

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

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Date of decision: 22nd January, 2014

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LPA 697/2013

**B.R. AMBEDKAR INSTITUTE OF DENTAL SCIENCES
AND HOSPITAL & ANR**

..... Appellants

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

Versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Amrit Pal Singh and Mr.
Rupinder Pal, Advocates for R-1, 2, 3
& 7.
Mr. Gaurav Sharma and Mr. Kapil
Midha, Advocates for R-4 to 6.

CORAM :-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This intra Court appeal impugns the judgment dated 1st August, 2013 of the learned Single Judge of this Court of dismissal of W.P.(C) No.3257/2013 filed by the two appellants. Notice of the appeal was issued. We have heard the learned senior counsel for the appellants and the counsel for the respondents no.4 to 6 being the Dental Council of India (DCI) and its Secretary and the Secretary in Charge.

2. The writ petition from which this appeal arises was filed by the appellants impugning, (a) the two recommendations dated 28th February, 2013 of the respondent no.4 DCI to the Government of India (GoI) to disapprove the application of the appellant no.1 (the appellant no.2 is the Chairman of the appellant no.1) for starting Master of Dental Sciences (MDS) course in the appellant no.1 Institute in the subjects of (i) Paedodontics & Preventive Dentistry and, (ii) Conservative Dentistry & Endodontics, in the academic session 2013-2014, for the reason of “deficiency of clinical material for 100 BDS seats and for starting PG course”; (b) further impugning the order dated 23rd April, 2013 of the GoI disapproving such applications of the appellant no.1, and, (c) for mandamus commanding the respondents to grant permission to the appellants for starting the MDS course in the two subjects aforesaid for the academic session 2013-2014.

3. It was *inter alia* the case of the appellants in the writ petition:-

- (a) that the appellant no.1 is a minority college established in the year 1990; the GoI vide its letter dated 4th January, 1996 granted permission to the appellants to start BDS course with 40 seats;

vide Notification dated 4th April, 2000 GoI granted recognition to the appellants' college for the BDS degree;

- (b) though the GoI vide its letter dated 11th July, 2002 ordered that no admissions in the BDS course in the appellants' college should be made in the academic session 2002-2003 but the appellants' college w.e.f. the academic session 2006-2007 has again been taking admission in the BDS course and the permission to the appellants to take admissions was being renewed from year to year; ultimately from the year 2011 the appellants' colleges was not required to take yearly permissions for admission to the BDS course;
- (c) that the appellants' college on 30th June, 2010 applied to the GoI for granting permission to start MDS course for the academic session 2011-2012 in four specialties but was refused such permission;
- (d) the appellants filed a writ petition in the Patna High Court in this regard and though vide interim order in the said writ petition the appellants were permitted to admit students provisionally but

the said interim order was set aside in an intra court appeal in the Patna High Court and the Special Leave Petition preferred by the appellants was dismissed with an observation that the dismissal thereof would not come in the way of the appellants seeking permission for the academic session 2012-2013 or subsequent sessions, on removal of deficiencies and on compliance of requisite formalities;

- (e) that the appellants removed the deficiencies and again applied for permission for the academic session 2012-2013 and for which year while the appellants were granted permission to commence MDS course in some of the specialties, it was again denied permission in other specialties;
- (f) that the appellants again filed a writ petition before the Patna High Court challenging the denial of permission in other specialties in the MDS course and in which writ petition notice was issued and which was pending at the time of filing of the writ petition from which this appeal arises;

(g) that the appellants applied for permission to start MDS course in 05 other specialties from the academic session 2013-2014; the application for one of the specialties was returned for the reason of the appellants' college being not associated with any medical college; and on the application for permission for four other specialties, an inspection was conducted and certain deficiencies pointed out and ultimately permission granted for two of the specialties but refused as aforesaid for two aforesaid specialties for the reason aforesaid of "deficiency of clinical material for 100 BDS seats and for starting PG course".

4. It was the contention of the appellants in the writ petition that the reason given of "deficiency of clinical material for 100 BDS seats" for denial of permission aforesaid was erroneous as the appellants' college had a sanctioned strength of 40 BDS seats only and on which basis permission for starting other MDS courses had been given and the respondent DCI had erroneously held the clinical material available to be deficient for 100 BDS seats, not realizing that the appellants' college had only 40 BDS seats and for which the clinical material available was sufficient.

