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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 22nd July, 2021
Decided on: 03rd August, 2021

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W.P.(C) 1846/2021

CAREER CONVENT EDUCATIONAL AND
CHARITABLE TRUST

..... Petitioner

versus

UNION OF INDIA & ANR

..... Respondents

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W.P.(C) 1923/2021 & CM APPL. 5603/2021

SHANTI NIKETAN TRUST

..... Petitioner

versus

UNION OF INDIA & ANR

..... Respondents

+

W.P.(C) 1924/2021

K.L.SHASTRI SMARAK SANSTHAN

..... Petitioner

versus

UNION OF INDIA THROUGH
ITS SECRETARY & ANR.

..... Respondents

Present:- For Petitioners

Mr. Abhijit Mittal, Ms. Nandini Aishwarya and Mr. Bhav Arora, Advocates in W.P.(C) 1846/2021 & W.P.(C) 1924/2021.

Mr. Akshay Bhatia, Advocate in W.P.(C) 1923/2021.

For Respondents

Ms. Monika Arora, CGSC with Mr. Shriram Tiwary, Advocate for UOI in W.P.(C) 1846/2021.

Mr. Sushil Kumar Pandey, Senior Panel Counsel with Mr. Jitendra Kumar Tripathi, GP for UOI in W.P.(C) 1923/2021.

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Mr. Vijay Joshi & Mr. Sahaj Garg, Advocates for UOI in W.P.(C) 1924/2021.

Ms. Archana Pathak Dave, Advocate with Mr. Parmod Kumar Vishnoi, Mr. Kumar Prashant and Ms. Vanya Gupta, Advocates for CCIM in all three petitions.

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CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

J U D G M E N T

The proceedings in the matter have been conducted through video conferencing.

1. These three petitions are directed against orders of the Union of India [hereinafter, "UOI"] rejecting applications made by the petitioners for permission to establish new Ayurveda medical colleges under Section 13A of the Indian Medicine Central Council Act, 1970 [hereinafter, "the Act"]. As the three petitions raise substantially similar legal issues, they have been taken up for hearing together and are disposed of by this common judgment.

I. Background and regulatory provisions

2. The issue in these petitions revolves around the documentation required to be submitted alongwith an application under Section 13A of the Act.

3. Section 13A deals with permission for establishment of a new medical college or a new course of study. It requires previous permission of the Central Government to be obtained. The Central Government, upon receipt of an application under Section 13A, refers it to the Central Council of Indian Medicine [hereinafter, "CCIM"] for

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its recommendation, and may approve or disapprove after obtaining the recommendation of the CCIM.

4. The Establishment of New Medical College, Opening of New or Higher Course of Study or Training and Increase of Admission Capacity by a Medical College Regulations, 2019 [hereinafter, “the Regulations”] were framed on 11.07.2019, in exercise of the regulation making power conferred by Section 36 of the Act. The Regulations require submission of various documents alongwith the application under Section 13A, including a No Objection Certificate [hereinafter, “NOC”] from the State Government, and a Consent of Affiliation [hereinafter, “COA”] from the affiliating university of the proposed college. These are to be in Form-4 and Form-5 appended to the Regulations, respectively.

5. Regulations 6(1)(c), 6(1)(d) and 7(1) are relevant for adjudication of these petitions:

“6. Eligibility for making an application.-(1)For making an application under sub-regulation (1) of regulation 4, a person shall be eligible if,-

xxxx xxx xxx

(c) has obtained 'No Objection Certificate' in Form- 4 from the concerned State Government for establishing a new medical college at the proposed site;

(d) has obtained a 'Consent of Affiliation' in Form- 5 for establishing a new medical college from a University established under any Central or State statute;

xxxx xxx xxx

7. Recommendation of Central Council. - (1) The Central Government, after receipt of the applications shall

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scrutinized the application on the basic of eligibility criteria like Application Fee, No Objection Certificate of the State Government and Consent of Affiliation of the University etc. and the Central Government shall forward only eligible applications to the Central Council of Indian Medicine for further consideration and the ineligible and incomplete applications shall be rejected and returned to the applicants by the Central Government.”

