

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 16991 of 2021

Date of Decision: October 07, 2021

Gian Sagar Educational and Charitable Trust

.....Petitioner

versus

Union of India and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Gagneshwar Walia, Advocate
for the petitioner

Mr. Arun Gosain, Advocate
for respondents No. 1 and 2

Mr. M.S. Longia, Advocate
for respondent No. 3

Sudhir Mittal, J. (Oral)

The question for consideration in this writ petition is whether respondent No. 1 – Central Government was duty bound to grant an opportunity of hearing to the petitioner before rejecting its scheme for establishing a new Dental College, by order dated 19.08.2021.

2. The petitioner is stated to be an Educational and Charitable Trust (hereinafter referred to as 'the Trust'). It has set up a Medical College and Hospital having the capacity to train 150 MBBS students. The hospital is a 300 bedded one. Being desirous of setting up a Dental College, it submitted an application dated 28.09.2020 under Section 10A of the Dentists Act, 1948 (hereinafter referred to as 'the Act') for approval of the Central Government. The application was addressed to the Central Government who referred the same to the Dental Council of India – respondent No. 3 (hereinafter referred to as 'the Council'). The Council sought details regarding the land on which the Dental College was to be set up vide

along with the requisite documents. This reply did not satisfy queries of the Council and, therefore, additional queries were raised vide letter dated 15.12.2020. This was followed by communication dated 24.12.2020 asking for more documents. The petitioner submitted its reply dated 31.12.2020. On the same date, the Council sent its recommendation to the Central Government, to disapprove the scheme of the petitioner as certain queries regarding the land documents submitted remained unanswered. Vide its communication dated 18.01.2021, the Central Government asked the petitioner to be present on 22.01.2021 for personal hearing. The petitioner appeared in person and submitted documents in support of its case whereafter, the Council was directed to conduct a physical verification/inspection. The same was done on 22/23.03.2021. The inspection report was submitted directly to the Council, who sent a communication dated 12.04.2021 to the petitioner directing it to remove the deficiencies mentioned therein. The petitioner responded vide compliance report dated 16.04.2021. Thereafter another inspection was conducted on 24.04.2021 for the purpose of satisfaction that compliance had in fact been made. Report of the compliance inspection was also sent directly to the Council. The petitioner submitted a representation dated 26.04.2021 to the Council explaining the manner of compliance with the help of video CD and documents. The Council, however, was not satisfied and it recommended disapproval of the scheme vide its recommendation dated 30.04.2021 addressed to the Central Government. The petitioner did not hear from either the Council or the Central Government for a period of three months and, thus, sensing something amiss, it wrote communications dated 09.07.2021 and 19.07.2021 for grant of personal hearing before taking a final decision. The requests were ignored and impugned order dated 19.08.2021 (Annexure P-16) was passed disapproving the scheme submitted by the petitioner.

3. From the aforementioned narration it transpires that -

(a) Copies of physical inspection reports dated 12.04.2021 and 24.04.2021 were not supplied to the petitioner and;

(b) Personal hearing was granted on 22.01.2021 before the conduct of physical inspection/verification.

4. Section 10A of the Act is reproduced below for ready reference :-

“10A Permission for establishment of new dental college, new courses of study, etc. (1) Notwithstanding anything contained in this Act or any other law for the time being in force

(a) no person shall establish an authority or institution for a course of study or training (including a post- graduate course of study or training) which would enable a student of such course or training to qualify himself for the grant of recognized dental qualification’ or

(b) no authority or institution conducting a course of study or training (including a post-graduate course of study or training) for grant of recognized dental qualification shall

(i) open a new or higher course of study or training (including a post-graduate course of study or training) which would enable a student of such course or training to qualify himself for the award of any recognized dental qualification; or

(ii) increase its admission capacity in any course of study or training (including a post-graduate course of study or training), except with the previous permission of the Central Government obtained in accordance with the provisions of this section.

Explanation 1. – *for the purposes of this section, “person” includes any University or a trust but does not include the Central Government.*

Explanation 2. – *For the purposes of this Section, “admission capacity”, in relation to any course of study or training (includes a post-graduate course of study or training) in an authority or*

institution granting recognized dental qualification, means the maximum number of students that may be fixed by the Council from time to time for being admitted to such course or training.

(2) (a) Every person, authority or institution granting recognized dental qualification shall, for the purpose of obtaining permission under sub-section (1), submit to the Central Government a scheme in accordance with the provision of clause (b) and the Central Government shall refer the said scheme to the Council for its recommendations.

(b) The scheme referred to in clause (a) shall be in such form and contain such particulars and be preferred in such manner and be accompanied with such fee as may be prescribed.

