

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

% *Pronounced on: 30.09.2015*

+ **W.P.(C) No.6699/2015**

CAREER INSTITUTE OF MEDICAL
SCIENCES AND HOSPITALS & ANR.

..... Petitioners

Through: Mr.Nidhesh Gupta, Sr.Adv. along
with Mr.Abdhesh Choudhry, Mr.Amit Jaiswal and
Mr.Abhijit, Advs.

Versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr.Vikas Mahajan, CGSC with
Mr.S.S. Rai and Sanjeev Kr.Baliyan, Advs. for
UOI.

Mr.Vikas Singh, Sr.Adv. with Mr.T.Singhdev and
Ms.Puja Sarkar, Advs. for MCI.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE JAYANT NATH

JUDGMENT

: **Ms.G.ROHINI, CHIEF JUSTICE**

1. We have passed a detailed order on 05.08.2015 and therefore, we are not repeating the facts of the case and the contentions of the parties.

2. By the said order dated 05.08.2015, we directed a fresh inspection by MCI for verification of the compliance report dated 20.01.2015 submitted by the petitioners and to submit the report of MCI to this Court in a sealed cover within four weeks. Though MCI carried the matter in appeal, the Supreme Court declined to grant leave and the Special Leave Petitions 23278-23279 of 2015 were disposed of by order dated 24.08.2015 granting

three weeks time to MCI to comply with the order of this Court dated 05.08.2015.

3. In compliance with the same MCI conducted an inspection on 02.09.2015 and the report has been filed in this Court in a sealed cover. On a perusal of the report, we found that apart from the deficiencies alleged earlier, certain other allegations have also been made.

4. The correctness of the said allegations/deficiencies cannot be enquired into by this Court in exercise of writ jurisdiction under Article 226 of the Constitution of India. Even under the scheme of Section 10-A of the Indian Medical Council Act, 1956, it is for the Central Government to consider the recommendation of the MCI having due regard to the factors referred to in sub-section (7) of Section 10-A of the Act.

5. It may be mentioned that having taken note of the law laid down in ***Swamy Devi Dayal (2014) 13 SCC 506 & Royal Medical Trust (Regd.) & Anr. Vs. Union of India & Anr., W.P.(C) No.705/2014*** dated 20.08.2015 (*Supra*) by order dated 11.09.2015, we have referred the matter to a Full Bench for consideration of the issue whether an opportunity of being heard need be given to the applicant in cases which fall within the ambit of the provisos (a) to (d) to Regulation 8(3)(1) of the Regulations. After considering the issue in detail and following the ratio laid down in ***Swamy Devi Dayal (supra)*** and ***Royal Medical Trust (supra)***, the Full Bench by judgment dated 29.09.2015 held:-

“51. Therefore, we are of the view that it is not open to MCI and/or Central Government to deny an opportunity to the

applicant/institute concerned to rectify the deficiencies specified by MCI even in cases which fall within the ambit of the provisos (a) to (d) of Regulation 8(3)(1) of the Regulations. However, it is essential for both MCI and Central Government to observe the time schedule as held in ***Royal Medical Trust (supra)***.

52. For the aforesaid reasons, we hold that the provisos (a) to (d) to Regulation 8(3)(1) of the Regulations shall not in any way circumvent the opportunity of being heard/opportunity to rectify the deficiencies provided under sub-Sections (3) and (4) of Section 10-A of the Medical Council Act. However, the same shall be in strict adherence to the time Schedule fixed in the Regulations and in conformity with the Schedule as laid down in ***Royal Medical Trust (supra)***.

53. The reference is answered accordingly.”

6. Since the order dated 15.06.2015, which is impugned in the writ petition was admittedly passed without giving an opportunity of being heard to the petitioner in terms of the decision in ***Swamy Devi Dayal and Royal Medical Trsut (supra)***, we hereby set aside the said order dated 15.06.2015.

7. Accordingly, the writ petition is disposed of with the direction to the first respondent to consider the fresh recommendation submitted by MCI and take an appropriate decision following due process of law. Needless to mention that the petitioner shall be given an opportunity of being heard in terms of the decisions of the Supreme Court in ***Swamy Devi Dayal Hospital and Dental College vs. Union of India (supra)*** & ***Royal Medical Trust (supra)***. Such exercise shall be completed within two weeks from today.

8. The report of MCI submitted to this Court in sealed cover be returned to the counsel for the MCI to enable MCI to submit the same to the Central Government forthwith.

CHIEF JUSTICE

JAYANT NATH, J

SEPTEMBER 30, 2015

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