

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

%

Pronounced on:30.09.2015

+ **W.P.(C) No.8541 of 2015 & CM No.18391/2015**

LORD BUDDHA SIKSHA PRATISTHAN AND ANR..... Petitioners
Through: Mr.Nidhesh Gupta, Sr.Adv. along
with Mr.Ashish Kumar, Mr.Avijit Mani Tripathi,
Advs.

Versus

UNION OF INDIA AND ANR. Respondents
Through: Mr.Vikas Singh, Sr.Adv. along with
Mr.T. Singhdev, Ms.Biakthansangi and Ms.Puja
Sarkar, Advs. for MCI.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE JAYANT NATH

J U D G M E N T

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

1. The petitioner was granted permission under Section 10-A of the Indian Medical Council Act, 1956 (for short 'the Act') for establishing a medical college with intake of 100 MBBS seats in the Academic Year 2012-2013. However, the petitioner was denied the renewal of permission for the Academic Years 2013-2014 and 2014-2015.

2. So far as the renewal of permission for the Academic Year 2015-2016 is concerned, the MCI carried out the inspection on 5th & 6th December, 2014. Basing on the said inspection, by proceedings dated 21.01.2015 MCI

recommended for rejection of renewal of permission on the ground of the deficiencies specified therein which included more than 20% shortage of Residents. On the said ground, proviso (b) to Regulation 8(3)(1) of the Establishment of Medical College Regulations, 1999 (for short 'the Regulations') as amended by Notification dated 16.04.2010 has also been invoked.

3. Having considered the said recommendation, the Central Government by proceedings dated 03.02.2015 called upon the petitioner to explain the deficiencies specified by MCI. The petitioner submitted its explanation dated 10.02.2015 stating that the alleged deficiencies are non-existent. Thereupon, the Central Government directed the MCI to reconsider the case of the petitioner on the basis the explanation/compliance report and to give a fresh recommendation by 15.04.2015. However, MCI declined to do so and by proceedings dated 01.04.2015 reiterated its earlier decision for rejection of renewal. Having accepted the said recommendation, the Central Government rejected the petitioner's request for renewal of permission for the Academic Year 2015-2016 vide proceedings dated 15.06.2015.

4. Hence the present writ petition seeking a declaration that the proviso (b) to Regulation 8(3)(1) is unconstitutional and *ultra vires* the Medical Council Act, 1956 and also to quash the order of the Central Government dated 15.06.2015 and the recommendations of MCI dated 21.01.2015 and 01.04.2015.

5. It is contended by Sh.Nidhesh Gupta, the learned Senior Counsel appearing for the petitioners that the action of MCI in declining to undertake

a fresh inspection for considering the renewal for the Academic Year 2015-16 in spite of the specific directions from the Central Government is contrary to the scheme of Section 10A of the Act.

6. Sh.Vikas Singh, the learned Senior Counsel appearing for the MCI placing reliance upon the decision of the Division Bench of this Court in **W.P.(C) No.5041/2015** titled ***Shree Chhatrapati Shivaji Education Society and Ors. Vs. Union of India & Anr.*** contended that the issue involved in the present petition is squarely covered by the said judgment and, therefore, the petition is liable to be dismissed *in limine*.

7. However, it is contended by the learned Senior Counsel appearing for the petitioner that the decision in ***Shree Chhatrapati Shivaji*** requires reconsideration in the light of the ratio laid down by the Supreme Court in ***Swamy Devi Dayal Hospital & Dental College Vs Union of India & Ors.*** (2014) 13 SCC 506. It is pointed out by the learned Senior Counsel that the decision of the Supreme Court in ***Swamy Devi Dayal (Supra)*** was not cited before the Division Bench while deciding ***Shree Chhatrapati Shivaji***. It is also brought to our notice by the learned Senior Counsel that the ratio laid down in ***Swamy Devi Dayal (supra)*** has been reiterated by a three Judge Bench in a recent decision in ***Royal Medical Trust (Regd.) & Anr. Vs. Union of India & Anr., W.P.(C) No.705/2014*** dated 20.08.2015.

8. Having taken note of the law laid down in ***Swamy Devi Dayal & Royal Medical Trust (Supra)***, by order dated 11.09.2015 passed in the present petition, 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 (Regd.) & Anr. Vs. Union of India & Anr., W.P.(C) No.705/2014* dated 20.08.2015, 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.”

9. In the light of the legal position noticed above and having regard to the admitted fact that MCI had declined to undertake inspection for compliance verification despite being asked by the Central Government and had erroneously relied upon the proviso (b) to Regulation 8(3)(1), we are of the view that the impugned order of rejection of renewal of permission to the

petitioner for the Academic Year 2015-16 is illegal and unsustainable.

10. Having held so, in the normal course we would have directed fresh inspection by MCI after giving an opportunity to the petitioner to rectify the deficiencies so as to enable the Central Government to consider the petitioner's request for renewal of permission for the Academic Year 2015-2016.

11. However, as per the time schedule for the Academic Year 2015-2016, the time for inspection expired long back and there is no possibility to undertake an inspection at this point of time since the statutory schedule is already over.

12. In identical circumstances, the Supreme Court in **Special Leave Petition (C) No.15043 of 2015** titled *Padmashree Dr.D.Y. Patil Medical College vs. Medical Council & Anr.* held that:

“23. Considering the statutory time schedule and that the same is already over and in the facts and circumstances of the case, it would not be appropriate to direct inspection to be made and thereafter a decision to be taken for the current academic session 2015-16 as that would be in breach of the law laid down in various decisions of this Court which is binding. Thus, we direct that the application which has been submitted by the college for the academic session 2015-16 be considered for the next academic session, subject to fulfilment of other requisite formalities, as may be necessary, and thereafter the MCI shall conduct an inspection well-in-time as per the time schedule fixed under the Regulations of 1999. The Special Leave Petition is dismissed with the aforesaid modification. Ordered accordingly.”

13. In the facts and circumstance of the present case, though the impugned order dated 15.06.2015 is hereby set aside, there cannot be any

direction to MCI to conduct a re-inspection and to take further steps for grant of renewal for the Academic Year 2015-16.

14. Accordingly, the writ petition is disposed of with the direction that the application which has been submitted by the petitioner for the Academic Year 2015-16 be considered for the next Academic Year subject to compliance of all the deficiencies specified by MCI.

There shall be no order as to costs.

CHIEF JUSTICE

JAYANT NATH, J.

SEPTEMBER 30, 2015

pmc