

DENTAL COUNCIL OF INDIA

A

S.R.M. INSTITUTE OF SCIENCE AND TECHNOLOGY AND ANR.

APRIL 5, 2004

[S. RAJENDRA BABU AND G.P. MATHUR, JJ.]

B

Education/Educational Institutions:

Writ Petition filed for grant of permission to start new M.D.S. Courses without insisting on requirement of essentiality certificate from State Government—High Court directing Government of India to process the application and also to do necessary inspection thereof—Government directing Dental Council of India to take appropriate action—High Court disposed of the petition directing the Government to pass appropriate order on the application after taking into consideration the inspection report—Writ Appeal dismissed by High Court—On appeal, Held: The process of the Courts/Law should not be allowed to subvert the law—Without essentiality certificate, application incomplete—High Court erred in directing the Government to process the incomplete application— Applicant/Institution should furnish the essentiality certificate/other requisite documents along with the application— Dental Council of India/ Government of India should process the application, if so received, in accordance with law and pass appropriate orders.

C

D

E

First respondent-Institute filed a writ petition for quashing order dated 6.6.2003 of the Ministry of Health and Family Planning, Government of India and also to direct them to process their application proposing to start six new M.D.S. Courses in the Institute without insisting on furnishing essentiality certificate from the State Government. High Court, vide its interim order, directed the Government of India to process the application. Government of India asked Dental Council of India to take necessary action accordingly. High Court finally disposed of the petition, directing the Government of India to pass appropriate orders. Writ appeal was dismissed by the High Court. Hence the present appeals.

F

G

Appellant-Council contended that essentiality certificate is a pre-requisite and need to be furnished along with the application proposing to start new course; that the Dental Council being a statutory body the

H

A State Government undertake certain obligation while issuing the essentiality certificate, thus both of them ought to have been impleaded as parties in the proceedings; and that unless all the formalities completed as per the Regulations and confirmed by the Dental College, no permission could be granted to start a new course.

B First-respondent submitted that the appellant was bound to forward its report to the Government of India in terms of Section 10A(3) of the Dental Act; that they had already incurred huge expenditure on staff and maintenance for starting the proposed courses; that in the inspection report no deficiency has been pointed out by the Council/Government of India; and that essentiality certificate would not serve any useful purpose at the belated stage, and thus should not be insisted upon.

Partly allowing the appeals, the Court

D HELD: 1.1. The High Court made an interim order to complete the processing of the application including inspection even in the absence of the permission or essentiality certificate from the State Government in terms of the regulations framed by the Dental Council of India. The process of the Courts or the process of law should not be allowed to subvert the law. [760-A-B]

E 1.2. The High Court ought not to have made an interim order to process the application even in the absence of the permission or essentiality certificate as the application would not be complete without being accompanied by permission or essentiality certificate by the State Government along with certain other requisite documents. An incomplete application cannot be processed either by the Central Government or the Dental Council. To decide such matter even in the absence of the Dental Council and the State Government as if they have no role to play in the matter is only to by-pass the law, when statutory duties have been assigned and each one of those authorities have got separate roles to play. It may be that the Government of India takes the ultimate decision in the matter but to state that these authorities only aid the Government of India and hence it is not necessary to make them a party to the proceedings is not at all appropriate. [760-C-E]

H 1.3. In the facts and circumstances of the case, it would be more appropriate to process the application of the first respondent on furnishing the permission or essentiality certificate and other relevant documents as

provided under the relevant regulations and the scheme framed for the purpose of filing an application for starting a new or higher course in the college. On furnishing such permission or essentiality certificate, the Dental Council and the Government of India should take appropriate steps as provided under the relevant Act and Rules or Regulations, process the application and pass appropriate orders. [760-G-H]

Islamic Academy of Education and Anr. v. State of Karnataka and Ors., [2003] 6 SCC 697 and *State of Maharashtra v. Indian Medical Association & Ors.*, [2002] 1 SCC 589, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2036-37 of 2004.

