

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

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**Date of decision: 23<sup>rd</sup> December, 2014**

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**LPA No.788/2014**

**MEDICAL COUNCIL OF INDIA**

**..... Appellant**

Through: Mr. Vikas Singh, Sr. Adv. with Mr. T. Singhdev, Mr. Manan Khera & Mr. Vishu Agrawal, Advs.

Versus

**MUZAFFARNAGAR MEDICAL COLLEGE & ORS... Respondents**

Through: Mr. Sandeep Sethi, Sr. Adv. with Mr. Aseem Mehrotra, Adv. for R-1&2. Ms. Monika Arora, CGSC with Ms. Saroj Bidawat, Mr. Abhishek Kumar Chaudhary & Ms. Medha Arya, Advs. for R-3 / UOI.

**CORAM:-**

**HON'BLE THE CHIEF JUSTICE**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

**RAJIV SAHAI ENDLAW, J**

1. This intra-court appeal impugns the order dated 29<sup>th</sup> October, 2014 of the learned Single Judge of this Court allowing W.P.(C) No.7339/2014 filed by the respondents No.1 and 2 i.e. Muzaffarnagar Medical College (MMC) and its Chairman Sh. Satish C. Goel and impleading the respondent No.3 Union of India (UOI) only as the respondent thereto and by setting aside the letter dated 22<sup>nd</sup> July, 2014 of the respondent No.3 UOI, returning / rejecting

the Scheme (for starting various postgraduate courses and for increase in seats for other postgraduate courses) for the academic session 2015-16 submitted by the respondent No.1 MMC on 27<sup>th</sup> May, 2014 on the ground of same having been submitted after the cut-off date of 30<sup>th</sup> April, 2014 and permitting the respondent No.1 MMC to re-file its Scheme for the academic session 2015-16 within a period of two weeks therefrom and by directing the respondent No.3 UOI to consider the said Scheme on merits.

2. The appeal came up before us first on 12<sup>th</sup> December, 2014 when the counsel for respondent No.1 MMC as well as the counsel for respondent No.3 UOI appeared on advance notice. It was the contention of the senior counsel for the appellant Medical Council of India (MCI) that the appellant was a necessary party to the writ petition and was adversely affected by the order of the learned Single Judge. Reliance in this regard was placed on *Medical Council of India Vs. Swati Sethi* (2004) 5 SCC 798 and *Dental Council of India Vs. S.R.M. Institute of Science & Technology* (2004) 9 SCC 676. The counsel for the respondent No.1 MMC on that date did not contend that the appellant, being not a party to the writ petition, was not entitled to prefer the appeal. We thus stayed all further proceedings pursuant to the order of the learned Single Judge and posted the matter for hearing.

We have heard the senior counsel for the appellant as well as the senior counsel for the respondent No.1 MMC.

3. The respondent No.1 MMC and its Chairman filed the writ petition from which this appeal arises *inter alia* pleading that:

- (i) The respondent No.1 MMC for the last more than seven years had been regularly accorded permission to conduct MBBS courses, initially for 100 seats and subsequently increased to 150 seats.
- (ii) The respondent No.1 MMC in or about the year 2010 was also granted permission to start postgraduate courses in Anatomy (2 seats) and in Physiology (1 seat).
- (iii) Vide Notification dated 24<sup>th</sup> May, 2011, the respondent No.1 MMC was included in the First Schedule to the Indian Medical Council Act, 1956 for awarding MBBS Degree from Chaudhary Charan Singh University, Meerut, U.P.
- (iv) The respondent No.1 MMC was also accorded permission for the academic session 2012-13 for starting postgraduate course

MD (Pathology) with annual intake of four students; subsequently, the respondent No.1 MMC was granted permission for starting certain other postgraduate courses in Medicine.

