

**CWP Nos.9499 and 9893 of 2016 (O&M)**

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

**(1) CWP No.9499 of 2016 (O&M)**  
**Date of decision:24.05.2016**

Gaurav Varshney and others ...Petitioners

Versus

Union of India and others ...Respondents

**(2) CWP No.9893 of 2016 (O&M)**  
**Date of decision:24.05.2016**

Panjab University and another ...Petitioners

Versus

Union of India and others ...Respondents

**CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain**

Present: Mr. Abhilaksh Grover, Advocate,  
for the petitioners in CWP No.9499 of 2016.

Mr. Anmol Rattan Sidhu, Senior Advocate, with  
Mr. Suvir Sidhu, Advocate, for the petitioners  
in CWP No.9893 of 2016.

Mr. Chetan Mittal, Senior Advocate, with  
Mr. Varun Issar, Advocate, for the respondent-UOI.

Mr. Gurminder Singh, Senior Advocate, with  
Ms. Harpriya, Advocate, for the respondent-DCI.

Ms. Deepali Puri, Advocate,  
for UT Chandigarh in CWP No.9499 of 2016.

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**Rakesh Kumar Jain, J. (Oral)**

This order shall dispose of two petitions bearing CWP No.9499  
of 2016 (hereinafter referred to as the “first petition”) and CWP No.9893 of  
2016 (hereinafter referred to as the “second petition”) as the issues involved

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in both the petitions are the same. However, for the sake of convenience, the facts are being extracted from the second petition.

The prayer made in the second petition is for the issuance of a writ in the nature of *certiorari* for quashing the order dated 31.03.2016 passed by respondent no.1 whereby renewal of permission to allow admissions for 2<sup>nd</sup> year of MDS Courses in five specialties along with the application/scheme for starting MDS Course in the specialty of Oral Pathology and Microbiology for the academic session 2016-17 has been declined and a further prayer has been made for the issuance of a writ in the nature of *mandamus*, directing the respondents to allow petitioner no.2-institute to start admission process for the academic year 2016-17 considering the time deadline being 31.05.2016 as the last date upto which the students can be admitted or to modify the time schedule.

In short, the facts of the present case are that petitioner no.2-institute was established and named as Dr. Harvansh Singh Judge Institute of Dental Sciences & Hospital (hereinafter referred to as the “institute”). It is duly approved by the respondent no.2-Dental Council of India (hereinafter referred to as the “DCI”) and the Ministry of Health & Welfare, Government of India (hereinafter referred to as the “Central Government”) as per the norms laid down in the Dentists Act, 1948 and the Dentists (Amendment) Act, 1993 (hereinafter referred to as the “Act”) along with the Dental Council of India (Establishment of New Dental Colleges, Opening of New or Higher Course of Study or Training and Increase of Admission Capacity in Dental Colleges) Regulations, 2006 (hereinafter referred to as the “Regulations”). Petitioner No.2 was granted permission to start Master

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of Dental Surgery (MDS) Courses by the Central Government on 10.03.2015 on the recommendations of the DCI and as a result thereof, the first batch was admitted in 2015 in five specialties i.e. Conservative Dentistry and Endodontics, Oral and Maxillofacial Surgery, Orthodontics and Dentofacial Orthopedics, Periodontics or Periodontology, Prosthodontics and Crown and Bridge, with an intake of total 14 students. The institute, in order to obtain renewal of permission from the Central Government for making admissions in the next batch of students for the session 2016-17, filed the application well within time. The institute was allegedly inspected for renewal by the Central Government for the 2<sup>nd</sup> year of MDS course on 8<sup>th</sup> and 10<sup>th</sup> of September, 2015 and subsequently the same reports were considered by the Executive Committee of the DCI on 30.09.2015 whereby certain deficiencies were pointed out. The common deficiency in respect of all the five specialties was of non-availability of a regular Principal. According to the petitioners, the Principal was appointed by the Panjab University, Chandigarh (hereinafter referred to as the "University") on 26.12.2014 for 3 years as Principal-cum-Professor which was brought to the notice of the respondents but initially the DCI rejected their claim on the ground that the deficiency was not removed before the cut off date i.e. 28.02.2016 but lateron, the DCI recommended to the Central Government for reviewing its decision on the ground that the confirmation of appointment of Principal in the institute has been conveyed to them vide letters dated 08.03.2016, 15.03.2016 and 23.03.2016 and, thus, the request was made to the Central Government to reconsider the matter. However, after reconsideration, the Central Government has declined the application

