

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

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Date of decision: 11th August, 2015

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W.P.(C) No.6778/2015

**HIMALAYAN INSTITUTE OF MEDICAL
SCIENCES**

..... Petitioner

Through: Mr. Sanjeev Agarwal & Mr. Ekansh
Agarwal, Adv.

Versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. S.N. Parashar, Adv. for R-1.
Mr. Vikas Singh, Sr. Adv. with Mr. T.
Singhdev, Ms. Biakthansangi & Ms.
Puja Sarkar, Adv. for R-2.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The petitioner College is aggrieved from the refusal by the respondent No.1 Union of India (UOI), vide order dated 15th June, 2015, to renew permission to admit the increased intake of 50 students to the MBBS programme for the academic year 2015-16.
2. The petitioner Medical College was established in the year 2002 with permission to admit 100 students in the MBBS programme. The permission was renewed from year to year and ultimately recognition was granted. The petitioner College applied for increase in seats in the MBBS programme

from 100 to 150 and the said increase was permitted in the academic year 2013-14 and the permission to admit 50 students, in addition to 100 for which recognition stands granted, was renewed for the year 2014-15. However as aforesaid, vide order dated 15th June, 2015 impugned in this petition, renewal of permission to admit 50 additional students in the academic year 2015-16 has been denied and which has led to the filing of this petition.

3. Notice of the petition was issued and counter affidavit has been filed by the respondent No.1 UOI as well as the respondent No.2 Medical Council of India (MCI). The counsels were heard on 6th August, 2015 and judgment reserved.

4. The counsel for the petitioner argued, that:

- (i) An inspection of the petitioner College was carried out on 12th and 13th December, 2014 and a notice dated 21st January, 2015 listing out the deficiencies found in the inspection was issued and negative recommendation for the year 2015-16 made to the Government of India.

- (ii) The Government of India in the hearing under Section 10A(4) of the Indian Medical Council Act, 1956, after perusing the reply of the petitioner College to the deficiency notice, on 20th February, 2015 asked the respondent No.2 MCI to review.
- (iii) Another inspection was carried out of the petitioner College by the respondent No.2 MCI on 22nd May, 2015 and the respondent No.2 MCI on 4th June, 2015 withdrew the deficiency notice earlier issued.
- (iv) Notwithstanding the same, Government of India vide impugned order dated 15th June, 2015 has denied renewal of the permission for increased intake of 50 students for the academic year 2015-16.
- (v) The respondent No.2 MCI having withdrawn the deficiency notice earlier issued, the Government of India could not deny the renewal permission for increased intake.
- (vi) That the fact that the date prescribed by the Supreme Court for grant of such permission has lapsed cannot be a ground for this

Court not granting permission, which has been wrongly denied, today. Reference in this regard is made to the order dated 15th July, 2015 of the Supreme Court in SLP (C) No.14838/2015 titled *Ponnaiyah Ramajayam Institute of Science and Technology Trust Vs. Medical Council of India* to contend that the date is not sacrosanct and no pedantic approach can be adopted.

5. The senior counsel for the respondent No.2 MCI has explained that:
 - (a) As far as the intake capacity of 100 students to the MBBS programme is concerned, the petitioner College was granted recognition, meaning that it does not have to apply year after year for renewal of permission.
 - (b) The petitioner College thereafter as aforesaid applied for permission to increase the intake in MBBS programme by 50 students i.e. to 150 students annually and for which permission was granted in the year 2013-14 and renewed in the year 2014-15.

- (c) However deficiencies were found in the inspection of 12th and 13th December, 2014 and which led to i) issuance of the notice dated 21st January, 2015, and, ii) negative recommendation to the Central Government for renewal permission for the year 2015-16 for the increased intake of 50 students.
- (d) The notice dated 21st January, 2015 was a notice to show cause as to why recognition earlier granted for intake of 100 students every year in the MBBS programme should not be withdrawn.
- (e) What was withdrawn on 4th June, 2015 subsequent to the reply dated 16th February, 2015 of the petitioner College to the show cause notice and to the second inspection dated 22nd May, 2015, was only the show cause notice qua withdrawal of recognition for admission of 100 students and not qua the negative recommendation for the increased intake by 50 students.
- (f) As far as the renewal of permission to admit additional 50 students is concerned, the deficiency found in the first inspection on 12th and 13th December, 2014 was *inter alia* of shortage of residents by 30.71%.

(g) As per proviso (a) of Regulation 8(3)(1) of Establishment of Medical College Regulations, 1999, if the deficiency found of residents is more than 30% upto second renewal (i.e. admission of 3rd batch), the college is not to be considered for renewal of permission in that academic year.

