

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

FRIDAY, THE 11TH DAY OF SEPTEMBER 2015/20TH BHADRA, 1937

WP(C).No. 21267 of 2015 (G)

PETITIONER(S):

**THE MANAGER/CHAIRMAN,
AL-AZHAR DENTAL COLLEGE, PERUMPILLICHIRA P.O.,
THODUPUZZHA.**

**BY ADVS.SRI.KURIAN GEORGE KANNANTHANAM (SR.)
SRI.TONY GEORGE KANNANTHANAM
SRI.THOMAS GEORGE**

RESPONDENT(S):

- 1. THE DENTAL COUNCIL OF INDIA,
REPRESENTED BY ITS SECRETARY, KOTLA ROAD,
NEW DELHI - 110 002.**
- 2. UNION OF INDIA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
MINISTRY OF HEALTH & FAMILY WELFARE, NIRMAL BHAVAN,
NEW DELHI - 110 011.**

*** ADDITIONAL R3 IMPEADED**

- 3. THE KERALA UNIVERSITY OF HEALTH SCIENCES ,
REPRESENTED BY ITS REGISTRAR, TRICHUR - 680 596.**

*** (ADDL. R3 IS IMPEADED AS PER ORDER DATED 20.08.2015 IN IA.12026/2015)**

**R1 BY ADV. SRI.TITUS MANI VETOM, SC, DENTAL COUNCIL OF INDIA
R2 BY ADV. SRI.M.C.MONY, CGC
SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
R3 BY ADV. SRI.P.SREEKUMAR, SC**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
09-09-2015, ALONG WITH WPC. 22748/2015, THE COURT ON
11-09-2015, DELIVERED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' EXHIBITS

**P1:-TRUE COPY OF THE LETTER OF PERMISSION DTD 13/7/2007 ISSUED BY THE
2ND RESPONDENT.**

**P2:-TRUE COPY OF THE NOTIFICATION DTD 24/1/2013 ISSUED BY THE
2ND RESPONDENT.**

**P3:-TRUE COPY OF THE ORDER DTD 4/9/2014 ISSUED BY THE KERALA UNIVERSITY
OF HEALTH SCIENCES.**

P4:-TRUE COPY OF THE LETTER DTD 7/4/2015 ISSUED BY THE 1ST RESPONDENT.

P5:-TRUE COPY OF THE LETTER DTD 7/4/2015 OF -DO-.

P6:-TRUE COPY OF THE LETTER DTD 15/6/2015 ISSUED BY THE 1ST RESPONDENT.

P7:-TRUE COPY OF THE LETTER DTD 15/6/2015 OF -DO-.

P8:-TRUE COPY OF THE LETTER DTD 19/6/2015 ISSUED BY THE 2ND RESPONDENT.

**P9:-TRUE COPY OF THE STATEMENT DTD 22/6/2015 ISSUED BY THE PRINCIPAL OF
THE PETITIONERS COLLEGE.**

P10:-TRUE COPY OF THE STATEMENT DTD 22/6/2015 ISSUED BY -DO-.

**P11:-TRUE COPY OF THE RELEVANT PAGES OF LETTER DTD 9/7/2015 ISSUED BY
THE 1ST RESPONDENT.**

RESPONDENT(S)' ANNEXURES:

**ANNEXURE R1(a): TRUE COPY OF LETTER NO.V.12025/44/2015-DE DTD.26.6.2015
ISSUED BY MINISTRY OF HEALTH AND FAMILY WELFARE (DENTAL
EDUCATION SECTION).**

**ANNEXURE R1(b): TRUE COPY OF LETTER NO.V.12025/44/2015-DE(PART-3)
DTD.13.7.20015 ISSUED BY MINISTRY OF HEALTH AND FAMILY
WELFARE (DENTAL EDUCATION).**

ANNEXURE R1(c): TRUE COPY OF THE LETTER DE-3(257)-2015/5166 DTD.14.7.2015.

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.MUHAMED MUSTAQUE, J.

W.P.(C) Nos.21267 & 22748 of 2015

Dated this the 11th day of September, 2015

JUDGMENT

These writ petitions are filed by existing Dental Colleges having recognition of the Dental Council of India (hereinafter, referred to as the “DCI”), aggrieved by the action of the DCI in not allowing them to admit their students for the academic year 2015-2016 on account of deficiencies exist in the Colleges.

2. There are common issues to be considered in both the writ petitions. Therefore, it is appropriate to dispose both these cases by a common judgment.

Facts

W.P.(C) No.21267/2015

3. This writ petition is filed by AL-Azhar Dental College. This Dental College was established in the year 2007. The first batch of the students passed out in the year 2012. Therefore, the Government of India issued a Notification under Section 10(2) of the Dentists Act, 1948 (hereinafter referred to as “ the Act”)

declaring recognition of the Dental Degree awarded by the M.G University to which the petitioner's institution was affiliated.