5. On the said contention of the appellants, notice of the writ petition was issued and vide order dated 17th May, 2013 the appellants were directed to appear before the GoI on 20th May, 2013 and GoI directed to look into the matter.

6. The GoI thereafter, vide communication dated 24th May, 2013, though found the clinical material available to be sufficient for the aforesaid two specialities, observed that there were several other deficiencies mentioned in the DCI inspection reports dated 28th January, 2013 and 27th February, 2013 with respect to staff, journals, equipments, library etc. and hence the appellants college did not fulfill the requirements for induction of MDS students in the above two specialities. It was also observed that the deadline for grant of permission for the year 2013-2014 had expired on 30th April, 2013 and the appellants college could be considered for the next academic year 2014-2015 subject to fulfilling required conditions and rectification of deficiencies as per the inspection reports.

7. The appellants thereafter amended the writ petition, to also challenge the order/communication dated 24th May, 2013 supra contending that once on an earlier occasion permission had been denied only on the ground of deficiency

of clinical material and which in pursuance to order dated 17th May, 2013 in the writ petition had been found to be sufficient, no other grounds could be urged.

8. The learned Single Judge, vide impugned judgment, dismissed the writ petition finding/observing/holding:-

- (i) that the writ petition had come up for hearing first on 17th May, 2013; that the last date for granting permission for starting the postgraduate courses initially stipulated as 31st March, 2013 though had been extended up to 30th April, 2013 but that date had also gone; therefore permission for the academic session 2013-2014 could not be granted;
- (ii) that the dicta of the Supreme Court in *Priya Gupta Vs. State of Chhattisgarh* (2012) 7 SCC 433 equally applied to the dental courses and therefore no permission to start new courses could be given at that stage;
- (iii) that teaching in dental colleges had already commenced on 1st August, 2013 and it would thus not be appropriate to direct the respondents to grant permission to start the course at that stage; and,

(iv) on merits also no reason was found to interfere with the view taken by the Government.

9. Notice of the appeal was issued and the respondents directed to produce the complete record, which has been produced. We have heard the senior counsel for the appellants and the counsels for the respondents DCI and Government of India.

10. We, at the outset enquired from the senior counsel for the appellants, whether not this appeal which came up for admission first on 26th September, 2013 and in which final arguments were heard on 6th & 8th January, 2014 had not become infructuous as the academic session 2013-2014 is already half over.

11. The senior counsel for the appellants though not controverting that the relief qua the academic session 2013-2014 cannot now be granted to the appellants, has contended that once this Court quashes the communication/order dated 24th May, 2013, the result thereof would be to hold/find the appellants college eligible to start imparting education in the MDS course in the aforesaid two specialities, at least from the year 2014-2015.

12. We further enquired, whether not fresh permission would be required to be sought and obtained for the year 2014-2015, as also indicated in the communication/order dated 24th May, 2013.

13. The senior counsel for appellants contends that the rigours of the “test to be passed” for permission to start a course are far more stringent than the “test to be passed” for “renewal” of permission to, year after year, admit students to such course and this Court should adjudicate on the challenge to the denial of permission to start the aforesaid two courses. The senior counsel for the appellants has in this regard taken us through The Dental Council of India (Establishment of New Dental Colleges, Opening of New or Higher Course of Study or Training and Increase of Admission Capacity in Dental Colleges) Regulations, 2006 and we have studied the same in conjunction with The Dentists Act, 1948.

14. The counsel for the respondent DCI points out that though the appellants, after refusal of permission to them had within the stipulated time applied for fresh permission for starting the said courses for the academic session 2014-2015 but the cheques submitted by them towards fee thereof were dishonoured and the appellants inspite of opportunity have not paid the said fee resulting in

the application for permission filed by them for the academic session 2014-2015 having become defective and the appellants are thus not entitled for permission to commence the aforesaid courses for the academic session 2014-2015 also. He however stated that he has instructions to say that the appellants even if now pay the fee, their application for permission to commence the aforesaid two courses from the academic session 2014-2015 shall be processed.

