

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SMT JUSTICE ANIS

WRIT PETITION No. 25902 of 2016

ORDER: (*Per VRS,J*)

Aggrieved by the decision of the Government of India not to renew and not to allow any admission for the 3rd year BDS course at KIMS Dental College and Hospital, Amalapuram, for the academic session 2016-17, the petitioners have come up with the present writ petition.

2. Heard Mr. P. Venugopal, learned senior counsel, appearing on behalf of Mr. Kiran Tirumalasetti, learned counsel for the petitioners, Mr. T. Sujan Kumar, learned Central Government standing counsel, appearing for the 1st respondent, Mr. P. Vishnuvardhan Reddy, learned standing counsel for Dental Council of India, appearing for the 2nd respondent, Mr. Taddi Nageswara Rao, learned standing counsel for Dr.NTR University of Health Sciences, appearing for the 3rd respondent, and Mr.Srinivas Chetluri, learned standing counsel appearing for Bank of Baroda, which is impleaded as the 5th respondent.

3. The 1st petitioner is a Society registered under the Societies Registration Act. The 2nd petitioner is a Dental College and Hospital run by the 1st petitioner Society.

4. It appears that by proceedings, dated 23.10.2013, the State Government of Andhra Pradesh granted essentiality certificate to the petitioners to start a Dental College and Hospital. The 1st petitioner appears to have taken land of an extent of about Acs.5.07 ½ cents from the 4th respondent herein, under a registered Lease Deed, dated 24.08.2013. Thereafter, the 1st petitioner admitted students to BDS course for the academic year 2014-15. The permission granted for the said year was also renewed for the academic year 2015-16.

5. However, at the time when the academic year 2016-17 was about to commence, the petitioners came up with a writ petition in W.P.No.17799 of 2016. In the said writ petition, an interim order was passed by a learned single Judge of this Court on 09.06.2016 directing the Dental Council of India (DCI) to cause an inspection for processing the application for renewal. It was recorded in the said order that the Bank of Baroda had already initiated proceedings under the SARFAESI Act, 2002 against the 4th respondent herein, and that, at that time, the petitioners filed yet another writ petition in W.P.No.28852 of 2015 and got their possession protected.

6. However, the District Collector, thereafter, passed an order under Section 14 of the SARFAESI Act, 2002, for taking over possession. The said order came to be challenged by the petitioners in yet another writ petition. Since we are not concerned about the disputes that the petitioners or their lessors had with the Bank of Baroda, we are not elaborating on the same.

7. Suffice it to say that on account of the above, the Executive Committee of the DCI passed a resolution on 18.05.2016 with regard to the renewal of the approval for the current academic year. The decision taken in the Meeting of the Executive Committee, dated 18.05.2016, was communicated by the DCI, by proceedings, dated 20.05.2016. The said decision reads as follows:

“The Executive Committee has carefully perused the compliance report including two orders dated 17.09.2015 and 18.11.2015 enclosed with the compliance report and found that the land dispute and the matter relating to symbolic possession of the land by Bank of Baroda has not yet been finally settled and the college authority has miserably failed to fulfill or satisfy the condition of their undertaking to settle the dispute. In case, their case is considered for renewal permission of merely on the ground that the matter is subjudice in the Court of law, the fate of the students would be at stake. However, one more opportunity of being settled the issue on or before 30th May, 2016 be afforded to the college authority.”

8. Thereafter, the petitioners appear to have made further representations and also made efforts to arrive at a settlement with the

Bank. Even before us, several chances were taken to settle the matter with the Bank. But, the petitioners were unable to reach a settlement.

9. Be that as it may, the Government of India passed an order under Section 10A (4) of the Dentists Act, 1948, after granting personal hearing to the College authority. The said order reads as follows:

“The College representative informed the Hearing Committee that some deficiencies pointed out by the DCI still persists. On perusal of written submission made by the College representative, it was observed that the land dispute between Bank of Baroda and Ms. Badari Laxmi Educational Society, Amalapuram still under dispute and is subjudice. It was also observed that the land on which the College has been established is on lease basis from the private party which is not acceptable in terms of Regulations 6(2)(c) of DCI Regulations, 2006.”

