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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated:26.08.2015

CORAM:

THE HON'BLE Mr.JUSTICE S.NAGAMUTHU

and

THE HON'BLE Mr.JUSTICE V.S.RAVI

Writ Appeal (MD)No.912 of 2015

and

M.P.(MD)No.1 of 2015

Dental Council of India,
Aiwar-E, Galib Marg, Kotla Road,
Opp.Mata Sundry College for Women,
New Delhi-110 002.

...Appellant/
2nd Respondent/2nd Respondent

vs.

1.Best Dental Science College,
Ultra Trust,
rep.by the Principal,
4, Staff Quarters,
Best Dental College Campus,
Madurai-625 104.

... 1st Respondent/
Petitioner/Writ Petitioner

2.Government of India,
Ministry of Health and Family Welfare,
rep.by its Secretary/Under Secretary,
Nirman Bhavan,
Maulana Azad Road,
New Delhi-110 011.

... 2nd Respondent/
1st respondent/1st respondent

Writ Appeal under Clause 15 of Letters Patent, against the order, dated 21.07.2015, made in M.P.(MD)No.2 of 2015 in W.P.(MD)No.12420 of 2015 on the file of this Court.

Prayer in MP(MD). 2/ 2015 in WP(MD).12420/2015 : To issue an AD INTERIM DIRECTION directing the 2nd respondent to inspect the petitioner college based on the compliance report dated 24.6.15 within a period of one week and to convey its recommendations to the first respondent and the first respondent to pass order within a period of one week thereafter pending disposal of the WP.

Prayer in WP(MD). 12420/ 2015 : Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus calling for the records relating to records of the 1st respondent in particular No.V.12025/44/2015-DE dated 15.7.15 and to quash the same and directing the 2nd respondent to inspect the petitioner college and sent its report within one week or any other short time limit to be fixed by this Honourable Court and direct the 1st respondent to pass orders on the recommendations of the 2nd respondent independently forthwith or within the time limit to be fixed by this Honourable Court.



For Appellant : Mr.G.R.Swaminathan,
Assistant Solicitor General.

For Respondent-1 : Mr.V.T.Goplan,
Senior Counsel for Mr.B.Saraswathi.

For Respondents 2 : No Appearance

JUDGMENT

(Judgment of the Court was delivered by S.NAGAMUTHU, J)

The appellant is the Dental Council of India. Challenge in this writ appeal is to the interim order, dated 21.07.2015, passed by the learned Single Judge in M.P.(MD)No.2 of 2015 in W.P.(MD)No.12420 of 2015.

2.We have heard Mr.G.R.Swaminathan, learned Assistant Solicitor General of India, appearing for the appellant and Mr.V.T.Gopalan, learned senior counsel, appearing for the 1st respondent/writ petitioner. We have not issued any notice to the 2nd respondent, since the order that we pass will not be prejudicial to the 2nd respondent.

3.Writ petition in W.P.(MD)No.12420 of 2015 came to be filed by the first respondent, challenging the order of the 2nd respondent/Ministry of Health and Family Welfare, Government of India, dated 15.07.2015, rejecting the request of the 1st respondent College to grant renewal permission for 3rd year BDS Course with increased intake capacity from 50 to 100 seats, in the Dental College run by the first respondent herein and also sought for consequential direction to the Dental Council to inspect the first respondent College and send its report to the Central Government, within a time frame and also to issue further direction to the Central Government to consider the same and to pass orders, independently. It was, in that writ petition, in M.P.(MD)No.2 of 2015, a learned Single Judge passed an interim order, directing the appellant herein to inspect the first respondent college and submit a report, regarding the infrastructure and other facilities available in the College, in a sealed cover. Aggrieved by the same, the Dental Counsel of India has preferred the present appeal.

4.In this appeal, it is submitted by Mr.G.R.Swaminathan, learned Assistant Solicitor General, appearing for the appellant/Dental Council that the impugned order would tantamount to granting one part of the main relief itself and therefore the same is liable to be set aside. He would further submit that inspection of the college would happen only after the order under challenge in the writ petition is set aside. The learned Single Judge, according to the learned Assistant solicitor General, has passed the order, without assigning any reason for issuance of such a direction for inspection. Learned Assistant Solicitor General further submitted that the last date prescribed for making/sending recommendation is already over.

5.Learned Senior Counsel appearing for the first respondent/Dental College would vehemently oppose this appeal. According to him, there was no fault or delay on the part of the first respondent/Dental College and the delay was caused by the appellant in sending recommendation to the 2nd respondent. Learned Senior Counsel further submitted that the interim relief granted will not be prejudicial to the appellant. He would further submit that in order to avoid any time lapse, the interim order came to be passed by the learned Single Judge.



6. We have considered the above submissions.

7. In this writ appeal, a party cannot canvass the grounds or objections raised in the writ petition, which is now pending before the learned Single Judge. In our considered view, if we express any opinion regarding those grounds or objections, it will have influence in the writ petition and therefore we refrain from making any such examination as to the correctness or otherwise of the grounds or objections raised in the writ petition.

8. Insofar as the impugned order is concerned, In our considered view, the learned Single Judge has made it very clear that the inspection shall be conducted by the appellant, without prejudice to the rights of both the parties. It is only to avoid any further delay in the matter, the learned Single Judge has passed the said order. We do not find any infirmity in the order at all. Further the impugned order will not tantamount to granting any part of the main relief sought for in the writ petition. For any reason if the writ petition is dismissed, holding that the order passed by the Central Government is sustainable, then the inspection report, which would be submitted, would not be of any use. Or, for any reason, if the learned Single Judge decides to set aside the order under challenge in the writ petition, then this inspection report would be useful for passing further orders. Thus, the impugned order does not suffer from any illegality or irregularity, on any account, warranting interference at the hands of this Court. We do not find any merit in the writ appeal. Accordingly, the writ appeal is dismissed. No order as to costs. Connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar - AS

/True Copy/

Sub Assistant Registrar

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TO:

1. The Principal,
Best Dental Science College, Ultra Trust,
4. Staff Quarters, Best Dental College Campus,
Madurai-625 104.

2. The Secretary/ Under Secretary,
Ministry of Health and Family Welfare,
Government of India,
Nirman Bhavan, Maulana Azad Road,
New Delhi-110 011.

1CC TO MR. G.R.SWAMINATHAN, ADVOCATE SR: 49299

1CC TO M/S. B. SARASWATHI, ADVOCATE SR: 49300

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