15. We gave an opportunity to the senior counsel for the appellants to take instructions whether the appellants are willing to the aforesaid but the senior counsel for the appellants stated that the appellants are not so willing and the appellants are prepared to either succeed in these proceedings or to sink for the academic session 2014-2015 as well with respect to the aforesaid two courses.

16. The senior counsel for the appellants has further argued:-

A. that four different teams of the respondent DCI inspected the college and facilities of the appellants for the purpose of grant of permission sought for commencing MDS course in four specialities aforesaid;

B. that the appellants were vide separate letters both dated 19th February, 2013 of the respondent DCI informed of the deficiencies

found in the two specialties with which these proceedings are concerned and the appellants were called upon to furnish the report of compliance/removal of deficiencies;

- C. that the appellants vide their letters both dated 21st February, 2013 furnished such compliance report/removal of deficiencies;
- D. that a fresh inspection was carried out by the respondent DCI on 27th February, 2013 and the appellants vide letters dated 28th February, 2013 supra communicated of the recommendation of the respondent DCI of refusal of the permission for the reason only of “deficiency of clinical material for 100 BDS seats and for starting PG course”; no other reason , even if any, for recommending refusal of permission thus survived;
- E. that though the respondents subsequently on representation of the appellants agreed that the clinical material available was sufficient, but vide letter dated 24th May, 2013 still refused permission for the reason of several other deficiencies mentioned in the reports of inspections dated 28th January, 2013 and 27th February, 2013, with respect to staff, journals, equipments, library etc.

- F. that the respondent DCI having in letters dated 28th February, 2013 recommended refusal of permission only on the ground of deficient clinical material for 100 BDS seats, upon being confronted with the error in judging clinical material for 100 BDS seats when in fact the appellants' college had only 40 BDS seats, cannot take the ground of other deficiencies; and,
- G. reliance in this regard is placed on *Commissioner of Police Vs. Gordhandas Bhanji* AIR 1952 SC 16 (para 9), *Mohinder Singh Gill Vs. The Chief Election Commissioner, New Delhi* (1978) 1 SCC 405 (para 8) and *Rashmi Metaliks Vs. KMDA* (2013) 10 SCC 95 (para 14-16) to contend that the respondents cannot improve their case and once an impugned order gives a certain ground for an action, additional grounds cannot be given to justify the action by way of any subsequent order/affidavit.

17. The counsel for the respondent DCI has contended:-

- a. that the appellants are not entitled to any equitable relief; that when the team of the respondent DCI visited the college of the appellants on 15th July, 2013 for a surprise inspection, the

appellants vide their letter dated 15th July, 2013 refused such inspection on the ground of the matter being *sub judice*; it is argued that a medical college running various courses is not entitled to refuse such inspection merely on the ground that the matter is *sub judice* qua refusal of permission to commence other courses and the same shows that the college of the appellants had other deficiencies also;

- b. that the deadline for various stages for admission and commencing of the course have been laid down by the Supreme Court and have to be followed and cannot be extended;
- c. that the writ petition as well as the appeal were in the circumstances indeed infructuous;
- d. attention is invited to the judgment dated 17th September, 2013 of the Supreme Court in Special Leave Petition (Civil) No.22910/2013 titled ***Educare Charitable Trust Vs. Union of India*** laying down that no mandamus can be issued to modify the sanctity of the time schedule fixed for the process of admission to such courses and commencement of education in the courses.

18. The counsel for the GoI has supported the contention of the counsel for the respondent DCI.

19. The senior counsel for the appellants has in rejoinder argued that once permission for commencement of the course has been granted, no fresh permission is required for subsequent years and only a permission for admitting students to the next academic session is required; that the error even if any of the appellants in framing the prayer paragraph in the writ petition and in this appeal would not deprive the appellants of the said relief; that the appellants for the year 2013-2014 have paid the fee of Rs.3 lacs for obtaining permission and are entitled to a final decision on their such application and the relief of grant of permission to commence studies in the course does not become infructuous even if the permission to admit the students in the said courses for the current year cannot be granted; that if the appellants are succeeding in this appeal they would merely be entitled to obtain renewal of the permission to admit the students.

