

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

FRIDAY, THE 23RD DAY OF JANUARY 2015/3RD MAGHA, 1936

WA.No. 1967 of 2014 ()

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AGAINST THE JUDGMENT IN WP(C) 26350/2014 OF THIS HONOURABLE COURT
DATED 24-10-2014
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APPELLANT/RESPONDENT NO. 2 IN WP(C) :

**MEDICAL COUNCIL OF INDIA (MCI)
REPRESENTED BY ITS SECRETARY, SECTOR 8, POCKET 14
DWARKA, PHASE-1, NEW DELHI-110 077.**

BY ADV. SRI.TITUS MANI VETTOM, SC

RESPONDENTS/PETITIONER/RESPONDENT 1 IN WP(C) :

**1. S.R. EDUCATIONAL AND CHARITABLE TRUST
REPRESENTED BY ITS CHAIRMAN R.SHAJI, DIVYA PRABHA
MARAPPALAMA, PATTOM, TRIVANDRUM-695 004.**

**2. UNION OF INDIA
REPRESENTED BY ITS SECRETARY
MINISTRY OF HEALTH AND FAMILY WELFARE
NIRMAN BHAVAN, NEW DELHI-110 001.**

**R1 BY ADVS. SRI.G.BIJU
SRI.S.JAYAPRAKASH (MADAVOOR)
SRI.V.A.VINOD**

R2 BY ADV. SRI.N.NAGARESH, ASGI

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 23-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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ASHOK BHUSHAN, Ag.CJ

& A.M.SHAFFIQUE, J.

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W.A.Nos.1967 of 2014 and 25 of 2015

Dated this the 23rd day of January 2015

J U D G M E N T

Shaffique,J

These writ appeals have been filed by the Medical Council of India (for short 'MCI') challenging the direction issued by the learned Single Judge in separate writ petitions permitting the petitioners to resubmit their applications to the Central Government and in turn the Central Government was directed to forward the said documents to MCI, in order to enable MCI to submit recommendation within the specified time schedule. Hence these writ appeals are decided by a common judgment.

2. The facts involved in W.A.No.1967/2014 are as under:

The writ petitioner in W.P(C) No.26350 of 2014 submitted an application before the Central Government for permission to establish a new Medical College during the academic year 2015-16. Petitioner had, in fact, applied for permission during the previous year itself with all necessary certificates. Since the inspection was not conducted by MCI in time, according to the petitioner, they were not granted permission and the matter is pending before the Supreme Court. But, to avoid unnecessary controversy, a fresh application was filed within the stipulated time for starting the college during the academic year 2015-16. According to the petitioner, they received an information that their application may not be referred to the MCI for want of validity of essentiality certificate submitted along with the application. The essentiality certificate submitted by the petitioner was for the year 2014-15. Hence the petitioner approached the State Government and renewed the validity of the essentiality certificate for the academic year 2015-16

and 2016-17 and the same was produced before the Central Government on 29/9/2014. Exhibit P7 is the covering letter under which the essentiality certificate was produced. The last date fixed for receipt of applications by MCI was 30th September 2014. Petitioner submits that despite production of the essentiality certificate, the Central Government did not forward the application to MCI for further process and therefore the writ petition was filed on 09/10/2014 seeking for a direction to the Central Government to accept the essentiality certificate and to refer Ext.P5 application to MCI for being evaluated as per the procedure prescribed under the Regulations and for other alternate reliefs.

3. The learned Single Judge disposed of the writ petition by judgment dated 24/10/2014 forming an opinion that the petitioner, having produced Exhibit P6 essentiality certificate by curing the defect in time and within the schedule fixed for submission of application in terms with the Regulations, he was given an opportunity to resubmit

the application within a period of ten days and thereafter directions were given to the respondents to process the same within the time as specified in the schedule without further delay.

4. The facts involved in W.A.No.25 of 2015 are as under:

The petitioner filed W.P.(C) No.31405 of 2014 seeking to quash Ext.P6 and for a direction to the Central Government to treat the petitioner's application for permission to enhance the number of seats from 100 to 150 for the academic year 2015-16 and to consider the same on merits. The petitioner is already running a college which commenced in the year 2002 with the sanctioned strength of 100 seats. In order to enhance the number of seats to 150, applications were submitted during the academic year 2013-14 and 2014-15. On account of delay of approval by MCI, permission was not granted. Hence a fresh application was submitted on 27/08/2014 for the academic year

2015-16. Along with the application, petitioner submitted the consent for affiliation from the University obtained by them for the academic year 2014-15 since the fresh consent could not be obtained as the same was pending consideration. According to the petitioner, communication from MCI informing that approval cannot be granted for the academic year 2014-15 was received by them only on 01/09/2014. In order to meet the deadline for submission of the application, the same was submitted along with the documents received from the University for the previous academic session. Petitioner obtained Ext.P4 consent for affiliation for the academic year 2015-16 on 04/09/2014. Hence the same was sent along with a covering letter to the first respondent as per Ext.P5 dated 04/9/2014. But the Central Government returned the application by Ext.P6 dated 16/10/2014, indicating that the consent for affiliation is not valid for the academic year 2015-16. Petitioner submitted a representation Ext.P7 dated 4/11/2014 to

reconsider the same, but since no action has been taken in the matter, the writ petition was filed on 24/11/2014. The learned Single Judge, by an interim order dated 02/12/2014 directed the Central Government to receive petitioner's application for enhancement of the seats and forward the same to MCI within a week, however observing that the same will be subject to result of the writ petition.

