

SUPREME COURT OF INDIA

Priya Darshni Dental College

Vs.

Union of India & Ors.

WP.(Civil) No.319 of 2010

(R.V. Raveendran and A.K.Patnaik,JJ.,)

15.02.2011

ORDER

R.V. Raveendran,J.,

1. Issue rule nisi. Heard finally by consent. As these cases involve a similar issue, they are disposed of by this common order. For convenience we will refer to the facts from the lead matter [W.P.(C)No.319 of 2010].

2. The Central Government, by order dated 12.7.2007, granted permission to the petitioner college, under Section 10A(4) of the Dentists Act, 1948 ('Act' for short) for establishing a new Dental College with an intake of 100 students, commencing from the academic year 2007-08. Thereafter, by orders dated 18.8.2008 and 23.6.2009, the Central Government granted renewal of permission for the academic years 2008-09 and 2009-10.

3. For the academic year 2010-2011, the petitioner made an application for fourth year renewal permission, to the Dental Council of India ('DCI' for short) on 24.2.2010 enclosing therewith a form containing the particulars of teaching staff, infrastructure etc. as also a demand draft for Rupees one lakh towards the inspection fees. In pursuance of it, the DCI Inspectors carried out an inspection on 26.4.2010 and submitted a Joint Inspection Report to DCI. Based on the said report, the DCI by communication dated 17.5.2010 informed the petitioner college about the deficiencies in faculty, equipments/instruments and library, with reference to the DCI Norms, and called upon the college to rectify the deficiencies and furnish a compliance report within five days.

4. The petitioner college sent a Compliance Report dated 19.5.2010 to DCI informing them about the action taken to rectify the deficiencies and also giving certain clarifications to show that some of the deficiencies pointed out were not deficiencies at all. DCI considered the said reply of the petitioner College and made a recommendation dated 12.6.2010 to the Central Government not to renew the permission for the fourth year of the BDS Course for the academic year 2010-2011, in view of the deficiencies noted therein.

5. The central government, sent a general circular dated 21.6.2010 to all Dental Colleges in whose cases the DCI had recommended that permission should not be renewed, including the petitioner college, informing that a three-member Committee under the Chairmanship of the Director General of Health Services will give a personal hearing to them, as required under the first proviso to Section 10A (4) of the Act to consider the proposal for renewal of permission for the BDS Course for the academic year 2010-2011, on 23rd, 24th and 25th June, 2010. The said letter was dispatched on 22.6.2010 and reached the petitioner college on 25.6.2010, making it impossible for the petitioner college situated at Chennai (Tamil Nadu) to send its Principal/Representative for the personal hearing. In the circumstances, the petitioner college by letter dated 25.6.2010, requested for such hearing. However, such hearing was not granted. By communication dated 15.7.2010, the Central Government communicated its decision not to grant renewal permission to the Dental College for the academic year 2010-11. A consequential direction was issued to the college not to admit students for the academic year 2010-11.

6. Feeling aggrieved, the petitioner approached the Madras High Court by filing a writ petition on 19.7.2010 praying that the order of rejection dated 15.7.2010 be quashed and seeking a direction to the Central Government to permit the College to admit fresh students for BDS course for the academic year 2010-11 and also seeking a direction to the Central Government to grant renewal permission to conduct the fourth year of the BDS course during the academic year 2010-11. The said writ petition was allowed by the Madras High Court by order dated 29.7.2010. The High court held that dispatch of the letter dated 21.6.2010 on 22.6.2010 fixing the personal hearing on 23rd, 24th and 25th June, 2010, did not amount to grant of a hearing at all, if the letter reached the College on 25.6.2010, after the time fixed for hearing. It, therefore, held that the mandatory requirement of reasonable opportunity of being heard, required under the proviso to Section 10A (4) of the Act was not complied with. As a consequence, the High Court remitted the petitioner's application for renewal of permission for 2010-2011, for re-consideration by the Central Government, by giving a due hearing to the petitioner. The High Court also directed the three-member Committee constituted by the Central Government to hear the petitioner on 6.8.2010, consider the documents furnished by it and pass final orders. It also reserved liberty to DCI, if necessary, to make further inspection to verify the correctness of the compliance report submitted by the petitioner college and send a further report so as to reach the three-member Committee of the Central Government before 6.8.2010.