6. Although August 31 is normally the last date for submission of applications under Section 13A in respect of permissions for the following year, in view of the Coronavirus pandemic, the UOI extended the last date for submission of applications for the year 2021-22 until 30.09.2020.

II. Facts

A. W.P.(C) 1846/2021

7. The petitioner, Career Convent Educational and Charitable Trust [hereinafter, “CC Trust”] first set up an Ayurvedic medical college and research centre in the year 2016. It obtained an NOC from the State of Uttar Pradesh and a Consent of Association from Lucknow University [hereinafter, “the University”] on 11.05.2018 and 12.07.2018 respectively.

8. The petitioner thereafter filed an application for permission to establish the college in the academic year 2021-22 under Section 13A of the Act on 25.08.2020. Alongwith the application, it filed a Consent of Association issued by the University on 18.08.2020, by which the University signified an extension of the earlier consent granted on 12.07.2018.

9. By a communication dated 25.09.2020 [which CC Trust claims to have received in October, 2020] the UOI rejected and returned its application, for want of the COA from the affiliating university in Form-5 of the Regulations. On 09.10.2020, CC Trust obtained a Consent of Association from the University in the proper format. This was submitted to the UOI on 12.10.2020, and received by the UOI on 23.10.2020. The UOI, however, by the impugned order dated 09.12.2020, once again rejected and returned the application on the ground that it was incomplete as the COA was received after the closing date of receipt of applications, i.e. 30.09.2020.

B. W.P.(C) 1923/2021

10. The petitioner in W.P.(C) 1923/2021, Shanti Niketan Trust [hereinafter, “Shanti Niketan”], submitted its application under Section 13A of the Act on 29.08.2020, which was received by the UOI on 31.08.2020. At this time, it did not submit the NOC of the State Government and stated that the NOC was “under process”. Alongwith the application, it also filed an affidavit of its Deputy Manager, stating that it had applied for the NOC and would send it to the UOI upon receipt. The NOC in the required format [Form-4 of the Regulations] was issued by the State Government on 29.09.2020 and received by the petitioner on 01.10.2020. The petitioner submitted it to the UOI on 05.10.2020, the three intervening days [02.10.2020 to 04.10.2020] being holidays. On 12.10.2020, however, the UOI rejected and returned the petitioner’s application on the ground that the NOC of the State Government was received on 05.10.2020, after the closing date of receipt of applications. The petitioner’s representations dated

27.10.2020 and 09.12.2020 led to further rejections dated 19.11.2020 and 31.12.2020 respectively, in substantially similar terms.

C. W.P.(C) 1924/2021

11. The petitioner, K.L. Shastri Smarak Sansthan [hereinafter, “KLSSS”] set up an Ayurvedic medical college in the year 2018 and obtained an NOC dated 08.01.2019 from the Government of Uttar Pradesh as well as a Consent of Association from the affiliating University, Lucknow University, on 19.08.2019.

12. The petitioner filed its application under Section 13A of the Act with the UOI on 20.08.2020. Alongwith the application, it submitted the Consent of Association granted by the University dated 19.08.2019, which was valid for three years from the date of issue. The consent was, however, not in the proper format, in terms of Form-5 of the Regulations, and was therefore rejected by a communication dated 08.09.2020.

13. After receipt of the rejection on 08.09.2020, KLSSS again applied for a COA from Lucknow University. The University issued two documents dated 27.09.2020, both purporting to be Consents of Association. However, one of the documents was in the format of Form-5, and the other was a reiteration of the original Consent of Association issued on 19.08.2019.

14. KLSSS re-filed its application on 29.09.2020. However, it again failed to enclose the newly obtained COA in Form-5, but enclosed the other document issued by the University on 27.09.2020. The UOI rejected the application on 13.10.2020, for want of COA in Form-5. This was received by KLSSS on 31.10.2020. It was thereafter filed in

the proper format on 02.12.2020, but once again rejected by the UOI's communication dated 21.12.2020.

