

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

Sr. No.249

CWP-13846-2022 (O&M)

Reserved on : 02.08.2022

Pronounced on: 18.08.2022

Gian Sagar Educational and Charitable Trust

..... Petitioner

VERSUS

Union of India and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Nandan Jindal, Advocate and
Mr. Abhinandan Jindal, 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.

It is well known that Government departments pass orders without application of mind. Certain departments take the cake. The Dental Education Section of the Ministry of Health & Family Welfare, Government of India appears to be one of them.

Earlier, the petitioner was denied permission to set up a new dental college without granting any opportunity of hearing. Now, the application for first renewal has been rejected.

In the year 2007, a Dental College & Hospital named as Gian Sagar Dental College & Hospital was started. It was providing education in six specialties through the Bachelor of Dental Science Course (BDS

Course) and Master of Dental Science Course (MDS Course). The college was closed in the year 2017. Change of management took place in the year 2018 and a Medical College & Hospital for imparting education in MBBS Course was set up. It admitted the first batch of students in November, 2020 for the academic session 2020-21. Prior to that, on an application filed by the petitioner, the Punjab Government issued Essentiality Certificate/No Objection Certificate (NOC) dated 04.07.2019 for starting BDS Course with intake of 100 students. Baba Farid University of Health Sciences granted affiliation, whereafter, application dated 29.09.2020/30.09.2020 was filed under Section 10 (A) of the Dentists Act, 1948 (hereinafter referred to as the Act) for permission of the Central Government to set up a new dental college vide order dated 19.08.2021. The application was rejected by the Central Government necessitating filing of CWP-16991-2021 titled as Gian Sagar Educational & Charitable Trust Vs. Union of India. This writ petition was allowed vide order dated 07.10.2021. Order dated 19.08.2021 impugned therein, was quashed and the Central Government was directed to grant an opportunity of hearing to the petitioner therein before passing a fresh order. Consequently, personal hearing was granted on 08.11.2021. The Dental Council of India-respondent No.3 conducted an inspection on 23.11.2021. Permission of the Central Government was granted on 31.01.2022 for the academic session 2021-22. The Punjab Government extended the Essentiality Certificate/NOC dated 04.07.2019 vide its order dated 16.03.2022, based upon, provisional affiliation dated 02.02.2022 granted by the Baba Farid University of Health Sciences. Counseling for

the academic session 2021-22 was held from 04.04.2022 onward. The petitioner was part of the said counseling and managed to admit 18 students. Soon after receipt of provisional affiliation on 02.02.2022, the petitioner submitted an application dated 03.02.2022 for first renewal for academic session 2022-23. Request for inspection was made vide communication dated 15.03.2022 and inspection was conducted on 23-24.05.2022. For whatever it is worth, it may be noted, the impugned order records that respondent No.3 received the application for first renewal on 15.03.2022. For the purpose of this writ petition, this date is not being disputed. Respondent No.3 recommended first renewal vide its communication dated 26.05.2022, but the Central Government did not accept the recommendation. The communication dated 31.05.2022 was issued by it declining renewal permission on the ground that the time schedule laid down by 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) (8th Amendment) Regulations, 2006 (hereinafter referred to as the 2006 Regulations), did not permit grant of approval.

On behalf of Union of India, a short reply by way of affidavit has been filed. According to the contents thereof, the schedule to 2006 Regulations has been violated inasmuch as respondent No.3 had sent its recommendation on 26.05.2022 which was after 31.04.2022 i.e. the last date fixed as per the schedule. The recommendation was based upon an inspection conducted on 23-24.05.2022, the last date for which was

31.12.2021 as per schedule. On these grounds, the impugned order has been justified.

The third respondent i.e. Dental Council of India has also filed a short reply. It has been submitted that the last date for sending recommendations could not be abided by as permission to establish the college was given only on 31.01.2022. The inspection also could not be done in accordance with the fixed time schedule and considering the peculiar facts and circumstances of this case, the late inspection and recommendations were justified. In fact, late inspection was done after taking approval from the Central Government which was granted vide letter dated 13.05.2022.

Learned counsel for the petitioner has argued that in the peculiar facts and circumstances of this case, the time schedule could not have been adhered to. Thus, the Central Government should have modified the same for the petitioner by exercising the authority conferred on it by Note-2 to the Schedule to the 2006 Regulations. The third respondent has also stated in its reply that precedent for the same existed as per the case of Government Dental College of Jamnagar for the academic session 2021-22. First renewal for MDS Course in the specialty of Periodontology under EWS Scheme was inadvertently left out. The Dental Council of India had thus, sent its recommendation after the cut-off date and the Central Government had issued letter of permission also after the cut-off date. The petitioner was not to be blamed for delayed submission of application. The NEET (UG) Examination for the academic session 2022-23 was scheduled to be held on 17.07.2022,

resultantly, no delay in admission of students would take place. The time schedule fixed for admission of students would not be violated, thus, the impugned order was arbitrary as it suffered from non-application of mind.

Learned counsel for the Union of India has argued in accordance with the stand set-forth in the written statement. He has placed strong reliance upon Educare Charitable Trust Vs. Union of India and another, 2013 (16) SCC 474 to submit that the schedule being a part of the 2006 Regulations was statutory in nature and could not be violated. He has also placed reliance upon judgment dated 15.02.2011 passed in Writ Petition (Civil) No.319 of 2010 titled as Priya Darshni Dental College & Hospital Vs. Union of India and others and Priya Gupta Vs. State of Chhatishgarh and others, 2012 (7) SCC 433.

