

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.05.2018

Delivered on : 22.052018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

and

THE HONOURABLE Mr.JUSTICE P.D.AUDIKESAVALU

W.A.No.1047 of 2018 and

C.M.P.Nos.8798 to 8800 of 2018

Madha Dental College and Hospital
Rep by its Principal,
Madha Nagar, Somangalam Road,
Kundrathur, Chennai - 600 069.

... Appellant

-Vs-

1.The Union of India,
Rep by its Secretary to Government,
Ministry of Health and Family Welfare
(Dental Education Section),
A wing, Nirman Bhawan,
Maulana Azad Road,
New Delhi - 110 011.

2.The Dental Council of India
Rep by its Secretary,
Aiwan-E-Galib Marg,
Kotla Road, Temple Lane,
Opp.Mata Sundari College for Women,
New Delhi - 110 010.

3.The Directorate of Medical Education,
162, EVR Periyar Salai, Kilpauk,
Chennai - 600 010.

4.The State of Tamil Nadu,
Rep by its Secretary to Government,
Health and Family Welfare Department,
Secretariat, Fort St.George,
Chennai - 600 009.

... Respondents

Prayer : Appeal filed under Clause 15 of the Letters Patent, to set aside the order dated 09.04.2018 passed by this Court in W.P.No.6013 of 2018.

PRAYER IN W.P.No.6013 of 2018.

Writ Petition filed Under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus Calling for the records of the 1st respondent pertaining to the order dated 28.02.2018 bearing No.V.12025/149/2017-DE (Pt-III) (FTS No. 3143073) in respect of the petitioner and quash the same and consequently, direct the 1st respondent to issue permission to the petitioner for the MDS courses in the specialties of Oral Pathology and Microbiology, Oral and Maxillofacial surgery, Conservative Dentistry and Endodontics, Oral Medicine and Rediology, Prosthodontics and Crown and Bridge, Orthodontics & Dentofacial Orthopedics, and Periodontology for the academic session 2018-19.

For Appellant : Mr.P.Wilson, Senior Counsel for
Mr.Richardson Wilson

For Respondents:Mr.V.P.Sengottuvel for R1
Ms.Seetha Lakshmi for R2
Mr.K.Karthikeyan, GA for R3 and R4

O R D E R

V.PARTHIBAN, J.

Heard Mr.P.Wilson, learned senior counsel for the appellant and Mr.V.P.Sengottuvel, learned counsel appearing for the first respondent, Ms.Seetha Lakshmi, learned counsel appearing for the second respondent and Mr.K.Karthikeyan, learned counsel appearing for the third and fourth respondents.

2. The issues that fall for consideration before this Bench are limited in its scope whether the renewal sought by the appellant College for seven Post Graduate Courses for the academic year 2018-19 in MDS ought to be granted or not by the first respondent, in view of the definite time schedule as set out by the regulations provided for under the provisions of Dentists Act, 1948. The facts in brief are stated hereunder which gave raise to filing of the present writ appeal. The detailed facts need not be gone into, in view of the judgment in appeal was passed by the learned Judge, wherein, the entire facts have been incorporated in extenso.

3. The appellant has approached this Court, seeking the following relief:-

"To set aside the order dated 09.04.2018 passed by this Court in W.P.No.6013 of 2018."

4. The case of the appellant is as follows:-

The appellant College and Hospital applied for renewal of the following seven MDS courses for the academic year 2018-19:

SI · No	Course	Year	No.of Seats
i	Oral Pathology and Microbiology	2015-16	2
ii	Oral and Maxillofacial surgery	2015-16	2
iii	Conservative Dentistry and Endodontics	2016-17	2
iv	Oral Medicine and Radiology	2016-17	2
v	Prosthodontics and Crown & Bridge	2015-16	2
vi	Orthodontics & Dentofacial Orthopedics	2015-16	2
vii	Periodontology	2016-17	3
	Total		15

The total seats for all the above 7 courses are 15 in number. The application was made under Section 10A of the Dentists Act, 1948, by the appellant College.