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of the institute vide its impugned order dated 31.03.2016 and has also ordered that the institute shall not give admission for 2<sup>nd</sup> year of MDS course in the five specialties, as stated here-in-above, and also advised that any admission made in violation of the order would be treated as irregularity and action will be taken under Section 10B of the Act.

Counsel for the petitioners has submitted that the Executive Committee of the DCI has initially recommended not to allow admission in 2<sup>nd</sup> year of MDS course in the aforesaid five specialties because of non-submission of the appointment letter of the permanent/regular Principal but lateron, in terms of the letter dated 08.03.2016 submitted by the institute, they recommended to the Central Government on 28.03.2016 to reconsider the matter, if permissible under Section 10A(4) of the Act. It is further submitted that the said recommendation should have been considered by the Central Government as even after the expiry of the last date because in the notification dated 07.03.2016, Note (2) provides that the time schedule may be modified by the Central Government for the reasons to be recorded in writing.

It is further argued that because of the fault on the part of the DCI, who had lateron recommended for reconsideration of the matter, the petitioner should not suffer as it ultimately going to adversely affect the institute itself. It is further argued that the Principal of the institute has been appointed in terms of Chapter 52 of the Panjab University Calender Vol.III, 2009, in which clause 2.1 provides that the Chairperson/Head of the Department is to be designated by rotation from amongst the professors in the Department.

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While referring to the order of the Vice Chancellor dated 26.12.2014, which is in tandem with the decision of the Syndicate dated 26.10.2014 which has been taken under Chapter 52, as stated above, Prof. Ashish Jain, Head of the Periodontics Department, has been designated as Principal-cum-Professor for three years as rotatory Principal. In the end, it is submitted that though the Central Government has the jurisdiction to extend the period in terms of Note (2), as provided in the notification dated 07.03.2016 but the said power is not being exercised by it, otherwise the Supreme Court, in the case of **Royal Medical Trust (Registered) and another vs. Union of India and another**, (2015) 10 Supreme Court Cases 19, while following its decision in the case of **Priyadarshini Dental College and Hospital vs. Union of India and others**, (2011) 4 Supreme Court Cases 623, has held that the Central Government, in the given circumstances and to meet the hardship of the students or the institution, can extend the time but for the last date for admission.

It is further contended that since the last date for admission in the MDS course is 31.05.2016 in view of notification dated 07.03.2016, the Central Government can still exercise its jurisdiction in terms of aforesaid Note (2) to extend the time period for the purpose of granting permission, which was otherwise required to be granted upto 31.03.2016.

Counsel for the petitioner in the first petition has submitted that because of non-renewal of the permission, the petitioners, who are students of the first batch of the MDS course, are going to suffer and that is why the first petition has been filed to assail the same impugned order dated

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31.03.2016.

On the other hand, it is contended by the learned Senior counsels appearing on behalf of the Central Government and the DCI that there is no fault on the part of the respondents, rather the petitioners are to be blamed for the delay on their part. It is submitted that the notification dated 07.03.2016 is not meant for admissions for the academic session 2016-2017 for which the Court is concerned, rather it is meant for admission in the academic session 2017-18, for which the time schedule has been given, and the relevant notification, according to them, is of 16.01.2006 in which the DCI has to make the recommendations to the Central Government in the case of MDS course upto 28<sup>th</sup> February and the letter of permission by the Central Government has to be given upto 31<sup>st</sup> March.