III. Submissions of counsel

A. Submissions on behalf of the petitioners

15. Mr. Abhijit Mittal, learned counsel appearing for CC Trust and KLSSS, submitted that in the case of both these institutions, Consents of Association issued by Lucknow University were submitted well before the last date, although these were admittedly not in the format required by Form-5 of the Regulations. The petitioners subsequently obtained the COA in the proper format and also submitted those to the UOI – on 09.10.2020 in the case of CC Trust, and on 02.12.2020 in the case of KLSSS.

16. In the case of KLSSS, Mr. Mittal further pointed out that the COA in Form-5 had, in fact, been obtained on 27.09.2020, prior to the last date for filing of the application. However, he submitted that there was an administrative oversight, which he attributes to the pre-occupation of the petitioner's management with the Coronavirus pandemic, as the hospital had been converted into a COVID-19 hospital in March, 2020.

17. Mr. Mittal submitted that the COAs, which in fact had been submitted alongwith the original applications, were substantially compliant with the requirements of the Regulations and the petitioners' applications could not have been rejected on this ground. In support of this submission, Mr. Mittal cited the Constitution Bench judgment of the Supreme Court in *Commissioner of Central Excise*,

*New Delhi vs. Hari Chand Shri Gopal and Ors.*¹ and the three-judge bench decision in *Dr Jagat Narain Subharti Charitable Trust and Anr. vs. Union of India and Ors.*². Mr. Mittal also referred to the judgment of the Supreme Court in *Ponnaiyah Ramajayam Institute of Science and Technology Trust vs. Medical Council of India & Anr.*³ to submit that the non-receipt of the required documents from an applicant before the last date would not render the application automatically ineligible.

18. Mr. Akshay Bhatia, learned counsel for Shanti Niketan, emphasised that the applicant had been entirely diligent in submission of the NOC of the State Government as soon as it was received. He submitted that the order of the UOI passed on 12.10.2020, well after the document in the proper format had admittedly been received by it, was, in these circumstances, inappropriate. In addition to the judgment in *Ponnaiyah Ramajayam*⁴ cited by Mr. Mittal, Mr. Bhatia referred to the judgment of the Supreme Court in *Royal Medical Trust vs. Union of India & Anr.*⁵ and the Division Bench judgment of the Kerala High Court in *Medical Council of India vs. S.R. Educational and Charitable Trust & Anr.*⁶. Mr. Bhatia pointed out that, against the aforesaid judgment of the Kerala High Court, the Supreme Court declined Special Leave to Appeal.⁷

¹ (2011) 1 SCC 236 [paragraph 32]

² (2017) 16 SCC 666 [paragraphs 14 and 16]

³ (2015) 10 SCC 80 [paragraphs 6 and 7]

⁴ Supra (note 3)

⁵ (2014) 14 SCC 675 [paragraphs 9 and 12]

⁶ 2015 SCC OnLine Ker 3193 [W.A. No. 1967/2014, decided on 23.01.2015]

⁷ Order dated 20.02.2015 in SLP (C) No.5294/2015

B. Submissions on behalf of the respondents

19. The UOI was represented by Ms. Monika Arora, Mr. Sushil Pandey and Mr. Vijay Joshi, learned counsel. They submitted that the provisions of Regulations 6(1)(c) and 6(1)(d) lay down eligibility criteria, for which the cut-off dates stipulated by the UOI are sacrosanct. According to learned counsel, the UOI is required under Regulation 7 to scrutinize the applications on various parameters enumerated therein [including submission of the NOC and COA], and to forward only such applications to the CCIM for inspection as are compliant with the said provisions. The facts of these cases, according to learned counsel, demonstrate a lack of diligence expected from an institution seeking to establish a professional college. Mr. Pandey drew my attention to the judgments of the Supreme Court in *U.P. Public Service Commission U.P., Allahabad and Anr. vs. Alpana*⁸ and *Bhupinderpal Singh & Ors. vs. State of Punjab & Ors.*⁹ in support of the aforesaid contentions.

20. Ms. Archana Pathak Dave, learned counsel for CCIM, supporting the submissions of learned counsel for the UOI, additionally submitted that the present petitions have been pending in this Court for a substantial period of time and the Court ought not to grant relief at this stage. She submitted that in the event the petitioners are permitted to pursue their applications for the academic year 2021-22, the colleges would have to be inspected by the CCIM and the

⁸ (1994) 2 SCC 723

⁹ (2000) 5 SCC 262

applications scrutinized further. At this belated stage, Ms. Dave submitted that such a course ought not to be adopted.