- (v) The respondent No.1 MMC on 31<sup>st</sup> May, 2012 applied for starting postgraduate courses in certain other streams for the academic session 2013-14.
- (vi) For the academic session 2014-15, the respondent No.1 MMC applied for starting more postgraduate courses and for increase of seats in certain postgraduate courses for which permission had been accorded in the earlier years.
- (vii) Though the appellant MCI on 11<sup>th</sup> April, 2014 had made a recommendation for rejecting the application / Scheme submitted by the respondent no.1 MMC for the academic session 2014-15 but as the respondent No.3 UOI / Central Government had not issued the letter, either approving or disapproving the Scheme for the academic session 2014-15 and as the classes were to commence in May, 2014, the respondent

No.1 MMC in or about April, 2014 filed five different petitions in the Supreme Court seeking a writ of mandamus for starting the courses for which the Scheme had been submitted.

- (viii) The aforesaid writ petitions were however dismissed on 2<sup>nd</sup> May, 2014.
- (ix) The respondent No.3 UOI / Central Government however vide letter dated 15<sup>th</sup> May, 2014, received by the respondent No.1 MMC on 27<sup>th</sup> May, 2014 rejected the Scheme submitted by the respondent No.1 MMC for the academic session 2014-15 but clarifying that the same did not debar the respondent No.1 MMC for applying for the academic session 2015-16.
- (x) The respondent No.1 MMC thereafter on 27<sup>th</sup> May, 2014 itself submitted its Scheme (for starting certain new postgraduate courses and for increasing the seats in certain other postgraduate courses for which permission had been granted in the earlier academic sessions) for the academic session 2015-16 to the Central Government.

- (xi) The respondent No.1 MMC was orally told that the said Scheme for the academic session 2015-16 submitted on 27<sup>th</sup> May, 2014 could not be considered having been submitted after the cut-off date of 30<sup>th</sup> April, 2014.
- (xii) The respondent No.1 MMC filed a writ petition in the Supreme Court seeking mandamus against the respondent No.3 UOI / Central Government for considering the application / Scheme of the respondent No.1 MMC for the academic session 2015-16.
- (xiii) The respondent No.3 UOI / Central Government vide letter dated 22<sup>nd</sup> July, 2014 returned the application / Scheme aforesaid of the respondent No.1 MMC for the academic session 2015-16.
- (xiv) The writ petition aforesaid filed by the respondent No.1 MMC in the Supreme Court with respect to the academic session 2015-16 was withdrawn from the Supreme Court on 12<sup>th</sup> September, 2014 with liberty to file a fresh petition before the appropriate forum in accordance with law.

(xv) The respondent no.1 MMC filed another writ petition in the Supreme Court, again claiming a mandamus to the respondent no.3 UOI / Central Government to consider its application / Scheme for the academic session 2015-16.

(xvi) The said writ petition also was dismissed as withdrawn on 17<sup>th</sup> October, 2014 with liberty to file appropriate petition before the High Court.

Thereafter, the writ petition from which this appeal arises was filed for the relief of quashing of the letter dated 22<sup>nd</sup> July, 2014 (supra) of the respondent No.3 UOI / Central Government rejecting the Scheme submitted by the respondent No.1 MMC for the year 2015-16 and of mandamus commanding the respondent No.3 UOI / Central Government to consider the Scheme submitted on 27<sup>th</sup> May, 2014 for the academic session 2015-16 on merits was sought.

4. The writ petition came up before the learned Single Judge of this Court first on 29<sup>th</sup> October, 2014 when the counsel for the sole respondent UOI / Central Government appeared on advance notice. The learned Single Judge accepted the contention of the counsel for the respondent No.1 MMC

that the respondent No.1 MMC could not have filed the Scheme for the academic session 2015-16 till it was informed of the fate of the Scheme submitted for the previous academic session 2014-15 and rejection whereof was learnt by the respondent No.1 MMC on 27<sup>th</sup> May, 2014 only; it was thus held that the respondent No.1 MMC could not have prior to the cut off date of 30<sup>th</sup> April, 2014 filed the Scheme for the academic session 2015-16. Accordingly, the writ petition was allowed, permitting the respondent No.1 MMC to re-file its Scheme for the academic session 2015-16 within a period of two weeks therefrom and with a direction to the respondent No.3 UOI / Central Government to consider the said Scheme on merits.

