

HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND
THE HON'BLE SRI JUSTICE S.V.BHATT
W.A.No.779 OF 2015

PC:

The writ appeal is directed against the order dated 08.12.2014 in W.P.M.P.No.47211 of 2014 in W.P.No.37734 of 2014.

The 2nd respondent in W.P.No.37734 of 2014 is the appellant.

Having regard to the fact situation of the subject matter of the writ petition and also the earlier order passed for examination of application for enhanced intake and admitted inaction thereon, the learned Single Judge passed the following order:

“In terms thereof, 2nd petitioner college is entitled to be considered for grant of higher intake capacity for the academic year 2015-16 even if no fresh application is submitted. However, on 30.08.2014, a fresh application was submitted seeking permission to increase intake capacity to 200 seats. Since by that time consent of affiliation for the academic year 2015-16 was not available and such consent was granted by Dr.NTR University of Health Sciences only on 08.09.2014, granting consent affiliation for the academic years 2015-16 and 2016-17, a fresh application was submitted on 26.09.2014 enclosing the consent of affiliation.

By order dated 16.10.2014, the Government of India, returned proposal submitted by the petitioner for grant of increase of the intake capacity for the academic year 2015-16 on two grounds; 1) that the consent of affiliation submitted along with proposal dated 30.08.2014 is not valid for the academic year 2015-16 since it was for the academic year 2014-15 and 2) consent of affiliation submitted along with proposal dated 26.09.2014 is issued after the cut off date and, therefore, it is not valid, in obvious reference to the schedule determined by Medical Council of India for processing such applications. According to the schedule, application from a College should be received by the Central Government between 1st and 31st August, 2014 and Central Government in turn should forward those applications to the Medical Council of India before 30th September, 2014.

Prima facie, this decision in the face of earlier orders of this Court in W.P.No.23414 of 2014 is illegal.

Be that as it may, as contended by the learned counsel for petitioners, such infirmities can be cured while application was processed by the Medical Council of India and Medical Council of India does grant opportunity to rectify the deficiencies noticed in processing application and, therefore, if opportunity was given, petitioner would have satisfied the Medical Council of India. Learned counsel further submits that on account of delay in granting the consent of affiliation by the University, petitioner cannot be blamed. It is a well established institution and is administering the MBBS course of study since the year 1984. Grant of consent of affiliation by NTR Health University is a routine matter.

In the facts of this case, the proceedings in File No.U-12012/904/2014-ME(P11) dated 16.10.2014 is suspended and respondents 1 and 2 are directed to forthwith process the petitioner's application for additional intake of 50 seats by increasing the intake from 150 to 200 seats for the academic year 2015-16 duly considering the petitioner's representations/ applications dated 30.08.2014, 26.09.2014 and 02.12.2014.”

The facts relevant for the disposal of the appeal are briefly stated:

The 1st and 2nd respondents in the instant appeal filed W.P.No.23414 of 2014 challenging communication No.

U-12012/589/2014-ME(P11) dated 15.07.2014 of the 3rd respondent in the writ appeal. The 3rd respondent through proceedings dated 15.07.2014 rejected the request of 1st and 2nd respondents to enhance the intake from 150 to 200 MBBS seats. A learned Single Judge, on 20.08.2014, after considering the material on record in W.P.No.23414 of 2014, issued the following interim directions and the relevant portion reads thus:

“In view of the directions of the Supreme Court in PRIYA GUPTA, the claim of the petitioners to permit them to admit students for the academic year 2014-15 as desired by them by directing the Government of India to grant them permissions required for the present academic year and to permit them to participate in the counselling for admission, cannot be granted, since the last date to grant such permissions expired on 15.07.2014.

However, the process of evaluation of suitability of the petitioners for running MBBS course or enhancing the intake capacity can be continued. This would at least militates against similar scenario developing for the next academic year. Thus, having *prima facie* found that the actions of the Medical Council of India and the Government of India are contrary to the mandate of Medical Council of India Act and the public interest, the orders of Government of India dated 15.07.2014 rejecting the request of respective petitioners is suspended and the Government of India is directed to reconsider the claim of the petitioners to continue to administer the course of study leading to

awarding degrees in MBBS/to increase the intake capacity in the course of study leading to awarding MBBS degree strictly in accordance with Medical Council of India Act and after duly considering the compliance reports/objections on the reports of Medical Council of India submitted by the petitioners (**emphasis supplied**), take a decision as warranted by law and in larger public interest, as expeditiously as possible, preferably within a period of six weeks from the date of receipt of a copy of this order. However, it is made clear that even if the Government of India takes decision in favour of the petitioners, petitioners' colleges are not entitled to admit students for the academic year 2014-15."