5. Originally, the application was made somewhere during the academic year 2015-16 for MDS Courses. It appears that originally, the institution was granted letters of intent and permission to admit students for MDS Courses in four disciplines and for the subsequent academic year i.e., 2016-17, three more disciplines were added. This was in addition to the BDS Courses conducted by the appellant College. It appears that several deficiencies were pointed out when the inspection was carried out at the instance of the second respondent Council. In this regard, there was correspondence between the first and second respondents and the appellant College. Finally, the deficiencies appeared to have been rectified by the appellant College and the only deficiency which was not rectified was the submission of affiliation certificate from the University concerned. It is relevant to point out here that the appellant College was affiliated to Tamil Nadu Dr.MGR Medical University.

6. According to the time schedule, the last date for compliance of all the deficiencies was 31.01.2018, for the present academic year. The appellant College was originally issued with affiliation by the Tamil Nadu Dr.MGR Medical University on 02.11.2017 and the affiliation was only for a period of three months pending issue of permanent affiliation. The affiliation which was granted temporarily on 02.11.2017, had expired on 01.02.2018. When the above affiliation certificate was submitted to the second respondent, an objection was raised because of the fact that unless the permanent affiliation was obtained from the University concerned, the appellant was informed that the first and second respondents would not be in a position to grant permission for the renewal of courses concerned for the present academic year.

7. At this, the appellant College appeared to have gone before the University and obtained a certificate and the same was submitted on the last day i.e., on 31.01.2018. However, the appellant was informed by the authority concerned that the certificate which was submitted on the deadline, was not in order for the reason that the same was issued only for the purpose of inspection that too for the academic year 2015-16 and there was no mention about the affiliation being granted for the academic year 2017-18, by the University concerned. Thereafter, the appellant had gone before the University and obtained the affiliation for the academic year 2017-18 from Tamil Nadu Dr.MGR Medical University. The said affiliation certificate was given on 07.02.2018, after the deadline i.e., on 31.01.2018.

8. In the above circumstances, the Government, the first respondent herein, issued a communication dated 28.02.2018, rejecting the renewal request of the appellant. The first respondent vide the above communication had given a detailed reasoning as found in paragraph 2, 3 and 4 of the said communication, which is reproduced below:-

"2. In view of DCI's recommendations for non-renewal, hearing was afforded to the College on 02.11.2017 in the Ministry as per Section 10A(4) of the Dentists Act, 1948 and the recommendation of the Committee, along with compliance was sent to DCI for review vide this Ministry's letter dated 09.11.2017. Subsequently, DCI furnished its revised recommendations vide its letter dated 31.01.2018 (copies enclosed) reiterating its earlier decisions dated 13.10.2017.

3. The college vide its email dated 08.02.2018 provided a copy of the updated Affiliation Certificate dated 07.02.2018 for the year 2017-18 for the 7 specialties. The same was forwarded to DCI for further necessary action vide letter dated

13.2.2018. However, DCI vide its letter dated 19.2.2018 informed that after considering the university affiliation certificated dated 2.11.2017 for 2017-18 it was not accepted by DCI since it was a conditional certificate for three months only and hence they recommended for non-renewal for the said 7 specialties. Further, DCI stated that that the updated University affiliation dated 7.2.2018 cannot be considered at this stage since the last date for sending recommendations to the Central Government is 31.01.2018 as per time schedule of the DCI Regulations 2016.

4. In view of above, the Central Government has decided not to renew its permission for 3rd year of MDS Course in the specialties of (i) Conservative Dentistry & Endodontics with 2 seats, (ii) Oral & Maxillofacial Surgery with 2 seats, (iii) Oral Medicine & Radiology with 2 seats, (iv) Periodontology with 3 seats and for 4th batch of students in MDS course in the specialties of (v) Oral Pathology & Microbiology with 2 seats, (vi) Orthodontics & Dentofacial Orthopedics with 2 seats, (vii) Prosthodontics Crown & Bridge with 2 seats at Madha Dental College & Hospital, Chennai for the academic session 2018-19."

The above said communication by the first respondent is put to challenge in the writ petition.