5. According to the appellant MCI, since it was not made a party to the writ petition, it did not know of the order aforesaid of the learned Single Judge till 25<sup>th</sup> November, 2014 when it learnt of the same from another writ petition of which copy was served on it. In any case, the respondent No.3 UOI / Central Government in compliance of the order of the learned Single Judge, vide its letter dated 25<sup>th</sup> November, 2014 received by the appellant on 26<sup>th</sup> November, 2014, forwarded to the appellant the Scheme submitted by the respondent No.1 MMC for the academic session 2015-16 along with the

order of the learned Single Judge, to take appropriate action thereon. Immediately thereafter this appeal was filed.

6. The senior counsel for the appellant has argued that:

- (a) As per the time schedule provided in The Opening of a New or Higher Course of Study or Training (including Postgraduate Course of Study or Training) and Increase of Admission Capacity in any Course of Study or Training (including a Postgraduate Course of Study or Training) Regulations, 2000 framed by the appellant MCI, the date for receipt of application / Scheme from the Medical College / proposed Medical Colleges by the Central Government is between 1<sup>st</sup> April to 30<sup>th</sup> April and the appellant is to make recommendations to the Central Government by 31<sup>st</sup> January of next year and the Letter of Permission for starting a course in Medicine / College is to be issued by the Central Government by 28<sup>th</sup> February of the next year.
- (b) However owing to the appellant MCI having been superseded and functioning through the Board of Governors and a new

MCI having been constituted, the Supreme Court extended the period for the appellant MCI to make its recommendations to the Central Government for the academic session 2014-15 from 31<sup>st</sup> January of that year to 15<sup>th</sup> April, 2014 and for the Central Government to issue Letter of Permission to 15<sup>th</sup> May, 2014.

- (c) That the respondent No.1 MMC on 11<sup>th</sup> April, 2014 was aware that the appellant MCI had made a recommendation to the Central Government to reject the application / Scheme of the respondent No.1 MMC for starting new postgraduate courses and for increasing the seats in certain other postgraduate courses for the academic session 2014-15.
- (d) This is apparent from the respondent No.1 MMC, in April, 2014 itself filing the five writ petitions (supra) in the Supreme Court challenging the recommendation of the appellant MCI, even prior to the same having been considered by the Central Government.
- (e) The Supreme Court on 2<sup>nd</sup> May, 2014 dismissed the said writ petitions.

- (f) The Central Government by its letter dated 15<sup>th</sup> May, 2014 accepted the recommendation aforesaid of the appellant MCI and rejected the Scheme Submitted by the respondent No.1 MMC for the academic session 2014-15.
- (g) The respondent No.1 MMC being so aware on 11<sup>th</sup> April, 2014 of the recommendation of the appellant MCI, could have well before the cut-off date of 30<sup>th</sup> April, 2014 submitted the Scheme for the academic session 2015-16; the respondent No.1 MMC could have done so even without prejudice to its right to challenge the said recommendation of the appellant MCI as had been done by filing the writ petitions in the Supreme Court and could have also done the same without prejudice to the decision of the Central Government on the said recommendation.
- (h) Even if the respondent No.1 MMC had to incur some fee for so submitting the said application / Scheme for the academic session 2015-16 and which would have been wasted in the event of the writ petitions filed before the Supreme Court succeeding or the Central Government not accepting the

recommendation of the appellant MCI (and in which case the respondent No.1 MMC would not have been required to seek the same approval for the academic session 2015-16), the respondent No.1 MMC could have always claimed the refund of the said fee.

- (i) The application / Scheme for the academic session 2015-16 submitted on 27<sup>th</sup> May, 2014 was clearly after the cut-off date prescribed in the Regulations and by the Supreme Court and the said application / Scheme cannot be considered.
- (j) Attention is drawn to *Priya Gupta Vs. State of Chhattisgarh* (2012) 7 SCC 433 and it is contended that the said judgment bars the appellant MCI as well as this Court from entertaining / directing consideration of an application / Scheme filed after the cut-off date; that though prior to the said judgment, High Courts were issuing directions for entertaining applications / Schemes submitted beyond the cut-off dates but after the said judgment, the jurisdiction of the High Courts is limited only to

entertaining contempt proceeding for violation of the cut-off date.

