

POONAIYAH RAMAJAYAM INSTITUTE OF SCIENCE AND A
TECHNOLOGY TRUST

v.

MEDICAL COUNCIL OF INDIA AND ANOTHER B
(Special Leave Petition (Civil) No.14838 of 2015)

SEPTEMBER 17, 2015

[M.Y. EQBAL AND C. NAGAPPAN, JJ.]

*Medical Council of India Act, 1956 – s.10A – C
Establishment of new medical college for the academic year
2015-2016 – Application u/s. 10A – Rejected on the ground
that Essentiality Certificate and Certificate of Affiliation not
submitted before the cut-off date – Petitioner had submitted
the application but the essentiality certificate was issued late D
and was subsequently submitted – Writ petition thereagainst
allowed with the direction to the Medical Council to consider
the application of the petitioner – However, Division Bench
set aside the order – SLP before this Court – Application
disposed of with a direction to the Medical Council of India to E
consider the application and make its recommendation within
the stipulated period – Submission of inspection report in a
sealed cover by Medical Council – Challenge to – Held:
Executive committee of the council noted many deficiencies
in the report and returned the application for establishment F
of a new Medical College to the Central Government
recommending disapproval of the scheme u/s. 10A for the
academic year 2015-2016 and 2016-2017 – In the facts and
circumstances of the case, no directions can be issued to G
the respondent to consider the case of the petitioner, since
the matter is yet to be decided by the Central Government –
However, no opinion is expressed with regard to the
recommendation made by the Council to the Central
Government disapproving the scheme for the academic year H*

A 2016-2017 also – Petitioner to move the appropriate forum as against the decision of disapproval for the academic year 2016-2017 – Establishment of Medical College Regulation (Amendment), 2010 – cl 8(3)(1)(d).

B *Royal Medical Trust (Regd.) and Another vs. Union of India and Another*, reported in **2015 (9) SCALE 68**; *Padmashree Dr. D.Y. Patil Medical College versus Medical Council of India and Another* **2015 (9) SCALE 428** – referred to.

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Case Law Reference

2015 (9) SCALE 68 referred to. **Para 11**

2015 (9) SCALE 428 referred to. **Para 13**

D CIVIL APPELLATE JURISDICTION : Special Leave Petition No. 14838 of 2015

From the Judgment and Order dated 05.05.2015 of the High Court of Delhi at New Delhi in LPA No. 234 of 2015

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Dr. Rajeev Dhawan, Akbar Ali, G. Umapathy, Rakesh K. Sharma, R. Mekhala for the Petitioner.

Vikas Singh, Gaurav Sharma, Prateek Bhatia for the Respondents.

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The Order of the Court was delivered by

M. Y. EQBAL, J. 1. We have heard Dr. Rajeev Dhawan, learned senior counsel appearing for the petitioner and Mr.

G Vikas Singh, learned senior counsel appearing for Respondent No.1 – Medical Council of India (MCI).

2. Aggrieved by the judgment and order dated 5th May, 2015 passed by the Division Bench of the Delhi High Court in

H L.P.A. No. 234 of 2015, the petitioner filed this special leave petition. .

3. By the impugned judgment, the Division Bench allowed the appeal filed by the respondent-Medical Council of India and set aside the judgment passed by the learned Single Judge in the Writ Petition. A

4. Indisputably, the petitioner submitted application, as required under Section 10A of the Medical Council of India Act, 1956 (hereinafter referred to as 'the Act') for establishment of new medical college for the academic year 2015-2016. The Essentiality Certificate and the consent of affiliation were admittedly not annexed along with the application filed under Section 10A of the said Act. According to the petitioner, the Essentiality Certificate was issued on 28.8.2014 and the consent of affiliation was communicated on 30.8.2014. After about 10 days i.e. 10.9.2014, the petitioner submitted Essentiality Certificate and Certificate of Affiliation. The application so submitted by the petitioner was, however, rejected on 15.10.2014 on the ground that the certificates aforesaid were not submitted before the cut-off date i.e. 31.8.2014. By the said order, the petitioner was given liberty to apply for the next academic year. B
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5. Against the aforesaid order, the petitioner moved the Delhi High Court by filing Writ Petition being Writ Petition No. 7424 of 2014. The learned Single Judge, after hearing the parties, by judgment dated 8.4.2015 allowed the Writ Petition and directed the Medical Council of India to consider the application of the petitioner and make recommendations. F

