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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 13th March, 2019

+ W.P.(C) 2536/2019 & CM APPL. 11786/2019 (*for interim relief*)

SHREE BANKEY BIHARI EDUCATIONAL SOCIETY

..... Petitioner

Through: Mr. Karunesh Tandon, Adv.

Versus

MINISTRY OF HEALTH AND FAMILY WELFARE

..... Respondent

Through: Mr. Prakash Kumar, Adv. for
R-1.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER (ORAL)

13.03.2019

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1. This writ petition is directed against an order dated 28th February, 2019, issued by the Ministry of Health and Family Welfare, which reads thus:

“No. V.1201 7/13/2018-DE (pt. I)

GOVERNMENT OF INDIA
Ministry of Health & Family Welfare
(Dental Education Section)

Nirman Bhawan, New Delhi
Dated the 28th February, 2019

The Principal,

Shree Bankey Bihari Dental College & Research Centre,

0.5 KM Ahead Masuri Canal. Masuri, NH-24,
Ghaziabad-201 302, U.P.”

Subject: Non-renewal of MDS scheme for 3rd year at
Shree Barikey Bihari Dental College &
Research Centre, Ghaziabad for the
academic year 2019-20.

Sir,

I am directed to refer to DCI's letters dated 129.01.2019 (copies enclosed) on the subject cited above thereby recommending the Central Government not to renew its (permission for 3rd year of MDS course for increase of seats in the specialties of (i) Conservative Dentistry and Endodontics from 3 to-5 seats & (ii) Prosthodontics and Crown & Bridge from 3 to 5 seats at Shree Bankey Bihar! Dental College & Research Centre, Ghaziabad for the academic-session 2019-20-and to say that in pursuance of section 10A(4) of the Dentists (Amendment) Act, 1993, the Central Government has decided to accept the recommendations of DCI.

2. You are, therefore, directed NOT to admit students in the MDS course in the specialties of (i) Conservative Dentistry and Endodontics against the increased intake from 3 to 5 seats & (ii) Prosthodontics and Crown & Bridge against the increased intake from 3 to 5 seats at Shree Bankey Bihari Dental College & Research Centre, Ghaziabad for the academic session 2019-20.

3. Any admission made in violation of the above condition will be treated as irregular and action under the provisions of the Dentists Act, 1948 and Regulations made thereunder shall be taken.

Yours faithfully,
(Vidyadhar Jha)

Under Secretary to the Government of India
Telephone: 011-23063068.”

2. The letter, dated 29th January, 2019, to which reference is made, in the afore-extracted communication, dated 28th February, 2019, in turn, reads as under:

“DENTAL COUNCIL OF INDIA
(CONSTITUTED UNDER THE DENTISTS ACT, 1948)

No.DE-15/169:-MDS-2018/9095 Dated:29 January, 2019

To,

The Secretary to the Govt. of India
Ministry of Health & Family Welfare
Department of Health (DE Section)
Maulana Azad Road, Nirman Bhawan
New Delhi-110011

Sub:- Verification Inspection Report of the Council's Inspectors Dr. Divya Kalra, Rohtak (on 4.1.2019) to verify the Verification Report of the Council's Inspector Dr. Ashii Gupta, Shimla (on 11.10.2018) to verify the Compliance on the Joint Inspection Report of the Council's Inspectors Dr. Ida de Noronha de Atide, Goa 85 Dr. Jagat Bhushan, Chandigarh to verify the achievement of annual target for renewal of the Central Government permission for 3rd year of MDS course for increase of seats in the speciality of Conservative Dentistry from 3 to 5 seats at Shree Bankey Bihari Dental College 85 Research Centre, Ghaziabad for the academic session 2019-20 on 4th and 5th September 2018 - Consideration of-

Sir,

I am directed to state that the General Body of the DCI at its meeting held on 23rd and 24th January, 2019 at Goa considered the Verification Report of the Council's Inspectors Dr. Divya Kalra, Rohtak (on 4.1.2019) to verify the Verification Report of the Council's Inspector

Dr. Ashu Gupta, Shimla (on 11.10.2018) to verify the compliance on the Joint Inspection Report of the Council's Inspectors Dr. Ida de Noronha de Atide, Goa & Dr. Jagat Bhushan, Chandigarh and after discussion & deliberation accepted the recommendation of Executive Committee (22.01.2019) and recommended as under:-