On 30.08.2014, the 1st and 2nd respondents applied to the 3rd respondent to process their request to increase the intake capacity from 150 to 200 seats in MBBS course from the academic year 2015-16. The 3rd respondent through communication dated 16.10.2014 returned the application dated 30.08.2014 filed for enhancing the intake from 150 to 200 MBBS seats. The relevant portion of the communication reads thus:

"Consent of affiliation submitted along with the proposal dated 30.8.2014 is not valid for the academic year 2015-16.

"Consent of affiliation submitted along with the proposal dated 26.09.2014 after cut off date (i.e., 31.8.2014)."

The 1st and 2nd respondents filed W.P.No.37734 of 2014 challenging the communication dated 16.10.2014. As already noticed, the interim order dated 08.12.2014 challenged in the writ appeal was passed. Hence, the appeal.

The learned counsel for the appellant submits that the application dated 30.08.2014 is not a complete application, for the application is not accompanied by the consent of affiliation and secondly the consent of affiliation dated 26.09.2014 is submitted after the cut off date i.e., 31.08.2014 for making application for grant of renewal of permission under Section 10(A) of Indian Medical Council Act, 1956 and that in view of the binding precedents of the Apex Court in **PRIYA GUPTA, PRIYADARSHINI, MADHU SINGH, MRIDUL DHAR** cases (infra), the appellant cannot be directed to process the application received beyond the time limit and the order of the learned Single Judge directing the appellant to process the application dated 30.08.2014 is illegal and erroneous. According to the appellant, the application submitted is not compliant for examination on merits. It is contended that the

1st and 2nd respondents cannot make any grievance against the communication dated 16.10.2014 and pray for setting aside the order impugned in the appeal.

The learned counsel appearing for the 1st and 2nd respondents contends that the appellant, or for that matter the

3rd respondent in the writ appeal, having regard to the facts and circumstances of the present case, cannot canvass that the request for increasing the intake is not made before the cut off date. The learned counsel places strong reliance on the order of this Court dated 20.08.2014 in WPMP Nos.29328 & 29329 of 2014 in W.P.No.23414 of 2014 and contends that according to the order dated 20.08.2014, the appellant and 3rd respondent are under legal obligation to re-consider the pending request of respondents 1 and 2 for enhancement of intake and for that matter, the request dated 30.08.2014 was made in abundant caution and the making of application on 30.08.2014 does not in any way relieve the appellant and the 3rd respondent from refusing to undertake the exercise as directed by this Court. It is further contended that either the consent of affiliation or any other curable defect is a matter of rectification during and in the course of evaluation of the request of the 1st and 2nd respondents and that on account of the inaction of the appellant and the 3rd respondent in complying with the order dated 20.08.2014, the 1st and 2nd respondents ought not to be denied the consideration of enhancing the intake from 150 to 200 seats in MBBS course for the academic year 2015-16.

The learned counsel places strong reliance upon the decisions reported in **ROYAL MEDICAL TRUST (REGISTERED) V. UNION OF INDIA AND ANOTHER**^[1], **PRIYADARSHINI DENTAL COLLEGE AND HOSPITAL V. UNION OF INDIA AND OTHERS**^[2] and an unreported decision in **PONNAIYAH RAMAJAYAM INSTITUTE OF SCIENCE AND TECHNOLOGY TRUST v. MEDICAL COUNCIL OF INDIA AND ANOTHER**^[3].

In **ROYAL MEDICAL TRUST**'s case (1 supra) the Apex Court held thus:

“4.The appellant furnished the essentiality certificate for the academic years 2013-2014 and 2014-2015 issued by the State Government dated 16.08.2012 on the even date. However, for reasons best known to KUHS, it did not issue the affiliation certificate well in time i.e., before 31.08.2012. Therefore, the appellant was constrained to submit the application under Section 10-A(2)(a) of the Act to the Central Government without the affiliation certificate on 20.8.2012, which was referred to the Medical Council of India (for short “the Council”) – Board of Governors for the purpose of its remarks and recommendations, on 28.8.2012.