10. Thereafter, the petitioners have come up with the above writ petition.

11. The main contention of the learned senior counsel appearing for the petitioners is that in the original decision taken by the DCI in its Meeting held on 18.05.2016, the DCI did not put the issue of leasehold rights in the land against the writ petitioners. On the contrary, the DCI chose to give one opportunity to the petitioners to settle the matter with the Bank. After having done so, the Central

Government has now taken a stand that as per the Regulations, the College is supposed to own the property.

12. But, the above contentions of the learned senior counsel are unsustainable. It is true that in the Meeting of the Executive Committee of the DCI held on 18.05.2016, they appear to have decided to grant one opportunity. But unfortunately, if the Regulations require the DCI to take a decision in a particular manner, the Executive Committee cannot go contrary to the statutory prescription. In any case, the decision taken by the DCI to grant one opportunity cannot compel the Central Government, while exercising the power under the proviso to Section 10A (4) of the Dentists Act, to toe the same line as that of the DCI. There is no dispute that under the Regulation 6(2)(c) of the DCI Regulations, 2006, the applicant should own the land. So long as such a Regulation is not under challenge, no party can seek a Mandamus from this Court to issue a direction, contrary to the statutory prescription, on the ground that the DCI has already conceded to a breach of such a Regulation.

13. The second contention of the learned senior counsel for the petitioners is that permission had already granted for two academic years in the past, and that the fate of the students will have to be considered. But unfortunately, in view of the mere fact that two sets

of students in two previous academic years have met with a particular fate, it is not possible for this Court to ask them to continue to suffer the same fate for the future. The petitioners, even before us, could not arrive at any kind of settlement. As a matter of fact, they impleaded the Bank of Baroda as a party to the writ petition. The Bank has categorically stated that there was no settlement.

14. It is most fundamental that a Writ of Mandamus will lie only to compel the performance of the statutory duty. As a corollary, the performance of such a statutory duty can be only in the manner prescribed by the statute and not in a manner deviating from the duty.

15. Placing heavy reliance upon a decision of the Supreme Court in *Royal Medical Trust Vs. Union of India*¹, it is contended by the learned senior counsel for the petitioners that the issue of leasehold rights in the land was never put against the petitioners, and that the opportunity of hearing allegedly granted under the proviso to Section 10A (4) was not in relation to such a deficiency. Therefore, the learned senior counsel contended that when there is a gross violation of the principles of natural justice and the procedure prescribed by the proviso to Section 10A (4), the Central Government cannot even put the expiry of deadline against the petitioners, as held by the Supreme Court in *Royal Medical Trust*.

¹ (2015) 10 SCC 19

16. We have carefully considered the above submissions.

17. It is not in every case that any violation of the principles of natural justice would vitiate the order. Let us assume for a minute that the petitioners were not granted an opportunity to put forth their due points as against the prescription contained in Regulation 6(2)(c). Admittedly, the said Regulation requires the land to be owned by the applicant for approval. It is not the case of the petitioners that they are the owners of the land. Their only case is that they may be given an opportunity to acquire the land and satisfy the Regulation 6(2)(c). This opportunity was given first by the DCI, and next even by a Bench of this Court. But, nothing has happened and, hence, the opportunity sought by the petitioners was nothing more than an empty formality. Therefore, the said contention does not deserve merit. It may be true that if approval is granted and students are allowed to be admitted, the petitioners may be in a better financial position to acquire the land. But, the Court cannot be a party to the same. Therefore, the said contention is rejected.

18. Hence, the Writ Petition is devoid of merits. Therefore, it is dismissed.

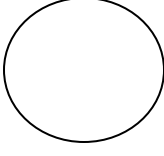
Consequently, miscellaneous petitions if any pending in the writ petitions shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

ANIS, J.

15th September, 2016
cbs





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