issued by The Nainital Bank Limited.
Ghaziabad.”

14. In the absence of any reason, the respondent cannot be faulted for not

extending time in accepting the application. Moreover, I am of the view that note 2 is not applicable to the facts of the present case, as the time schedule is to be modified by the Central Government not for any particular college or institution, but it can be modified by the Central Government for the reasons to be recorded in respect of any class or category of applications, which is evident upon reading of note no.2, which has been reproduced above.

15. It is well settled by a catena of decisions that a Writ of Mandamus can be granted only in a case of failure to perform a statutory duty. The petitioner has failed to show that the order passed by the respondent is irrational, illegal or unreasonable.
16. In view of above, no grounds are made out to issue notice in the matter. Accordingly the writ petition and the application are dismissed, in limine.

G.S.SISTANI, J

FEBRUARY 07, 2013
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