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12.In the instant case, the appellant mindful of the aforesaid directions of this Court, had applied in due time adhering to the statutory timelines. Its application in terms of necessary documents was in fact complete but for the affiliation certificate from KUHS which was awaited by the appellant even after several reminders for its issuance of KUHS pressing upon the urgency of the matter. Since the appellant was not at fault but constrained due to the delay on the part of KUHS, the Council was expected to have appropriately considered the facts and circumstances of the case pleaded by the appellant and thereafter, reached a conclusion one way or the other on its merits instead of functioning in such mechanical manner by rejecting the application filed by the appellant and, thereafter, forwarding it to the Central Government with its adverse recommendations. In our considered opinion, this aspect of the matter ought to have been noticed by the writ court in writ petition as well as the writ appeal. Since that has not been done, in our considered view, we cannot sustain the impugned judgment and order passed by the High Court.

13. Accordingly, while allowing the appeal, we direct the Council to register the application for the academic year 2013-14 and thereafter, proceed with the matter on its merits in accordance with Act and rules thereto within 15 days’ time from today. The higher authority, after receipt of the recommendations made by the Council, will act upon such recommendations and pass appropriate orders in accordance with law as expeditiously as possible, at any rate within a month’s time from today.”

In **PRIYADARSHINI DENTAL COLLEGE’S CASE** (2 supra), Apex Court held thus:

20. If the Central Government was of the view that a dental college deserved renewal of permission in accordance with the Act and Regulations, it should grant such permission. If it was of the view that the dental college did not deserve renewal of permission, it should refuse the permission. If the Central Government felt that the last date for granting renewal of permission was over and there was no justification for extending the time schedule, it could refuse the renewal of permission on that ground. On the other hand, if the Central Government was of the view that the applicant college had complied with the requirements and was not at fault, and it was not responsible in any manner for the delay in considering the application, and there were other applicants of similar nature, it could have recorded those reasons in writing and extended the time schedule for that category of applicants and then granted the renewal of permission, provided the last date for admissions had not expired. Note (2) to the schedule to the DCI Regulations enables the Central Government to modify the time schedule, for reasons to be recorded in writing, in respect of any class or category of applications. Applicants for renewal of permission for the fourth or fifth year, where there is compliance with the requirements relating to infrastructure, equipment and faculty, could be such a class or category of applications. Similarly, applications where High Courts have directed consideration beyond 15th July in view of special circumstances, can also constitute a class or category of applicants.”

In **PONNAIYAH RAMAJAYAM INSTITUTE OF SCIENCE** case (3 supra), the Apex Court held thus:

4. Indisputably, the petitioner as far back as on 25.8.2014 submitted application as required under Section 10A of the Indian Medical Council Act, 1956 for the establishment of the Institute. The Essentiality Certificate was issued by the State of Tamil Nadu only on 28.8.2014. The said communication was received by the petitioner only in the 1st week of September, 2014. Similarly, the Tamil Nadu MGR University granted Consent of Affiliation for starting of MBBS Degree course in the new medical college. On receipt of this communication, the petitioner immediately on 10.9.2014 submitted Essentiality Certificate and Certificate of Affiliation. Curiously enough after about a month, the respondent no.2 – Central Government rejected the application on the ground that Essentiality 2 Page 3 Certificate was not submitted before the cut-off date i.e. 31.8.2014.

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6. From the aforesaid facts narrated in brief, we do not find any fault, laches or negligence from the side of the petitioner in 3 Page 4 the matter of submission of application and other required documents. As noticed above, although the Essentiality Certificate and Certificate of Affiliation were filed on 10.9.2014, but after a month application was rejected by the Central Government merely on the ground that the same was not submitted before the cut-off date i.e. 31.8.2014. This reason given by the Central Government is highly unjustified. The Division Bench in the impugned judgment also took note of the fact and held that the rejection of the application merely on the ground that the said documents were not submitted along with application would not be proper since such pedantic

approach serve no purpose. For better appreciation, paragraph 39 of the impugned judgment is quoted herein below:

“39. However, when the deficient documents are available with the Central Government as on the date of consideration of the applications for reference to the MCI for their recommendations, it appears to us that nothing precludes the Central Government to consider the applications on merits. Rejection of the applications in such circumstances merely on the ground that the said documents were not submitted along with the applications may not be proper since such pedantic approach does not serve any purpose. Therefore, we too agree that the Central 4 Page 5 Government in appropriate cases may exercise the discretion in favour of the applicants and consider the applications which are complete in all respects by the date of consideration under Section 10A(2) of the MCI Act. Such consideration in our considered opinion cannot be found fault with since the same would not affect the adherence to the statutory time schedule. However, the question with which we are concerned in the present case is whether the failure of the Central Government to exercise such discretion can be held to be erroneous and contrary to law and whether a positive direction can be issued by this court to consider the applications of the petitioners particularly at the fag end of the statutory time schedule.”

7. Prima facie, therefore, we are of the view that in the facts and circumstances of the case, the respondents have not discharged their duty in accordance with the provisions of the Act and Rules made thereunder rather acted in a biased manner.

8. We, therefore, dispose of this application with a direction to the respondent Medical Council of India to consider the application and make its recommendation within a period of three weeks from today.

The learned counsel appearing for the appellant as well as the 1st and 2nd respondents rely upon an unreported decision of the Hon’ble Apex Court in **ROYAL MEDICAL TRUST (REGD) V. UNION OF INDIA AND ANOTHER** ^[4].

In **ROYAL MEDICAL TRUST (REGD)** case (4 supra), the Apex Court held thus:

18. Since the deadline for effecting admission as per Medical Council of India Regulations on Graduate Medical Education, 1997 namely 30.09.2014 was approaching and large number of seats were involved because of recommendations for disapproval without having assessed or verified compliance as reported by the applicants, the matters were considered for grant of suitable relief. The Medical Colleges in Category III as mentioned above alone were considered fit to be granted such relief as they were all renewal cases. All these Medical Colleges had received permission to set up and/or to increase the intake in previous year(s). The cases in Category III being renewal cases were considered differently as against other cases in the light of the law laid down in *Priyadarshini*. This Court therefore by orders dated 18.09.2014 and 25.09.2014 permitted all the medical colleges falling in category No.III to give fresh admissions in the first year of the M.B.B.S. Course subject to certain conditions mentioned in those orders. The Medical Colleges in that category were required to file an undertaking on same terms as Government Medical Colleges that there was no deficiency and that if the undertaking so submitted was found to be incorrect in the next inspection, their deposit with the MCI, which was around Rs.10 crores, would be forfeited by way of penalty. It was further directed that admissions could be given to only those students from the merit list prepared by the respective States and that the students would be charged fees prescribed by the Government Medical Colleges of the respective States. These orders were passed as the concerned medical colleges had already received permission to establish new medical college or to increase the intake capacity and the matters in issue were only concerning renewal permissions and as the concerned colleges had statedly removed deficiencies and submitted their compliance reports.

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27. The MCI and the Central Government have been vested with monitoring powers under Section 10A and the Regulations. It is expected of these authorities to discharge their functions well within the statutory confines as well as in conformity with the Schedule to the Regulations. If there is inaction on their part or non-observance of the time Schedule, it is bound to have adverse effect on all concerned. The affidavit filed on behalf of the Union of India shows that though the number of seats had risen, obviously because of permissions granted for establishment of new colleges, because of disapproval of renewal cases the resultant effect was net loss in terms of number of seats available for the academic year. It thus not only caused loss of opportunity to the students’ community but at the same time caused loss to the society in terms of less number of doctors being available. The MCI and the Central Government must therefore show due diligence right from the day when the applications are received. The Schedule giving various stages and time limits must accommodate every possible eventuality and at the same time must comply with the requirements of observance of natural justice at various levels. In our view the Schedule must ideally take care of :-

(A) Initial assessment of the application at the first level should comprise of checking necessary requirements such as essentiality certificate, consent for affiliation and physical features like land and hospital requirement. If an applicant fails to fulfill these requirements, the application on the face of it, would be incomplete and be rejected. Those who fulfill the basic requirements would be considered at the next

stage.

