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

+ **W.P.(C) 8649/2018**

**DR. R. N. GUPTA TECHNICAL EDUCATIONAL
SOCIETY**

..... Petitioner

Through Mr Aseem Mehrotra, Advocate.

versus

UNION OF INDIA AND ANR.

..... Respondents

Through Ms Monika Arora, CGSC with

Mr Kushal Kumar, Advocate.

Mr T. Singhdev, Ms Biakthan Sangi Das,
Advocates for MCI.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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17.08.2018

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, impugning a letter dated 09.05.2014 (hereafter 'the impugned letter') issued by the Medical Council of India (respondent no.2 – hereafter 'MCI') and further praying that directions be issued to the respondents for refunding ₹7,00,000/- with interest.

2. The aforesaid amount of ₹7,00,000/- was deposited by the petitioner along with its application for establishment of a new Medical College at Agra, Uttar Pradesh. This application was made for the academic year commencing in 2014. This application was rejected by the MCI by a letter dated 21.01.2014 as the petitioner did not have the Essentiality Certificate

from the concerned State Government – State of Uttar Pradesh.

3. The petitioner made an application for refund of the fee deposited along with its application; however, the said application was also rejected by the impugned letter.

4. At this stage, it would be relevant to refer to Regulation 4 of the Establishment of Medical College Regulations, 1999, which reads as under:-

“ 4. APPLICATION FEE.

The application shall be submitted by registered post only to the Secretary (Health), Ministry of Health and Family Welfare, Government of India, Nirman Bhawan, New Delhi-110 Oil along with a non-refundable application fee of Rs 3.5 lakhs in the form of demand draft/pay order in favour of ‘Medical Council of India’ payable at New Delhi. The Fee is for registration, technical scrutiny, contingent expenditure and for five inspections. Beyond five inspections, the normal inspection fee prescribed by the Council shall apply. The Schedule for receipt of the application for establishment of new medical colleges and processing of the applications by the Central Government is given in the Schedule annexed with these regulations.”

5. In terms of the notification dated 29.07.2008 issued by the MCI, the fee referred under Regulation 4, as quoted above, was enhanced to ₹7 lakhs for private medical colleges/institutions. It is apparent from the plain reading of the aforesaid Regulation that the application fee is non-refundable.

6. The learned counsel appearing for the petitioner states that notwithstanding the aforesaid regulation, the petitioner would be entitled to refund of the application fee by virtue of the decision of the Board of

Governors of MCI taken at a meeting held on 09.11.2012. He referred to the minutes of the said meeting, which indicate that the Board of Governors of MCI had decided that the fee would be proportionately returned depending on the stage at which the application is withdrawn, in support of his contention. He further states that the petitioner's claim for refund of fee is also not barred by limitation, as its request was accepted by the Central Government in its letter dated 29.05.2014.

7. This Court does not find any merit in the contentions advanced on behalf of the petitioner. First of all, the applicable Regulation (Regulation 4) clearly indicate that the application fee is not refundable. Secondly, it is also not disputed that the petitioner had sought to withdraw its application after it was rejected on 21.01.2014. Thus, it is difficult to accept that the petitioner's request for refund of the fee could be considered in terms of the decision of the Board of Governors of MCI, which is relied upon by the petitioner. Thirdly, the Court is informed that the aforesaid minutes (of the meeting dated 09.11.2012) were sent to the Central Government for approval but the approval has not been granted as yet and the relevant Regulations have not been amended. Thus, the said decision is not effective as yet. Lastly, the petitioner's claim is also hopelessly barred by limitation. The MCI had denied the petitioner's request for refund of application fee by the impugned letter and the present petition has been filed more than four years thereafter. There is no credible explanation for the delay in approaching this Court. Although, the Limitation Act, 1963 may not strictly apply to the proceedings under Article 226 of the Constitution of India, it is settled law that courts would not extend the discretionary remedy to applicants who have failed to

approach the court within time. It is also well settled that recourse to proceedings under Article 226 of the Constitution of India is not available for recovering any amount where a suit for recovery of that amount would be barred by limitation.

8. In ***Rosa Power Supply Co. Ltd. v. Union of India & Ors.: 2014 (307) ELT 638 (Del.)***), this Court while taking note of a judgment rendered by a Division Bench of this Court in ***Government of NCT of Delhi v. New Variety Tent House: 189 (2012) DLT 65***, held as under:

“8. The matter in fact is not res integra. A Division Bench of this Court (of which one of us Rajiv Sahai Endlaw, J. was a member), in ***Government of NCT of Delhi Vs. New Variety Tent House*** 189 (2012) DLT 65 has held that money claim, suit for which has become barred by time / limitation, cannot be allowed in writ jurisdiction. Reliance was placed on State of ***Madhya Pradesh Vs. Bhailal Bhai*** AIR 1964 SC 1006 laying down that though the provisions of Limitation Act do not apply to the grant of relief under Article 226 of the Constitution of India however the maximum period fixed by the Legislature as the time within which the relief by a suit in a Civil Court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 of the Constitution of India can be measured and on ***Tilokchand Motichand*** supra laying down that the extraordinary remedies under the Constitution are not intended to enable the claimant to recover monies, the recovery of which by suit is barred by limitation and that where the writ remedy under Article 226 corresponds to a remedy in an ordinary suit and the latter remedy is subject to the bar of a statute of limitation, the Court in its writ

jurisdiction acts by analogy to the statute, adopts the statute as its own rule of procedure and in the absence of special circumstances imposes the same limitation on the summary remedy in writ jurisdiction...”

9. The contention that the Central Government had accepted the petitioner’s request for refund and therefore the petitioner’s claim is not barred by limitation, is also unmerited. A mere perusal of letter dated 29.05.2014 indicates that the petitioner’s application was forwarded to the Secretary, MCI to take “the necessary action in the matter of refund as per Indian Medical Council Act, 1956 and Establishment of Medical College Regulations, 1999.” Thus, the said letter only required the MCI to take decision in the matter and not to grant refund as contended by the petitioner. The MCI had clearly declined the petitioner’s request for refund way back on 09.05.2014, and there is nothing placed on record, which would even remotely indicate that the MCI or the Central Government had acknowledged any liability towards the petitioner.

10. In view of the above, the petition is dismissed.

नात्यमेव जयते

VIBHU BAKHRU, J

AUGUST 17, 2018

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