(h) Since the deficiency in residents was more than 30%, the petitioner College was not even to be considered for renewal of permission for increase in intake by 50 students. Reliance in this regard was placed on the judgment dated 28th May, 2015 of the Division Bench of this Court (of which the undersigned was a member) in W.P.(C) No.5041/2015 titled ***Shree Chhatrapati Shivaji Education Society Vs. Union of India.***

6. On enquiry, what was the status of the residents in the second inspection carried out on 22nd May, 2015, the senior counsel for the respondent No.2 MCI stated that the second inspection was confined to the aspect of withdrawal of recognition vis-à-vis intake capacity of 100 students only and not vis-à-vis increase in intake capacity and for which the shortage of 30.71% was found in the first inspection on 12th and 13th December, 2014.

7. The Division Bench in *Shree Chhatrapati Shivaji Education Society* supra was concerned with the challenge to proviso (b) to Regulation (8)(3)(1) supra on the ground that the same, by providing non consideration for the renewal permission for that academic year on account of deficiency mentioned therein, was in violation to Section 10A(4) of the Act providing for an opportunity of hearing and an opportunity to make up the deficiency. It was held that:

(i) The main part of Regulation 8(3)(1), in consonance with Section 10A(4) provides for grant of an opportunity of hearing and time to rectify the deficiencies.

(ii) However the provisos (a) to (d) thereof limit such opportunity by specifying the deficiencies / defects for rectification whereof no opportunity and time to rectify will be given and existence whereof will lead to non-consideration of the application for renewal permission for that year.

(iii) that said provisos (a) to (d) [of which we herein are concerned with proviso (a)] thus, instead of taking away any right vested by Section 10A(4) in the applicant, limit the discretion vested by Section

10A(3) and (4) in the MCI and the Central Government to, inspite of deficiencies, give opportunity for rectification thereof.

(iv) The said provisos preclude the Central Government from considering the applicant Medical College for renewal permission for that academic year upon finding the deficiencies mentioned therein.

(v) Where a statute confers a discretion in a statutory body and / or the Government and also empowers such statutory body and / or Government to make Regulations for exercise thereof, a Regulation providing for situations in which discretion will not be exercised cannot be said to be inconsistent with the statute.

(vi) If the deficiencies are of a nature which cannot possibly be rectified in short time available, a regulation providing that no opportunity for rectification thereof shall be given, cannot be said to be unreasonable.

(vii) That once the provisos to Regulation 8(3)(1) bar consideration of the application for renewal permission on finding the deficiencies

mentioned therein, the Central Government could not have directed the respondent No.2 MCI to reconsider.

8. The dicta of the Division Bench in *Shree Chhatrapati Shivaji Education Society* supra thus applies squarely to the facts of the present case. The inspection conducted by the respondent No.2 MCI having revealed deficiencies within the meaning of provisos to Regulation 8(3)(1) in petitioner Medical College, the application of petitioner Medical College for renewal of permission to admit additional 50 students in the year 2015-16 is not to be considered and the earlier direction of the Central Government to MCI to review is of no avail.

9. The petitioner College has purported to make out a case without carving out a distinction between the proposal for withdrawal of recognition qua 100 seats in MBBS programme and renewal of permission for increase in intake capacity by 50 students. The said distinction is clearly borne out from the documents on record. What was withdrawn by respondent No.2 MCI on 4th June, 2015 was only the show cause notice earlier issued for renewal of recognition qua 100 students and the said withdrawal has no bearing on the application for renewal of permission to admit additional 50

students. The petitioner College remains entitled to admit 100 students in the MBBS Programme in the year 2015-16.

10. However having been informed during the hearing in another matter that *Shree Chhatrapati Shivaji Education Society* supra has been referred for re-consideration, enquiry in that regard was made from the senior counsel for the respondent No.2 MCI. He has drawn attention to the interim order dated 5th August, 2015 of the Division Bench in W.P.(C) No.6699/2015 titled *Career Institute of Medical Sciences & Hospitals Vs. Union of India*. A reading thereof shows that it was the contention of the counsel for the petitioner therein that the dicta of the Division Bench in *Shree Chhatrapati Shivaji Education Society* supra is *per incuriam* having not considered the judgments in *Swamy Devi Dayal Hospital and Dental College Vs. Union of India* (2014) 13 SCC 506 and *Priyadarshini Dental College and Hospital Vs. Union of India* (2011) 4 SCC 623. In the light of the said contention and finding that the Supreme Court in SLP preferred against *Shree Chhatrapati Shivaji Education Society* has by an interim order directed inspection of the medical college, the Division Bench in *Career Institute of Medical Sciences* supra also has by the order dated 5th August, 2015 entertained that petition and ordered inspection of medical

college. The senior counsel for the respondent No.2 MCI also informs that SLP to the Supreme Court is being preferred against the said order. It thus cannot be said that the dicta of the Division Bench in *Shree Chhatrapati Shivaji Education Society* is not binding as of today.

11. There is thus no merit in the petition which is dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

AUGUST 11, 2015
'gsr'