It is further submitted that the petitioners have been given ample opportunity time and again to remove the deficiency, repeatedly pointed out by the respondents for submitting the appointment letter of a regular Principal but since they did not submit it till 27.03.2016 i.e. the last date for the DCI to make recommendations to the Central Government, the recommendation for disapproval was made by the DCI to the Central Government, which has been accepted by the Central Government vide impugned order dated 31.03.2016 which was the last date for grant of permission because the approval/disapproval was dependent upon the recommendation of the DCI which had no jurisdiction to recommend to the Central Government after the cut off date i.e. 28.02.2016.

Counsel for the respondents have relied upon a judgment of the

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Supreme Court in the case of **Priya Gupta vs. State of Chhatishgarh and others**, 2012(7) SCC 433 to contend that the time schedule fixed in the scheme cannot be changed by them as it would invite the penal consequences. They have also referred to a decision of the Supreme Court in the case of **Padmashree Dr. D.Y. Patil Medical College vs. Medical Council of India and another**, 2015(4) S.C.T. 183.

Counsel for the Central Government further argued that it has been specifically mentioned in the affidavit dated 19.05.2016, filed as short reply to the second petition, that the Central Government is bound to adhere to the time schedule contained in the Regulations where the last date of issue of permission was 31.03.2016 and has got oral instructions as well in regard to Note (2) of the notification dated 07.03.2016 to the effect that the Central Government is not inclined to extend the time or modify the stand taken in para 8 of their reply.

I have heard learned counsel for the parties and examined the available record with their able assistance.

The facts are not much in dispute because the five specialties in the MDS course, which I have already referred to in the earlier part of the judgment, are running in the institute with the intake capacity of 14 students for the academic session 2015-2016. However, on 30.03.2015, the Central Government had informed the institute that “*the admission of next batch of students in MDS courses in the above specialties for the academic year 2016-17 will be made only after obtaining the renewal permission from the Central Government*”. In view of this letter dated 30.03.2015, the institute had applied for permission. For the purpose of renewal of permission for

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the next batch of the MDS courses in the aforesaid five specialties for the academic session 2016-2017 and also for starting two new specialties, a joint inspection was carried out by the Council's Inspectors and on the basis of their inspection report, the DCI, vide its letter dated 06.10.2015, asked the institute to remove the deficiencies which was common deficiency in all the five specialties i.e. no regular Principal was appointed in the institute. In reply, vide its letter dated 07.01.2016, the institute informed the DCI that the Principal has already been appointed and in that regard, it submitted some sort of certificate issued by the Registrar of the University and the office order dated 26.12.2014, as per which Dr. Ashish Jain was appointed as Principal-cum-Professor for three years w.e.f. 26.12.2014. Thereafter, a joint inspection report was also submitted, on the basis of which the DCI asked the institute vide its letter dated 03.02.2016 to remove the deficiency regarding appointment of regular Principal and again the appointment letter of the Principal was asked. On 16.02.2016, the institute again gave the same reply that the Principal has already been appointed on 26.12.2014. Thereafter, on 20.02.2016, after the joint verification of the Council's Inspectors, the DCI informed the institute that they have not yet submitted the Principal's appointment letter. In this letter, the DCI gave three days time to the institute to do the needful and the language used for that purpose was that *“the above said decision of the Executive Committee of the Council is communicated to you with a request to furnish the requisite information/documents within 3 days, failing which appropriate recommendations will be sent to the Central Government”*.

As a matter of fact, this was the last warning given by the DCI



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to the institute to comply with the order because the DCI knew that the last date for recommendation on its part to the Central Government was 28.02.2016 but the institute did not avail that opportunity and did not submit the appointment letter of its Principal to the DCI and at last submitted it on 27.02.2016, whereas the DCI, after discussing the matter in the meeting of its Executive Committee held on 25.02.2016, decided to recommend to the Central Government not to renew its permission and not to allow admission for the 2<sup>nd</sup> year of the MDS courses in the aforesaid five specialties due to non-appointment of regular Principal. Thereafter, the matter was placed before the Hearing Committee of the Central Government constituted in terms of Section 10A(4) of the Act, in which the following decisions were taken on 16.03.2016:-

