

[REPORTABLE]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (Civil) No. 22910 OF 2013

Educare Charitable Trust

.....Petitioner

Vs.

Union of India & Anr.

....Respondents

JUDGMENT

A.K.SIKRI,J.

1. In this petition, invoking the provisions of Article 136 of the Constitution of India, the petitioner seeks leave to appeal against the judgment dated 2nd July 2013 passed by the High Court of Kerala. Writ Petition of the petitioner has been dismissed by the aforesaid judgment.

2. The petitioner, which is a Charitable Trust working in the field of education, has established a Dental College which was established few years ago. During the Academic Year 2007-08, course in Bachelor of Dental Surgery (BDS) was started by it with an annual intake of 50 students. This was done after taking due -- permission from the Central Government under Section 10-A of the Dentists Act,

1948 on the recommendation of Dental Council of India (DCI). The Government of Kerala has issued requisite Essentiality Certificate. The college run by the petitioner is affiliated with University of Calicut as that University had granted necessary Consent of Affiliation. The Dental College also stands affiliated to the Kerala University of Health Sciences, established by the Kerala University of Health Science Act, 2010.

3. In the year 2012, the petitioner wanted to expand the size of BDS, being desirous of increasing the capacity from 50 to 100 seats. Intention was to do so with effect from current Academic Year i.e. 2013-14. The scheme was rejected by the Government vide order dated 31.12.2012 on the ground that it did not fulfil the eligibility criteria for such an increase. Against this order of refusal of the Central Government, the petitioner had approached the High Court of Kerala seeking quashing of the said order and for issuance of Writ of Mandamus commanding the Central Government to forward the application of the petitioner for intake of students, to the DCI for technical scrutiny and further to direct the DCI to make appropriate recommendation to the Central Government for issuance of letter of permission during the Academic Year 2013-14 itself. As pointed out in the beginning of this order, the said Writ Petition has been dismissed by the High Court.

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4. In order to appreciate the controversy and the grievance of the petitioner, it would be necessary to traverse few facts.

5. On 8th August 2012, the petitioner had submitted the scheme to the Government of India for increasing the admission capacity. This request of the petitioner was considered but the Central Government could not process the same as at the time of submission of the application, the petitioner had yet to get the recognition of the BDC course with 50 seats i.e. the existing capacity, which is a pre-condition for forwarding the application. The Central Government had issued various letters, last of which was dated 19th December 2012, asking the petitioner to obtain the recognition. Last date for forwarding the application by the Central Government to DCI for approval of such scheme was 31.12.2012. Since the petitioner could not bring the said “Essential Documents” even upto the last date i.e. 31-12-2012, the Central Government returned the application with liberty to the petitioner to apply afresh in the next Academic Year i.e. 2014-15.

6. As per the petitioner, its college fulfilled all the norms required for increase of intake of students from 50 to 100 seats. In so far as matter of recognition is concerned, the petitioner squarely blames the DCI for dragging its feet and, therefore, it is pleaded that the petitioner could not be made to suffer for no fault on its part. In this behalf, it was pointed out that the Executive Committee of the DCI in its meeting held on 26.11.12 had duly recommended to accord recognition.

-Recommendation of the Executive Committee was considered by the General Council of the DCI which met on 27/28.11.2012. This Governing Council also approved the proposal. Nothing further was to be done by the DCI but to send letter of recommendation to the Central Government. Had it been done immediately or within few days thereafter, the petitioner could have got the recognition of the BDS course much before 31st December 2012, which was the last date. The grudge of the petitioner is tht the DCI slept over the matter and sent the communication regarding recognition of the petitioner –college to the Central Government only on 7th January 2013 thereby causing the last date to expire. The Central Government had notified the recognition on 23rd January 2013 but with effect from July 2012. In this conspectus, it was the submission of the petitioner that the right of the petitioner to seek enhancement of seats from 50 to 100 could not be defeated by the respondents when the delay was at their end. It was pleaded that thought as per the time frame set out in the Schedule, last date for forwarding the application was 31st December, 2012, Note (2) appended beneath the said Schedule enables the Central Government to modify the same in respect of any class or category of applicants. In the present case, there was valid reason to exercise such discretion but it was not done. For this reason, another prayer was made in the Writ Petition to the effect that the Central Government be directed to --

modify the time schedule for the petitioner by invoking the power under Note (2) to the Regulations.