9. The learned Judge after adverting to various materials and pleadings placed before him, has passed an order on 09.04.2018, dismissing the writ petition filed by the appellant herein, holding that there was no due compliance by the appellant College in sticking to the time schedule and in the absence of valid submission of affiliation certificate by 31.01.2018, the first respondent had rejected the request and the same therefore, did not call for any interference. The reasoning as said out by the learned Single Judge in paragraph Nos.33 to 36, are reproduced hereunder:-

"33. From a reading of the provisions of Section 10(A) of the Dentists Act, 1948, and the Schedule, which is extracted supra, it is clear that the time schedule for receipt of application for renewal of permission and processing of the application by the Central Government and DCI was before 31.01.2018. The affiliation certificate dated 31.01.2018 issued by the Tamil Nadu Dr.M.G.R Medical University is only for the purpose of inspection. Admittedly, Tamil Nadu Dr.M.G.R Medical University is not a party to the Writ Petition. Even if it is a party, they cannot issue the said certificate. It is no doubt true that said

certificate was communicated by e-mail to the respondent concerned, but, the said certificate is not a permanent one and it is only for the purpose of inspection as stated above. The affiliation certificate, after rectification of the defects pointed out by the authorities, was issued only on 07.02.2018. This alone can be construed as the certificate of affiliation, but unfortunately, it has been issued only after the cut-off-date viz., 31.01.2018.

34. The learned counsel appearing for the petitioner would vehemently contend that there is no reference at all with regard to the certificate dated 31.01.2018 and that affiliation certificate is a permanent one and that Tamil Nadu Dr.M.G.R Medical University, vide proceedings dated 02.11.2017, granted conditional continuance of provisional affiliation to Madha Dental College & Hospital, Madha Nagar, Somangalam Road, Kundrathur, Chennai, for M.D.S. Course for the academic year 2017-2018, based on an undertaking given by the Chairman of Soosaiya Peter Education Trust and it was subject to the conditions stated therein and necessary documents are to be submitted within a period of three months. University has taken note of the request of the Chairman, but untimely admission is only for the period of three months and that, in any event, communication runs to counter to the Regulations, which clearly stipulates that cut-off-date/last date is on 31st January of every year. Even on 31.01.2018 with regard to seven disciplines, there has been a categorical rejection and the Dental Council of India (DCI) has decided not to renew its permission for the third year M.D.S course in the various seven specialties for the defects pointed out thereunder.

35. As rightly pointed out by the learned counsel appearing for the 2nd respondent, the cut-off-date was fixed based on the Regulations and that the purpose of introduction of Section 10(A) of the Dentists Act, 1948, was to curtail the mushrooming growth of dental colleges/institutions. The Hon'ble Apex Court has come down heavily with regard to the grant of affiliation beyond the cut-off-date. Hence, this Court is of the view that the petitioner will not be entitled to any relief. There is no reference to the communication dated 31.01.2018 with regard to the affiliation, which cannot hold good, as it is only for the purpose of inspection and not for any other purpose and it may not by any stretch of imagination, be construed as one of permanent grant

of approval. The petitioner cannot admit any student in seven disciplines for the academic year 2018-2019. This will not preclude the petitioner seeking for recognition/approval for the academic year 2019-2020 and if they fulfill the conditions, it is open to the respondents to consider the same.

36. With the above directions, the Writ Petition is dismissed. No costs."

As against the above order passed by the learned Single Judge, the present writ appeal is preferred.

10. The learned senior counsel for the appellant would at the outset submit that although initially the temporary affiliation was granted for a period of three months on 02.11.2017, subsequently, another affiliation certificate was issued by the University on 31.01.2018. However, when a clarification was sought by the second respondent, the appellant had gone before the University and obtained affiliation certificate for the academic year 2017-18. Therefore, the second respondent ought to have appreciated that only a clarification was sought from the appellant College in regard to the certificate originally submitted before the Council on the date of the deadline i.e., 31.01.2018 and all the queries raised by the Council, had been clarified. Therefore, it cannot be gainsaid that the appellant College did not meet the time schedule as said forth by the second respondent as per the regulations. He would also submit that admittedly all other deficiencies which were pointed out earlier, had been rectified by the appellant College. The only issue which was hanging in fire against the appellant College was non-submission of the affiliation certificate. When such certificate has been submitted by the appellant College to the satisfaction of the second respondent, the first respondent ought to have considered the request of the appellant favourably.

