

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

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Date of Decision: 05.08.2013

+ W.P.(C) 3085/2013

SHRI RAM MURTI SMARAK TRUST

..... Petitioner

Through: Counsel for the petitioner.

versus

BOARD OF GOVERNORS IN SUPER-SESSION OF MEDICAL
COUNCIL OF INDIA & ANR.

..... Respondents

Through: Mr Ashish Kumar, Adv for R-1/MCI
Ms Laxmi Chawla and Mr Sunil Kumar, Advs for R-2
(Union of India)

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (ORAL)

1. The petitioner before this Court is running a Medical College and hospital in Bareilly, Uttar Pradesh and admitting students to the MBBS Course, pursuant to the permission granted by Medical Council of India and affiliation by MJP Rohilkhand University. The petitioner was also granted permission to start post-graduate courses in as many as 17 disciplines. In April, 2012, the petitioner applied to the respondent-Medical Council of India for increase of PG seats in various disciplines during the Academic Year 2013-14 and an inspection of the institute of the petitioner was conducted in December, 2012. Vide communication dated

12.02.2012, Medical Council of India, annexing the Inspection Report required the petitioner to show cause as to why permission for five post- graduate courses, i.e., Orthopaedics, Paediatrics, DVL, Radio-diagnosis and General Medicine be not denied to it. The petitioner made a representation to the counsel on 14.02.2013 and was given a personal hearing on 19.02.2013. Vide communication dated 29.03.2013, the permission was refused. Being aggrieved from the aforesaid refusal, the petitioner is before this Court by way of this writ petition. The writ petition was filed about 1 ½ month after issue of communication date 29.03.2013.

2. When the writ petition came up for hearing on 13.05.2013, my learned predecessor issued notice to the respondent, returnable on 05.08.2013. Accordingly, the respondent-Medical Council of India is represented by a counsel, who at the very outset, seeks rejection of the writ petition on the ground that in terms of the schedule fixed under its Regulations, the last date for issue of Letter of Permission sought by the petitioner having already expired, it is not open to MCI to grant LoP for the Academic Year 2013-14 at this stage.

3. A perusal of separate show cause notices issued to the petitioner shows that the following deficiencies were found during the course of inspection:-

MS (Orthopaedics)

- No appreciable increase in blood unit consumption, histopathology workload

& operative workload over past 4 years.

- Deficiencies pointed by assessor—Emergency trauma work was less in number, Library did not have sufficient international journals, indoor bed occupancy was less, mainly trauma work was of insufficient quantity. No paediatric orthopaedic work was seen, Other planned work like arthroplasty and arthroscopy was also less, Only one operation theatre was seen functioning.

MD (Paediatrics)

- As per Assessor's report there was poor casualty attendance, clinical material was very inadequate. Indoor wards filled with patients who were not admissible cases. Record maintenance poor. Delivery cases were very few.

MD (Radio-diagnosis)

- Assessor pointed out that one Professor, Dr. Rajesh Madhok had been promoted as Professor recently. The other Professor, Dr. V.R. Bhutalia was serving in the institute for last 4 months, he had not stayed for more than 1 (one) year in his previous 3 assignments as professor in other institutes. Professor serving at the starting of PG course was not working presently in the institute.

MD (General Medicine)

- 2 Professor Dr. Pranesh Nigam and Dr. A.C. Nagpal were to attain age of 70 in the month of June, 2013 when the new batch of MD students was expected to join.
- There was no substantial increase in clinical material and workload since December, 2011.
- The average daily number of plain X-Rays and USG were inadequate

MD (DVL)

- There was salary discrepancy between the three teachers, professor: 60,000/- Associate Professor: Rs. 84405/- and Assistant Professor: Rs 61121/-
- Publication and research experience was inadequate

4. The increase sought in MS(Orthopaedics) was declined by MCI in view of deficiencies pointed out by the Assessors and inadequate workload and daily consumption of the blood units. The explanation offered by the petitioner in this regard could not satisfy the respondent.

With respect to MD(Paediatrics) course, the permission was declined as the institute failed to submit a satisfactory explanation in view of the deficiencies pointed out earlier by the Council and the fact that the Assessor had physically verified the data and the clinical material could not be ignored by the Council. The explanation offered by the petitioner in this regard could not satisfy the respondent.

With respect to MD(DVL) course, the explanation regarding the discrepancy

in the salary was not acceptable as the salary structure was not as per the UGC or state norms. The explanation offered by the petitioner in this regard could not satisfy the respondent.

With respect to MD(Radio-diagnosis) course as the institute had failed to offer a satisfactory compliance in regard to deficiencies pointed out by the Council, the permission was declined. The explanation offered by the petitioner in this regard could not satisfy the respondent.