IV. Analysis

A. Cases of CC Trust and KLSSS

21. In the cases of CC Trust and KLSSS, the only deficiency for which the petitioners' applications have been rejected is that the COAs of the University were not provided in the format of Form-5.

22. In both cases, however, the petitioners had provided communications from the University indicating its consent to the affiliation:

(a) In the case of CC Trust, the Consent of Association dated 12.07.2018 is reproduced as follows:

“
L.No. AF-16009/NOC/2015
Dated: 12/07/2018

From,
Registrar
Lucknow University
Lucknow-226007

To,
Manager
Career Ayurvedic Medical College & Research Centre
I.I.M. Road, Ghaila Lucknow
Sub:-REGARDING ISSUE NO OBJECTION
CERTIFICATE OF GIVING CONSENT OF
ASSOCIATION FOR CONDUCTING BAMS
(AYURVEDA) SYLLABUS

Sir,
Above subjected, kindly take the reference of your letter dated 26.06.2018, through which request has made to issue consent of association in B.A.M.S. Syllabus.
I have been directed to say in this regard that in the background of your proposal dated 26.06.2018 and site

inspection dated 25.06.201 consent of association has been given under self-financing project in BAMS syllabus at Graduate level to Career Ayurvedic Medical College & Research Centre, Lucknow, UP under following terms and conditions as:-

- 1. This consent letter shall be valid for application to CCIM, New Delhi in the sequence of no objection issued by UP Govt., AYUSH Department for operating B.A.M.S. Syllabus in prescribed Career Ayurvedic Medical College & Research Centre Lucknow.*
- 2. The referenced medical college shall allow of admission in BAMS Syllabus only when the AYUSH Department/Medical Central Council allows the number of seats for the given year.*
- 3. The reference medical college shall allow admission of the students in BAMS Syllabus by Referenced Medical College shall allow only when college shall provide consent of above syllabus after inspection of the spot through prescribed procedure also by the Lucknow University after the permission of Medicine Department / Indian Medical Central Govt. of India.*
- 4. Guidelines to be given timely by Uttar Pradesh, Lucknow College and Indian Medical Central Council, New Delhi should comply.*
- 5. Admission of student shall be done through the candidate selected after entrance examination organized by the organization authorized by State Govt. or CPMT.*

*Truly
Sd/-
(Dr. Bhavna Mishra)
Registrar”*

The petitioner had also filed a further communication dated 18.08.2020 certifying that the consent dated 12.07.2018 would be valid until 10.05.2021.

(b) In the case of KLSSS, the Consent of Association originally filed was dated 19.08.2019. It stated as follows:

“
L.No. R/1228/NOC/201
Dated: 19.08.2019

From,
Registrar
Lucknow University
Lucknow-226007

To,
Manager
K.L.S. Ayurveda College and Research Institute
506A, Mukktipur, I.I.M. Road, Lucknow
Sub:-REGARDING ISSUE NO OBJECTION
CERTIFICATE OF GIVING CONSENT OF
ASSOCIATION FOR CONDUCTING BAMS SYLLABUS
IN PRESCRIBED AYURVEDA MEDICAL COLLEGE &
RESEARCH INSTITUTE.

Sir,

Above subjected, kindly take the reference of your letter dated 03.08.2019, through which request has made to issue consent of association in B.A.M.S. Syllabus.

I have been directed to say in this regard issued by Govt. consent of association has been given under self-financing project in BAMS Syllabus (60 seats) at Graduate level to .L.S. Ayurveda College & Research Institute, IIM Road Mutakkipur, Lucknow, UP under following terms and conditions as:-

1.This consent letter shall applicable for 3 years from the date of issue by UP Govt. only applied for CCIM, New Delhi in the sequence of no objection issued by UP Govt., Medicine Department for operating B.A.M.S. Syllabus in prescribed .L.S. Ayurveda College & Research Institute, IIM Road Mutakkipur, Lucknow.