7. In pursuance of the said order, the three-member Committee gave a hearing to the petitioner college on 6.8.2010. Thereafter, the Committee recommended the renewal of permission for the fourth year of BDS Course for the academic year 2010-11. Accepting the recommendation, the Central Government sent a communication dated 17.8.2010 to the petitioner college granting renewal of permission subject to a condition. We extract below the relevant portion of the said order:

"The Central Government has accepted the above recommendation of the Committee and the permission of the Central Government is granted to Priyadarshini Dental

College and Hospital, Thiruvallur Taluk & Dist. Tamil Nadu, for admission of 100 students in the 4th year of BDS course for the academic year 2010-11. However, since the last date of grant of such permission has already expired on 15.7.2010, the above Central Government permission to the institute is subject to the condition that the institute obtains the orders of Supreme Court to the effect that such permission would not violate the earlier order of the Hon'ble Supreme Court to the effect that 15th July would be last date for grant such permission in the relevant academic year."

(emphasis supplied)

The DCI also sent a communication dated 23.8.2010 to the petitioner requiring compliance with the communication dated 17.8.2010 sent by the Central Government.

8. In compliance with the direction of the Central Government, the petitioner college has approached this Court by filing this writ petition, seeking a direction that the conditional permission granted to it by the Central Government on 17.8.2010 under Section 10A(4) of the Act for the academic year 2010-11, be made "absolute" by declaring that such permission granted by the Central Government, did not violate the order of this court in *Mridul Dhar vs. Union of India* ¹-- (which according to the Central Government, directed that 15th July should be the last date for grant of such permission). While issuing notice on the writ petition, this Court granted interim stay of the said condition requiring the 'approval' of this Court.

9. Learned Additional Solicitor General appearing for the Central Government and the learned counsel appearing for DCI submitted that the High Court, in a writ petition filed by the petitioner, had held that there was a violation of the first proviso to Section 10A(4) of the Act by the Central Government failing to provide a hearing to the petitioner before refusing to renew the permission; that as a consequence, the High Court directed the Central Government to give a fresh opportunity of hearing to the petitioner college; that such a direction was issued on 29.7.2010, after the last date (15th July) for grant of permissions had expired; that the Central Government gave a hearing as directed by the High Court and being satisfied that the petitioner had complied with the requirements, promptly took a decision reversing the earlier decision and granted the renewal of permission; and that as the Central Government felt that its order granting permission in August may violate the requirement in *Mridul Dhar* that the last date for issue of permission should be 15th July, the Central Government imposed the condition that its permission was subject to the Dental College obtaining an order from this Court, approving the grant of permission beyond 15th July. It was submitted by the Central Government in its counter affidavit dated 10.12.2010 filed in this writ petition that as the Ministry did not want to violate the order of this Court in *Mridul Dhar*, by granting any permission after 15th July, it had "incorporated the condition in the letters of permissions issued after 15.7.2010 but before 30.9.2010". It was submitted that the delay was not attributable either to the petitioner college or DCI or the Central Government; and that on the facts and circumstances of the case, the Central Government and the DCI have no objection for grant of the relief prayed by the petitioner.

Issue of Propriety

10. But the question that arises for consideration is, whether on such concession, or by mutual consent, the relief sought in the petition should be granted. The matter involves issues of propriety and violation of the constitutional scheme relating to separation of powers and independence of judiciary. First is whether it was proper for the Ministry to issue an order granting renewal of permission with a condition that petitioner should seek approval of its order from this Court, so as to `regularize' its order. Second is whether it would be proper for this court to `approve' the Central Government's order granting renewal of permission, as a part of the `decision making process' so as to `regularize' the delay in making the order. The executive power of the Central Government to grant permission or renewal of permission under section 10A of the Act, is not subject to the control or supervision of this Court, nor subject to confirmation or approval by this Court. The Central Government is bound to consider and pass orders granting or refusing permission in terms of section 10A of the Act, taking note of the recommendations of DCI, by following the procedure prescribed by the Act and DCI regulations. Neither this court, nor any other court, has any role to play in the decision making process relating to grant or refusal of permission under the Act, by the Central Government.