6. The respondent-Medical Council of India assailed the impugned order passed by the learned Single Judge by filing a Writ Appeal being Letters Patent Appeal No. 234 of 2015. The Division Bench, by a reasoned order, allowed the appeal and set aside the judgment and order passed by the learned Single Judge. The Division Bench rejected the plea of the petitioner based on the need for medical assistance in the G
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A country and the resulting disuse of the infra structure for one year. The petitioner-Trust dissatisfied with the order passed by the Division Bench, filed the instant special leave petition.

7. The matter was firstly heard on 15th July, 2015 by this
B Bench and after taking note of the facts of the case and sequence of events, disposed of the application with a direction to the respondent-Medical Council of India to consider the petitioner's application and make its recommendation within a period of three weeks from that day. The matter was directed
C to be listed after four weeks to enable the respondent-Medical Council of India to submit the recommendation in a sealed cover.

8. The relevant portion of the order dated 15th July, 2015
D is reproduced herein below:-

"4. Indisputably, the petitioner as far back as on
25.8.2014 submitted application as required under
Section 10A of the Indian Medical Council Act, 1956
E for the establishment of the Institute. The Essentiality Certificate was issued by the State of Tamil Nadu only on 28.8.2014. The said communication was received by the petitioner only in the 1st week of September, 2014. Similarly, the
F Tamil Nadu MGR University granted Consent of Affiliation for starting of MBBS Degree course in the new medical college. On receipt of this communication, the petitioner immediately on 10.9.2014 submitted Essentiality Certificate and
G Certificate of Affiliation. Curiously enough after about a month, the respondent no.2 – Central Government rejected the application on the ground that Essentiality Certificate was not submitted before the cut-off date i.e. 31.8.2014.

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5. Aggrieved by the said rejection of application, the petitioner filed writ petition being W.P. No.7424 of 2014. The learned Single Judge of the High Court by a detailed judgment and order allowed the writ petition and directed the respondent no.1 MCI to consider the case of the petitioner. Instead of doing so, the respondent no.1 being dissatisfied assailed the said judgment of the learned Single Judge by filing writ appeal. The said appeal was heard and disposed of on 5th May, 2015. The Division Bench, after giving reasons, refused to uphold the direction issued by the learned Single Judge for processing the application of the petitioner and consequently the direction was set aside.

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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 application was 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 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 application would not be proper since such pedantic approach serve no purpose. For better appreciation, paragraph 39 of the impugned judgment is quoted hereinbelow:

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A “39. However, when the deficient documents
are available with the Central Government as
on the date of consideration of the
applications for reference to the MCI for their
recommendations, it appears to us that
B 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
C 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
D applicants and consider the applications
which are complete in all respects by the date
of consideration under Section 10A(2) of the
MCI Act. Such consideration in our considered
opinion cannot be found fault with since the
E 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
F 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
G particularly at the fag end of the statutory time
schedule.”

7. 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
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accordance with the provisions of the Act and Rules made thereunder rather acted in a biased manner. A

8. 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. B

9. Let the matter be listed after four weeks to enable the respondents to submit the recommendation in a sealed cover.” C

9. In compliance of the aforesaid direction, the respondent-Medical Council of India conducted inspection and submitted its report in a sealed cover. Thereafter the matter was again listed before us for hearing. D

10. Dr. Rajeev Dhawan, learned senior counsel appearing for the petitioner, assailed the impugned report submitted by the Medical Council of India on various grounds including that the same is arbitrary and biased. E