2.The referenced medical college shall allow of admission in BAMS Syllabus after the clear order of this means from Medicine Department / Indian Medical Central Council, New Delhi i.e. seats should allot for the

admission of students for BAMS Medical Central Council, New Delhi should comply.

4. Admission of student shall be done through the candidate selected after entrance examination organized by the organization authorized by State Govt. or CPMT.

5. Admission of the students in BAMS Syllabus by Referenced Medical College shall allow only when college shall provide consent of above syllabus after inspection of the spot through prescribed procedure also by the Lukhnow University after the permission of Medicine Department / Indian Medical Central Council, New Delhi of Govt. of India.

Truly

Sd/-

(Dr. Vinod Kumar Singh)

Registrar”

A further consent in similar terms dated 27.09.2020 was also submitted prior to the last date viz 30.09.2020. [Although the petitioner claims that the consent in Form-5 was also issued on 27.09.2020, it was admittedly not submitted to the UOI until 02.12.2020. For the present purposes, therefore, I proceed on the basis of the documents submitted prior to the last date.]

23. The question which arises for consideration is whether the documents submitted by the petitioners were substantially compliant with the requirement of the Regulations, so as to render the impugned rejection orders unreasonable. The doctrine of substantial compliance has been elucidated in the Constitution Bench judgment in *Hari Chand Shri Gopal*¹⁰ in the following terms:-

¹⁰ Supra (note 1)

“ **Doctrine of substantial compliance and “intended use”**

32. The doctrine of substantial compliance is a judicial invention, equitable in nature, designed to avoid hardship in cases where a party does all that can reasonably be expected of it, but failed or faulted in some minor or inconsequential aspects which cannot be described as the “essence” or the “substance” of the requirements. Like the concept of “reasonableness”, the acceptance or otherwise of a plea of “substantial compliance” depends upon the facts and circumstances of each case and the purpose and object to be achieved and the context of the prerequisites which are essential to achieve the object and purpose of the rule or the regulation. Such a defence cannot be pleaded if a clear statutory prerequisite which effectuates the object and the purpose of the statute has not been met. Certainly, it means that the Court should determine whether the statute has been followed sufficiently so as to carry out the intent for which the statute was enacted and not a mirror image type of strict compliance. Substantial compliance means “actual compliance in respect to the substance essential to every reasonable objective of the statute” and the Court should determine whether the statute has been followed sufficiently so as to carry out the intent of the statute and accomplish the reasonable objectives for which it was passed.¹¹

24. In *Dr Jagat Narain*¹², the Court applied this principle to an application for permission to establish a medical college under the Indian Medical Council Act, 1956. In that case also, the deficiency pertained to non-supply of information in the prescribed form [information regarding land ownership]. The Court held *inter alia* as follows:-

¹¹ Emphasis supplied.

¹² Supra (note 2)

“14.In addition, the petitioners have rightly pointed out that the information regarding ownership of land as was furnished by them was dependent on the communication issued by the DM being Annexure P-5 in Writ Petition (Civil) No. 513 of 2017, which contains all the requisite details as were required for the purpose of Form 5. Thus, there has been substantial compliance with the said requirement by the petitioners. Assuming that the Notification dated 16-10-2015 applied even to the proposal of the petitioners, suffice it to observe that failure to furnish information in the prescribed Form 5 cannot be held against the petitioners. In any case, that is not a deficiency relating to infrastructure or academic matters as such, which may require a different approach. Accordingly, even this aspect does not detain us from concluding that the impugned decision of the competent authority suffers from the vice of non-application of mind, if not perverse.”¹³

25. Whether this principle is applicable to the facts of the present cases turns on a reading of the documents submitted by the petitioners, in the context of the requirements of Form-5.

26. The format required by Form-5 of the Regulations is as under:-

“
FORM- 5
[See regulation 6]
CONSENT OF AFFILIATION
No
University
Place

Dated
On the basis of the report of the Local Inquiry Committee, the University of has agreed in principle, to affiliate the proposed Ayurved or Siddha or Unani Tibb or Sowa Rigpa College with

¹³ Emphasis supplied.

admission capacity of seats to be established at by the (name of the applicant) increase in admission capacity from-----to-----seats of -----course/starting ----- course. Subject to grant of permission by the Government of India, Ministry of AYUSH, New Delhi under section 13A of the Indian Medicine Central Council Act, 1970 (48 of 1970).