- (k) though the respondent No.1 MMC in July, 2014 filed a writ petition in the Supreme Court seeking a direction to the Central Government to consider its application / Scheme for the academic session 2015-16 but without impleading the appellant MCI as a party thereto and even though the respondent No.1 MMC, on 12<sup>th</sup> September, 2014 was aware of the letter dated 22<sup>nd</sup> July, 2014 of the Central Government of return of application / Scheme for the academic session 2015-16 for the reason of having been filed after the cut-off date, but still withdrew the said writ petition.
- (l) Though the respondent No.1 MMC had so withdrawn the writ petition qua the academic session 2015-16 but immediately thereafter in September / October, 2014 itself filed yet another petition in the Supreme Court claiming the same relief as in the earlier writ petition and again without impleading the appellant MCI as a party thereto – the said writ petition was again

dismissed as withdrawn on 17<sup>th</sup> October, 2014 with liberty to file appropriate petition before the High Court – had the MCI been a party to the said writ petition, it would have informed the Supreme Court of the earlier writ petition for the same relief filed by the respondent No.1 MMC and withdrawn with the same liberty.

- (m) It is only thereafter that the writ petition from which this appeal arises was filed on or about 27<sup>th</sup> October, 2014.

7. The senior counsel for the respondent No.1 MMC has contended that:

- (I) The judgment (supra) of the Supreme Court in *Priya Gupta* is in relation to the MBBS course and not in relation to the postgraduate courses and thus it cannot be urged that owing thereto this Court is not entitled to direct consideration of an application / Scheme submitted beyond time.
- (II) The respondent No.1 MMC was prevented from applying / submitting the application / Scheme for the academic session 2015-16 by the appellant MCI and the respondent No.3 UOI / Central Government ; though they were as per the Regulations

required to approve / reject the application / Scheme submitted for the academic session 2014-15 by 28<sup>th</sup> February, 2014 but did not; had the application / Scheme submitted for the academic session 2014-15 been approved, there would have been no need for the respondent No.1 MMC to submit a Scheme for the same courses / additional seats for the academic session 2015-16 inasmuch as the benefit of the approval for the academic session 2014-15 would have enured for the following years also; on the contrary, had the appellant MCI and the respondent No.3 UOI / Central Government rejected the application / Scheme for the academic session 2014-15 by the stipulated date of 28<sup>th</sup> February 2014, the respondent No.1 MMC would have applied afresh for 2015-16 by 30<sup>th</sup> April, 2014.

- (III) Attention is invited to the order dated 10<sup>th</sup> September, 2013 of the Supreme Court in Civil Appeal No.8054/2013 titled ***Royal Medical Trust (Regd.) Vs. Union of India*** and to order dated 18<sup>th</sup> September, 2014 in W.P.(C) No.469/2014 titled ***Hind Charitable Trust Shekhar Hospital Pvt. Ltd. Vs. Union of***

*India* to contend that the Supreme Court also has extended the time schedule.

8. We have considered.

9. The Supreme Court, in *Swati Sethi* (supra) was dealing with the judgment of the High Court directing admission of certain students who claimed to have been wrongfully deprived of their right to admission to the medical courses. MCI which was not made a party to the writ petitions, preferred a Special Leave Petition to the Supreme Court. It was the contention of the respondents / writ petitioners before the Supreme Court that their grievance was against the medical colleges only and not against the MCI. The Supreme Court however held that it is the MCI which lays down the time schedule and is responsible for maintaining such time schedule as well as the quality and discipline in the medical courses and what was being asked by the respondents / writ petitioners was a change in the time schedule fixed by the MCI; such a plea could not have been entertained in the absence of the MCI. Similarly in *S.R.M. Institute of Science & Technology* (supra), it was held that since the Dental Council of India is a statutory body having statutory duties, it ought to have been impleaded in a writ petition seeking

direction to the Central Government to process the proposal to start Master of Dental Surgery (MDS) courses.