5. These appeals have been filed by MCI challenging the directions issued by the learned Single Judge in the above writ petitions inter alia contending that the directions have been issued contrary to the judgment of the Supreme Court in **Mridul Dhar and another v. Union of India and others** [(2005) 2 SCC 65] and **Priya Gupta v. State of Chattisgarh** [(2012) 7 SCC 433]. It is argued that though a different approach had been taken by the Supreme Court in **Royal Medical Trust (Regd.) v. Union of India and another** [2013 (12) scale 145] and by a Division Bench of this Court in W.A.No. 711 of 2014 in **Muslim Educational**

Society v. State of Kerala and others, relying upon **Royal Medical Trust** case (supra), the said judgments cannot be made applicable to the facts of the present case and that apart, **Royal Medical Trust** case (supra) is not a valid precedent and is contrary to the ratio in **Mridul Dhar** case (supra). Learned counsel also relied upon the judgment of the Constitution Bench in **Union of India v. Reghubir Singh** [(1989) 2 SCC 754] and **Sundeep Kumar Bafna v. State of Maharashtra** [AIR 2014 SC 1745] to emphasise the point that a judgment can be per incuriam if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a co-equal or larger Bench. Learned counsel also relied upon a few interim orders passed by the Supreme Court in similar situations wherein directions have been issued to consider their applications during the next academic year.

6. On the other hand, learned counsel appearing for the petitioners supported the view taken by the learned

Single Judge. According to them, applications were filed within time along with all necessary particulars. The defect, if any, had been cured within the time before which Central Government had to forward the applications to MCI. Without undertaking such a procedure, if the applications are not referred to MCI, definitely it was open for this Court to direct the applications to be received and forwarded to MCI especially when the time within which MCI has to give recommendation has not expired. According to them, **Royal Medical Trust** case (supra) has been decided by the Supreme Court after referring to **Mridul Dhar** and **Priya Gupta** (supra) and on peculiar facts and circumstances of the case. These are cases where applications were submitted in time and were wrongly rejected. That apart, the Division Bench of this Court had decided the **Muslim Educational Society** case (supra) on similar set of facts where the essentiality certificate was unduly delayed by the State Government without any specific reason. The learned

counsel also relied upon Sections 10A(2) and 10A(3) of the Medical Council of India Act to contend that Central Government was under obligation to refer the application along with connected documents to MCI and if there was any defect in the documents, it was for the MCI to call upon the applicants to cure the defects.

7. Having regard to these factual situation and the arguments raised on either side, it is true that in **Mridul Dhar** case (supra), a three-Judge Bench of Supreme Court had emphasised about the strict adherence to the time schedule. In **Priya Gupta** case (supra), the Supreme Court held that the MCI, Government of India, the State Government or the University or other selected bodies have no power of relaxing, varying or disturbing the time schedule or the procedure for admission as provided in the judgment of the Supreme Court and the MCI Regulations. However, it is evident that in **Royal Medical Trust** case (supra), the Supreme Court, having referred to the restrictions imposed

in **Mridul Dhar** (supra) and **Priya Gupta** (supra), observed that, since the appellant had applied in due time adhering to statutory time line, direction was issued. The present are not cases in which the applications were filed out of time. Facts involved in these cases also indicate that the petitioners had filed applications during the previous years as well and since the MCI recommendations were not obtained within time, they could not start the College or to enhance the seats. Apparently, petitioners in these cases produced certain documents which are related to the previous year. However, they produced the current documents immediately thereafter and the Central Government had sufficient time to consider their applications in order to forward the same to MCI. Such an exercise has not been done by the Central Government which clearly amounts to arbitrariness. Therefore, these cases also are instances where the applications were submitted in time and the defects, if any, were cured within a few days. Under such circumstances, we

are of the view that the learned Single Judge was justified in issuing the directions which are impugned herein. We are unable to accept the argument of the learned counsel for the MCI that the judgment in **Royal Medical Trust** case (supra) is per incuriam. Under exceptional circumstance, it is always open for this Court in exercise of power under Article 226 to issue appropriate directions, of course, keeping in mind the time schedule which has to be complied by all concerned.

8. The learned counsel for the MCI points out that delayed directions will cause substantial prejudice to them as they will not be in a position to complete the formalities of verification within the time schedule which is fixed every year. But, that by itself shall not be a reason to deny consideration of the applications which are forwarded within time. Applications are not to be rejected without proper scrutiny. It is evident in these cases that the defect pointed out had been cured and was available with the Central Government. Therefore, merely for the reason that such

directions may cause some inconvenience to MCI, will not be a reason to deny the benefit of consideration of application submitted by the petitioners.

9. In regard to the interim orders passed by the Supreme Court in a few cases brought to our notice, we are not aware of the facts of the said cases. Each case will have to be considered on its own facts.

10. Learned Assistant Solicitor General of India points out that sufficient opportunity was not given to file counter affidavit. But, the fact remains that, there are cases which have to be considered and decided without wasting much time, as substantial rights are involved in the matter, which requires urgent orders. Hence the learned Single Judge was justified in passing the impugned judgment and order.

Since no grounds are made out to interfere with the judgment and order passed by the learned Single Judge in the writ petitions, we decline to interfere with the said

judgment and order and accordingly these writ appeals are dismissed.

**(ASHOK BHUSHAN,
ACTING CHIEF JUSTICE)**

(A.M.SHAFIQUE, JUDGE)

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