

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :27.01.2016

Delivered on :02.2.2016

CORAM:

THE HONOURABLE MR.JUSTICE SATISH K. AGNIHOTRI

AND

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

W.A.Nos.1595 of 2015 and 12 of 2016

Medical Council of India,
Pocket-14, Sector 8,
Dwarka, Phase I,
New Delhi 110077,
Rep. by its Secretary

... Appellant in both WAs/
2nd Respondent

Versus

1.Christian Medical College,
Vellore Association,
Ida Scudder Road,
Vellore -4, rep. By its Secretary.

2.The Secretary,
Ministry of Health and Family Welfare,
Nirman Bhavan, New Delhi 110001. ... Respondents in both WAs/
Petitioner and 1st Respondent

Appeals filed under Clause 15 of Letters Patent Appeal against the order passed by this Court dated 9 September 2015, passed in W.P.No.19133 of 2015 and 30 June 2015 i W.P.No.15908 of 2015.

W.P.No.19133 of 2015 : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records culminating in communication No. U.12012/258/2015-ME(P.II) dated 02/06/2015 issued by the 1st Respondent and quash the same and consequently direct the Respondents to process the application dated 29.04.2015 for introduction of a new course, MD-Family Medicine with 4 seats in accordance with The Opening of a New or Higher Course of Study or Training (including Post-Graduate Course of Study or Training) and Increase of Admission Capacity in any Course of Study or Training (including a Post-Graduate Course of Study or Training) Regulations 2000 if the application is otherwise in order.

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W.P.No.15908 of 2015 : This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of

Mandamus, directing the Respondents to accept the application dated 29.04.2015 submitted by Christian Medical College, Vellore for increase of Seats from 1 Seat to 3 Seats in MD-Geriatric Medicine and grant permission for the increase of seats if the application is otherwise in order.

For appellant : Mr.V.P.Raman

For Respondents : Mr.Krishna Srinivas,
for M/s.Ramasubramanian Associates
for R-1 in both appeals.

Mr.SU.Srinivasan,
Assistant Solicitor General of India,
for R-2 in W.A.No.12 of 2016

Ms.G.Hema, A.C.G.S.C.
for R-2 in W.A.No.1595 of 2015.

COMMON JUDGMENT
(made by K.K.SASIDHARAN, J.)

The intra court appeal in W.A.No.12 of 2016 is directed against the order dated 30 June 2015 in W.P.No.15908 of 2015 whereby and whereunder a Writ of Mandamus was issued to accept the application filed by Christian Medical College, Vellore, for increase of seats from 1 to 3 in MD-Geriatric Medicine.

2. The appeal in W.A.No.1595 of 2015 is directed against the order dated 9 September 2015 in W.P.No.19133 of 2015; quashing the order dated 2 June 2015 passed by the Ministry of Health and Family Welfare, returning the belated application filed for opening the new course in M.D.- Family Medicine and issuing a Mandamus to consider the application on merits without rejecting it on the ground of delay.

W.A.No.12 of 2016 :-

3. The petitioner in W.P.No.15908 of 2015 is stated to be a minority institution, established by 53 different Indian Christian Churches and Bodies, which represent almost all the states in India. The institution is a reputed unaided Christian Minority institution. The institution has been running several medical courses, including Post Graduate Courses, successfully. The institution submitted an application for consent of affiliation to the Tamil Nadu Dr.MGR Medical University for increase of seats in M.D.Geriatric Medicine from 1 to 3, with effect from the academic year 2016-17. The application was kept pending with the university and ultimately, on 29 April 2015, letter of consent of affiliation was granted. The institution, pursuant to the instruction given by the Officials of the Ministry of Health, sent the application by fax and e-mail, on 29 April 2015, for increase of seats. The hard copy of the application sent on 29 April 2015 was received by the Ministry

on 1 May 2015. The application was returned on the ground of belated submission. The learned Single Judge issued a mandamus to consider the application on merits instead of rejecting it on the ground of delay.

W.A.No.1595 of 2015:-

4. The application submitted by the institution for introduction of a new course in M.D. Family Medicine with an intake of four seats was returned on the ground of delay. According to the Ministry of Health and Family Welfare, the application was received only on 1 May 2015, which was beyond the cut off date. The learned Single Judge, by following the earlier order in W.P.No.15908 of 2015, quashed the order and permitted the institution to resubmit the application. The Central Government was directed to consider the application on merits.