REGISTRAR”

27. Upon a perusal of the documents issued by the University and submitted by the petitioners to the UOI prior to 30.09.2020, I find that the University signified its consent to the association of the proposed college, and referenced the NOC to be obtained from the State Government. It was also stated that the consent letter would be valid for application to the CCIM and would be subject to the terms and conditions stated therein. This information was provided in the documents submitted alongwith the applications. Form-5 does not require any other substantive information to be provided. The purpose of Regulation 6(1)(c) is to ensure that the proposed college would be in a position to confer degrees under the aegis of its affiliating university and would have to abide by the standards prescribed by the university. These purposes were met by the University's communications and the petitioners are, therefore, entitled to the benefit of the equitable doctrine of substantial compliance.

28. In view of this conclusion, it is not necessary in the present cases to consider whether the petitioners were entitled to reconsideration of their applications after submission of the COAs in Form-5.

B. Case of Shanti Niketan

29. The case of Shanti Niketan is slightly different. As no NOC had been submitted alongwith the application, it is not a case of substantial compliance within the prescribed time frame. The matter must then be considered from the standpoint of as to whether the delay of five days in submission of the NOC would be fatal to the petitioner's application.

30. In this regard, the judgments of the Supreme Court in *Royal Medical Trust*¹⁴ and *Ponnaiyah Ramajayam*¹⁵ provide valuable guidance. In *Royal Medical Trust*¹⁶, the petitioner had applied for permission to establish a new medical college under the Indian Medical Council Act, 1956. It was unable to obtain the affiliation certificate from the affiliating university within time, and submitted its application without the required certificate, which was filed later. The Medical Council of India rejected the application on the ground that it was incomplete for want of the affiliation certificate. The Court noted that the petitioner had applied for the certificate well in time, and was constrained to make its application without the certificate due to the omission of the concerned university. The Supreme Court considered its earlier decisions in *Mridul Dhar (Minor) & Anr. vs. Union of India & Ors.*¹⁷ and *Priya Gupta vs. State of Chhattisgarh & Ors.*¹⁸ with regard to the time frame for establishment of new colleges, and thereafter held as follows:-

¹⁴ Supra (note 5)

¹⁵ Supra (note 3)

¹⁶ Supra (note 5)

¹⁷ (2005) 2 SCC 65

¹⁸ (2012) 7 SCC 433

“12. In the instant case, the appellant mindful of the aforesaid directions of this Court, had applied in due time adhering to the statutory timelines. Its application in terms of necessary documents was in fact complete but for the affiliation certificate from KUHS which was awaited by the appellant even after several reminders for its issuance to KUHS pressing upon the urgency of the matter. Since the appellant was not at fault but constrained due to the delay on the part of KUHS, the Council was expected to have appropriately considered the facts and circumstances of the case pleaded by the appellant and thereafter, reached a conclusion one way or the other on its merits instead of functioning in such mechanical manner by rejecting the application filed by the appellant and, thereafter, forwarding it to the Central Government with its adverse recommendations. In our considered opinion, this aspect of the matter ought to have been noticed by the writ court in writ petition as well as the writ appeal. Since that has not been done, in our considered view, we cannot sustain the impugned judgment and order [Royal Medical Trust v. Union of India, WA No. 671 of 2013, decided on 27-5-2013 (Ker)] passed by the High Court.”¹⁹

31. The judgment in *Ponnaiyah Ramajayam*²⁰ is to similar effect. The essentiality certificate of the State Government and the COA of the affiliating university were submitted by the petitioner after the last date for applications. The Supreme Court held as follows:-

“6. From the aforesaid facts narrated in brief, we do not find any fault, laches or negligence from the side of the petitioner in the matter of submission of application and other required documents. As noticed above, although the essentiality certificate and certificate of affiliation were filed on 10-9-2014, but after a month the application was

¹⁹ Emphasis supplied.