Learned counsel for the Dental Council of India has argued in accordance with the averments in the written statement.

The short issue for decision is, whether, order dated 31.05.2022 passed by the Central Government denying permission for first renewal suffers from non-application of mind?

According to the time schedule, applications must be received by the Central Government between 15th June to 17th July. They should be forwarded to the Dental Council of India latest by 31st July, who must carry out technical scrutiny and assessment and send its recommendation by 31st December. Two months' time is granted for compliance/personal hearing. Final recommendation must be made by the Dental Council of India by 30th April and letter of permission should be issued by 31st May. Note-2 to the Schedule gives power to the Central

Government to modify the time schedule for reasons to be recorded in writing in respect of any class or category of applicants.

In this case, this Court passed order dated 07.10.2021 in CWP-16991-2021 quashing order dated 19.08.2021 refusing permission for setting up a new dental college. Thereafter, the Central Government granted permission vide communication dated 31.01.2022 after receipt of recommendations from the third respondent and after granting an opportunity of personal hearing. The permission was for the academic session 2020-21. As per schedule, such a letter of permission should have been issued not later than 31st May, yet, permission was granted on 31.01.2022, without raising any objection regarding violation of the time schedule. Obviously, raising of an objection was not thought to be proper as counseling for the academic session 2020-21 had been delayed on account of Covid-19 pandemic and was to be held in April, 2022. The same logic should have prevailed while considering the application for first renewal because the same could have been filed only after grant of permission to establish a new college. The permission having been granted only on 31.01.2022, the application could not have been filed before 03.02.2022 as provisional affiliation was granted only on 02.02.2022. Assuming, that the application was received in the Dental Council of India on 15.03.2022, inspection could not have been done before 23-24.05.2022 as has been set out in its affidavit. Thus, the recommendation was bound to be delayed. The entire process commenced after the last date fixed by the schedule for submission of final recommendations. It was not humanly possible to abide by the time

schedule given in the facts and circumstances of this case. Fortunately, the reasoning adopted now was not adopted at the time of issuance of permission for establishing the dental college, otherwise, the petitioner may not have been able to admit the first batch of students also. Authority for modification of the schedule has been granted vide Note-2 to cater for such situations. A single person may constitute a class, if, the facts of the case so demand. It has been so held in Ramakrishna Dalmia Vs. Justice S.R. Tendolkar, AIR 1958, SC 538, Md. Shahabuddin Vs. State of Bihar and others (2010) 4, SCC 653 and many other cases, in the context of Article 14 of the Constitution of India. Under the circumstances, the Central Government should have invoked the discretion vested in it especially when a precedent had been brought to its notice by the Dental Council of India. Failure to do so reveals complete non-application of mind rendering the impugned order dated 31.05.2022 arbitrary.

Reliance upon Educare Charitable Trust (supra) cannot be of any assistance to the Union of India as the said case is distinguishable on facts. In that case, an existing dental college running from 2007-08 had applied for increase in admission capacity on 08.08.2012, even though, it did not possess recognition for the course with the existing capacity from the Central Government. An argument was raised that the delay in grant of recognition was only because the Dental Council of India forwarded the recommendation late to the Central Government resulting in crossing of the last date i.e. 31.12.2012. Under the circumstances, the Central Government should have exercised its power to extend the time schedule

granted by Note-2 of the 2006 Regulations. The argument was rejected on the ground that the application itself was not maintainable as a pre-condition for making such an application was possession of recognition. It was held that the last date for admitting students having expired, no relief could be granted to the petitioner therein and thus, the petition was rejected. It is thus, obvious that the facts are completely distinguishable as is the issue for consideration. Judgment in Priya Darshani Dental College (supra) is also distinguishable. In that case, the Central Government approved the fourth renewal sought by the petitioner subject to the condition of obtaining orders from the Supreme Court that the permission did not violate earlier orders of the Supreme Court not to grant permission beyond 15th July. It was held that placing of such a stipulation was highly improper and amounted to making the Courts party to decision making process. Accordingly, the condition was quashed. On merits, it was held that considering the facts and circumstances of the case, it would be deemed that the Central Government had exercised its powers under Note-2 to the schedule and had amended the time schedule. In fact, the final observation on merits would help the case of the petitioner. Priya Gupta (supra) is a case of cancellation of admission granted to the petitioners in a medical college for having practiced fraud with the concerned authorities. Consideration therein is of the time schedule for admission of students and not for grant of permission. The issue of renewal of permission has not been dealt with at all. The observations made therein regarding the importance of the time schedule are meant for the institutions, authorities and Government. They do not

interdict Courts from passing judgments to do complete justice between the parties.

For the reasons aforementioned, the writ petition is allowed. Impugned order dated 31.05.2022 (Annexure P-11) is quashed. There being no other objection relating to infrastructure or any qualification, approval for the session shall be deemed to have been granted by the Central Government with effect from the date of the judgment. Such an order is being passed as counseling for the academic session 2021-22 is scheduled to commence from mid August. The college of the petitioner be included in the forthcoming counseling.

(SUDHIR MITTAL)
JUDGE

18.08.2022
Ramandeep Singh

Whether speaking / reasoned	Yes
Whether Reportable	Yes