11. A stipulation by an authority entrusted with the power to consider and grant permissions/recognitions, while granting such permission/recognition, that the applicant should seek and obtain an order from a court, approving the grant of such permission/recognition, as a condition precedent to give effect to such grant, would be improper and irregular. It amounts to failure to take responsibility or shirking the responsibility in exercising the power in accordance with the Act and the Regulations. Further, such a requirement by the executive, amounts to attempting to make the judiciary a part of the decision making process by the executive. Judiciary has no role to play under the Act or Rules in granting permission or renewal of permission. The power of judicial review is not intended to be exercised to grant `advance rulings of administrative approvals' to validate executive orders. Neither Central Government, nor the DCI, can shift the onus of decision making to the courts, blurring and obliterating the line of separation between the executive and the judiciary. Any attempt by the executive authority to provide itself a protective cover against challenges or criticism to its action, by `passing the buck' to the Judiciary in regard to final decisions, should be resisted and avoided. The orders of the Central Government granting or refusing permission are subject to judicial review at the instance of any affected party, and the same cannot be pre-empted by making the Supreme Court a party to the decision making process of the executive. We are therefore of the view that it was not proper for the Ministry of Health and Family Welfare (Dental Education Section), Government of India, (for short `the Ministry') to stipulate a condition while granting renewal of permission for the BDS Course, that the "order is subject to the condition that the institute obtains the orders of Supreme Court to the effect that such permission would not violate the earlier order of the Hon'ble Supreme Court to the effect that 15th July would be last date for grant of such permission in the relevant academic year." Such a condition requiring approval of this Court is liable to be quashed.

On merits

12. It is necessary to refer to certain aspects of grant of permissions to avoid confusion, unnecessary delays and litigation. In Mridul Dhar, this Court primarily dealt with the time schedule for completion of admission process for medical and dental colleges. Mridul Dhar did not provide any time schedule, much less 15th July as the last date, for issue of letters of permissions or renewal of permissions by Central Government to Dental Colleges. Para 28 of the decision in Mridul Dhar referring to a time schedule stipulating 15th July as the last date for issue of letters of permission by Central Government does not relate to dental colleges nor to permissions/renewal of permissions to dental colleges. The said time schedule is not even a direction of this Court, but is only an extract from the Medical Council of India Establishment of Medical College Regulations, 1999 applicable only to medical colleges. This Court in Mridul Dhar however clearly directed that the Central Government should strictly adhere to the time schedule wherever provided for. This Court stated :

"Having regard to the professional courses, it deserves to be emphasized that all concerned including Governments, State and Central both, MCI/DCI, colleges - new or old, students, Boards, universities, examining authorities, etc., are required to strictly adhere to the time schedule wherever provided for; there should not be midstream admissions; admissions should not be in excess of sanctioned intake capacity or in excess of quota of anyone, whether State or management. The carrying forward of any unfilled seats of one academic year to next academic year is also not permissible."

[emphasis supplied]

13. In view of the directions in Mridul Dhar, DCI in consultation with the Central Government, provided a time schedule, while making the Dental Colleges of India (Establishment of New Dental Colleges, Opening of New or Higher Course of Study or Training and Increase of Admission Capacity in Dental Colleges) Regulations, 2006 (for short `DCI Regulations'). As per the DCI Regulations, the last date for grant of permissions and renewal of permissions by Central Government is 15th July. We may refer to relevant provisions of the DCI Regulations.

“13.1) Regulation 4 of DCI Regulations relates to submission of proposals/schemes for establishing new dental colleges and it is extracted below:

"4. Proposals or schemes for establishing a new dental college, or opening a new or higher course of study or training or increasing the admission capacity, in the dental college:-

(1) The proposals or schemes for establishing a new dental college, or opening a new or higher course of study or training or increasing the admission capacity, in the

dental college, as the case may be, shall be made or submitted to the Central Government for obtaining its permission under the Act in the Form. I, Form 2 and Form 3, respectively, annexed to these regulations.

(2) The scheme or the proposal under sub-regulation (1) and, processing thereof shall be submitted within the time- schedule as provided in the Schedule annexed to these regulations."

The schedule annexed to the regulations, referred to in Regulation 4(2) pre- scribing the time schedule for grant of permissions, is extracted below: SCHEDULE [(see regulation 4(2)] Schedule for Receipt of Applications for Establishment of New Dental Colleges, Opening of Higher Courses of Study & Increase of admission capacity in the rec- ognized Dental Colleges and processing of the applications by the Central Govern- ment and the Dental Council of India.

S.No.	Stage of Process- ing	Time Schedule for BDS	Time Schedule for MDS
1 to 30th	Receipt of applications by the Central Govt	From 1st Aug. to 30th September (both days inclusive) of any year	From 1st May June (both days sive) of any year
2	Forwarding of applica- tions by the Central Government to the Den- tal Council of India for technical scrutiny	Upto 31st December	Upto 31st July
3	Recommendation of DCI to the Central Govern- ment	Upto 15th June	Upto 28th February
4	Issue of Letter of	Upto 15th July	Upto 31st March

Permission by Central

Government

Note: (1) : If any clarification is sought by the Central Government on the recommendation of the Council, the same will be furnished by the Council forthwith, if necessary, after conducting inspection.