(B) Inspection should then be conducted by the Inspectors of the MCI. By very nature such inspection must have an element of surprise. Therefore sufficient time of about three to four months ought to be given to the MCI to cause inspection at any time and such inspection should normally be undertaken latest by January. Surprise Inspection would ensure that the required facilities and infrastructure are always in place and not borrowed or put in temporarily.

(C) Intimation of the result or outcome of the inspection would then be communicated. If the infrastructure and facilities are in order, the concerned Medical College should be given requisite permission/renewal. However if there are any deficiencies or shortcomings, the MCI must, after pointing out the deficiencies, grant to the college concerned sufficient time to report compliance.

(D) If compliance is reported and the applicant states that the deficiencies stand removed, the MCI must cause compliance verification. It is possible that such compliance could be accepted even without actual physical verification but that assessment be left entirely to the discretion of the MCI and the Central Government. In cases where actual physical verification is required, the MCI and the Central Government must cause such verification before the deadline.

(E) The result of such verification if positive in favour of the Medical College concerned, the applicant ought to be given requisite permission/renewal. But if the deficiencies still persist or had not been removed, the applicant will stand disentitled so far as that academic year is concerned.

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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 dead line namely 30th of 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.”

The sanctity of cut off date as laid down by the Hon'ble Supreme Court in **MEDICAL COUNCIL OF INDIA V.**

MADHU SINGH^[5] and **MRIDUL DHAR v. UNION OF INDIA**^[6], has to be followed by the managements of the colleges, the Union of India and the appellant. In the case on hand, the 1st and 2nd respondents through letter dated 30.08.2014 applied for enhancement of intake from 150 to 200 seats in MBBS course for the academic year 2015-16. The instant request is in continuation of the pending request of 1st and 2nd respondents which was directed to be

re-considered through order dated 20.08.2014 in W.P.M.P.Nos.29328 and 29329 of 2014. Instead of processing the application as directed by this Court, the appellant and the 3rd respondent have erroneously forwarded the communication dated 16.10.2014 returning the application with untenable grounds. The appellant to avoid any criticism, in all fairness and in obedience to the order of this Court dated 20.08.2014 passed at the first instance, ought to have processed the application and undertaken inspection of the college. Having not done so, now the appellant cannot reply upon time schedule prescribed in this behalf. The reasons stated in the impugned communication dated 16.10.2014 do not stand to scrutiny. As held by the Apex Court in the cases noted supra, the non-submission of consent of affiliation along with application by itself is not a ground for return of request for enhancement of intake, for the authorities will have sufficient time before commencement of next academic year to take decision and pass final orders on the request for enhancement of intake of seats. Now having not undertaken the inspection of the medical college of 1st and 2nd respondents, the appellant cannot complain against the order impugned in the writ appeal. By relying upon the principle enunciated by the Apex Court in **ROYAL MEDICAL TRUST's** case

(4 supra), **PRIYADARSHINI DENTAL COLLEGE's** case (2 supra) and **PONNAIYAH RAMAJAYAM's** case (3 supra),

we are of the view that no exception to the direction issued in the order impugned in the appeal can be taken. We see no merit in the writ appeal filed against the interim order dated 08.12.2014 in WPMP.No.47211 of 2014 in W.P.No.37734 of 2014 and is liable to be dismissed.

In the instant case, the appellant, has not obeyed the directions issued by this Court, which occasioned substantial loss of time to all the concerned. Therefore, to make good the loss of time occasioned in this behalf and to keep in line with the time schedule to freeze the admissions by 30.09.2015, the appellant is directed to undertake the inspection of college of 1st and 2nd respondents within 10 days from today and forward a report to the 3rd respondent immediately. The 3rd respondent is directed to take appropriate decision on the recommendations/report of the appellant within a further period of one week from the date of such report.

The writ appeal is dismissed.

Consequently, miscellaneous petitions, if any pending, also stand disposed of.

DILIP B. BHOSALE, ACJ

S.V.BHATT, J

Date: 03.09.2015
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[1] (2014) 14 SCC 675
[2] (2011) 4 SCC 623
[3] (SLP (CIVIL) No.14838 OF 2015)
[4] W.P. (C) No.705 of 2014
[5] (2002) 7 SCC 258
[6] (2005) 2 SCC 65