From the Judgment and Order dated 23.12.2003 of the Madras High Court in W.A. No. 4068/2003 and W.A.M.P. No. 6703 of 2003.

Mukul Rohtagi, Additional Solicitor General, A. Mariarputham, Maninder Singh, Mrs. Prathiba M. Singh and Angag Midhra for the Appellant.

P.P. Rao. Sanjay R. Hegde, Mahalaxmi Pavani, Anil K. Mishra, Malikarajuna Reddy and Ms. B. Saraswati for the Respondents.

The Judgment of the Court was delivered by

RAJENDRA BABU, J. Leave granted.

A writ petition was filed by the first respondent seeking for quashing an order dated 06.06.2003 made by the Ministry of Health and Family Planning, Government of India and direct it to process the proposal dated 28.03.2003 of the first respondent to start MDS course in six specialties in its Dental College and grant permission for the academic year 2003-2004 without insisting on permission or essentiality certificate from the State Government of Tamil Nadu and pass such further orders as the High Court may deem fit. Curiously enough, the High Court made an interim order in the following terms:-

“Considering the facts and circumstances of the case, I direct the respondent to complete the processing of the application including inspection and not to pass orders until further orders from this Court. The respondent is directed to carry out the said exercise within a period of four weeks from the date of receipt of a copy of this order.”

A On passing of the interim order, the Government of India sent a letter to the Dental Council adverting to the interim order made by the High Court to take further necessary action in terms of the order of the High Court. However, it was stated that the findings of the inspection ought to be kept in a sealed cover until the final orders of the High Court are passed in the matter.

B

Thereafter, on 25.9.2003 the High Court made an order stating as follows:

C

“In view of the consensus among counsel, I am of the view, *without going into the merits of the case*, the respondent Government of India may be directed to pass appropriate orders within a period of four weeks from the date of receipt of copy of this order.”

Further a direction was also issued to the Dental Council in the following terms:

D

“Hence a direction is hereby issued to the Dental Council to forward the inspection report prepared as per the direction of this Court along with its recommendations to the Ministry of Health and Family Welfare, New Delhi forthwith on production of copy of this order and the respondent is hereby directed to pass appropriate orders on the report and recommendations of the Dental Council in accordance with law within a period of four weeks from the date of receipt of copy of this order.”

E

F With these observations, the writ petition was disposed of. It was against this order that a writ appeal was filed, which was dismissed. That order was result of consensus amongst counsel and hence these appeals by special leave.

G

Establishment of new Dental Colleges or opening of higher courses of study and increase of admission capacity in Dental Colleges are governed by appropriate regulations framed by the Dental Council of India in terms of Section 10A read with Section 20 of the Dentists Act, 1948 with the previous approval of the Central Government. The scheme relating to Section 10A(2)(a) and (b) of the Dentists Act is set out in the regulations itself. For starting higher courses in dental subjects in Dental Colleges, the applicant should conform to the guidelines prescribed by the Dental Council of India and they should apply to the Central Government for permission along with the State Government's permission, University affiliation and in conformity with the

H

Dental Council of India regulations and documentary evidence to show that the applicant has additional financial allocation and provision for additional space for additional equipment and infrastructural facilities and provision for recruitment of additional staff as per the relevant norms or regulations. The Central Government on the recommendation of the Dental Council of India may issue a letter of intent for starting higher courses with such condition or modification on the original proposal as may be considered necessary.

The learned Additional Solicitor General submitted on behalf of the Dental Council that permission or essentiality certificate by the State Government has to be furnished along with application proposing to start a higher course in the Dental College; that the Dental Council is a statutory body constituted under the Dentists Act and has been attached with statutory duties and hence ought to have been impleaded as a party in the proceedings; that when the permission or essentiality certificate had to be given by the State Government with certain obligations arising thereunder such as assessment of the desirability and feasibility, it was also necessary to implead the State Government as a party; that in the absence of these two parties, the High Court ought not to have granted any relief to the first respondent, either interim or final. The learned counsel also emphasised that unless all requirements as per the Regulations are conformed to by the Dental College, no permission can be granted to start a higher course.

