

SUPREME COURT OF INDIA

Dr.B.R.Ambedkar Medical College

Vs.

Union of India

Writ Petition (Civil) No. 580 of 2013

(K.S. Radhakrishnan and A.K. Sikri JJ.)

18.09.2013

JUDGMENT

K. S. RADHAKRISHNAN, J.

1. Petitioners have approached this Court invoking the extraordinary jurisdiction of this Court under Article 32 of the Constitution of India seeking a Writ of Certiorari to quash the Corrigendum Notification No. 37(1)2013/One Time Permission/Med./19355, in so far as it confines the benefits of the “Enhancement of Annual Intake Capacity in Undergraduate Courses in Medical College for the Academic Session 2013-14 only Regulations 2013” (in short “Regulations 2013”), issued vide notification dated 8.7.2013, to the Government Medical Colleges only, as unconstitutional, being ultra vires of Article 14 of the Constitution of India.

2. Petitioners in all these petitions submit that they are all well established private unaided medical institutions in the country running for more than 10 years with an annual intake of 100 MBBS students, over and above, they are conducting PG Degree and Diploma courses as well. Regulations 2013 was issued on 8.7.2013 by the Medical Council of India (for short “MCI”) with the intention of granting one-time permission to all Government and Non-Government Medical Colleges with the objective of enhancing the intake capacity of all the medical colleges in the country, which was framed with the intention to augment the human resources in medicine for attaining optimum Doctor-Population ratio in the nation, without compromising on the prescribed minimum standards of medical education.

3. Petitioners have satisfied all the eligibility criteria laid down in the above mentioned Regulations 2013, and after having satisfied the eligibility criteria laid down, few of them submitted an application to the MCI for enhancement of annual intake of students, reference was made to one of such applications dated 15.7.2013. While so, they came across a Corrigendum issued by the Board of Governors of the MCI, on the direction given by the Central Government, stating that Regulations 2013 would be confined only to Government medical colleges for the academic year 2013-14.

4. Learned senior counsel appearing for the writ petitioners submitted that such corrigendum cannot override the statutory Regulations 2013. Learned senior counsel submitted that the object of the Regulations would be achieved only if the same is made applicable uniformly to the Government as well as Non-Government medical colleges in the country and that confining the Regulations only to the Government medical colleges is discriminatory and violative of Article 14 of the Constitution of India. In support of this contention, reference was made to the judgments of this Court in *Suraj Mall Mohta and Co. v. A. V. Vishvanath Sastri* (1955) 1 SCR 448 and *State of West Bengal v. Anwar Ali Sarkar* 1952 SCR 284.

5. Shri Amit Kumar, learned counsel appearing for MCI defended the issue of corrigendum stating that the same was issued in public interest and also in the peculiar facts and circumstances of the present case since the time limit fixed in the Schedule to 2013 Regulations got expired. Learned counsel also submitted that corrigendum was issued by the MCI on the direction given by the Central Government under Section 3(c) of the Indian Medical Council (Amendment) Act, 2010, which enables the Central Government to give proper directions to the MCI and the MCI is bound to give effect to those directions. Learned counsel also explained the circumstances which led the Central Government in issuing the letter dated 18.7.2013 to the MCI. Learned counsel also submitted that, due to the extreme necessity of completing the admission process, the Board of Governors of the MCI could not have received applications from the private medical colleges for enhancing the intake capacity during the academic year 2013-14. It is under such circumstances, the Central Government had directed the MCI to apply the modified time schedule for the receipt of application - and grant permission only to the Government medical colleges for the academic year 2013-14. Learned counsel also pointed out that MCI and the Central Government have to comply with the time schedule fixed by this Court in various judgments for admission of students as well. Reference was made to the judgments of this Court in *Mridul Dhar (Minor)*

and Another v. Union of India and Others (2005) 2 SCC 65 and Priya Gupta v. State of Chhattisgarh and Others (2012) 7 SCC 433.

6. Shri Sidharth Luthra, Additional Solicitor General appearing on behalf of the Union of India, made available the original files leading to the issue of the letter dated 18.7.2013 by the Central Government to the MCI and explaining the circumstances under which it was decided to confine the Regulations 2013 only to the Government medical colleges, that too, taking into consideration the larger public interest. Shri Luthra also submitted that the direction given by the Central Government vide letter dated 18.7.2013 is in consonance with the Regulations and issued in exercise of the powers conferred on it under Section 3(c) of the Indian Medical Council Act, 1956.