Conservative Dentistry from 3 to 5 seats

The Council recommends to the Central Government not to renew its permission for 3rd year MDS course for increase of seats in the speciality of Conservative Dentistry and Endodontics from 3 to 5 seats at Shree Bankey Bihari Dental College & Research Centre, Ghaziabad for the academic session 2019-20 due to the following deficiencies even after verification:-

1. University Affiliation:- There is no University Affiliation for the academic year 2018-19.
2. The above said recommendation of the General Body (23rd & 24th January, 2019) of the Council is forwarded to the Govt. of India for the information and further necessary action in the matter.
3. Further, a copy each of the Verification Inspection Report of the Council's Inspector of Dr. Divya Kalra, Rohtak (i) Verification Report of the Council's Inspector Dr. Ashu Gupta, Shimla and (ii) Joint Inspection Report of the Council's Inspector Dr. Ida de Noronha de Atide, Goa & Dr. Jagat Bhushan, Chandigarh is enclosed herewith for your information and ready reference.

Yours faithfully,
Sd/-

Encl: as above.

(Dr. Sabyasachi Saha)
Secretary
Dental Council of India"

3. Apparently, only ground on which the petitioner's application has been rejected is that it did not possess University affiliation for the Academic year 2018-2019.

4. Mr. Karunesh Tandon, learned counsel for the petitioner, points out that the petitioner, in fact, obtained affiliation from the concerned University on 30th January, 2019, i.e. the day after the above-extracted communication of the DCI, which was of 29th January, 2019. As such, he submits that, prior to the passing of the impugned order, dated 28th February, 2019, his client was in possession of the concerned affiliation. He also points out that this fact was communicated by his client to the respondent *vide* letter, dated 11th February, 2019, which constitutes Annexure-I to the writ petition, and reads as under:-

"SBBDC/2019/51679

Dt. 07.02.2019

To,

The Secretary
Ministry of Health & Family Welfare
Govt. of India
Nirman Bhavan, New Delhi

Sub: Submission of affiliation letter for MDS course for the session 2018-19

Dear Sir,

Please find enclosed herewith the affiliation letter no.4495 dt. 30.01.2019 for 3 to 5 seats in the specialties of (1) Prosthodontics and Crown & Bridge and (2) Conservative Dentistry & Endodontics for the session 2018-19 issued by Ch. Chran Singh University, Meerut.

Sir, all deficiencies pointed out by DCI, have been fulfilled by us except affiliation letter as it was under process at University level. Due to the procedural delay at

university level we have received the affiliation letter late.

In view of the above you are requested to consider our college as special case and grant permission for renewal of 3 to 5 seats in the above MDS specialties for the session 2019-20.

We will be highly obliged to you.

Thanking you,

Yours faithfully,

Shree Bankey Bihari Dental College & Research Centre

Dr. Kishan Singh
Principal”

5. Apparently, this fact has not been considered by the respondent, while passing the impugned order. Learned counsel for the petitioner submits that had the respondent taken into account this fact, possibly the request of his client, for recognition/affiliation would not have been rejected.

6. Mr. Tandon accordingly, prays that this writ petition may be disposed of at this stage, directing the respondent to reconsider the application of the petitioner, keeping in view the fact that petitioner had obtained reaffiliation on 30th January, 2019.

7. The request appears reasonable. Learned counsel for the respondent has no serious objection thereto, but submits that Court

should stop sort of issuing directions to the respondents to grant such recognition/affiliation.

8. I am of the view that, in the circumstances, the interests of justice would stand subserved if this writ petition is disposed of, at this stage, with a direction to the respondent to take a fresh look at the petitioner's request to reconsider the decision taken *vide* the impugned communication, dated 28th February, 2019, keeping in view the fact that the petitioner did obtain affiliation with the Chaudhary Charan Singh University, on 30th January, 2019.

9. For the above purpose, the petitioner would also be entitled to a hearing by the respondent for which purpose the petitioner may appear before the respondent on 20th March, 2019.

10. The respondent is directed to take a fresh decision on the petitioner's application within a period of one week from the said date, and communicate the order to the petitioner. Should the petitioner continue to remain aggrieved by the fresh decision taken of the respondent, its right to challenge the said order, in accordance with law, would remain reserved.

11. The writ petition stands disposed of in the above terms, with no order as to costs.

Order be given *dasti* under the signature of the Court Master.

C. HARI SHANKAR, J

MARCH 13, 2019/bh