11. The learned senior counsel for the petitioner would also submit that even otherwise, it is always possible to extend and adjust the deadline within various stages without disturbing the last date of admission which was fixed on 31.05.2018. In support of his contention, the learned counsel would rely on the following decisions.

(i) In the case of Royal Medical Trust (Registered) and another Vs. Union of India and another, reported in (2015) 10 SCC 19, wherein, the learned senior counsel would draw the attention of this Court to paragraph No.33 of the judgment which is reproduced below:-

"33. The cases in hand show that the Central Government did not choose to extend the time limits in the Schedule despite being empowered by Note below the Schedule. Though the Central Government apparently

felt constrained by the directions in Priya Gupta it did exercise that power in favour of Government Medical Colleges. The decision of this Court in Priya Gupta undoubtedly directed that Schedule to the Regulations must be strictly and scrupulously observed. However, subsequent to that decision, the Regulations stood amended, incorporating a Note empowering the Central Government to modify the stages and time limits in the Schedule to the Regulations. The effect of similar such empowerment and consequential exercise of power as expected from the Central Government has been considered by this Court in Priyadarshini. The Central Government is thus statutorily empowered to modify the Schedule in respect of class or category of applicants, for reasons to be recorded in writing. Because of subsequent amendment and incorporation of the Note as aforesaid, the matter is now required to be seen in the light of and in accord with Priyadarshini where similar Note in pari materia Regulations was considered by this Court. We therefore hold that the directions in Priya Gupta must now be understood in the light of such statutory empowerment and we declare that it is open to the Central Government, in terms of the Note, to extend or modify the time limits in the Schedule to the Regulations. However the dead line namely 30th of September for making admissions to the first MBBS course as laid down by this Court in Madhu Singh and Mridul Dhar must always be observed."

The learned senior counsel would therefore submit that the first respondent is empowered to modify the schedule without disturbing the last date of admission.

(ii) In the case of Priyadarshini Dental College and Hospital Vs. Union of India and others, reported in (2011) 4 SCC 623, for the proposition that for the purpose of grant of renewal permission, the second respondent can only consider whether the applicant has proper faculty or infrastructure made available. In the instant case, when the appellant had demonstrated that proper infrastructure and faculty were available for the previous academic year and they were allowed to conduct the subject courses. The insistence on the affiliation certificate from the University concerned, was not mandatory for the purpose of submission of the same before the date of deadline i.e., 31.01.2018. In support of his contention, the learned senior counsel would draw the attention of this Court to paragraph No.24 of the judgment which is reproduced below:-

"24. In the context of what has happened in

these cases, it is necessary to emphasize the distinction between the applications for fresh permissions and applications for renewal of permissions. They require distinct time schedules. The process of decision making under the Regulations, for grant of fresh or initial permission for establishment of new dental colleges is exhaustive and elaborate, when compared to the process of decision making in regard to grant of renewal of permission for the four subsequent years. Before grant of initial grant of permission, the DCI and Central Government are required to consider the following aspects : whether the institution would be in a position to offer the minimum standards of dental education in conformity with the Act and the Regulations; whether the institution has adequate resources; whether the institution has provided or will provide within the time-limit specified in the scheme, necessary staff, equipment, accommodation, training and other facilities to ensure proper functioning of the institution; whether the institution has provided or would provide within the time-limit specified in the scheme, adequate hospital facilities; whether faculty having recognized dental qualifications and personnel in the field of practice of dentistry will be available to impart proper training for the students; and whether other factors prescribed by the Regulations have been complied. On the other hand, for the purpose of grant of renewal of permission, DCI has to make recommendations by considering only whether the prescribed faculty and infrastructure are available."