Since the Hearing Committee decided that the Ministry of Health and Family Welfare may consider referring the case to the DCI for review, the matter was put up before the DCI in terms of the letter dated 21.03.2016 written by the Under Secretary to the Govt. of India, Ministry of Health & Family Welfare, New Delhi, and the DCI took the decision on 28.03.2016 that *“since the college authority did not furnish an appointment of regular/permanent Principal on or before 28.2.2016 to the DCI by which date DCI was mandated to send it appropriate recommendation to the GOI and they have now vide letter dated 23.03.2016, 15.3.2016 and 08.3.2016 confirmed the appointment of their Principal, therefore, the DCI has no objection if the Central Government consider and renew its permission under section 10A(4) of the Dentist Amendment Act, 1993 for the academic session 2016-17”*.

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In the aforesaid decision dated 28.03.2016, the DCI had found that the University has confirmed the appointment of the Principal of the institute vide letters dated 08.03.2016, 15.03.2016 and 23.03.2016 and referred the matter to the Central Government with a recommendation that it has no objection if the Central Government may renew the permission, as desired by the institute. The recommendation made by the DCI was ultimately considered and the impugned order was passed on 31.03.2016 in the following terms:-

“I am directed to say that the Dental Council of India vide their letter dated 27.01.2016 has recommended to the Central Government to disapprove the application/scheme for starting of MDS course in the specialties of (i) Oral Pathology & Microbiology (ii) Oral & Maxillofacial Surgery (iii) Periodontology (iv) Orthodontics & Dentofacial Orthopedics (v) Prosthodontics and Crown & Bridge (vi) Conservative Dentistry & Endodontics at Dr. Harvansh Singh Judge Institute of Dental Sciences and Hospital, Chandigarh due to certain deficiencies for the academic session 2016-17.

2. As per provision u/s 10A(4) of the Dentists Act, 1948 (inserted by the Dentists (Amendment) Act, 1993), personal hearing to the authorized representative(s) of the dental college had been given by the Hearing Committee of this Ministry on 16.03.2016. The Hearing Committee in its report dated 17.03.2016 (copy enclosed) recommended referring the case to the DCI for review.

3. However, DCI, vide its letter No.DE-14-2015/18226 dated 28.03.2016 stated since the cut-off date for recommendation by the DCI to GOI was 28.02.2016 which has already been over & now there is no time to verify the compliance submitted by college authorities to GOI hence the Executive Committee after some discussion and deliberations recommends to reiterate its earlier decision.

4. After considering the above negative recommendation of

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the Council, report of Hearing Committee, and the final/revised recommendation of the Council, I am directed to convey that the Central Government has decided as under:-

- (i) to disapprove the application/scheme of Dr. Harvansh Singh Judge Institute of Dental Sciences and Hospital, Chandigarh for starting of MDS course in the specialty of Oral Pathology & Microbiology for the academic session 2016-17.
- (ii) Not to renew its permission and not to allow admission for 2<sup>nd</sup> year of MDS course in the specialty of (i) Oral & Maxillofacial Surgery with 2 seats (ii) Periodontology with 3 seats (iii) Orthodontics & Dentofacial Orthopedics with 3 seats (iv) Prosthodontics and Crown & Bridge with 3 seats (v) Conservative Dentistry & Endodontics with 3 seats at Dr. Harvansh Singh Judge Institute of Dental Sciences and Hospital, Chandigarh for the academic session 2016-2017.

Accordingly, you are hereby advised not to admit students for the starting of MDS course in the specialty of Orthodontics & Dentofacial Orthopedics for the academic session 2016-17.

5. Any admissions made in violation of this condition, will be treated as irregular and action under section 10(B) of the Dentists (Amendment) Act, 1993, will be initiated.”