With respect to MD(General Medicine) course in view of the unsatisfactory compliance submitted by petitioner at the time of personal hearing and also unexplained gaps in the service of certain teachers, namely, Dr.A.B.Mowar Dr.S.K.Saxena, Prof. P.Nigam and Prof. A.C.Nagpal, the permission was declined.

5. The following is the Schedule prescribed by Medical Council of India for opening or to increase the admission capacity in respect of Post-Graduate Medical Courses and its processing by the Central Govt. and Medical Council of India:-

Sl. No.	Stage of processing	Time Schedule
1.	Receipt of applications by the Central Government.	1st May to 30th June
2	Forwarding of applications by Central Government to Medical Council of India for technical scrutiny.	Up to 31st July
3.	Forwarding of recommendations of MCI which are for grant of only Letter of Intent.	Up to 15th September
4.	Issue of Letter of Intent by Central	Up to 15th October

	Government.	
5.	Applicant institution to send its reply to Central Government requesting for Letter of Permission.	Up to 15th November
6.	Receipt of Letter from Central Government by the Medical Council of India for consideration for issue of Letter of Permission.	Up to 30th November
7.	Recommendation of Medical Council of India to Central Government for issue of Letter of Permission.	1st January to 28/29th February
8.	Issue of Letter of Permission by Central Government.	Up to 31st March

The dead line for issue of Letter of Permission stands extended to 15th July, 2013, for the Academic Year 2013-14. The studies in the Post-Graduate Courses are stated to have commenced on 1st August, 2013.

6. In **Priya Gupta vs. State of Chhattisgarh and Others** (2012) 7 ***Supreme Court Cases*** 433, the Apex Court after taking note of its several decisions in the matter, *inter alia*, observed and held as under:-

“31. Further, this Court in Mridul Dhar case even took pains to declare the need for adherence to the schedule for receipt of applications for establishment of new medical colleges or seats and the process of the review and recommendation by the Central Government and the Medical Council of India.

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33. Lastly, in the case of *Priyadarshini Dental College and Hospital v. Union of India* this Court cautioned all concerned that the schedule specified in Mridul Dhar (supra) should be maintained and Regulations should be strictly followed. The Court suggested that the process of inspection of colleges, grant of permission or renewal of permission should also be done

well in advance to allow time for setting right the deficiencies pointed out.

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40. The schedules prescribed have the force of law, in as much as they form part of the judgments of this Court, which are the declared law of the land in terms of Article [141](#) of the Constitution of India and form part of the Regulations of the Medical Council of India, which also have the force of law and are binding on all concerned. It is difficult to comprehend that any authority can have the discretion to alter these schedules to suit a given situation, whether such authority is the Medical Council of India, the Government of India, State Government, University or the selection bodies constituted at the college level for allotment of seats by way of counseling. We have no hesitation in clearly declaring that none of these authorities are vested with the power of relaxing, varying or disturbing the time schedule, or the procedures of admission, as provided in the judgments of this Court and the Medical Council of India Regulations.

41. Inter alia, the disadvantages are:

(1) Delay and unauthorized extension of schedules defeat the principle of admission on merit, especially in relation to preferential choice of colleges and courses. Magnanimity in this respect, by condoning delayed admission, need not be shown by the Courts as it would clearly be at the cost of more meritorious students. The principle of merit cannot be so blatantly compromised. This was also affirmed by this Court in the case of *Muskan Dogra and Ors. v. State of Punjab and Ors.* (2005) 9 SCC 186.

(2) Mid-stream admissions are being permitted under the garb of extended counseling or by extension of periods for admission which, again, is impermissible.

(3) The delay in adherence to the schedule, delay in the commencement of courses etc., encourage lowering of the standards of education in the Medical/Dental Colleges by

shortening the duration of the academic courses and promoting the chances of arbitrary and less meritorious admissions.

(4) Inequities are created which are prejudicial to the interests of the students and the colleges and more importantly, affect the maintenance of prescribed standard of education. These inequities arise because the candidates secure admission, with or without active connivance, by the manipulation and arbitrary handling of the prescribed schedules, at the cost of more meritorious candidates. When admissions are challenged, these students would run the risk of losing their seats though they may have completed their course while litigation was pending in the court of competent jurisdiction.

(5) The highly competitive standards for admission to such colleges stand frustrated because of non-adherence to the prescribed time schedules. The admissions are stretched to the last date and then admissions are arbitrarily given by adopting impermissible practices.