10. We thus, at the outset enquired from the senior counsel for the respondent No.1 MMC as to why in the face of such a settled position of law, from the very factum of the respondent No.1 MMC, in the writ petition from which this appeal arises, not impleading the appellant MCI as a party, inference should not be drawn that the appellant MCI was intentionally not made a party, to manipulate a walkover and the respondent no.1 MMC be held not entitled to the discretionary relief under Article 226 on this ground only. We also drew the attention of the senior counsel for the respondent No.1 MMC to the fact that it is not as if the writ petition was filed by a novice; the writ petition was filed under legal assistance of a counsel who, if we may say so, specializes if not enjoys exclusivity in the said field; he cannot be presumed to be not knowing the law. We yet further pointed out to the senior counsel for the respondent No.1 MMC that in such matters though Central Government is also a party but the contesting respondent is always the MCI and owing whereto the panel advocates of the Central Governments are not even called upon to file counter affidavits or address

and are generally not even aware of the Regulations and the Schedules laid down by the MCI.

11. The senior counsel for the respondent No.1 MMC could only respond that the respondent No.1 was aggrieved only from the rejection / return by the Central Government of the application / Scheme for the academic session 2015-16 solely on the ground of having been submitted beyond the cut-off date and there was thus no need to implead the appellant MCI.

12. We however enquired whether not the time schedule which was sought to be overcome, was prescribed by the appellant MCI and if so how could it be said that the appellant MCI was not a necessary party.

13. No appropriate answer has been forthcoming.

14. We yet further asked whether any other writ petitions of a similar nature have been filed in the past without impleading the MCI and merely against the Central Government.

15. Again no answer was forthcoming. It was however urged that the order under appeal is only an interim one. Upon it being pointed out that it is a final order allowing writ petition, it was stated that the order only directs

consideration of the application / Scheme and it is always open to the Central Government / MCI to say, that the same being beyond time, cannot be considered.

16. We asked that if that be so, is the very filing of this appeal by the appellant MCI not such a reply of the appellant MCI. We have also drawn the attention to the impugned order which directs consideration of the application / Scheme “on merits”.

17. We also enquired from the senior counsel for the respondent No.1 MMC that if the cut-off dates prescribed by the Supreme Court are with respect to the MBBS and BDS courses only and not with respect to the postgraduate courses, where was the need for the Supreme Court to extend the date for the academic session 2014-15 from the prescribed date of 28<sup>th</sup> February, 2014 to 15<sup>th</sup> May, 2014.

18. The senior counsel for the respondent No.1 MMC stated that it is for the appellant MCI to answer, as the respondent No.1 MMC was not a party to the said proceedings before the Supreme Court.

19. We also enquired whether there are any precedents of the High Courts, after the judgment in *Priya Gupta* (supra) having so extended the dates in relation to postgraduate courses.

20. No answer has been forthcoming.

21. The senior counsel for the respondent No.1 MMC then contended that even if we are of the view that the appellant MCI is a necessary party, it can be ordered to be impleaded and the matter remanded to the Single Judge for decision afresh.

22. We may in this regard point out that this option was considered by us on 12<sup>th</sup> December, 2014 when the appeal had first come up before us. However it was the contention of the senior counsel for the appellant MCI and of the counsel for the respondent No.1 MMC on that date that since the MCI is to make recommendations on the Schemes for the academic session 2015-16 latest by 31<sup>st</sup> January, 2015, the matter be considered by us only. The respondent No.1 MMC cannot now be permitted to turn turtle.

23. However being still of the view that the time for taking decision on the applications / Schemes for the academic session 2014-15 having been extended from 28<sup>th</sup> February, 2014 to 15<sup>th</sup> May, 2014, in all fairness, the

time for submitting applications / Schemes for the academic session 2015-16 should also have been proportionately extended, we enquired from the senior counsel for the appellant MCI as to what prejudice the appellant MCI will suffer if directed to so consider the application / Scheme submitted by the respondent No.1 MMC for the academic session 2015-16, as done in the impugned judgment / order.