On 21.04.2016, the DCI had requested the Central Government to ignore the reiteration of the recommendation dated 28.02.2016 whereby it has recommended not to renew permission of the institute and not to allow the admission and rather to consider the later part of the recommendation for reconsideration of the matter for grant of renewal to the institute. It is also pertinent to mention that on 22.04.2016, the Professors of the institute made a representation to the Central Government, in which they have made the following averments:-

“The Vice Chancellor in response to the deficiency stated in letters dated 20.02.2016 ordered to reissue the appointment letter for Principal on 24.02.2016. However, probably due to some

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oversight the concerned office/authorities could not comply to the instructions of Vice Chancellor and issued the requisite document only on 08.03.2016 (Annexure 8). However, in the meantime the last date of submission of compliance documents to Dental Council of India (28.2.2016) got over. In the meanwhile the Dental Council recommended the disapproval of MDS admission in all 6 specialties to Ministry of Health dated 27.2.2016 (Annexure 9).”

Thereafter, the present petition has been filed with the prayers which have already been mentioned in the earlier part of the judgment.

The issue which has cropped up for consideration by this Court after going through the aforesaid pleadings is as to “whether the time schedule provided in the notification dated 07.03.2016 (Annexure P-10), relied upon by the petitioner, is meant for the academic session 2017-2018 or the time schedule provided in the notification dated 16.01.2006, relied upon by the respondents, is meant for the academic session 2016-2017.

Since in the notification dated 07.03.2016, the date for final recommendations by the DCI is 31.03.2016 and in the notification dated 16.01.2006, it is 28.02.2016, therefore, the notification dated 07.03.2016 would not be applicable.

Admittedly, the respondents have been repeatedly asking the institute to remove the deficiency in respect of the appointment of a permanent/regular Principal. The objection started on 21.09.2015 and every time whenever there was an inspection, the same objection was taken till 20.02.2016. Being concerned, the DCI asked the institute to submit the proof of removal of deficiency within 3 days and also warned that if they would not do it within the prescribed time of 3 days, then they would not wait any further and make negative recommendations to the Central

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Government. Ultimately, in the absence of the evidence having been led by the petitioners in regard to removal of deficiency of the appointment of regular Principal, the recommendation was made by the DCI to the Central Government on 27.02.2016 and, thereafter, from 28.02.2016, their hands were cut insofar as the issue of recommendation is concerned. However, when the petitioners represented to the DCI with the letter of appointment of Principal dated 08.03.2016, followed by the letters dated 15.03.2016 and 23.03.2016, the DCI made a request to the Central Government to review its decision but, ultimately, it is the prerogative of the Central Government to accept or not to accept the recommendation of the DCI for the purpose of renewal of permission for the already running specialties of the MDS course and for starting of a new course.

Counsel for the petitioners has tried to stir the magnanimity of the Central Government by referring to Note (2) of the notification dated 16.01.2006 whereby the Central Government has got the jurisdiction to modify its decision after recording reasons and in that regard, reliance has been placed upon two judgments of the Supreme Court in the cases of **Royal Medical Trust's case (supra)** and **Priyadarshini Dental College and Hospital's case (supra)** but the Central Government has stuck to its stand on the basis of the judgment rendered by the Supreme Court in **Priya Gupta's case (supra)** and has submitted that enough time had already been given to the petitioners but because of their adamant behaviour, they did not avail the opportunity given and as a result thereof, they are to be blamed themselves and neither the Central Government nor the DCI.

I do not find any error on the part of the respondents in not

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granting extension of time to the petitioners as a consistent stand has been taken by the Central Government in its reply and it has been specifically mentioned by the learned Senior counsel appearing on behalf of the Central Government that the time schedule provided for grant of permission as per notification dated 16.01.2006, i.e. 31.03.2016, cannot be extended.

Keeping in view the totality of the facts and circumstances, I am of the considered opinion that no interference is called for in these petitions and hence, both the writ petitions are hereby dismissed, though without any order as to costs.

However, it is made clear that the decision taken by the respondents is not going to affect the students of the first year of the MDS Courses, as stated by the learned Senior counsel for the Central Government.

A copy of this order be given to the learned counsel for the parties under signatures of the Special Secretary attached to this Bench.

**May 24, 2016**  
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**(Rakesh Kumar Jain)**  
**Judge**