(iii) In the case of Swamy Devi Dayal Hospital and Dental College Vs. The Union of India (UOI) and others, wherein, the learned senior counsel would draw the attention of this Court to paragraph No.26 of the judgment of the Hon'ble Supreme Court of India, which is extracted below:-

"26. We, accordingly, sum up the legal position, touching upon the issue, on the interpretation of Section 10A (4) of the Act, as below:

(a) Section 10A applies to the cases of renewal of permission as well;

(b) It contemplates grant of opportunity of being heard at two stages. First stage would be at the level of DCI after the scheme is submitted to DCI under sub-section (2) of Section 10A of the Act. Once it is found by the DCI that all the parameters for granting permission are met, it recommends the grant

of approval of the scheme to the Central Government. In case Scheme it is found to be deficient, sub-section (3) (a) of Section 10A of the Act casts an obligation on the part of the DCI to give a reasonable opportunity for making a written representation and also to rectify the deficiencies, if any, specified by the DCI. Second stage of adherence to the principles of natural justice is provided at the level of Central Government at the time when it has to take final decision, after the receipt of the recommendation sent by the DCI. This requirement of hearing is stipulated in proviso to sub-section (4) of Section 10A, in the event the Central Government is proposing to disapprove the scheme.

(c) The expression "opportunity of being heard" occurring in this proviso would mean that the material that goes against the applicant and is to be taken into consideration, is to be supplied to the applicant within an opportunity to make representation. For this purpose either the report of the DCI itself can be supplied or at least the deficiencies pointed out in the report have to be communicated by the Central Government to the applicant with an opportunity to furnish its comments thereupon. At that stage while giving its reply, if the applicant claims personal hearing, such a personal hearing should also be accorded."

12. The learned senior counsel would submit that the appellant has not been given proper opportunity and by impugned action by the first respondent, the appellant College has lost the valuable 15 seats in MDS Courses for the academic year 2018-19. According to the learned senior counsel, the learned Judge has not appreciated these issues in proper perspective, but, has chosen to render the decision against the appellant only on the basis of the fixed time schedule in terms of the relevant regulations.

13. Per contra, learned counsel appearing for the first and second respondents stoutly opposed grant of any relief to the appellant, stating that the learned Judge has considered all the submissions of the appellant in detail and after adverting to various regulations and the facts of the case, the learned Judge has come to the conclusion that the appellant herein was not entitled to the relief. The learned Judge has categorically held that there cannot be any deviation from the schedule appended to the Regulations or Act, in respect of the deadline of various stages for scrutiny of application and therefore the impugned

decision does not call for interference.

14. We have considered the rival submissions of the learned counsels on either side and perused the relevant materials and pleadings placed on record. First of all, we do not find anything from the order passed by the learned Judge that any submission to the effect that the date fixed for different stages of scrutiny of applications can be adjusted or extended without disturbing the final date of admission and therefore, on this ground, the order passed by the learned single Judge, cannot be assailed. Nonetheless, even assuming submissions made to that effect, we do not think that the time schedule as fixed by the second respondent for all the applicants to follow, cannot be adjusted and varied depending on the individual applicants request. If such leverage is given to any individual applicants or institution, it will completely upset the time schedule as fixed by the second respondent.

15. Once the time limit has been fixed for various stages of scrutiny of application, it is incumbent upon the applicant to stick to the time schedule without even the slightest deviation. The arguments advanced on behalf of the appellant College, on this aspect, cannot be accepted for the reason that the schedule of dates under regulation is appended to Section 10A of the Dentists Act, 1948 and therefore, the time schedule has a statutory force and any infraction of the same cannot be condoned. Therefore, the learned Judge has rightly rejected the claim of the appellant herein and dismissed the writ petition.

16. In regard to the decision relied on by the learned senior counsel for the appellant, we are of the clear view that the said decisions do not apply to the factual matrix of the present case. Those decisions were rendered in terms of the respective factual context and the same cannot be transported and applied to the present case. In the instant case, admittedly when the appellant College submitted their affiliation certificate on 31.01.2018. The University has stated that the certificate was issued only for the inspection purpose. When affiliation is a precondition for consideration of renewal request, it is incumbent upon the appellant College to have obtained proper certificate as per the requirement and ought to have submitted the same before the deadline. Admittedly, proper affiliation certificate was submitted by the appellant only on 07.02.2018, much after the dead line and therefore, the first respondent had issued communication on 28.02.2018, rejecting the request of the appellant College.