3.i. The petitioner's College has been affiliated with the Kerala University of Health Sciences from the year 2009 onwards. This was necessitated on account of the enactment of the Kerala University of Health Sciences. By virtue of Section 74(3) of the Kerala Health University Act, all the Colleges/Institutions imparting education in Health and Allied Sciences deemed to be affiliated to the Kerala University of Health Sciences. Based on the recognition awarded to the petitioner, they applied for enhancement of seats from 50 to 100. This was granted in the year 2014. However, the petitioner could not admit 100 students on account of delay in issuing Letter Of Permission (LOP) by the Government of India.

3.ii. The petitioner's Institution was inspected by a team constituted by the DCI in the month of March, 2015. This was done as a part of renewal of the Central Government permission. The Inspection team found out certain deficiencies with the Institution. The petitioner was asked to cure the defects as per Ext.P4 dated 7.4.2015. The petitioner claims that they have cured the defects. It appears that another joint inspection was

conducted and found out the deficiencies exist. Therefore, by Ext.P6 dated 15.6.2015, the petitioner was communicated that they shall not admit 50 students for the academic session 2015-2016. By Ext.P7, the petitioner was also communicated that the Council recommended to the Central Government “not to renew” the 2nd year BDS Course with increased intake capacity from 50 to 100 for the academic session 2015-2016. The petitioner challenges Exts.P6 and P7.

W.P.(C) No.22748/2015

4. This writ petition is filed by the Director of the Pariyaram Dental College. This Dental College was established in the year 2004 with an annual intake of 60 admissions. In the month of March, 2015, an inspection was conducted in the petitioner's College. The inspection team pointed out certain deficiencies in the College. The petitioner, thereafter, submitted a compliance report on 20.4.2015. Again, an inspection was conducted to verify compliance and a report was placed before the DCI. Based on the report, the DCI recommended the Government of India not to allow the Pariyaram Medical College, Kannur with 60 seats for the academic session 2015-2016.

7. The Pariyaram Medical College was initially affiliated with the Kannur University. Thereafter, on constitution of the Kerala University of Health Sciences, it was affiliated with the Health University under Section 74(3) of the Kerala Health University Act. On completion of the first batch, the Government of India by a notification under Section 10(2) of the Act, recognized the award of degree of the Kannur University in respect of the Pariyaram Dental College. This was in the year 2010.

Common facts relating to both the cases.

8. The DCI has undertaken inspection in both the Institutions as contemplated under 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 (for short, the “Regulation, 2006”). This Regulation was framed by the DCI, by virtue of the powers conferred under Section 10A read with Section 20 of the Act. Apparently, the DCI is of the view that in view of the change of the University for affiliation, notwithstanding the recognition accorded to the petitioners' Institution under Section 10 of the Act, they are bound to follow the procedure referred in the above

Regulations for exercise of the powers under Section 10A of the Act. Regulation 11 of the Regulation, 2006 stipulates annual renewal of permission.

Submissions

9. The learned Senior Counsel Sri.Kurian George Kannanthanam appearing for the petitioner in W.P.(C) No.21267/2015 would argue that once the recognition is awarded in terms of Section 10(2) of the Act, the question of renewal of permission does not arise. The learned Senior Counsel further referred to the proviso to Regulation 11 in the Regulation, 2006 to bring home this point. Regulation 11 reads as follows:

“11. Renewal of Permission:-

(1) Admissions of the next batches shall not be made by the dental college unless the permission granted under regulation 10 has been renewed by the Central Government.

(2) The application for renewal of permission shall be submitted to the Council, with a copy to the Central Government, six months prior to the expiry of the current academic session. The recommendation of the Council in all cases of renewal shall be made by 15th June and the Central Government shall issue final orders regarding

renewal of permission by 15th July of each year.

Provided that the process of renewal of permission will not be applicable after the completion of phased expansion of the infrastructure facilities and teaching faculty as per norms laid down by the Council and the first batch of students take the final year examinations.”

9.i. However, the learned Senior Counsel fairly conceded that the DCI is competent to exercise the powers under Section 10A of the Act in respect of increased intake from 50 to 100 seats granted in the previous year.

9.ii. The learned Senior Counsel also pointed out to variance in deficiencies shown in the initial inspection report and in the subsequent inspection report after submission of the compliance report by the petitioner. Therefore, it is submitted that the inspection team was reckless in reporting the matter to the DCI. It is further argued that the DCI has chosen to communicate the recommendation only on 15.6.2015, i.e. the last date on which LOP, could have been issued by the Government of India. The learned Counsel further referred to Ext.P8 issued by the Government of India directing the petitioner to appear before the DCI to report compliance of the same. It is submitted that the DCI

ignored the directions of the Government of India and denied the petitioner an opportunity to place the case before the DCI.