Sri P.P. Rao, learned Senior Advocate appearing for the first respondent, submitted that the appellant having complied with the directions of the learned Single Judge made in the interim order without demur cannot now complain against the final order directing it to forward its report to the Central Government and the Dental Council of India is bound to forward its report with its recommendations to the Government of India in terms of Section 10A(3) of the Dentists Act, 1948; that, the order made by the learned Single Judge is a consent order to which the Union of India was a party and the Dental Council was only an advisory body which is bound to consider the scheme forwarded to it by the Government of India; that the first respondent has invested about Rs.10 crores in the college for starting MDS course and is spending about Rs.10 lakhs a month on staff and maintenance; that it has already established the infrastructure and reports of inspection are available with the authorities; that no deficiency has been pointed out by any one and it would serve no useful purpose to insist upon the permission or essentiality certificate by the Central Government at this belated stage in the case and for this purpose placed reliance on the decision in *Thirumuruga Kirupananda*

A *Variyar thavathiru Sundara Swamigal Medical Educational & Chairtable Trust v. State of Tamil Nadu and Ors.*, [1996] 3 SCC 15.

In this case, the High Court made an interim order to complete the processing of the application including inspection even in the absence of the permission or essentiality certificate from the State Government in terms of the regulations framed by the Dental Council of India. The process of the courts or the process of law should not be allowed to subvert the law. In cases of recognition of dental colleges or starting of higher courses, this Court has in several cases including *Islamic Academy of Education and Anr., v. State of Karnataka and Ors.*, [2003] 6 SCC 697; *State of Maharashtra v. Indian Medical Association and Ors.*, [2002] 1 SCC 589, etc. held that they are of mandatory character and have got to be complied with. When that is the position in law, the High Court ought not to have made an interim order to process the application even in the absence of the permission or essentiality certificate because the application will not be complete without being accompanied by permission or essentiality certificate by the State Government along with certain other documents. An incomplete application cannot be processed either by the Central Government or the Dental Council. The argument advanced on behalf of the respondents will set at naught the law that in certain cases the courts need not insist on production of permission or essentiality certificate of the State Government, particularly, when the regulations insist upon the same. To decide such a matter even in the absence of the Dental Council and the State Government as if they have no role to play in the matter is only to by-pass the law, when statutory duties have been assigned and each one of those authorities have got separate roles to play. It may be that the Government of India takes the ultimate decision in the matter but to state that these authorities only aid the Government of India and hence it is not necessary to make them a party to the proceedings is not at all appropriate or acceptable to us. However, that would not be the end of the matter. In the present case, pursuant to the interim direction issued by the High Court, inspection has taken place and a report has been submitted by an inspection team appointed by the Dental Council of India which is kept in a sealed cover by the Dental Council of India. It would be more appropriate to process the application on the first respondent furnishing the permission or essentiality certificate and other relevant documents as provided under the relevant regulations and the scheme framed for the purpose of filing an application for starting a new or higher course in the college. On furnishing such permission or essentiality certificate, the Dental Council and the Government of India shall take appropriate steps as provided under the relevant

Act and rules or regulations. Sri P.P. Rao submits that a time of eight weeks **A**
may be granted to furnish the permission or essentiality certificate to the
Government of India. We, therefore, direct that if such permission or
essentiality certificate issued by the State Government is furnished within a
period of eight weeks, the proposal of 1st respondent for starting new/higher
courses shall be processed by the Dental Council of India and the Government **B**
of India and appropriate orders made thereon within eight weeks thereafter.

The appeals are, therefore, partly allowed and the order made by the
High Court is modified as aforesaid.

S.K.S.

Appeals partly allowed.