20. Though the senior counsel for the appellants at one stage of the arguments had contended that it is incongruous that of the inspection carried out qua four specialities of MDS courses applied for, the report for two would

be favourable and for the other two unfavourable but upon our pointing out that the requirements for four different specialities are necessarily to be different as else there would be nothing to distinguish one specialty from other, the senior counsel for the appellants did not press the said argument further.

21. We have considered the rival contentions and are unable to accept the contention of the senior counsel for the appellants.

22. It is not in dispute that in the letter dated 19th February, 2013 to the appellants pursuant to the inspection on 28th January, 2013, the following deficiencies (besides deficient clinical material) were pointed out in the specialty of Paedodontics and Preventive Dentistry:-

- (i) deficiency of one Reader;
- (ii) no publication of Dr. Mrinmoy Kanti Bagchi, Professor who was also not present during the inspection;
- (iii) deficiency of back volumes of journals from the minimum requisite of three international journals for ten years;

- (iv) deficiency of international and national journals in specialty and related against the minimum requirement of 6-8 & 2-4 respectively; and,
- (v) deficiency of equipments in the Department viz. endomotor-1, apex locatr-1, SS crown kit-4, strip crown kit, endodontics pressure syring-2, hydro solder-1m chemo mechanical caries-2, pliers-1 set, automatic developer-1 conscious sedation unit-1, electronic anaesthesia-1, pulse oxymeter-1, magnifying louns-1, phantom table with heads-3;
- (vi) library facilities were deficient.

23. The following deficiencies (besides deficient clinical material) were pointed out in the speciality of Conservative Dentistry and Endodontics in another letter dated 19th February, 2013 pursuant to inspection on 28th January, 2013 with respect to the said course:

- (a) General Hospital is not as per BIS norms;
- (b) there are no back volumes of international journals for ten years;

- (c) there were no national and international journals in specialty and related fields;
- (d) there was gross deficiency of equipments viz. Endodontics hand pieces-2, autoclave for hand piece sterilization-2, picking kits-2, surgical endo kits-1, low speed high torque motors-2, anthogyr torque control hand pieces-1, kavo torque control hand pieces-2, Freidy sterlizer trays-4, over head projector-1 equipments for casting procedure-1;
- (e) that the library facilities were deficient;
- (f) medical faculty was not present nor had signed on the day of inspection; and,
- (g) pre clinical phantom head was not available.

24. The appellants claim to have removed all the aforesaid deficiencies and to have reported so in their letters dated 21st February, 2013 with respect to aforesaid two specialities. The senior counsel for the appellants contends that the report of inspection on 27th February, 2013 was not supplied to the appellants.

25. The counsel for DCI controverts and has produced his own files and states that in the said inspection on 27th February, 2013, deficiencies other than in clinical material, were found to persist.

26. The senior counsel for the appellants contends that he is not entering into the said controversy and even if there were other deficiencies found, besides in clinical material, the respondent DCI in its recommendations dated 28th February, 2013 having taken the ground only of deficiency in clinical material for 100 BDS students for recommending refusal of permission, was estopped from, upon being found to have erred in judging clinical material for 100 instead of 40 BDS seats, from then refusing permission on the ground of other deficiencies, even if any, reported in inspection on 27th February, 2013. He pegs his case on *Mohinder Singh Gill* supra.

27. The Supreme Court in *Mohinder Singh Gill* supra laid down that when a statutory functionary makes an order based on certain grounds, its validity must be judged, by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise as else an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought by. The emphasis therein was on

“subsequent explanations” given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do.

28. However, what we have in the present case are not “fresh reasons in the shape of affidavit or otherwise” or “subsequent explanations of the officer making the order.” All that has happened in the present case is that though in the inspection of appellant college on 28th January, 2013 several deficiencies besides deficiency in clinical material were found and the appellants notified thereof and in spite of the appellants claim to have rectified/removed the said deficiencies, in the inspection on 27th February, 2013 also the said deficiencies were found to persist but the respondent DCI while recommending refusal of permission to the appellants, instead of setting out all the deficiencies noticed to persist in the inspection on 27th February, 2013, set out only one deficiency and not all. The question which arises is whether in this circumstance the principle aforesaid in *Mohinder Singh Gill* supra is applicable.