7. The aforesaid plea of the petitioner did not cut any ice with the High Court. It held that as per Regulation 18 of the DCI (Establishment of New Dental Colleges, Opening of New Higher Course of Study or Training and Increase of Admission Capacity in Dental Colleges) Regulations, 2006, the applicant has to submit application in Form 3 when it wants to increase of seats. Qualifying criteria is laid down in Regulation 19 and as per Clause (a) thereof, it is mandatory that the college is recognized with the existing admission capacity. This condition was not fulfilled by the petitioner and it was not possible for the Central Government to forward the application to the DCI for technical scrutiny. In these circumstances, if the Central Government did not exercise its discretion to modify the time schedule, in terms of Note (2) of the Regulations, direction could not be issued to the Central Government to exercise that power in a particular manner as it was purely within the discretion of the Central Government and Central Government refused to exercise the discretion for valid reason.

8. Before us as well, the case was argued on the same lines which was taken before the High Court. It was submitted by Mr. Patwalia, the learned senior counsel appearing for the petitioner that in the absence of any fault of the petitioner and when the petitioner has taken all steps well within time, it was a fit case for --

exercising discretion by the Central Government and non-exercise of such a discretion was clearly arbitrary. Mr. Patwalia emphasized and reemphasized, with lots of vehemence that when the Governing Council had approved the case of recognition of the petitioner-college in respect of existing seats on 27/28 November 2012, there was no reason for it to delay forwarding of this proposal to the Central Government. Had it been done immediately thereafter, the Central Government would have granted the recognition much before 31st December, 2012 thereby removing the only handicap which was coming in the way of the petitioner and its scheme containing proposal of increase of seats from 50 to 100 could have been forwarded to the DCI well in time. He, thus, made a passionate plea that it was a fit case for exercise of power to extend the time Schedule under Note (2) of the Regulations, 2006.

9. We are not persuaded by these submissions of the petitioner. Regulations, 2006 are framed by the DCI, with the previous approval of the Central Government, in exercise of powers conferred by Section 10A read with Section 20 of the Dentists Act, 1948. These Regulations, thus, have statutory force. These Regulations deal with the procedure for obtaining permission of the Central Government to establish new Dental College, for starting new or higher courses or training in a Dental College as well as for increase in admission capacity in a Dental College. Regulation 18 deals with “Permission of the Central Government

-to increase admission capacity in the dental college” which is the subject matter of the present proceedings. Under Regulation 18, the applicant, a Dental College desirous to increase the admission capacity has to make requisite application in Form 3. Regulation 19 lays down the qualifying criteria and the conditions which are to be necessarily fulfilled to enable that college to apply under Regulation 18. As per Regulation 20, application is to be submitted in Form 3 and the application fee with the particulars mentioned in the said Regulation. Relevant portions of Regulations 18,19 and 20, with which we are concerned, are reproduced herein below:

“18. Application for increasing the admission capacity:-

For increasing the admission capacity (number of seats) at the under-graduate or post-graduate level (degree or diploma), a dental college shall, subject to regulation 19, submit to the Central Government the scheme in this regard in Form 3, as annexed, for obtaining its permission.

19. Qualifying Criteria:-

A dental college shall qualify to apply under regulation 18, if the following conditions are fulfilled:

(a) the dental qualification granted to the students of the college and in respect of which the capacity is sought to be increased is recognized with the existing admission capacity;

(b) xxxxxxxxxxxxxxxxxxxxxx

- (c) xxxxxxxxxxxxxxxxxxxxxxxx

(d)xxxxxxxxxxxxxxxxxxxxxxxx

(e)xxxxxxxxxxxxxxxxxxxxxxxx

20. Submission of the application in Form 3 and the application fee:-

(1) xxxxxxxxxxxxxxxxxxxxxxxx

(2) Incomplete application or scheme will not be accepted and will be returned by the Central Government to the applicant along with enclosures and processing fee.

(3)xxxxxxxxxxxxxxxxxxxxxx”

7. It is clear from the above that Regulation 18 is made subject to Regulation 19. Regulation 19 states, in no uncertain terms, that a dental college “shall qualify to apply under regulation 18” if the conditions stipulated in Regulation 19 are fulfilled. It clearly follows that a dental college which does not satisfy the conditions laid down in Regulation 19 is not qualified to make an application under Regulation 18. Clause (a) of Regulation 19 lays down a specific condition, namely existing admission capacity should be recognized

8. Admittedly, as on the date of application, the petitioner did not have this recognition and thus, it did not fulfill the stipulations contained in Clause (a) of Regulation 19. In the absence thereof, it was not qualified to make the --

application. It, thus, clearly follow that on the date of application i.e. 8th August 2012, the application was incomplete. As per regulation 20(2) incomplete application or scheme can be returned by the Central Government to the applicant,

