

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 4th March, 2015

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LPA No.123/2015

UNION OF INDIA

..... Appellant

Through: Mr. Sanjeev Narula with Mr. Ajay
Kalra, Adv.

Versus

**NITISHWAR AYURVED MEDICAL
COLLEGE & HOSPITAL & ORS.**

..... Respondents

Through: Mr. Rudro Chatterjee, Adv. for R-3.

CORAM :-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

CMs No.3945-46/2015 (both for exemptions)

Allowed, subject to just exceptions.

The applications are disposed of.

LPA No.123/2015, CMs No.3944/2015 (for condonation of 72 days delay in filing the appeal), 3948/2015 (for condonation of 63 days delay in re-filing the appeal & 3947/2015 (for stay)

1. This intra-court appeal impugns the order dated 1st September, 2014 of the learned Single Judge of this Court in W.P.(C) No.363/2012 filed by the respondents No.1&2. Though the appeal is accompanied with applications for

condonation of 72 days delay in filing and 63 days delay in re-filing the appeal and considering the nature of the controversy, there was no reason for the delay after which this appeal has been filed and we are also not satisfied with the sufficiency of the reasons given for the delay but having also gone through the memorandum of appeal and having *prima facie* not found any merit in the appeal, we have without concerning ourselves with the aspect of delay, heard the counsel for the appellant on merits of the appeal. Only for this reason, the delays in filing and re-filing the appeal are condoned.

2. The respondent No.1 Nitishwar Ayurved Medical College and of which the respondent No.2 is the Principal, was established in or about the year 1979 for imparting education in indigenous medicine (Ayurveda) and was admitting 50 students each year. Upon amendment of the Indian Medicine Central Council Act, 1970 with effect from 7th November, 2003, requiring prior permission for establishing / setting up of medical colleges or increasing admission capacity therefor and also requiring the existing Medical Colleges to seek such permission within three years i.e. by 7th November, 2006, the respondent No.1 College sought permission and was vide letter dated 1st May, 2007 granted permission to admit students for the academic session 2007-08. Thereafter also permission to admit students were given for the academic

sessions 2008-09, 2009-10, 2010-11. However there was a delay on the part of the respondent No.3 Central Council of Indian Medicine (CCIM) (respondent No.4 is Baba Saheb Bhimrao Ambedkar University, Bihar to which the respondent No.1 Medical College is affiliated) in processing the case of the respondent No.1 Medical College for grant of permission for the year 2011-12 and which resulted in the respondent No.1 Medical College filing W.P.(C) No.7713/2011 in this Court. The said writ petition was entertained and since the time for admitting students was expiring on 31st October, 2011 and finding that the delay was on the part of the respondent No.3 CCIM, vide interim order dated 24th October, 2011 in the said writ petition, the respondent No.1 Medical College was granted permission to admit 50 students in the Bachelor of Ayurvedic Medicine and Surgery (B.A.M.S.) course for the year 2011-12 on the condition to inform the students that their admission shall be subject to further orders in the writ petition. In pursuance to the said interim order, the respondent No.1 Medical College admitted 50 students to the said course. However the appellant vide order dated 25th October, 2011 found the respondent No.1 Medical College ineligible for grant of permission for the year 2011-12 on the ground that the respondent No.1 Medical College had been unable to show the Hospital attached to it to be having sufficient number of

patients in the Out-patient and In-patient Departments. In view thereof, W.P.(C) No. 7713/2011 was disposed of with liberty to the respondent No.1 Medical College to challenge the said order dated 25th October, 2011 by a separate petition and further clarifying that the fate of the students admitted under the interim order in the said petition would be dependent upon the orders in a proceeding to be filed by the respondent No.1 Medical College challenging the order dated 25th October, 2011 of denial of permission for the year 2011-12.

3. The respondent Nos.1&2 then filed W.P.(C) No.363/2012 from which the appeal arises, impugning the order dated 25th October, 2011 of refusal of permission for the year 2011-2012. Vide interim order in the said petition, the students admitted for the said academic year under interim order in the earlier writ petition were continued subject to the outcome of the said petition. W.P.(C) No.363/2012 remained pending till its disposal vide the order impugned herein i.e. the order dated 1st September, 2014. The learned Single Judge has allowed the writ petition i.e. by setting aside the order dated 25th October, 2011 of the appellant of denial of permission to admit students for the year 2011-12 in the peculiar facts and circumstances of the case and for the reason, i) that the respondent No.1 Medical College had been granted the requisite permission to admit students for the subsequent academic year 2012-

13 also meaning that the deficiency on account of which permission was denied for the year 2011-12 stood rectified, ii) the High Court of Karnataka (in W.P.(C) No.39573/2010) also, finding that the students had already been admitted and the deficiencies stood rectified and that the students so admitted had already appeared in the examinations in pursuance to the permission granted by the Court by way of interim order had considered it inappropriate to deny approval / permission for one year in between, iii) that the said order of the Karnataka High court had been implemented by the appellant, iv) that it would be unfair and not prudent to cancel the admission of the students who had already been admitted and given their theory exam.