7. We have heard learned senior counsel on either side at length. We need not reiterate the imperative need to follow the time limit fixed by this Court in the matter of admission to MBBS/BDS courses in Mridul Dhar case (supra) which was done in the interest of students' community, for admission to the Post Graduate and Super Speciality courses. Timely admission of the students to these courses is of utmost importance so that the students would get quality and timely education. In Mridul Dhar case (supra), this Court clearly indicated that the time schedule for establishment of new college or to increase intake in existing college shall be adhered to strictly by all concerned, failing which defaulting party would be liable to be personally proceeded with.

8. In Priya Gupta v. State of Chhattisgarh and Others (2012) 7 SCC 433, this Court has reiterated the necessity to follow the time limit fixed by this Court. This Court went even to the extent of indicating that failure to conform with the time limit fixed by this Court shall be liable for action under the provisions of the Contempt of Courts Act, 1971 read with Article 129 of the Constitution of India.

9. In the light of the above mentioned judgments and the various directions issued by this Court, we have to judge whether the decision taken by the Central Government as well as the MCI confining the Regulations 2013 only to the Government medical colleges is arbitrary, illegal or discriminatory in the peculiar circumstances of this case. Regulations 2013 was issued by the MCI in exercise of its powers conferred under Section 33(fa) of the Indian Medical Council Act, 1956 with the previous sanction of the Central Government. The object of the notification was to enhance the intake capacity in the existing medical colleges so

as to augment human resources in medicine for attaining optimum Doctor-Population ratio in the Nation, without compromising the prescribed minimum standards of medical education. Regulation 3 deals with the eligibility to make an application, which reads as under:

“3. Eligibility to make application.- (1) The application for enhancement of annual intake capacity in the existing Medical Colleges may be made by the organizations that have established the Medical College to the Board of Governors in Supersession of the Medical Council of India. The format of application for Government and non- governmental owned Medical College is prescribed in Schedule I appended to these Regulations.

(2) Only such existing Medical Colleges shall be eligible to apply under these Regulations that enjoy minimum ten years of standing from the date of grant of initial letter of permission by the Central Government and the MBBS qualification awarded by them stands included in the First Schedule of the Indian Medical Council Act, 1956 [Act No. 102 of 1956].

(3) The Medical Colleges with an annual intake of 50 or more but below 100 MBBS seats shall be eligible to apply for enhancement for annual intake capacity to 100, as one-time measure.

(4) The Medical Colleges with an annual intake of 100 or more but below 150 MBBS seats shall be eligible to apply for enhancement for annual intake capacity to 150, as one-time measure.

(5) Such Medical Colleges that have not been granted letter of permission by the Board of Governors in Super-session of the Medical Council of India in accordance with clause 8(1)(3)(d) of the Establishment of Medical College Regulations, 1999 [notified in the Official Gazette on 16.04.2010] and/or the person who has established the Medical College has been convicted by a Court of Competent jurisdiction in a criminal investigation initiated by the Central Bureau of Investigation or Police.”

10. Regulation 4 deals with the procedure to make application. The time- schedule for receipt of application for enhancement of annual intake capacity in undergraduate courses, is provided in Schedule II appended to the Regulations, which reads as follows:

“SCHEDULE II

TIME-SCHEDULE FOR RECEIPT OF APPLICATION FOR ENHANCEMENT OF ANNUAL INTAKE CAPACITY IN UNDERGRADUATE COURSES

|S. No. |Stage of Processing |Last date | |1. |Receipt of applications by the Board |15.07.2013 | | |of Governors in Super-session of the | | | |Medical Council of India | | |2. |Return of Incomplete application |20.07.2013 | |3. |Grant of Letter of Permission by the |31.07.2013 | | |Board of Governors in Supersession of | | | |the Medical Council of India | |

11. Schedule I of Regulations 2013 deals with the format of application for Government and Non-government medical colleges for making an application for enhancement of annual intake capacity. Para 4 of the Form (Schedule I) as well as the note attached to the said format also has relevance and the same is as follows:

“SCHEDULE I

FORM

(Suggested format for Applicants)

PROPOSED FORMAT OF UNDERTAKING TO BE OBTAINED FROM THE APPLICANT FOR ENHANCEMENT OF MBBS SEATS FROM _____ (Please specify existing intake capacity) to _____ (Please specify enhanced intake capacity)

xxx xxx xxx

xxx xxx xxx

4. The applicant assures that the compliance with the relevant Minimum Standard Requirement Regulations is mandatory for continuation of the batch of students and is in the interest of students. In case of any failure to meet the requirements of the Regulations the Central Government / Board of

Governors in super-session of the Medical Council of India would be entitled in law to withdraw/revoke/cancel such permission.