5. Feeling aggrieved, the Medical Council of India is before us.

Submissions:-

6. The learned Standing counsel for the appellant contended that the learned Single Judges of this Court erred in directing the Central Government and Medical Council to process an incomplete application, received beyond the cut off date. According to the learned counsel, there was no valid consent of application for the course in Family Medicine. The learned Single Judge omitted to consider this fundamental defect and as such, the impugned orders are liable to be set aside.

7. The learned counsel for the institution while supporting the order impugned in these appeals, submitted that directions were given only to the Central Government and as such, the intra-court appeals filed by the Medical Council of India are not maintainable. The learned counsel submitted that there was non compliance of sub Section (3) of Section 10 of Act 102 of 1956 and as such, the learned Judges were justified in directing the Central Government to consider the applications on merits. The learned counsel submitted that the appeals are devoid of merits.

Discussion and conclusion :-

8.1. The Indian Medical Council Act is a comprehensive legislation in the field of medical education and medical profession. Section 10A of the Indian Medical Council Act provides for permission to establish new medical colleges in India, opening of new or higher courses or increase in the annual intake. Section 10A contain a legislative mandate that prior permission must be obtained from the Central Government, in consultation with the Medical Council of India, both for opening new institutions or new courses in the existing institutions. Even for increase in total in-take the very same procedure has to be followed.

8.2. The Medical Council of India (hereinafter referred to as MCI), with the approval of the Central Government notified the regulations under Section 10A read with Section 33 of the Medical Council of India Act. The regulations contain the details and procedures to be complied with by the institutions while making applications to the Central Government for grant of permission for establishing a medical college and also for starting new courses, including higher courses and increase of intake. The regulations framed in 1993 were subjected to periodical revisions. The amended Regulations, 2009, lays down the schedule for processing the applications/ scheme and grant of permission for starting post graduate courses. The applications as per Appendix-I of the Schedule shall be submitted to the Secretary (Health) Ministry of Health and Family Welfare, New Delhi, along with the required documents and non refundable application fee. The last date of receipt of application by the Central Government is on 30 April. Similarly, 31 May is fixed as the last date for forwarding the application by the Central Government to the Medical Council of India.

8.3 Appendix-I to the Regulation mandates that the application for permission of the Central Government for opening new or higher course or study including a post Graduate Course in a medical college shall be accompanied by attested copy of the Essentiality Certificate issued by the concerned State / Union Territory administration and the consent of affiliation issued by a recognized university. Clause 4 of the regulation provides that incomplete application will be returned to the medical colleges/ institutions by the Ministry of Health, along with the enclosures and application fees.

8.4 A conjoint reading of section 10A of the Indian Medical Council Act and the regulations would make the position clear that the applicant must possess all the required permission before the cut off date. In case the application is incomplete, the Ministry of Health is empowered to return without forwarding it to the Medical Council of India.

8.5. The core question is whether it is open to the Medical Council of India to return the defective or belated application, in spite of forwarding of the same by the Central Government for consideration.

8.6. The learned Single Judge in W.P.No.15908 of 2015, placed reliance on the judgment in *Asha vs. Pt.B.D.Sharma University* (2012(4) LW 681 :: 2012 (7) 389) and granted the relief on the ground that the delay in processing the application for consent of affiliation cannot be attributed to the institution. In *Asha*, the Supreme Court found that candidates having merit much lower to her were given admission in the MBBS Course. Since she was denied admission for arbitrary decision, the Supreme Court relaxed the cut off date and directed the authorities to give her admission. With due respect to the learned Single Judge, we hold that the decision in *Asha*

case has no relevance to decide the issue involved in this matter.

8.7. The learned single Judge allowed the Writ Petition in W.P.No.19133 of 2015 mainly on the ground that public interest would suffer in case permission is denied, by taking hyper technical approach. The learned Judge has given a finding that objections like belated submissions cannot be raised by MCI and that it is only the prerogative of the Central Government. With due respect to the learned Single Judge, we are not in a position to subscribe to the said view.