11. Dr. Rajeev Dhawan has drawn our attention to the Inspection Report and submitted that as a matter of fact, the Medical Council of India was fully aware that the inspection was carried out for the academic year 2015-2016 and, therefore, there is no reason why the petitioner-Trust shall not be granted permission for the academic year 2015-2016. Dr. Dhawan further drawn our attention to the decision rendered by a three-Judges Bench of this Court in the case of **Royal Medical Trust (Regd.) and Another vs. Union of India and Another**, reported in 2015 (9) SCALE 68, and submitted that the respondent-Medical Council of India totally failed in the discharge of their duties and acted in a totally biased manner. Dr. Dhawan further submitted that the decision of Medical F
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- A Council of India recommending to cancel the prayer for approval not only for the academic year 2015-2016 but also for the academic year 2016-2017 is wholly illegal and arbitrary. The petitioner, therefore, reserves its right to challenge the said recommendation before the appropriate forum in accordance with law.

12. On the other hand, Mr. Vikas Singh, learned senior counsel appearing for the respondent-Medical Council of India, drawn our attention to the inspection report submitted by the Medical Council of India and contended that in addition to various deficiencies which are not remediable, fake faculty was also found in the said Institution.

13. Mr. Vikas Singh further submitted that the instant special leave petition was heard along with Special Leave Petition (Civil) No. 15043 of 2015 titled as ***Padmashree Dr. D.Y. Patil Medical College versus Medical Council of India and Another*** and in the similar facts and circumstances of the case, this Court, by a reasoned judgment dated 31st August, 2015 dismissed the special leave petition mainly after considering the statutory time schedule which is already over and held that no positive direction can be issued for the academic year 2015-2016.

14. Before we consider the rival contentions made by the learned counsel, we would like to refer the report and the decision of the executive committee of MCI dated 5.8.2015 in compliance to our order dated 15.7.2015. From the said report, it reveals that the executive committee of the council considered the council's assessment report and noted many deficiencies. Some of the major deficiencies are extracted hereinbelow:-

"1) Deficiency of teaching faculty is 83% as detailed in the report.

2) Shortage of residents is 100% as detailed in the report. A

4) As many as 42 Senior/Junior Residents as detailed in the report have provided wrong information in the Declaration Form regarding address proof as during round it was found that no staff member/faculty/resident doctor is staying/residing in the staff quarters/residents' hostel in the campus; B

6) OPD: Attendance was 150-175 on day of assessment which is grossly inadequate. Institute has given figure of 707 which is inflated. When the assessors arrived in the morning, few patients were found. After some time, during rounds, around 150 people were found sitting in front of registration counters, with only 3-4 patients actually registering at counters. When visited again in the afternoon, the same people were found sitting there without any intention of registering at OPD counter. Many patients in the OPD were having very minor/fake complaints for which normally no person will come to the hospital. In departmental OPD registers, no information regarding admitted patients was given. In Medical OPD, at 1 p.m., 61 patients were claimed to have been seen but there was not a single patient was admitted. There was no display board of OPD timings, doctor's name, Unit information. C
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7) There was NIL patient in Casualty on day of assessment. F
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12) There were NIL Major & Minor operations in the hospital on day of assessment.

13) There were NIL Normal Delivery & Caesarean Section on day of assessment. H

- A 16) MEU: It is not furnished.
- 24) ICUs: There was NIL patient in ICCU & SICU and only 1 patient in NICU/PICU on day of assessment.
- B 31) There is Engineering college in the same campus. Engineering books & instruments were found in some rooms of medical college hostel/ quarters. It appears as if the hostels & quarters shown for Medical College are actually used by Engineering College.
- C 32) Dean has refused to sign the report after reading it for 1 hour due to instruction from the management.
- D 33) Other deficiencies as pointed out in the assessment report.”