4. In the aforesaid scenario, the main contention of the counsel for the appellant of course is that the learned Single Judge, without holding that the reasons given by the appellant in the order dated 25th October, 2011 denying permission to admit students for the academic year 2011-12 were bad, could not have set aside the said order. It has also been contended that the reliance placed on the order of the Karnataka High Court is wrong inasmuch as in that case there was a categorical finding that the deficiency, for the reason whereof permission to admit students was denied, had been cured. It is contended that there is no such finding in the present case. It is yet further argued that since

the students were permitted to be admitted vide interim order dated 24th October, 2011 (supra), after intimating them that their admission was subject to the outcome of the petition, the petition could not have thereafter been allowed only for the reason of the students having been so admitted.

5. We have considered the said contentions.

6. The only reason for which the respondent No.1 Medical College was found not eligible to admit students to the academic year 2011-12 was that in the inspection carried out for considering the request for grant of such permission, hospital attached to the respondent No.1 Medical College was not found to have the requisite traffic of patients in the Out-patients as well as In-patients departments. We have thus enquired from the counsel for the appellant that since the appellant / CCIM for the grant of permission to admit students for the ensuing academic year considers the traffic of patients in the attached hospital for the previous year, whether not the grant of permission to admit students for the academic year 2012-13 and for the subsequent academic years is indicative of the said hospital during the inspections carried out for the said subsequent years having been found to have the requisite traffic of patients in the attached hospital.

7. The counsel for the appellant agrees.
8. We have next enquired from the counsel for the appellant as to how the deficiency if any in the traffic of patients in the hospital attached to the respondent No.1 Medical College for the academic year 2010-11 affects the students so admitted for the year 2011-12. We have yet further enquired that whether not grant of permission to admit students for the academic years subsequent to 2011-12 also indicates that ever since the students for the academic year 2011-12 were admitted, the respondent No.1 Medical College and the hospital attached thereto has been found to be compliant.
9. The counsel for the appellant agrees but contends that the deficiency in the traffic of patients to the attached hospital for the academic year 2010-11 would however still remain, making the respondent No.1 Medical College ineligible for admitting students in the academic year 2011-12.
10. Undoubtedly so, under the existing state of law / regulations. However the same highlights an error in the procedure followed by the appellant / CCIM for grant of permission to admit students. Instead of being concerned with the readiness to impart education for the ensuing academic year for which permission to admit students is under consideration, the appellant / CCIM

concern themselves with the state of affairs prevailing in the previous year. The students admitted in the ensuing year are unaffected by the deficiencies even if any in traffic of patients in the attached hospital in the previous year. The said factor does not affect their curriculum or experience. The students affected by the said deficiency would be the students already admitted to the respondent No.1 Medical College. We are thus of the *prima facie* opinion that the impact of such deficiencies, instead of on admission for the ensuing year, should be on the students who have suffered owing to the said deficiency. The appellant / CCIM need to consider whether the students so affected by the deficiencies in the Medical College should be allowed to take examination or the concerned Medical College should be required to, by holding special sessions, make up the said deficiency vis-à-vis the said students. Else, the respondent No.1 Medical College should be penalized for, after admitting students, not maintaining the infrastructure on the condition of maintaining which they were granted permission to admit students.

11. When we see the matter in this light, we do not find any reason whatsoever to at this stage go into the question whether the reasoning given by the appellant in the order dated 25th October, 2011 (i.e. of deficiency in traffic of patients in the attached hospital in the year 2010-11) is correct or not. The

students who would have suffered from the said deficiency in traffic would by now, in all probability, have already been conferred the requisite Degree. Similarly, we find no justification to, for the said reason even if we were to uphold the same, deprive the 50 students admitted under interim order of the learned Single Judge and who have already completed nearly four out of the five years of their course, of the benefit of their labour and to leave them in lurch. We cannot be unmindful of the fact that we are exercising discretionary jurisdiction and qua which jurisdiction, it is the settled principle of law (see *Chandra Singh Vs. State of Rajasthan* (2003) 6 SCC 545, *ONGC Ltd. Vs. Sendhabhai Vastram Patel* (2005) 6 SCC 454, *Teherakhatoon Vs. Salambin Mohammad* (1999) 2 SCC 635, *Filmistan Exhibitors Ltd. Vs. NCT* 131 (2006) DLT 648 and *Babu Ram Sagar Vs. Presiding Officer* MANU/DE/9235/2006) that relief can be given even when no case in law has been made out and can be denied even when case in law is made out. Article 226 grants an extraordinary remedy which is essentially discretionary, although founded on legal injury. It is perfectly open to the Court to, while exercising this flexible power, pass such order as public interest dictates and equity projects (see *Shiv Shankar Dal Mills Vs. State of Haryana* (1980) 2 SCC 437).

12. We therefore see no reason for interfering with the discretion exercised by the learned Single Judge and with which we for the reason aforesaid fully concur. Resultantly, the appeal is dismissed. A copy of this order be however sent to the Secretary, Ministry of Health and Family Welfare, Government of India and to the respondent No.3 CCIM to consider the change in law / regulations / approach if any required in the light of our observations in para no.10 hereinabove.

No costs.

RAJIV SAHAI ENDLAW, J.

CHIEF JUSTICE

MARCH 04, 2015
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