29. In our opinion, No. The Present is not a case of subsequent explanations or fresh reasons in the form of affidavits or otherwise. The other deficiencies on the basis whereof permission was denied vide communication dated 24th May, 2013 are very much part of the record i.e. the inspection reports of 28th January,

2013 and 27th February, 2013. It is significant to note that the said inspection reports were enclosed to the recommendations dated 28th February, 2013 of the respondent DCI. Moreover the respondent DCI was only making a recommendation and the decision thereon was to be taken by GOI. GOI while taking the said decision could have taken into consideration not only contents of letter dated 28th February, 2013 but also the inspection reports enclosed therewith and which GOI has done while issuing the letter dated 24th May, 2013.

30. There is another aspect of the matter. The prescription of the minimum parameters before permission to commence a new speciality course can be given, is in public interest, to ensure that the college is in a position to impart proper education and training in that course to the students admitted thereto and the said students when ultimately pass the examination in the said course are competent to render health care services and any negligence in rendition whereof can be fatal. The Supreme Court in ***Chairman, All India Railway Recruitment Board vs K. Shyam Kumar*** (2010) 6 SCC 614 has held that the principle laid down in ***Mohinder Singh Gill*** is not applicable where larger public interest is involved and in such situations additional grounds can be looked into to examine the validity of an order. We are of the view that the

present is one such case where the rights even if any of the appellant college have to give way to the public interest in maintaining standards of medical colleges and medical education.

31. We are thus not able to find any error requiring interference in the communication or order dated 24th May, 2013 of the respondent Government of India refusing permission to the appellants on the ground of deficiencies found during the inspection though not mentioned in the recommendation of the respondent DCI.

32. Though in the light of the above there is no need to deal with the other contention of the senior counsel for the appellants, of the tests for grant of permission for start of course being more rigorous than the test for renewal thereof but we may record that neither has the counsel been able to demonstrate in this behalf nor do we find the test to be any different under the Regulations aforesaid. Even otherwise it is inconceivable that a medical or dental college would not be required to in the subsequent years not maintain the standard which it is required to have for permission to commence the course.

33. We may mention that we had during the course of hearing suggested to the senior counsel for the appellants that in the event of the senior counsel for

the appellants agreeing to pay the fee afresh of the application for permission for the academic session 2014-2015, we will also direct the inspection of the college of the appellants well before 28th February, 2014 to enable the appellants to, even in the event of any deficiencies being still found, remove the said deficiencies and offer the college again for inspection but the said offer was also refused by the senior counsel for the appellants.

34. The only inference from the said conduct and earlier refusal of surprise inspection is that the appellants even now are not in a position to give inspection of all the requisite facilities for obtaining permission for the courses and are attempting to take permission taking advantage of technicalities and which cannot be permitted. The jurisdiction in which we have been approached is a discretionary jurisdiction and the appellants may be denied the relief even if in law found entitled to (See *Chandra Singh Vs. State of Rajasthan* (2003) 6 SCC 545, *ONGC Ltd. Vs. Sendhabhai Vastram Patel* (2005) 6 SCC 454, *Taherakhatoon Vs. Salambin Mohammad* (1999) 2 SCC 635). Any relief as sought if granted to the appellants would result in the appellants admitting students for imparting education in a course for which the appellants' college does not have the appropriate infrastructure and which the appellants are ill equipped to impart and which will be to the detriment of the students so admitted by the appellants and ultimately to the detriment of the society at large

which will be serviced by the students qualifying from the institute/college of the appellants not equipped to impart such training and the qualification acquired by the said students itself would thus be deficient. We may notice the Supreme Court recently in *Manohar Lal Sharma Vs. Medical Council of India* (2013) 10 SCC 60 has approved of the surprise inspections and further held grant or refusal of permission is acting as an administrative authority and not as a quasi judicial body and rigid rules of natural justice are neither contemplated nor required to be followed particularly when there are no allegations of bias. The senior counsel for the appellants in the present case on our enquiry expressly stated that it is not the contention of the appellant that it has been denied permission aforesaid for any extraneous reasons.

35. We therefore do not find any merit in this appeal which is dismissed with costs. Counsel's fee assessed at Rs.20,000/- payable by the appellants to the respondent DCI within 90 days of today.

CHIEF JUSTICE

RAJIV SAHAI ENDLAW, J.

JANUARY 22, 2014

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