10. The learned counsel Sri.P.V.Surendranath appearing for the Pariyaram Dental College submits that the change of University would not result in divesting the recognition granted under Section 10(2) of the Act. The learned counsel further submits that they have cured all the defects and reported compliance. The learned counsel also referred to Ext.P7 issued by the Government of India to place the case before the DCI to prove compliance. It is submitted that the petitioner was not given an opportunity. It is further submitted that the DCI cannot take advantage of their own action in delaying the process of conducting inspection.

11. Per contra, Sri.Titus Mani, learned Standing Counsel appearing for the DCI, defended the action of the DCI. He has strenuously taken this Court to the various measures taken by the DCI in the matter. The learned Counsel also referred to a regulatory mechanism evolved by the DCI to maintain the minimum standards by the Dental Institutions. The learned Counsel submits that in view of the affiliation with the new

University, i.e. the Kerala University of Health Sciences, it is imperative for the DCI to redo the exercise as contemplated under Section 10A of the Act to ensure the quality of the Course, Syllabus and examination pattern of the Institution based on the affiliation with the Health University. The learned Counsel further points out that the DCI is bound to consider the pattern of the affiliation made by the Institution with the Health University so as to ensure that the minimum standard prescribed in the DCI is not affected on account of change of University.

14. In view of the facts and circumstances, following points arise for consideration:

14.i. Whether the petitioners, do require to have a renewal of permission from the Government of India under Regulation 11 of the Regulation, 2006, once the phased expansion is completed and recognition is granted under Section 10(2) of the Act.

14.ii. Whether the DCI is justified in not permitting the petitioners for admitting students on original intake capacity, on account of deficiencies pointed out by the inspection team.

14.iii. Whether the writ petitioner in W.P.(C) No.21267/2015 is entitled for renewal of permission for the increased intake capacity of seats from 50 to 100.

Point No.1 (14.i):

14.i.a. The procedure adopted by the DCI in this matter is according to Section 10A of the Act. Section 10A of the Act prescribes provisions relating to permission for establishment of new Dental Colleges, new course of study etc. The Regulation, 2006 prescribes the procedure to carryout the mandate under Section 10A of the Act. The Regulation 10 of the Regulation, 2006 stipulates that the initial grant of permission is for a period of one year and will be renewed on yearly basis subject to verification of the achievement of the annual targets and revalidation, if necessary. The Regulation 11 of the Regulation, 2006 prescribes the procedure for renewal of permission. The proviso to regulation 11(2) of the Regulation, 2006 reads as follows:

“Provided that the process of renewal of permission will not be applicable after the completion of phased expansion of the infrastructure facilities and teaching faculty as per norms laid down by the Council and the first batch of students take the final year examinations.”

14.i.b. The above proviso clearly states that the renewal of permission will not be applicable after the completion of phased expansion of the infrastructure facilities and teaching faculty as per the norms laid down by the DCI. The notification issued under Section 10(2) of the Act is an approval of the BDS course imparted by the Institution in a phased manner on satisfying all the conditions throughout the course making the Institution eligible for recognition. This recognition does not require further renewal under any provisions of the Act or Regulation, 2006.

14.i.c. Therefore, there cannot be any dispute to the fact that the dental degree awarded by the petitioners' Institutions is having recognition and they do not require renewal of permission from the Government of India.

14.i.d. However, the question arises, whether the change of the University for affiliation after awarding recognition under Section 10(2) of the Act, would have an impact upon the recognition granted to the petitioners' Institutions to re-do the exercise contemplated under Section 10A of the Act. It is to be noted that the petitioners' Institutions have been affiliated to the Kerala Health University based on the provisions under Section 74

(3) of the University Act, 2010. The notification as completed under Section 10(2) of the Act showing the qualification, necessarily, would reflect the name of the University. The recommendation by the DCI and approval by the Government of India is based on the scheme of the Institutions to conduct course of study. The Regulation 4 of the Regulation, 2006 prescribe proposals of the Scheme to be submitted by the Institutions to the Government of India for establishing Dental Colleges. Form No.1 appended to the Regulation, 2006 sets out the proposal for the scheme. A mere glance of this Scheme would clearly indicate that the DCI is relying upon its own standards for granting recommendations and to accord permissions under the Act to start new BDS course. It is to be noted the recommendations or permissions granted are not based on the Scheme of the University.

14.i.e. Therefore, this Court is of the view that the change of University would not have any consequence upon the recognition already granted. The Regulation 4 read with Regulations 10 and 11 of the Regulation, 2006 clearly points out that those Regulations would govern only establishment of new Dental Colleges or opening of new BDS course or increase of

intake capacity. Therefore, this Court is of the view that the petitioners' Institutions do not require renewal of permission in respect of intake capacity in BDS Course which have got recognition under 10 (2) of the Act.

