

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

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Date of Decision: 01.08.2013

+ W.P.(C) 3257/2013 & CM Nos.6162/2013 and 10538/2013

**B R AMBEDKAR INSTITUTE OF DENTAL SCIENCES AND
HOSPITAL & ANOTHER**

..... Petitioner

Through: Mr. Sunil Gupta, Sr. Adv. with Mr. Avneesh
Garg, Ms. Kanika Sharma and Mr. Rohit
Sthalekar, Advs.

versus

THE UNION OF INDIA & OTHERS

..... Respondent

Through: Mr. Gaurav Sharma, Adv. for DCI
Mr. Amrit Pal Singh, CGSC for R-1,2,3 and
7/UOI

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (ORAL)

The petitioner no.1 is a Dental College started with sanctioned strength of 90 seats in BDS. Pursuant to the application of the petitioner seeking to start MDS Courses in (i) Conservative Dentistry & Endodontics (ii) Prosthodontics and Crown & Bridge (iii) Orthodontics and Dentofacial Orthopedics and (iv) Oral & Maxillofacial Surgery, the Government of India, vide its letter dated 23.3.2012 granted permission in MDS Courses in Prosthodontics and Crown & Bridge with 3 seats and Orthodontics & Dentofacial Orthopedics with two seats. However,

permission to start MDS Course in Conservative Dentistry & Endodontics and in Oral & Maxillofacial Surgery was refused vide letter dated 23.4.2013 on the ground that there were deficiencies of clinical material for starting 100 BDS seats and PGS Course. The issue raised in this writ petition is confined to MDS Course in Conservative Dentistry & Endodontics (ii) Prosthodontics and Crown & Bridge.

2. When the writ petition came up for hearing on 17.5.2013, it was brought to the notice of the Court that though the petitioner has a sanctioned strength of only 40 seats in BDS, the order in question referred to 100 such seats. It was also brought to the notice of the court by the learned counsel representing DCI that the last date for granting permission for starting the post graduate course initially stipulated as 31.3.2013 was extended upto 30.4.2013 and, therefore, permission for academic year 2013-2014 cannot be granted. This Court, therefore, directed as under:

“Counsel for the petitioner submits that the petitioner is willing to produce necessary OPD records to show that the college has been getting clinical material more than the minimum requirement. Petitioner prays that petitioner may be permitted to produce the relevant record before the Central Government to enable them to reconsider the matter.

It would be open for the petitioner to produce the records before the Joint Secretary, Dental Education on 20.5.2013 at 11:00 a.m. and the respondent may take recourse to the provisions of the Act to satisfy themselves if the deficiency stands cured. It will also be open to respondent no.2 to reconsider the clinical material and in case the respondent no.2 is satisfied appropriate directions may be issued by respondent no.2.”

3. Pursuant to the order passed by this Court on 17.5.2013, the Government of India, vide order dated 24.5.2013, acknowledged that there was a discrepancy in the earlier order since 100 seats of BDS were mentioned though the number of seats was only 40 and also accepted that the clinical material was sufficient for the courses in question, but, permission was declined on two grounds, the first being

deficiencies in staff, journals, equipments, library etc and the second being expiry of the last date for grant of such permission.

4. Being aggrieved from the said order, the petitioner, in the amended petition, is seeking the following reliefs:

- a. issue an appropriate writ, order or direction in the nature of certiorari quashing impugned recommendation of disapproval of DCI communicated vide letter No.DE-15(182)-2012/ D-505 dated 28.2.2013 to the Government of India;
- b. issue an appropriate writ, order or direction in the nature of certiorari quashing impugned recommendation of disapproval by DCI communicated vide letter No.DE-15(182)-2012/ A-7509 dated 28.2.2013 to the Government of India;
- c. issue an appropriate writ, order or direction in the nature of certiorari quashing impugned order of the Government of India communicated to the petitioner vide Letter No.V.12017/05/2012 – DE dated 23rd April, 2013;
- d. issue an appropriate writ order or direction in the nature of certiorari quashing impugned order of the govt. of India communicated to the petitioner vide letter no.V12017/11/2010 – DE dated 24th May, 2013 so far as it relates to refusal of permission to start MDS course in (i) Conservative Dentistry & Endodontics and (ii) Paedodontics & Preventive Dentistry for academic year 2013-2014 in the petitioners college.

5. The learned counsel for the respondent has drawn my attention to the following Schedule for receipt of applications for establishment of new dental colleges, opening of higher course of studies, increase in admission capacity in the recognized dental colleges and processing of the applications by the Central Government and Dental Council of India:

S.No.	Stage of processing	Time Scheduled 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 applications by the Central Government to the Dental Council of India for technical scrutiny.	Upto 31 st October	Upto 31 st July
3.	Recommendations 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

(2) The time-schedule indicated above may be modified by the Central Government, for reason to be recorded in writing, in respect of any class or category of applications.