Yours faithfully,

[Applicant]

Note:

Kindly enclose:

(a) duly attested copy of initial Letter of Permission and of subsequent renewals granted by the Central Government u/s 10A of the Indian Medical Council Act, 1956; and

(b) duly attested copy of the Gazette notification/Order of the Central Government including the MBBS qualification awarded by the applicant's Medical College in the First Schedule of the Indian Medical Council Act, 1956.

The Undertaking in case of Government of State/Union Territory should be signed by the Chief Secretary.

The Undertaking in case of non-Governmental application should be on non-judicial stamp paper of Rs. 100 and should be made by President / Chairman /Vice Chancellor/ Managing Trustee of the Society/Trust and Managing Director of the Company. The Undertaking should inter alia state that:

(a) the College has not been subject to clause 8 (3) (1) (d) of the Establishment of Medical College Regulations, 1999; and

(b) the person establishing the Medical College has not been convicted by a Court of competent jurisdiction in a criminal investigation initiated by the Central Bureau of Investigation or Police. The Undertaking should be duly attested by a First Class Magistrate.”

12. MCI, in their counter affidavit, stated that the above mentioned notification dated 8.7.2013 was received by the Council Office only on 16.7.2013. By that

time, the last date fixed for receipt of application by the Board of Governors was over, which was on 15.7.2013. Under such circumstances, the MCI wrote a letter dated 17.7.2013 to the Government of India, stating as follows:

“ xxx xxx xxx

In light of Gazette notification received on 16.07.2013 the time of receipt of application has already lapsed. Therefore, as per provisions as under [in the Establishment of Medical College Regulations, 1999]:

“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.

Keeping in light the above statutory provisions, whereby the Central Government is empowered to modify the time schedule, it is proposed in order to achieve the objective of enhancing the intake capacity in existing Medical Colleges, so as to augment the human resources in medicine for attaining optimum Doctor-population ratio in the nation, the above schedule may be modified to the following:

S. No.	Stage of Processing	Last Date	Modified Dates
1.	Receipt of applications	15.07.2013	24.07.2013
2.	Return of Incomplete application	20.07.2013	31.07.2013
3.	Grant of Letter of Permission by the Board of Governors in supersession of the	31.07.2013	31.07.2013

It is requested that permission of Central Government to modify the Schedule as proposed above be granted, so as to enable the Council to further expedite the process. This modification, with the approval of Central Government can be carried out by public notice and need not be notified in the Official Gazette.

It is also brought to your kind attention that as the time- schedule for grant of letter of permission for establishment of new Medical Colleges and renewal of permission for increase of seats in existing Medical Colleges was extended to 15 July 2013, by the Hon’ble Supreme Court for he academic

year 2013-14 pursuant to an application moved by the Council in Priya Gupta's case, an appropriate application is also required to be filed by the Council seeking permission - of the Hon'ble Supreme Court. Necessary steps are being taken by the Council in this regard.

Kindly grant permission at the earliest which will enable the Council to do the needful at the earliest.”

13. The MCI, therefore, requested the Government of India to modify the time schedule and extend the last date of receipt of application to 24.7.2013, since they could not receive the applications by the various medical colleges prior to 15.7.2013, as the very Regulations 2013 dated 8.7.2013 was received by the MCI only on 16.7.2013.

14. The Central Government considered the request and pointed out that it would not be possible for the Board of Governors of MCI to process all the applications preferred by the Non-government medical colleges within the time fixed, therefore, it decided to issued a corrigendum which modified that the date of 24.7.2013 would apply only to Government medical colleges.

15. We find no serious error in the view taken by the Central Government confining Regulations 2013 to Government medical colleges alone in view of strict time limit fixed in the Schedule for receipt of applications i.e. 15.7.2013 and the preremptory directions given by this Court in judgments referred to above.

We may make it clear that the time limit fixed for starting a medical college as well as for additional intake are of extreme importance, or else it may collide with the time limit fixed for starting the academic session. If the time limit fixed in the notification dated 8.7.2013 was to be adhered to strictly, the majority of the Non-government medical colleges could not have applied, since the Regulations 2013 was received by the MCI only on 16.7.2013 beyond the last date fixed for the receipt of application by the Board of Governors of MCI.

