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

+ LPA 638/2018

DR R.N GUPTA TECHNICAL
EDUCATIONAL SOCIETY

..... Appellant

Through: Mr.Aseem Mehrotra, Adv.

Versus

UNION OF INDIA & ANR

..... Respondents

Through: Ms.Monika Arora, Adv. with
Mr.Vibhu Tripathi, Adv. for UOI.

Mr.T.Singhdev, Adv. with Ms.Biakthansangi Das,
Adv. for R-2.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

% **20.11.2018**

C.M.No.48106/2018 (exemptions)

Allowed, subject to all just exceptions.

C.M.No.48105/2018 (delay)

For the reasons stated in the application, delay in filing is condoned and the application is disposed of.

LPA No.638/2018

Seeking exception to an order dated 17.08.2018 passed by the Writ Court in W.P.(C) No.8649/2018, this appeal has been filed under Clause 10 of the Letters Patent for the purpose of establishing a new Medical College in Agra, Uttar Pradesh. The Appellant submitted an application in the Academic Session 2014 vide letter dated 21.01.2014 to the Medical Council of India for grant of eligibility certificate. Application fee as per Regulation 4 of the Establishment of Medical College Regulations, 1999, which reads

as under, was submitted by the petitioner:

“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-110 011 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.”

2. Even though in the reproduced regulation the non-refundable application fee is shown to be 3.5 lakhs, it is an admitted position that this was increased to Rs.7 Lakhs. Finding that apart from the Regulation which speaks about non-refundable application fee, it was observed that the petitioner had submitted the application in the year 2014 and the claim of the petitioner was rejected by the MCI on 21.01.2014. Taking note of all these circumstances finding the claim to be untenable in view of the non-refundable clause in the regulation so also the claim barred by the principle of limitation, the learned Writ Court has refused to interfere into the matter. In our considered view, when the statutory regulation clearly stipulates that it is a non-refundable application fee, the Writ Court cannot, in violation of the statutory provision, grant relief to the petitioner. In dismissing the writ petition by a detailed order after relying upon various judgments of the

Division Bench of this Court, in our considered view, the learned Writ Court has not committed any error warranting the reconsideration.

The appeal is dismissed.

CHIEF JUSTICE

V. KAMESWAR RAO, J

NOVEMBER 20, 2018
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