²⁰ Supra (note 3)

rejected by the Central Government merely on the ground that the same was not submitted before the cut-off date i.e. 31-8-2014. This reason given by the Central Government is highly unjustified. The Division Bench in the impugned judgment [Medical Council of India v. Amma Chandravati Educational and Charitable Trust, 2015 SCC OnLine Del 9245] also took note of the fact and held that the rejection of the application merely on the ground that the said documents were not submitted along with the application would not be proper since such pedantic approach serves no purpose.

7. For better appreciation, para 39 of the impugned judgment [Medical Council of India v. Amma Chandravati Educational and Charitable Trust, 2015 SCC OnLine Del 9245] is quoted hereinbelow: (Amma Chandravati Educational and Charitable Trust case [Medical Council of India v. Amma Chandravati Educational and Charitable Trust, 2015 SCC OnLine Del 9245] , SCC OnLine Del)

“39. However, when the deficient documents are available with the Central Government as on the date of consideration of the applications for reference to MCI for their recommendations, it appears to us that nothing precludes the Central Government to consider the applications on merits. Rejection of the applications in such circumstances merely on the ground that the said documents were not submitted along with the applications may not be proper since such pedantic approach does not serve any purpose. Therefore, we too agree that the Central Government in appropriate cases may exercise the discretion in favour of the applicants and consider the applications which are complete in all respects by the date of consideration under Section 10-A(2) of the MCI Act. Such consideration in our considered opinion cannot be found fault with since the same would not affect

the adherence to the statutory time schedule. However, the question with which we are concerned in the present case is whether the failure of the Central Government to exercise such discretion can be held to be erroneous and contrary to law and whether a positive direction can be issued by this Court to consider the applications of the petitioners particularly at the fag end of the statutory time schedule.”

8. *Prima facie, therefore, we are of the view that in the facts and circumstances of the case, the respondents have not discharged their duty in accordance with the provisions of the Act and the Rules made thereunder rather acted in a biased manner.*

9. *We, therefore, dispose of this application with a direction to the respondent Medical Council of India to consider the application and make its recommendation within a period of three weeks from today.”²¹*

32. The Division Bench judgment of the Kerala High Court in *S.R. Educational and Charitable Trust*²², cited by Mr. Bhatia, is on similar lines.

33. Having regard to the principles laid down by the Supreme Court in these judgments, the question to be considered is whether the petitioner had made diligent efforts to ensure that the NOC was obtained and submitted to the UOI.

34. Alongwith the application filed on 29.08.2020, the petitioner had filed an affidavit to the effect that it had already applied for the NOC. The NOC was, in fact, issued on 29.09.2020 and received by the petitioner on 01.10.2020. It was submitted on the very next working day, i.e. 05.10.2020. Significantly, the impugned order of the

²¹ Emphasis supplied.

²² Supra (note 6)

UOI was issued only thereafter, on 12.10.2020. The judgment in *Ponnaiyah Ramajayam*²³ notes that rejection after the date of submission of the required documents on the ground of their non-submission within time would be a pedantic and purposeless approach. Similarly, both in *Royal Medical Trust*²⁴ and in *Ponnaiyah Ramajayam*²⁵, the Court considered the diligence of the applicant. The facts of the present case also show no lack of diligence or effort on the part of the petitioner. In the facts of the present case, therefore, these judgments are squarely applicable and the rejection of the petitioner's application must be held to be unreasonable.

C. Other judgments cited

35. Although Ms. Dave did not cite any judgments in the course of oral arguments, the CCIM has placed a compilation of judgments on record. Suffice it to say that the judgments in *Mridul Dhar*²⁶ and *Priya Gupta*²⁷, included in the said compilation, have been considered by the Supreme Court in the subsequent judgment in *Royal Medical Trust*²⁸. The decision of the Supreme Court in *D.Y. Patil Medical College vs. Medical Council of India & Anr.*²⁹ distinguishes the judgments in *Royal Medical Trust*³⁰ and *Ponnaiyah Ramajayam*³¹, and clarifies that the aforesaid decisions did not contain any positive direction to start the college but only for processing of the application. Further, the

²³ Supra (note 3)

²⁴ Supra (note 5)