6. The learned counsel for the respondents also submits that vide order dated 22.7.2013 passed in W.P(C) No.534 of 2013, **Rama Medical College H. & Res. Cen. Ghaz. Versus Union of India & Another**, the 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.

7. The learned counsel for the respondent also submits that the studies in the dental colleges has already commenced on 1.8.2013. He further submits that the last date stipulated by the Apex Court in **Priya Gupta versus State of Chattishgarh**, [(2012) 7 SCC 433], equally applies to dental courses and, therefore, no permission to start new course can be given at this stage.

8. In support of his contention, he relied upon the decision of the Apex Court in **Mridul Dhar (Minor) & Anr vs Union Of India & Ors.** [(2005) 2 SCC 65] and submits that the time approved by the Apex Court applies not only to medical colleges but also to dental colleges.

In **Mridul Dhar (Minor)** (supra), the Apex Court, *inter alia*, observed as under:

“.....35. Having regard to the professional courses into consideration, it deserves to be emphasized that all concerned including Governments, State and Central both, MCI/DCI, colleges, new or old, students, Boards, universities, examining authorities etc. are required to strictly adhere to time schedule wherever provided for; there should not be mid-stream admission; admission should not be in excess of sanctioned intake capacity or in excess of quota of any one, whether State or Management.”

9. The following view taken by the Apex Court in *Priya Gupta (supra)* is also relevant for the purpose of this case:

“....46. Now, let us examine the adverse consequences of nonadherence to the prescribed schedules. 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. *Inter alia*, the disadvantages are:-

a. 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 & Ors. v. State of Punjab & Ors.* [(2005) 9 SCC 186].

b. xxx

c. 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.”

10. Since the last date stipulated by the Government of India for grant of approval for starting of new courses in dental colleges has already expired, as well as the last date fixed by the Apex Court in Priya Gupta (supra) has already expired and teaching in dental colleges is already commenced on 1.8.2013, in my view, it would not be appropriate for this Court to direct the respondents to grant permission to start course in question at this stage. This is more so, when the matter has been considered again by the Government of India on 24.5.2013 and the permission has been declined.

11. On merits also, I find no reason to interfere with the view taken by the Government while passing the order dated 24.5.2013. A perusal of the impugned order would show that an inspection of the petitioner institute was also carried out on 27.2.2013 and various deficiencies with respect to staff, journals, equipments, library etc were found. It also transpires from the said order that the aforesaid deficiencies were taken note of by the Committee constituted under the Chairmanship of DDG(M), during the personal hearing which was granted to the petitioner on 18.3.2013. The grievance of the learned counsel for the petitioners is that only the inspection report dated 28.1.2013 was conveyed to them and they had removed the deficiencies pointed out in the said report, but the inspection report dated 27.2.2013 was not sent to them for information and removal of the deficiencies found at the time of the said inspection. He also points out that the Medical Council of India, vide its letter dated 28.2.2013, forwarded its

recommendations to Government of India without, making any reference to the inspection report dated 27.2.2013. In response, the learned counsel for DCI submits that since 28.2.2013 was the last date fixed under the Regulations for forwarding all its recommendations by the said Council of Government of India, no useful purpose could be served by forwarding the inspection report dated 27.2.2013 to the petitioner since no time was left for removing the deficiencies pointed out in the said report and verification of removal of the deficiencies and that was the reason no reference to the report dated 27.2.2013 was made in their recommendations to the Government of India.

12. Be that as it may, the fact remains that various deficiencies which were noted during the course of inspection of the petitioner institute on 27.2.2013. Till those deficiencies are removed, the respondents cannot permit the petitioner for starting the new course. Merely because infrastructure and clinical material etc for the other courses was found to be sufficient does not *ipso facto* mean that the said infrastructure and clinical material etc would also be sufficient for the new course sought to be introduced by the petitioner. It can hardly be disputed that every course has its own requirements in terms of members of the teaching staff, equipments, books and journals in the library etc and it would be highly improbable to allow admission in the aforesaid course till the deficiencies found by the inspecting team are removed. Also, primarily it is for the DCI, and not for the Court to decide, whether the infrastructure, faculty, books, equipments, etc found with the petitioner were sufficient for the new courses or not.

13. In these circumstances, I find no merit in the writ petition and the same 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.

There shall be no orders as to costs.

V.K. JAIN, J

AUGUST 01, 2013/rd