8.8. The Central Government and Medical Council have been given certain functions under the scheme. The Medical Council of India is not merely an examining body. Both the Central Government and Medical Council of India must be convinced that the applicants have complied with the statutory formalities including adherence to the time schedule.

8.9. The Supreme Court in Union of India v. All India Children Care & Educational Development Society, (2002) 3 SCC 649, made it clear that the Medical Council is not obliged to process the application in case it is not in accordance with law.

8.10. The cut off date prescribed under the regulation as approved by Hon'ble Supreme Court in a catena of decisions would apply equally to all the stakeholders including Central Government and MCI. The MCI is obliged to process the application and forward its recommendation to the Central Government as per schedule. The institution cannot be heard to say that only MCI is bound to adhere to the time schedule. It is equally applicable to the institutions.

8.11. The Supreme Court Maa Vaishno Devi Mahila Mahavidyalaya v. State of U.P., (2013) 2 SCC 617, indicated the purpose of fixing cut off date.

"81. ... Once the relevant schedules have been prescribed under the Regulations or under the Judge-made law, none, whosoever it be, is entitled to carve out exceptions to the prescribed schedule. Adherence to the schedule is the essence of granting admission in a fair and transparent manner as well as to maintain the standards of education. The purpose of providing a time schedule is to ensure that all authorities concerned act within the stipulated time. Where, on the one hand, it places an obligation upon the authorities to act according to the schedule, there it also provides complete clarity to other stakeholders as to when their application would either be accepted and/or rejected and

what will be the time duration for it to be processed at different quarters. It also gives clear understanding to the students for whose benefit the entire process is set up as to when their examinations would be held, when results would be declared and when they are expected to take admission to different colleges in order of merit obtained by them in the entrance examinations or other processes for the purposes of subject and college preference."

8.12. The concern of the Supreme Court with regard to adherence of time schedule is evident from the following observation in Medical Council of India vs. Manas Ranjna Behera, 2010(1) SCC 173 :-

"... Time Schedule provided in the Regulations shall be strictly adhered to by all concerned failing which the defaulting party would be liable to be personally proceeded with".

8.13. The Supreme Court in Dental Council of India vs. S.R.M. Institute of Science and Technology, 2004(9) SCC 676, observed that an incomplete application cannot be processed either by the Central Government or Dental Council.

8.14. The learned counsel for the institution placed heavy reliance on sub Section (3) of Section 10A in support of his contention that opportunity should have been given to rectify the defects. Sub clause (a) of sub section (3) of Section 10A speaks about defective applications which does not contain necessary particulars. The MCI is obliged in such cases to give reasonable opportunity to the applicant for making a written representation. This provision is for rectifying the defects. The provision is not intended to give an opportunity to procure Essentiality or letter of consent of affiliation subsequently. In case those certificates though obtained before the cut off dates were not enclosed, opportunity given by the MCI under sub clause (a) of Sub Section (1) of Section 10A would enable the applicant to rectify the defects by producing such certificates. A fundamentally defective application, unaccompanied by essentiality certificate or consent of affiliation cannot be directed to be processed on the basis of certificates obtained after the last date prescribed by the regulation for submission of application.

8.15. The Supreme Court in D.Y. Patil Medical College v. Medical Council of India, (2015) 10 SCC 51, held that application will not be complete without being accompanied by permission letter or essentiality certificate issued by the State Government and that such incomplete application cannot even be processed by the Central Government.

8.16. The Supreme Court in *Educare Charitable Trust vs. Union of India and another*, 2013(11) Scale 569, while considering similar regulations framed by Dental Council of India in exercise of power conferred by Section 10A of the Medical Council of India Act, observed that in case on the date of application, the applicant does not satisfy the conditions laid down in the regulations, it was not qualified to make the application.

8.17. In the subject case, the Government of India pursuant to the order impugned in these two intra court appeals, called upon the MCI vide letter dated 16 October 2015, to evaluate the proposals made by the institution and send the recommendation to the Ministry at the earliest. According to the MCI, the observation contained in the impugned order would stand in the way of consideration of the applications in accordance with the regulations. The learned counsel for the institution fairly submitted that he has no objection in processing the applications without reference to the observations made by the learned Judges in the order under appeals.