24. The senior counsel for the appellant MCI explained that the appellant MCI had, by the time of coming to know of the order of the learned Single Judge, already completed one round of inspection of all medical colleges and is now in the process of issuing deficiency notices and hearing on the same and conducting second inspections, if need be. It was further told that long time is taken in collating inspection teams and such inspections cannot be organized at short notice. It is stated that if at this time the process of considering the application / Scheme of the respondent No.1 MMC was to be commenced, it would derail the schedule for the academic session 2015-16 as well.

25. We tend to agree with the appellant MCI, particularly in view of the fact that the respondent No.1 MMC is found to have not acted with

promptitude. The respondent No.1 MMC on 11<sup>th</sup> April, 2014 itself knew of the appellant MCI having recommended rejection of its application / Scheme for the academic session 2014-15. The respondent No.1 MMC therefrom could have reasonably been sure that the Central Government will also accept the said recommendation. The respondent No.1 MMC however though filed writ petitions in the Supreme Court challenging the said recommendation of the appellant MCI but did not by way of abundant caution apply within the prescribed time of 30<sup>th</sup> April, 2014 for the academic sessions 2015-16. Not only so, when the said writ petitions were dismissed on 2<sup>nd</sup> May, 2014, then also no permission was taken from the Supreme Court for filing the application / Scheme for the year 2015-16 which till then was delayed by a few days only. Not only so, even after the Central Government on 15<sup>th</sup> May, 2014 accepted the recommendation of the appellant MCI qua the respondent No.1 MMC, the respondent No.1 MMC accepted the same and did not challenge the same. It thereafter filed successive writ petitions in the Supreme Court for acceptance of its application / Scheme for the academic session 2015-16. The respondent No.1 MMC thereby dragged the matter for a further six months before approaching this Court. The said delay on the part of the respondent No.1

MMC is not explained at all. The respondent No.1 MMC being at fault, we see no reason to put the appellant MCI at inconvenience for the defaults of the respondent No.1 MMC.

26. There is another aspect, which in fact arose from the arguments of the respondent No.1 MMC. It was the contention of the respondent no.1 MMC that the Central Government was bound to decide qua academic session 2014-15 by 28<sup>th</sup> February, 2014 but did not. Though of course the said date was extended but if the respondent No.1 MMC wants to take advantage thereof, the question also arises as to why the respondent No.1 MMC did not presume its application for the academic session 2014-15 to have been rejected owing to approval having not been accorded by 28<sup>th</sup> February, 2014 and re-apply for the academic session 2015-16 by the cut off date of 30<sup>th</sup> April, 2014.

27. The time schedule having been fixed by Regulations, has sanctity and cannot be disturbed at the mere asking of the respondent no.1 MMC particularly when the respondent no.1 MMC is itself to blame for missing the cut off date and is found to have attempted to obtain an order, extending the date, from this Court, behind the back of the appellant MCI.

28. The senior counsel for the respondent No.1 MMC had also argued that the appellant MCI itself, while rejecting its application / Scheme for the academic session 2014-15 vide letter dated 15<sup>th</sup> May, 2014, stated that the same will not prevent the respondent No.1 MMC from submitting a fresh application / Scheme for the subsequent academic year. It was contended that the same amounts to permitting the respondent No.1 MMC to submit the application / Scheme for academic session 2015-16 by a subsequent date.

29. We are unable to agree. The time schedule having been laid by the Regulations, could not have been changed by the letter aforesaid.

30. The appeal accordingly succeeds. The order dated 29<sup>th</sup> October, 2014 of the learned Single Judge is set aside and the writ petition filed by the respondent No.1 MMC and its Chairman, respondent No.2 is dismissed with costs assessed at Rs.30,000/- payable to the appellant MCI within four weeks of today.

**RAJIV SAHAI ENDLAW, J**

**CHIEF JUSTICE**

**DECEMBER 23, 2014**

‘gsr’..