17. As regards the submissions of the learned senior counsel for the appellant that it was a mere clarification which

was sought by the second respondent and the same was clarified by the University on 07.02.2018 and therefore, it ought to be taken that the appellant had submitted a valid certificate as on 31.01.2018. We are of the view that the said submission does not merit any serious consideration. Admittedly, the proper certificate has been obtained by the appellant College only on 07.02.2018 from the University concerned and such certificate does not relate back to validate the defective certificate submitted by the appellant College on 31.01.2018. Even earlier, the University has only granted the appellant College, a temporary affiliation certificate only for a period of three months with effect from 02.11.2017 which had expired on 01.02.2018. In such circumstances, obtaining affiliation certificate on 07.02.2018, for the academic year 2017-18 can only be from the prospective date of issue of the certificate. That being the case, we find that the submissions made in this regard cannot be acceptable.

18. For the above said reasons, we do not find any substance and merits in the appeal and we do not find any infirmity in the order passed by the learned single Judge in W.P.No.6013 of 2018, dated 09.04.2018. Therefore, the writ appeal stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Vacation Officer

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary to Government,
The Union of India,
Ministry of Health and Family Welfare
(Dental Education Section),
A wing, Nirman Bhawan,
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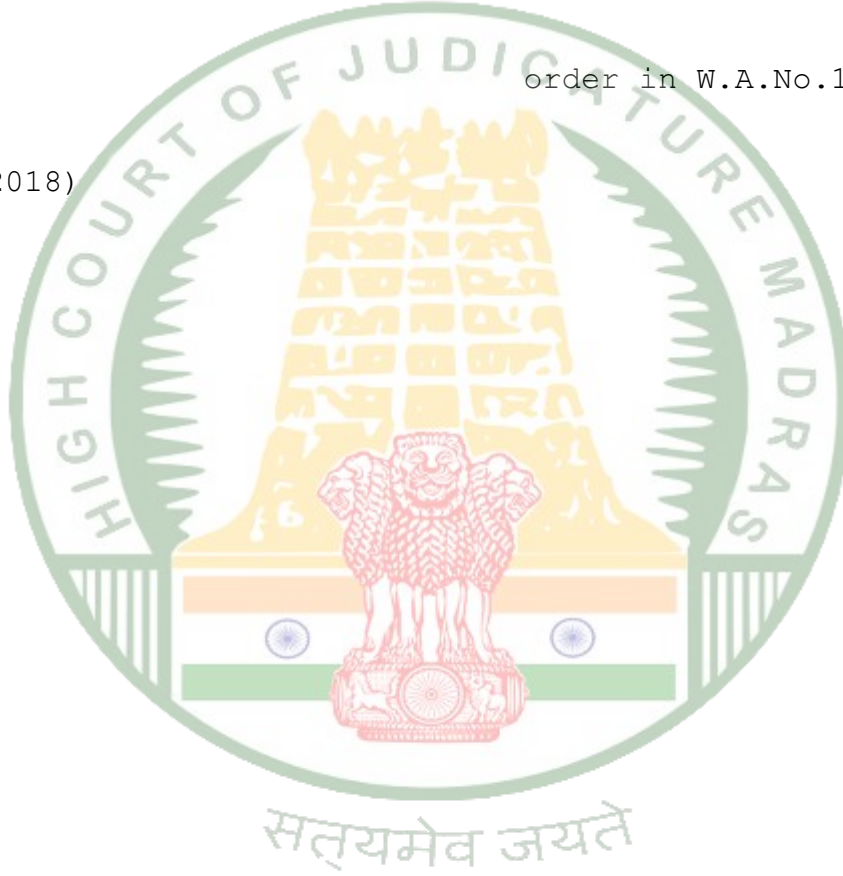
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+1cc to Mr.RICHARDSON WILSON, Advocate, S.R.No. 33955

order in W.A.No.1047 of 2018

SSD(CO)
TR(23/05/2018)



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