

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.09.2015

CORAM

THE HONOURABLE MR.JUSTICE M.M. SUNDRESH

W.P.No.21840 of 2015
and
M.P.Nos.1 to 3 of 2015

K S R Institute of
Dental Science & Research Represented by
its Principal K S R Kalvi Nagar
Kuchipalayam (P.O) Tiruchengode-637215
Namakkal District ... Petitioner

- Vs -

- 1 Government of India
Rep. by its Secretary Ministry of Health &
Family Welfare Dept. Nirman Bhawan
New Delhi-110011.
- 2 Dental Council of India Rep. by its
Secretary Aiwan-E-Ghalib Marg
Kotla Road New Delhi-110002.
- 3 The Tamil Nadu Dr. M.G.R. Medical University
Rep. by its Registrar
69 Anna Salai Guindy Chennai-32.
- 4 Director of Medical Examination
162 E.V.R. Periyar Salai
Kilpauk Chennai-10.
- 5 Selection Committee
Rep. by its Secretary
Directorate of Medical Examination
162 E.V.R. Periyar Salai
Kilpauk Chennai-10. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of certiorarified mandamus calling for the records of the Respondents relating to the Order of the 1st Respondent in No. V.12025/44/2015-DE dated 15.07.2015 and the orders of the 2nd Respondent in No.DE-3(191)-2015/1459 dated 15.06.2015 and No.DE-22-2015/4889 dated 09.07.2015 and quash the same and direct the

Respondents to restore the intake in BDS Course to 100 seats for the academic year 2015-16 onwards.

For Petitioner	: Mr.K.Doraisamy senior counsel for M/s.Muthumani Doraisamy
For R1	: Mr. A.Veeramani CGSC
For R2	: Dr.S.Seethalakshmi
For R3	: Mr.Anand David
For R4 & R5	: Mrs.P.Rajalakshmi, Govt. Advocate

ORDER

The writ petition is filed for the issuance of a writ of certiorarified mandamus calling for the records of the Respondents relating to the Order of the 1st Respondent in No. V.12025/44/2015-DE dated 15.07.2015 and the orders of the 2nd Respondent in No.DE-3 (191)-2015/1459 dated 15.06.2015 and No.DE-22-2015/4889 dated 09.07.2015 and quash the same and direct the Respondents to restore the intake in BDS Course to 100 seats for the academic year 2015-16 onwards.

2. The petitioner institute was issued with essentiality certificate by the Government of Tamil Nadu for starting the BDS course with total intake of 60 seats. Recognition was granted by the Government of India on 04.03.2009. An application was made by the petitioner to increase intake from 60 to 100. On 06.11.2012, the Government of Tamil Nadu granted essentiality certificate for increase of seats. Tamil Nadu Dr.M.G.R Medical University on 15.09.2011 granted consent of affiliation for increase in seats.

3. On 13.07.2012, Government of India, namely, respondent No.1 granted permission for increase of intake from 60 to 100 seats, in BDS course for the academic year 2012-13. Similarly, for the academic years, 2013-14 and 2014-15, approval/affiliation was granted for 100 seats. An inspection was made on 20.4.2015 in respect of renewal of permission for the year 2015-16 for increase of intake from 60 to 100. It was a surprise inspection. The petitioner was asked to explain the absence of faculty members by letter dated 05.05.2015. Compliance report was submitted on 07.05.2015. Another surprise inspection was made on 01.06.2015 to verify the compliance report submitted by the petitioner. According to the petitioner, the entire week was one meant for Sri Arthanareeswarar temple chariot Car festival in the town of Tiruchengode. Therefore, there was number of absentees and late comers. Some of the faculty members were not allowed to come in after 9.05 a.m. when the inspection team entered. Thus, representations were made on 08.06.2015 and 16.6.2015 by the petitioner to respondent No.1. By letter dated 26.6.2015, the respondent No.1 has made recommendation to the Dental Council of India to review the case of the petitioner. However, the Dental

Council of India has informed the first respondent that it is not possible to do so in view of the cut-off date fixed. Accordingly, the order impugned was passed that in view of the said letter dated 09.07.2015 sent by the Dental Council of India that last date of sending recommendations to Government of India was 15.6.2015 and it is already over. There were two inspections made already and it is not possible to renew the permission for 4th year BDS course for the additional intake of 60 to 100 seats and not to allow the admission for increased seats from 60 to 100 for the academic year 2015-16. Challenging the same, the present writ petition is filed.