(2) The time-schedule indicated above may be modified by the Central Government, for reasons to be recorded in writing, in respect of any class or category of applications."

13.2) Rule 10 relating to grant of permission to establish a dental college and Rule 11 relating to renewal of permission to a dental college, are extract-

ed below :

"10. Grant of Permission to establish a dental college: (1) The Central Government may, after considering the scheme submitted under regulation 7 in terms of Section 10A of the Act and the recommendations of the Council thereon, issue a Letter of Intent to grant permission to establish a dental college subject to such conditions or modifications in the original proposal as it may consider necessary. The formal permission will be granted by the Central Government after the conditions stipulated and the modifications suggested are accepted by the applicant and a performance bank guarantee from a Scheduled Commercial bank valid for the entire duration of the course in favour of the Council is furnished as follows x x x x x

(3) The formal permission will include conditions for fulfillment of a time bound programme and achieving of annual targets commensurate with the initial intake of students for the establishment of a dental college. (4) The permission under sub-regulation (1) to establish a new dental college will be granted for a period of one year and will be renewed on yearly basis subject to verification of the achievement of annual targets and revalidation, if necessary, of the performance bank guarantee."

11. Renewal of Permission (1) Admissions of the next batches shall not be made by the dental college unless the permission granted under regulation 10 has been renewed by the Central Government. (2) The application for renewal of permission shall be submitted to the Council, with a copy to the Central Government, six months prior to the expiry of the current academic session. The recommendation of the Council in all cases of renewal shall be made by 15th June and the Central Government shall issue final orders regarding renewal of permission by 15th July of each year. Provided that the process of renewal of permission will not be applicable after the completion of phased expansion of the infrastructure facilities and teaching

faculty as per norms laid down by the Council and the first batch of students take the final year examinations."

(emphasis supplied)

14. Regulation 11(2) clearly lays down a time schedule for the submission of applications for renewal of permission (six months prior to the expiry of the current academic session), for recommendation by DCI (15th June) and for issue of final orders by Central Government regarding renewal of permission (15th July). Though, the DCI Regulations provide that the last date for issue of letter of permission or renewal of permission by the Central Government is 15th July, having regard to the scheme relating to grant of renewal of permission and note (2) to the schedule, the Central Government has the discretion to modify the time schedule in appropriate cases, for reasons to be recorded, in respect of any class or category of applications.

15. If the Central Government was of the view that a dental college deserved renewal of permission in accordance with the Act and Regulations, it should grant such permission. If it was of the view that the dental college did not deserve renewal of permission, it should refuse the permission. If the Central Government felt that the last date for granting renewal of permission was over and there was no justification for extending the time schedule, it could refuse the renewal of permission on that ground. On the other hand, if the Central Government was of the view that the applicant college had complied with the requirements and was not at fault, and it was not responsible in any manner for the delay in considering the application, and there were other applicants of similar nature, it could have recorded those reasons in writing and extended the time schedule for that category of applicants and then granted the renewal of permission, provided the last date for admissions had not expired. Note (2) to the schedule to the DCI Regulations enables the Central Government to modify the time schedule, for reasons to be recorded in writing, in respect of any class or category of applications. Applicants for renewal of permission for the fourth or fifth year, where there is compliance with the requirements relating to infrastructure, equipment and faculty, could be such a class or category of applications. Similarly, applications where High Courts have directed consideration beyond 15th July in view of special circumstances, can also constitute a class or category of applicants.

16. Though we have rejected the prayer for 'approval' of the order of the Central Government, sought in the writ petition, we are of the view that the petitioner is entitled to a suitably moulded relief. As noticed above, the delay was beyond the control of DCI and the Central Government. The petitioner college was also not responsible for the delay in applying for renewal of permission. The last date for admissions had not yet expired. The order was passed on the direction of the High Court to reconsider the matter. There were several other similar cases pending before the Central Government. All those applications for renewal of permission, which were directed to be reconsidered by the High Court could be considered to be a special category of applications where the Central Government had modified the time schedule for grant of renewal of permissions under Note (2) to the schedule to the DCI Regulations. By so deeming, the order of the Central Government dated

17.8.2010 granting renewal of permissions in this case and other similar cases can be considered as having been validly made. The connected cases

17. In the connected cases, the Central Government has passed similar conditional orders granting renewal of permission to other petitioner dental colleges, in regard to either fourth or fifth year of BDS course. The conditional renewals of permission were granted in September 2010, except in WP(C) No.334 of 2010 where it was passed on 23.7.2010. The petitioners therein are entitled to similar relief as in the first matter.