Point No.2 (14.ii):

14.ii.a. This question is to be answered in the light of the stand taken by the DCI that 15.6.2015 is the deadline for renewal of permission. The time schedule as prescribed in the Regulation, 2006 for renewal of permission would not apply to the petitioners' Institutions in respect of the Course with intake capacity which have got recognition under Section 10(2) of the Act. The time schedule would only apply if the petitioners' Institutions will have to obtain renewal of permission from the Government of India under Regulation 11 of the Regulation, 2006. However, this Court cannot ignore the mandate of the DCI to ensure minimum standards of dental education in conformity with the norms laid down by them. This mandate flows from the very objective of the constitution of the Dental Council under Section 3 of the Act. Once the recognition is granted, the DCI can take action in terms

of Section 16 of the Act for withdrawal of recognition. It is only in this matter till the recognition is granted, the renewal would depend upon the recommendation of the DCI. The Government of India can refuse to renew the permission based on the recommendation of the DCI. There cannot be any dispute that the DCI inspected and found out deficiencies in the dental colleges of the petitioners. The petitioners claim that they have cured the defects. The DCI did not conduct further inspection obviously for the reason that the time schedule to grant permission was over. This Court, as already held above, the time schedule for renewal of permission under Section 10A of the Act read with Regulation 11 of the Regulation, 2006 would have no application in respect of the original intake which has got recognition under Section 10(2) of the Act. The DCI, therefore, ought to have conducted an inspection to find out compliance. The DCI could not have shirked its obligation, especially, in the light of the directions of the Government of India. If the deficiency still persists, the DCI is at liberty to initiate action under Section 16 of the Act for withdrawal of the recognition. It is now clear that the DCI had not verified the present status in the petitioners'

Institutions.

14.ii.b. Therefore, it cannot be said whether any deficiencies exist or not. In such circumstances, this Court is of the view that with liberty to the DCI to proceed against the petitioners' Institutions based on the action already initiated to arrive at a logical conclusion, the petitioners' Institutions which have got recognition under Section 10(2) of the Act shall be permitted to admit students with the original intake capacity.

Point No.3 (14.iii):

14.ii.a. This issue pertains to the enhanced intake capacity of the writ petitioner in W.P.(C) No.21267/2015. The Hon'ble Supreme Court in **Manohar Lal Sharma v. Medical Council of India and Others [(2013) 10 SCC 60]**, has held as follows:

“25. MCI, while deciding to grant permission or not to grant permission, is not functioning as a quasi-judicial authority, but only as an administrative authority. Rigid rules of natural justice are, therefore, not contemplated or envisaged. Regulation 8(3)(i) of the Establishment of Medical College (Amendment) Regulations, 2010 (Part II), provides for only an “opportunity and time to rectify

the deficiencies”. A compliance report is called for only to ascertain whether the deficiencies pointed out were rectified or not. If MCI is not satisfied with the manner of compliance, it can conduct a surprise inspection. After that, no further time or opportunity to rectify the deficiencies as contemplated, nor further opportunity of being heard, is provided.”

14.iii.b. In view of the above dictum, this Court is of the view that once the petitioner was given an opportunity and the second inspection was conducted based on the compliance report and the inspection team found that the deficiencies exist, no further opportunity need to be given to the petitioner since the deadline time schedule ran out. The petitioner has no case that there was no second inspection to verify the compliance report. The decision of the DCI, not to recommend the petitioner's Institution for renewal of the increased intake capacity of 50 seats is based on the inspection report of the team constituted to verify the compliance. Therefore, this Court finds that Ext.P7 is perfectly legal and need not be interfered. However, the petitioner is free to report compliance and the respondents shall verify the compliance for the consideration of renewal for the next year in respect of enhanced seats.

In view of the above discussions, these writ petitions are disposed of with the following directions:

- i). Ext.P6 in W.P.(C) No. 21267/2015 is set aside.
- ii). It is declared that the petitioner in W.P.(C) No.21267/2015 is entitled to admit 50 students of original intake capacity for the academic year, 2015-2016 subject to any proceedings of the DCI under Section 16 of the Act.
- iii). The challenge against Ext.P7 of the writ petitioner in W.P.(C) No.21267/2015 is rejected.
- iv). Ext.P8 in W.P.(C) No.22748/2015 insofar as it relates to the petitioner, is set aside.
- v). It is declared that the writ petitioner in W.P.(C) No.22748/2015 is entitled to admit 60 students for the academic year 2015-16 subject to any proceedings under Section 16 of the Act.
- vi). The DCI is free to inspect the petitioners' Institutions and take any measures under the Act. No costs.

A.MUHAMED MUSTAQUE, JUDGE

In