4. The learned counsel appearing for the petitioner submitted that the power under 10A of the Dentists (Amendment) Act, 1993 is not illusory. It is for the Central Government to consider the materials available. The order is not a speaking order. The Central Government is only a recommending body. As the last date of admission is only 30.9.2015 and in view of the reasoned order passed in W.P. (C).No.705/14 in Royal Medical Trust (Regd) and Another Vs Union of India and another by the Hon'ble Apex Court dated 20.08.2015, the impugned order cannot be sustained.

5. The learned counsel appearing for the respondents submitted that it is a case of two inspections made already. There are serious irregularities and infirmities found. As the cut-off date is already over, it was impossible to make an inspection, though a request was made in this regard by the Government of India. There is no contra material available to revise the decision made already. Hence, no interference is required.

6. In the Judgment referred supra, the Hon'ble Apex Court was dealing with three categories of institutions. The third category is in respect of medical colleges seeking renewal of permission inclusive of increase in intake capacity of an existing college. A perusal of the order would show that the facts governing the case are more or less similar, except the year. Though the Government of India, namely, respondent No.1 passed appropriate orders on 26.06.2015 recommending a review by the Dental Council Of India, it appears that the same could not be carried out in view of the time schedule. The said order dated 26.06.2015 would effectively take away the earlier recommendations made by Dental Council of India. Thus, the compliance report said to have been made by the petitioner has not been looked into on merit. It is needless to say that the petitioner has made out a case before respondent No.1 for reviewing its case. That is the reason why the order dated 26.6.2015 has been passed. However, the order impugned is passed merely based upon the letter of the Dental Council of India dated 09.07.2015 which expresses its inability to make another inspection by reiterating the earlier norms. Considering the said issue and analysing the earlier decisions of the Hon'ble Apex Court, in the decision cited supra, it has been reiterated as follows:

"29. The cases in hand show that the Central Government did not choose to extend the time limits in the Schedule despite being empowered by Note below the Schedule. Though the Central Government apparently felt constrained by the directions in Priya Gupta it did exercise that power in favour of Government Medical Colleges. The decision of this Court in Priya Gupta undoubtedly directed that Schedule to the Regulations must be strictly and scrupulously observed. However, subsequent to that decision, the Regulations stood amended, incorporating a Note empowering the Central Government to modify the stages and time limits in the Schedule to the Regulations. The effect of similar such empowerment and consequential exercise of power as expected from the Central Government has been considered by this Court in Priyadarshini. The Central Government is thus statutorily empowered to modify the Schedule in respect of class or category of applicants, for reasons to be recorded in writing. Because of subsequent amendment and incorporation of the Note as aforesaid, the matter is now required to be seen in the light of and in accord with Priyadarshini where similar Note in pari materia Regulations was considered by this Court. We therefore hold that the directions in Priya Gupta must now be understood in the light of such statutory empowerment and we declare that it is open to the Central Government, in terms of the Note, to extend or modify the time limits in the Schedule to the Regulations. However, the deadline namely 30th of the September for making admissions to the first MBBS course as laid down by this court in Madhu Singh and Mridul Dhar must always be observed."

7. In the said case, no relief was given since the deadline for making admissions was over. However, in the case on hand, the deadline expires only by the end of this month. Thus, there is still sufficient time. This Court cannot exercise power of review without going into the merits of the case as it is for respondents 1 and 2 to decide deadline. Suffice it is to state that the impugned order cannot be sustained in law especially, when it has been passed not on merits. Accordingly, the same is set aside and consequently, a direction is issued to respondent No.2 to make an inspection either surprise or otherwise of the petitioner's institution within a period of one week from the date of receipt of a copy of this order and make recommendation within a further period of one week to respondent No.1. The first respondent will have to pass appropriate orders on or before 25.9.2015.

8. Writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

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s/d-
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

To

- 1 Secretary to Government of India
Ministry of Health &
Family Welfare Dept. Nirman Bhawan
New Delhi-110011.
- 2 Dental Council of India Rep. by its
Secretary Aiwan-E-Ghalib Marg
Kotla Road New Delhi-110002.
- 3 The Tamil Nadu Dr. M.G.R. Medical University
Rep. by its Registrar
69 Anna Salai Guindy Chennai-32.
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Rep. by its Secretary
Directorate of Medical Examination
162 E.V.R. Periyar Salai
Kilpauk Chennai-10.

+ 1 cc to Mr.A.Veeramani, Advocate 47950

+ 1 cc to Mrs.Muthumani Doraisami, Advocate SR 47965

+ 3 ccs to Mrs.Muthumani Doraisami, Advocate SR 48504/9.9.2015

+ 1 cc to Mr.Dr.S.Seethalakshi Advocate SR 47968

+ 1 cc to Govt.Pleader SR 48279

lrs(co)
prk7/9

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