²⁵ Supra (note 3)

²⁶ Supra (note 17)

²⁷ Supra (note 18)

²⁸ Supra (note 5)

²⁹ (2015) 10 SCC 51

³⁰ Supra (note 5)

³¹ Supra (note 3)

judgment of the Supreme Court in *Medical Council of India vs. V.N. Public Health and Educational Trust & Ors.*³² concerns a case where the essentiality certificate was conditional, and the Court has, therefore, held that it was not an essentiality certificate in law at all. The judgment is, therefore, in my view, not applicable to the facts of the present cases, which are closer to the facts of the judgments in *Royal Medical Trust*³³ and *Ponnaiyah Ramajayam*³⁴.

36. The two judgments cited by Mr. Pandey, i.e. *Bhupinderpal Singh*³⁵ and *U.P. Public Service Commission*³⁶, concern dates on which eligibility is reckoned for the purposes of public employment. Having regard to the judgments on the issue of permission to medical colleges considered above, I do not consider it necessary to deal with the said authorities.

37. It may be mentioned that I have had occasion to deal with a similar issue in two recent judgments, both of which were decided against the petitioners on the facts of those cases. In *Tapasya Shiksha Samiti vs. Union of India & Ors.*³⁷, the rejection of the petitioner's application was on the ground that the COA had not been submitted. Although the COA was apparently issued prior to the last date of 30.09.2020, the petitioner was unable to demonstrate its diligence, or to show that the COA had been received by the UOI prior to the rejection letter dated 05.10.2020. The rejection was, therefore, upheld

³² (2016) 11 SCC 216

³³ Supra (note 5)

³⁴ Supra (note 3)

³⁵ Supra (note 9)

³⁶ Supra (note 8)

³⁷ W.P.(C) 9368/2020, decided on 06.07.2021

on a finding of lack of diligence on the part of the petitioner therein. The judgment in *RIMT University vs. Union of India & Anr.*³⁸ deals with a case where the NOC of the State Government was not submitted at all, on the contention that the applicant was constituted by a State legislation which obviated the need for an NOC from the State Government. The contention was rejected on the ground that the stipulations in the Act were inadequate to indicate compliance with the requirement of Form-4 of the Regulations. The question of substantial compliance was, therefore, decided against the petitioner. The facts of the present petitions are thus distinguishable from the facts of these two cases.

D. Relief

38. Although Ms. Dave submitted that the matters are now at a belated stage and relief ought not to be granted to the petitioners for the academic year 2021-22, learned counsel for the UOI and the CCIM both clearly stated on the last date of hearing [22.07.2021] that the process of scrutiny and inspection is still in progress, and the final permissions are likely to be granted to institutions for this year only after some time. The petitioners have been put in this position due to the failure of the UOI to adopt a reasonable course, consistent with the legal position. It is primarily for this reason that the consideration of their applications has been delayed. In these circumstances, the pendency of the petitions in this Court, which had to be adjourned from time to time *inter alia* due to the preoccupation of the Court, and

³⁸ W.P.(C) 5556/2021, decided on 15.07.2021

circumstances arising out of the prevailing pandemic, ought not, in my view, to prejudice the petitioners.

39. In *Dr Jagat Narain*³⁹, the Court specifically noted that no other objection had been raised for rejection of the petitioner's application and therefore issued directions for the college in question to admit students. That stage has not yet been reached in the present cases. The appropriate course, therefore, is to direct the UOI to forward the petitioners' applications to the CCIM, for further action in terms of the Regulations.

V. Conclusion

40. Having regard to the facts and circumstances of the present cases, the impugned decisions of the UOI rejecting and returning the petitioners' applications are set aside, and the UOI is directed to forward the applications to the CCIM for further consideration in accordance with law. It is made clear that the CCIM and the UOI are entitled to proceed in accordance with the Regulations, and the decision as to whether the petitioners are ultimately entitled to permission or not, is left to them.

41. The petitions are allowed in the aforesaid terms, but with no orders as to costs. Pending applications, if any, stand disposed of.

PRATEEK JALAN, J.

AUGUST 03, 2021

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³⁹ Supra (note 2)