E 15. The executive committee, therefore, decided to apply clause 8(3)(1)(d) of the Establishment of Medical College Regulation (Amendment), 2010 and further decided to return the application for establishment of a new Medical College of the petitioner to the Central Government recommending disapproval of the scheme under Section 10A of IMC Act, 1956 for the academic year 2015-2016 and 2016-2017.

F 16. Indisputably, now it is for the Central Government to approve or disapprove and to take a final decision on the report of the executive committee of the Council.

G 17. The crucial question that falls for consideration is as to whether this Court having regard to the facts of the case and the decision taken by the Council, which is not even looked into by the Central Government, this Court can issue any direction to consider the grant of permission to the petitioner for the academic year 2015-2016.

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18. Another Special Leave Petition being SLP (C) No. 15043 of 2015 was heard along with this case at the preliminary stage and decided by judgment dated 31.08.2015, in which one of us (M.Y. Eqbal, J.) was a member of the Bench. In that case, this Court elaborately discussed the time schedule which has to be strictly adhered and followed in catena of decisions. After discussing the ratio laid down in number of cases, the Bench observed:-

“20. On an analysis of the aforesaid decisions, it is crystal clear that the time schedule is required to be strictly observed. Hence, it would not be appropriate to issue any direction for consideration of petitioner’s case for the ongoing academic session 2015-16 in which inspection is yet to be made. It is too late in the day to direct inspection for the session 2015-16 as all the dates fixed in the time schedule are over and fixation of time schedule has a purpose behind it and from a particular date the session has to commence and part of seats to be filled by a competitive examination held on all-India basis. Any relaxation in the time schedule would make holding of examinations on an all India basis a farce and several complications would arise. Everything cannot be allowed to go haywire. The entire curriculum would be unsettled in case breach of time schedule is permitted. The power given to Central Government to relax can be exercised in exceptional circumstances and that too without disturbing the academic session. The decision-making process after inspection has various steps and it cannot be ordered to be done in haste resulting in sub-standard education and half-baked doctors.

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A 21. On behalf of the petitioner, reliance has been placed on a decision of this Court in S.L.P. [C] No.14838/2015 – Ponnaiyah Ramajayam Institute of Science and Technology Trust v. Medical Council of India & Anr. (decided on 15.7.2015) wherein this Court has directed the inspection to be made and to submit the recommendation in a sealed cover after four weeks to this Court. No doubt about it that the application which was filed was for the academic session 2015-16 but this Court has not decided the question whether inspection would enure for the benefit of the ongoing academic session 2015-16 and in case on inspection it is decided to recommend the prayer made whether it would be for academic year 2016-17 or for the ongoing session 2015-16 and also question of breach of time schedule. What has not been decided, cannot be deduced by inferential process. What would be the ultimate recommendation on inspection, can also not be anticipated. The requisite Committee of the MCI and Central Government have to ultimately consider the report/recommendations. Various aspects including time schedule are required to be taken into consideration for issuance of any positive direction as to session.

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G 23. Considering the statutory time schedule and that the same is already over and in the facts and circumstances of the case, it would not be appropriate to direct inspection to be made and thereafter a decision to be taken for the current academic session 2015-16 as that would be in breach of the law laid down in various decisions of

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this Court which is binding. Thus, we direct that the application which has been submitted by the college for the academic session 2015-16 be considered for the next academic session, subject to fulfilment of other requisite formalities, as may be necessary, and thereafter the MCI shall conduct an inspection well-in-time as per the time schedule fixed under the Regulations of 1999. The Special Leave Petition is dismissed with the aforesaid modification. Ordered accordingly”

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19. In the facts and circumstances of the case, no directions can be issued to the respondent to consider the case of the petitioner-college for the academic year 2015-2016 and 2016-17, since the matter is yet to be decided by the Central Government. However, we do not express any opinion with regard to the recommendation made by the Council to the Central Government disapproving the scheme for the academic year 2016-2017 also. Hence, it is for the petitioner to move the appropriate forum as against the decision of disapproval for the academic year 2016-2017.

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20. With the aforesaid directions and observations, this special leave petition stands disposed of.