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45. The maxim *Boni judicis est causas litium dirimere* places an obligation upon the Court to ensure that it resolves the causes of litigation in the country. Thus, the need of the hour is that binding dicta be prescribed and statutory Regulations be enforced, so that all concerned are mandatorily required to implement the time schedule in its true spirit and substance. It is difficult and not even advisable to keep some windows open to meet a particular situation of exception, as it may pose impediments to the smooth implementation of laws and defeat the very object of the scheme. These schedules have been prescribed upon serious consideration by all concerned. They are to be applied *stricto sensu* and cannot be moulded to suit the convenience of some economic or other interest of any institution, especially, in a manner that is bound to result in compromise of the above-stated principles.

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46.1 The commencement of new courses or increases in seats of existing courses of MBBS/BDS are to be

approved/recognised by the Government of India by 15th July of each calendar year for the relevant academic sessions of that year.

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47. All these directions shall be complied with by all concerned, including Union of India, Medical Council of India, Dental Council of India, State Governments, Universities and medical and dental colleges and the management of the respective universities or dental and medical colleges. Any default in compliance with these conditions or attempt to overreach these directions shall, without fail, invite the following consequences and penal actions:

47.1 Every body, officer or authority who disobeys or avoids or fails to strictly comply with these directions *stricto sensu* shall be liable for action under the provisions of the Contempt of Courts Act. Liberty is granted to any interested party to take out the contempt proceedings before the High Court having jurisdiction over such Institution/State, etc.

47.2 The person, member or authority found responsible for any violation shall be departmentally proceeded against and punished in accordance with the Rules. We make it clear that violation of these directions or overreaching them by any process shall tantamount to indiscipline, insubordination, misconduct and being unworthy of becoming a public servant.

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78.4 With all the humility at our command, we request the High Courts to ensure strict adherence to the prescribed time schedule, process of selection and to the rule of merit. We reiterate what has been stated by this Court earlier, that except in very exceptional cases, the High Court may consider it appropriate to decline interim orders and hear the main petitions finally, subject to convenience of the Court. We may refer the dictum of this Court in the case of *Medical Council of India v. Rajiv Gandhi University of Health Sciences* (2004) 6 SCC 76, para 14) in this regard.

7. The learned counsel for the MCI also submits that vide order dated 22.7.2013 passed in WP(C) No.534 of 2013, **Rama Medical College H. & Res. Cen. Ghaz. Versus Union of India & Another**, the Hon'ble Supreme Court declined to interfere with the order passed by the Government on similar ground but made it clear that the said dismissal will not affect the claim of the petitioner if it satisfies all the requirements as prescribed by MCI in the subsequent year. The learned counsel for the petitioner, however, relies upon the order dated 30th July, 2013 passed by the Apex Court in WP(C) No.244/2013 **Sinhgad Technical Education Society & Anr. vs. Union of India & Ors.**. A perusal of the aforesaid order would show that two writ petitions WP(C) No.256/2013 and 244/2013 filed by the same petitioner were disposed of by a common order. In WP(C) No.256/2013, the Apex Court declined to interfere with the impugned orders passed by the Board of Governors of the Medical Council of India so far as they related to Academic Session 2013-14 and dismissed the writ petition. It was, however, directed that since the petitioner had applied for Academic Session 2014-15 for the very same seats, MCI will consider the same in accordance with its norms and take an early decision not later than 31st January, 2014. However in WP(C) No.244/2013, the Hon'ble Supreme Court directed issue of Letter of Permission for 3 seats in MD(Radio-diagnosis), 3 seats in M.D.(Paediatrics) and 3 seats in MS(OBG).

8. In my view, in the facts and circumstances of this case, considering the Schedule notified by MCI, which this Court is expected to strictly adhere to in terms of the decision of the Apex Court in **Priya Gupta(Supra)**, it will not be appropriate for this Court to direct the respondents to consider issue of Letter of Permission for the Academic Year 2013-14 at this stage. This is the prerogative only of the Apex Court, to relax or extend the Time Schedule approved by it. This is more so when a number of deficiencies were found during the course of inspection carried out in December, 2012 and after considering the representation made by the petitioner in respect of the aforesaid deficiencies, the respondent MCI was of the view that the compliance submitted by the petitioner institute at the time of personal hearing was not satisfactory and it decided to disapprove the increase sought by the petitioner.

For the reasons stated hereinabove, the writ petition is hereby dismissed. It is, however, made clear that the dismissal of this writ petition will not affect the application of the petitioner, if made by it, for grant of permission for the aforesaid course for the academic year 2014-2015 provided that such an application can otherwise be made as per Regulations and it meets all the

requirements as prescribed by MCI for the academic year 2014-2015 whether by way of Regulations or otherwise.

V.K. JAIN, J

AUGUST 05, 2013

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