A suggestion for modification of time schedule

18. In all these cases, the petitioners, who were applicants for renewal were existing dental colleges, were functioning for three or four years and each college had admitted hundreds of students either directly or through State Government allotment. The colleges had the benefit of initial permission and several renewals of permission. Refusal of renewal of permission in such cases should not be abrupt nor for insignificant or technical violations. Nor should such applications be dealt in a casual manner, by either granting less than a week for setting right the 'deficiencies' or not granting an effective hearing before refusal. The entire process of verification and inspection relating to renewal of permission, should be done well in time so that such existing colleges have adequate and reasonable time to set right the deficiencies or offer explanations to the deficiencies. The object of providing for annual renewal of permissions for four years, is to ensure that the infrastructural and faculty requirements are fulfilled in a gradual manner, and not to cause disruption.

19. In the context of what has happened in these cases, it is necessary to emphasize the distinction between the applications for fresh permissions and applications for renewal of permissions. They require distinct time schedules. The process of decision making under the Regulations, for grant of fresh or initial permission for establishment of new dental colleges is exhaustive and elaborate, when compared to the process of decision making in regard to grant of renewal of permission for the four subsequent years. Before grant of initial grant of permission, the DCI and Central Government are required to consider the following aspects : whether the institution would be in a position to offer the minimum standards of dental education in conformity with the Act and the Regulations; whether the institution has adequate resources; whether the institution has provided or will provide within the time-limit specified in the scheme, necessary staff, equipment, accommodation, training and other facilities to ensure proper functioning of the institution; whether the institution has provided or would provide within the time-limit specified in the scheme, adequate hospital facilities; whether faculty having recognized dental qualifications and personnel in the field of practice of dentistry will be available to impart proper training for the students; and whether other factors prescribed by the Regulations have been complied. On the other hand, for the purpose of grant of renewal of permission, DCI has to make recommendations by considering only whether the prescribed faculty and infrastructure are available.

20. The need for renewal of permission emanates from the fact that a newly established college is not required to have in place, full complement of the teaching faculty and complete

infrastructure in the first year itself. This is because, during the first year, the college will be catering only to a limited number of first year students. During the second, third and fourth and fifth years, the student strength will increase. If the permitted intake is 100, usually there will be 100 students in the first year, 200 students in the second year, 300 students in the third year, 400 students in the fourth year and 500 students in the fifth year. Thereafter, the strength may remain constant. As the strength increases gradually every year, correspondingly the infrastructure and faculty will have to be increased. The DCI Regulations contemplate new dental colleges being established and started with limited infrastructure and faculty, and making "provision for expansion of teaching staff and infrastructure facilities in a phased manner as per Annexures III and IV to the regulations"

[vide Regulation 6(j)]. For example, the dental chairs required in a college will be as under [vide Regulation 6(k)] :

Year	Intake	Intake
	(50)	(100)

Similarly, the college is required to increase the faculty strength gradually over the second and third years so as to achieve the required dental faculty strength by the third year as under [vide Annexure-III to the DCI Regulations] :

Year	Total posts required					
	Professors		Readers		Lecturers	
	100 intake	50 intake	100 intake	50 intake	100 intake	50 intake

21. In view of the fact that the inspection and verification in regard to renewal of permission for the second, third, fourth and fifth years will be restricted only to the consideration of the additional faculty and additional infrastructure, it may not be necessary to apply the lengthy time schedule prescribed for initial permission, to renewal of permissions during the next four years. The DCI Regulations presently contemplate almost similar time schedules in regard to applications for establishment of new dental colleges, for opening of higher courses of study, for increase of admission capacity, and for renewal of permissions, with 15th July being the last date both for grant of permission or renewal of permission. DCI and Central Government may consider amendment to the DCI Regulations suitably to provide for a shorter and distinct time schedule for renewal of permissions, so that the dental colleges could file applications till end of February and the process of grant or refusal of renewal is completed by 15th of June.

Conclusion

22. In view of the above, these writ petitions are allowed as follows :

“(a) The condition imposed by the Central Government (requiring the dental colleges to secure appropriate orders from this court approving the renewals of permission) in the letters of renewal of permission issued to the petitioners in July/August/September, 2010, is quashed;

(b) It is however declared that the renewal of permissions issued by Central Government to the petitioners for the academic year 2010-2011, are valid.”

Judgment Referred.

¹(2005) 2 SCC 0065