8.18. Since MCI is a major stakeholder and vested with jurisdiction under the regulations to make recommendation to the Central Government, we hold that the MCI has every right to return the proposal in case it was made beyond the cut off date. It is open to the MCI in such cases to send its recommendations to the Central Government to return or reject the application on the ground of non compliance of time schedule. In view of this, we hold that the intra court appeals at the instance of MCI complaining of non adherence to the time schedule are maintainable.

9. Since the Central Government has acted on the applications, pursuant to the order in the Writ Petitions, as early as on 10 October 2015, we do not propose to interfere at this stage. We are of the view that interest of justice would be sub served by directing the MCI to consider the applications once again in accordance with the Indian Medical Council Act and relevant regulations, taking into account the law laid by the Hon'ble Supreme Court, without in any way being influenced by the observation made in the impugned orders and notwithstanding the findings rendered in respect of time schedule.

10. The intra court appeals are disposed of as indicated above. No costs. Consequently, connected M.P.s, are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

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Sub Assistant Registrar

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To

1.The Secretary
Medical Council of India,
Pocket-14, Sector 8,
Dwarka, Phase I,
New Delhi 140077

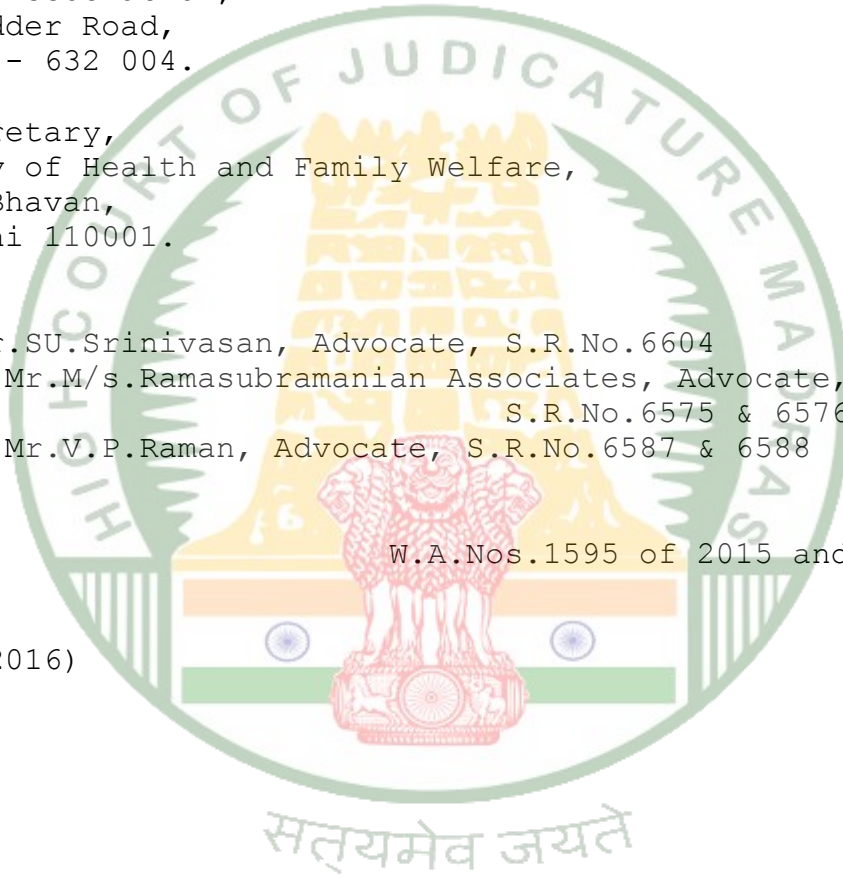
2.The Secretary.
Christian Medical College,
Vellore Association,
Ida Scudder Road,
Vellore - 632 004.

3.The Secretary,
Ministry of Health and Family Welfare,
Nirman Bhavan,
New Delhi 110001.

+1cc to Mr.SU.Srinivasan, Advocate, S.R.No.6604
+2cc's to Mr.M/s.Ramasubramanian Associates, Advocate,
S.R.No.6575 & 6576
+2cc's to Mr.V.P.Raman, Advocate, S.R.No.6587 & 6588

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