9. No doubt, instead of returning the application, the Central Government gave chances to the petitioner to obtain the recognition from DCI and furnish the same to it. Mr. Patwalia may be correct, to some extent, that had such a recommendation been forwarded by the DCI before December 2012, probably Central Government would have acted thereupon. It is also correct that the Governing Council in its meeting held on 27/28 November 2012 approved the case of the petitioner and sent the same to the Central Government only on 7.1.2013. However, merely from these facts, the blame cannot be foisted upon the DCI. It has been duly explained by the DCI that there are about 40 Members of the Governing Council spread throughout the country. The Governing Council meets twice a year and in every meeting the business transacted by the Governing Council is huge. After the meeting, minutes are to be prepared in respect of all the items in the agenda. By the time minutes are prepared, the Members go back to their respective places of residence. Getting signatures of the Members of the Council is, therefore, a time consuming process. It was pointed out also by the learned counsel for the DCI, which could not be disputed by the petitioner, that 40 days time is earmarked for sending the recommendation to the Central -Government, after it is approved by

the Governing Council. In the instant case, the Governing Council did its job within the stipulated time. Therefore, there is no delay in sending its approval to the Central Government on 7th January 2013.

10. As per Regulation 4 of Regulations, 2006, the scheme or proposal has to be submitted within the time frame as appended in the Schedule annexed to the said Regulations. The Schedule gives the following time frame:

SCHEDULE

(See Regulation 4(2))

Schedule for receipt of Applications for Establishment of New Dental Colleges, Opening of Higher Course of Study & Increase of admission capacity in the recognized Dental Colleges and processing of the applications by the Central Government and the Dental Council of India.

S.No.	Stage of Processing	Time Schedule for BDS	Time Schedule for MDS
1	2	3	4
1.	Receipt of applications by the Central Govt.	From 1 st August to 30 th Sep.(both days inclusive) of any year.	From 1 st May to 30 th June (both days inclusive)of any year
2.	Forwarding of applications by the Central Government to the Dental Council of India for technical scrutiny.	Upto 31 st October	Upto 31 st July
3.	Recommendations of DCI to the Central Govt.	Upto 15 th June	Upto 28 th February
4.	Issue of Letter of Permission by Central Government	Upto 15 th July	Upto 31 st March

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 reason to be recorded in writing, in respect of any class or category of applications.”

8. As per the aforesaid time-schedule, the applicant-college desirous of increasing the admission capacity is to submit the application from 1st August to 30th September. This was done by the petitioner. However, what was found that the petitioner was not meeting the qualifying criteria as on that date because with respect to existing admission capacity, it had not been recognized so far. The applications are to be forwarded by the Central Government, once they are found to be in order and meeting the qualifying criteria laid down in Regulation 19, by 31st October in respect of BDS course. This time was extended upto 31st December in this year. After an application is forwarded to the DCI, DCI is supposed to evaluate the scheme for increasing admission capacity as per the procedure laid down in Regulation 21 which lays down that the DCI is required to ascertain the desirability and prima facie feasibility for increasing the admission capacity at the Dental College. It is also required to satisfy itself about the capability of the Dental College to provide necessary resources and infrastructure for the scheme. DCI is even required to conduct physical inspection of the college before forming an opinion as to whether the applicant satisfies the condition of -feasibility of

increasing the admission capacity. This process, naturally, is time consuming. As per the time-schedule referred to above, time upto 15th June is given for the DCI to make recommendation to the Central Government. Such a report containing its recommendation is to be given in terms of Regulation 22. Thereafter, Central Government is required to go into the said recommendation and if it is found that applicant-college deserves the permission to increase the admission capacity, Letter of Permission is to be issued by 15th July. This time frame is to ensure timely admissions of students.

9. Having regard to the above, it is not possible to accede to the request of the petitioner to change the time-schedule when the last date for admitting the students, which was July 15, 2013, expired long ago. If the Central Government forwards the application to the DCI at this juncture, DCI shall hardly have any time to look into the feasibility of the scheme as per the requirements contained in Regulation 21. We have to keep in mind that in the schedule annexed to the Regulations 2006, six to eight months time is given to the DCI for this purpose. We are, thus, of the view that the High Court did not commit any error in holding that in the given circumstances mandamus could not be issued to the Central Government to exercise its discretionary powers in a particular manner to modify the time-schedule. Sanctity to the time-schedule has to be attached. It is too late in the day, in so far as present academic session is concerned, to give any

direction.- This Court has highlighted the importance of cut off date for starting the professional courses, particularly medical courses, and repeatedly impressed upon that such deadline should be tinkered with. (See: Priya Gupta vs. State of Chhattisgarh (2012) 7 SCC 433 and Maa Vaishno Devi Mahila Mahavidyalaya vs. State of U.P. (2013) 2 SCC 617.

10. We, thus, do not find any error in the impugned judgment of the High Court. This petition is bereft of any merit and is accordingly dismissed.

.....J.
(K.S.Radhakrishnan)

.....J.
(A.K. Sikri)

New Delhi,
September 17, 2013

JUDGMENT