16. We indicate that the main argument raised by the learned senior counsel appearing for the Petitioners was that 2013 Regulations should have been made applicable equally to the Government Medical Colleges as well as non-Government Medical Colleges and there cannot be any discrimination between

them, otherwise the object sought to be achieved by the Regulations would have been defeated. In our view, in a given case power is vested with the Central Government to modify the time schedule, in respect of at least one class or category of applicants. We may in this connection refer to Establishment of Medical College Regulations, 1999, which was issued in exercise of powers conferred under Section 10A read with Section 3 of the Indian Medical Council Act, which has recognised five categories of organisations which are eligible to apply for starting a Medical College as well as eligible to apply for further intake of seats. Following are the categories:-

1. A State Government/Union Territory;
2. A University;
3. An autonomous body promoted by Central and State Government by or under a Statute for the purpose of medical education;
4. A society registered under the Societies Registration Act, 1860 (21 of 1860) or corresponding Acts in States; or
5. A public religious or charitable trust registered under the Trust Act, 1882 (2 of 1882) or the Wakfs Act, 1954 (29 of 1954).

17. State Government/Union Territory can also set up a Medical College and take additional intake of seats, apart from the other categories mentioned above. In a given case, the Central Government, for reasons to be recorded in writing, can modify the time schedule in respect of any class or category of applicants mentioned hereinbefore. Such a power has been conferred on Central Government by virtue of Establishment of Medical College Regulations (Amendment), 2012.

18. The Establishment of Medical College Regulations, 1999, as amended by Establishment of Medical College Regulations (Amendment), 2012, provides for time schedule for grant of letter of permission by the Medical Council of India for establishment of a Medical College as well as increase in admission capacity in MBBS course. Schedule to the above mentioned Regulations reads as follows:-

SCHEDULE

SCHEDULE FOR RECEIPT OF APPLICATIONS FOR ESTABLISHMENT OF NEW MEDICAL COLLEGES AND PROCESSING OF THE APPLICATIONS BY THE MEDICAL COUNCIL OF INDIA.

|S.No. |Stage of processing | |Last Date | |1. |Receipt of applications by the Council | |From 1st August to | | | |30th September (both| | | |days inclusive) of | | | |the year. | |2. |Issue of Letter of Intent by the | |Upto 30th April | |Council | | |3. |Receipt of reply from the applicant by | |Upto 31st May | |the Council for consideration for issue| | | |of Letter of Permission | | |4. |Issue of Letter of Permission by the | |15th June | |Council | |

Note : 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.

19. The note specifically indicates that the time schedule could be modified by Central Government for reasons to be recorded in writing in respect of any category, class of applicants which, in our view, could also be invoked in the case of increase of annual intake as well. Resultantly, the Central Government has the power to modify the date from 15.7.2013 to 24.7.2013 in respect of any class or category of applications. So far as the present case is concerned, it is in exercise of that statutory power, the Corrigendum has been issued by the Central Government modifying the time schedule to the Government Medical College alone out of the five categories mentioned hereinbefore. We are not prepared to say favouring the Government Medical College alone in such circumstances is violative of Article 14 of the Constitution.

20. Central Government is also empowered under Section 3(c) of Indian Medical Council Act, as amended in 2010, to issue various directions to the Board of Governor of the the MCI, which reads as follows :-

“3C. (1) Without prejudice to the provisions of this Act, the Board of Governors or the Council after its reconstitution shall, in exercise of its powers and in the performance of its functions under this Act, be bound by such directions on questions of policy, other - than those relating to technical and administrative matters, as the Central Government may give in writing to it from time to time;

Provided that the Board of Governors or the Council after its reconstitution shall, as far as practicable, be given an opportunity to express its views before any direction is given under this subsection.

(2) The decision of the Central Government whether a question is a matter of policy or not shall be final.”

Board of Governors of the MCI is, therefore, bound by the Corrigendum issued by the Central Government.

21. We notice that the above corrigendum extending the last date was made applicable only to the Government medical colleges recording the reason that the time would be very short so as to process the applications by the MCI received from the non-government medical colleges. We cannot say that the decision taken by the Central Government is perverse, arbitrary or unreasonable, so as to strike down the corrigendum issued under the extra- ordinary jurisdiction of this Court under Article 32 of the Constitution of India.

22. The petitions, therefore, lack in merits and are accordingly dismissed.