(3) On receipt of a scheme by the Council under sub-section (2), the Council may obtain such other particulars as may be considered necessary by it from the person, authority or institution concerned, granting recognized dental qualification and thereafter, it may,

(a) if the scheme is defective and does not contain any necessary particulars, give a reasonable opportunity to the person, authority or institution concerned for making a written representation and it shall be open to such person, authority or institution to rectify the defects, if any, specified by the Council;

(b) consider the scheme, having regard to the factors referred to in sub-section (7), and submit the scheme together with its recommendations thereon to the Central Government,

(4) The Central Government may, after considering the scheme and the recommendations of the Council under sub-section (3) and after obtaining, where necessary, such other particulars as may be considered necessary by it from the person, authority or institution concerned, and having regard to the factors referred to in sub-section (7), either approve (with such conditions, if any, as it may consider necessary) or disapprove the scheme and any such approval shall be a permission under sub-section (1): Provided that no scheme shall be

disapproved by the Central Government except after giving the person, authority or institution concerned granting recognized dental qualification a reasonable opportunity of being heard.”

5. A perusal of the aforementioned provision shows that on submission of a scheme for approval, the Central Government refers the same to the Council for its recommendations. On receipt of the scheme, the Council may obtain further particulars, if considered necessary and if the scheme is considered defective, it must grant a reasonable opportunity for rectifying the defects pointed out. Thereafter, it sends its recommendations to the Central Government who is enjoined with the duty of granting opportunity of personal hearing before disapproving a scheme.

6. Short submission on behalf of the petitioner is that opportunity of personal hearing has not been granted in accordance with the proviso to Section 10A(4) of the Act. Thus, the impugned order disapproving the scheme deserves to be set aside. Reliance is placed upon ***Swamy Devi Dayal Hospital & Dental College vs. Union of India and others, 2014(13) SCC 506.***

7. On behalf of the Central Government it has been submitted that opportunity of hearing had already been granted on 22.01.2021 and no fresh opportunity needed to be granted. Reliance is placed upon ***Royal Medical Trust (Regd.) and another vs. Union of India and another, 2015(10) SCC 19.*** Further, according to the Schedule to the Dental Council of India (Establishment of New Dental Colleges, Opening of New or Higher Courses of Study or Training and Increase of Admission Capacity in Dental Colleges) Regulations, 2006 as amended by the 8th amendment notified on 07.03.2016, the last date for issue of permission letter by the Central Government is 31st May. Thereafter no opportunity of hearing can be granted.

8. Counsel representing the Dental Council of India submits that

shortcomings exist and, thus, the scheme had to be disapproved.

9. Opportunity of hearing is required to be granted so that principles of natural justice are not violated. The said principles require that a person against whom some order is to be passed which results in civil consequences, the person must be shown the material on the basis of which the order is proposed to be passed and he must be given an opportunity to establish that the proposed reasons do not exist by grant of hearing. In this case, the principles of natural justice have been statutorily incorporated in Section 10A(4) of the Act. Thus, it was incumbent upon the Central Government to hear the petitioner before passing the impugned order. Admittedly, the petitioner was not supplied with copies of the report of physical inspection conducted on 22/23.03.2021. Only deficiencies were pointed out vide communication dated 12.04.2020, which were allegedly complied with as communicated vide letter dated 16.04.2021. Thereafter, the compliance inspection dated 24.04.2021 was done and disapproval note dated 30.04.2021 was sent by the Council to the Central Government. The Central Government proceeded to pass final order dated 19.08.2020 even though the petitioner had sought grant of opportunity of hearing vide its communication dated 09.07.2021 and 19.07.2021. Thus, before the final order was passed, the petitioner was not supplied the material on the basis of which the order was to be passed nor was it given an opportunity of personal hearing. Grant of opportunity of hearing on 22.01.2021 would not suffice as at that stage physical inspection/verification had not been done. In *Swamy Devi Dayal Hospital and Dental College (supra)* Section 10(A) has been interpreted and it has been held that even in cases of renewal of annual permission, it is essential to grant opportunity of hearing because that is the demand of natural justice. This judgment applies to the facts of this case whereas the judgment in *Royal Medical Trust (supra)* is not applicable. In the said case the

Council of India was justified in refusing to undertake fresh inspections for purposes of verification of removal of shortcomings as adequate time was not available. It was held that the time schedule must be strictly adhered to at all stages so that sufficient time is available to all parties to do their respective duties and session is also not delayed.

10. The argument that no opportunity of hearing could be granted as last date for issue of permission letter had passed is frivolous. Time schedule fixed is for the purpose of making the concerned authorities vigilant and responsive and not for curtailing rights of parties.

11. The facts of this case show that time has been wasted by conducting a physical inspection/verification only after directions were issued by the Central Government. If the Council had conducted the same before sending its recommendations to the Central Government in the first instance, the illegality committed may have been obviated. The petitioner would have got an opportunity to rectify the defects pointed out by the Council and if the Council was still not satisfied it could establish before the Central Government that the objections were non-existent/not justified. Thus, the Council is directed to ensure that the physical verification is incorporated in its procedure of examination of scheme submitted for approval.

12. For the aforementioned reasons, the writ petition deserves to be allowed. Impugned order dated 19.08.2021(Annexure P-16) is quashed. The Central Government is directed to grant fresh opportunity of hearing to the petitioner after supplying a copy of the inspection report dated 24.04.2021.

October 07, 2021

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[SUDHIR MITTAL]
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No