

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4812 OF 2016
(Arising out of SLP(C)No.31535 of 2015)

MEDICAL COUNCIL OF INDIA ... APPELLANT(S)

VS.

MALLA REDDY INSTITUTE OF MEDICAL
SCIENCES & ORS. ... RESPONDENT(S)

WITH C.A.No.4813/2016 @ SLP(C)NO.30742/2015

J U D G M E N T

SHIVA KIRTI SINGH, J.

1. Leave granted.

2. Heard the learned counsel for the parties.

3. The Medical Council of India ('MCI' for short) is aggrieved by a common judgment dated 29th September, 2015, passed by a Full Bench of the High Court of Delhi in Writ Petition (C) Nos.7106 and 8541 of 2015.

4. It is not in dispute that the Full Bench judgment considered a singular question of law on a reference made

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SARITA PUROHIT

Date: 2016.05.07

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Reason:

by the Division Bench.

The question under reference is as

follows :

"Whether an opportunity to rectify the defects/deficiencies specified by the Medical Council of India need be provided to the applicant under Section 10-A(3) and/or 10-A(4) of the Indian Medical Council Act, 1956 (for short "the Medical Council Act") in cases which fall within the ambit of the provisos (a) to (d) to Regulation 8(3)(1) of the Establishment of Medical College Regulations, 1999 (for short 'the Regulations')." 1

5. The Full Bench placed a strong reliance upon time

schedule laid down by this Court in the case of

Royal

Medical Trust (Regd.) & Anr. Vs. Union of India & Anr. Etc.

[(2015) 10 SCC 19] for arriving at the final conclusions

recorded in the last four paragraphs of the impugned judgment, which are as follows :

"50. On a careful reading of Regulation 8(3)(1), it appears to us that what is provided thereunder is grant of permission to establish a medical college initially for a period of one year and the renewal of the same on yearly basis subject to verification of the achievements of annual targets prescribed by MCI under Regulation 8(2). It is no doubt true that Regulation 8(3)(1) also states that "the Central Government may at any stage convey the deficiencies to the applicant and provide him an opportunity and time to rectify the deficiencies". However, the contention of MCI that by virtue of the provisos (a) to (d), an exception has been carved out to

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the power conferred on the Central Government to provide an opportunity and time to the applicant to rectify the deficiencies, is fallacious. We are afraid that this is not the import of Regulation 8(3)(1). According to us, the provisos (a) to (d) which imposed a bar on grant of renewal in the circumstances specified therein would only work as an exception to the main part of Regulation 8(3)(1) specifying the process of renewal of permission on yearly basis but not to the requirement of providing opportunity to rectify the deficiencies.

51. Therefore, we are of the view that it is not open to MCI and/or Central Government to deny an opportunity to the applicant/institute concerned to rectify the deficiencies specified by MCI even in cases which fall within the ambit of the provisos (a) to (d) of Regulation 8(3)(1) of the Regulations. However, it is essential for both MCI and Central Government to observe the time schedule as held in Royal Medical Trust (supra).

52. For the aforesaid reasons, we hold that the provisos (a) to (d) to Regulation 8(3)(1) of the Regulations shall not in any way circumvent the opportunity of being heard/opportunity to rectify the deficiencies provided under sub-Sections (3) and (4) of Section 10-A of the Medical Council Act. However, the same shall be in strict adherence to the time Schedule fixed in the Regulations and in conformity with the Schedule as laid down in Royal Medical Trust (supra).

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53. The reference is answered accordingly."

6. The main submission advanced on behalf of the appellant MCI, is to the effect that although the Full Bench did not declare provisos (a) to (d) of Regulations 8(3)(1) ultra vires nor declared any need to read them down still on account of its observations that it is not open to MCI and/or Central Government to deny to the applicant/institute concerned, an opportunity to rectify the deficiencies falling within the ambit of the aforesaid provisos, the Division Bench, on receipt of answer to the reference, allowed the writ petitions with a direction to consider for grant of recognition in disregard of the relevant provisos. In other words, the grievance of the appellant is that the answer to the reference given by the Full Bench is being construed against the appellant as if the relevant provisos of Regulation 8(3)(1) of the Regulations have been declared ultra vires or have been read down so as not to cause any ill effect upon an applicant/institution covered by those provisos.

7. Parties are in agreement that the issue referred to the Full Bench did not require even reading down of the concerned Regulation, much less examining its vires and therefore, the conclusions being drawn by the High Court on

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account of the impugned judgment of the Full Bench is not warranted in law.

8. Since the Full Bench did not strike down the concerned provisos of Regulation 8(3)(1) nor directed for reading down their effect, its answers must be confined to the peculiar facts and further, in our view, the High Court on receipt of the reference erred in issuing directions contrary to the relevant provisos.

9. In the aforesaid facts and circumstances, it is clarified that the impugned Full Bench judgment does not

adversely affect the provisos (a) to (d) of Regulation 8(3) (1) of the Regulations and the Division Bench erred in allowing the writ petitions by issuing directions contrary to the relevant provisos. Consequently, the final order passed by the High Court on the basis of the impugned judgment is held to be bad in law.

10. It is admitted at Bar that the adverse effect of the relevant provisos upon the writ petitioners is over for all practical purposes.

11. The learned senior counsel appearing for the appellant MCI has assured that no further action will be taken against the writ petitioners on the basis of lapses that attracted the concerned provisos and now the institutions belonging to the ⁵petitioners shall be subjected to inspection without taking any further punitive action for the past happenings.

12. It goes without saying that if the writ petitioners are so advised and if the need arises, they may challenge the constitutional validity of the concerned Regulations through any appropriate proceeding in future.

13. Both the appeals are allowed to the above extent, but with no order as to costs.

.....J.
[ANIL R. DAVE]

.....J.
[SHIVA KIRTI SINGH]

.....J.
[ADARSH KUMAR GOEL]

New Delhi;
27th April, 2016.

ITEM NO.301

COURT NO.2

SECTION XIV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s).31535/2015

(Arising out of impugned final judgment and order dated 29/09/2015
in WP No.7106/2015 passed by the High Court Of Delhi At New Delhi)

MEDICAL COUNCIL OF INDIA

Petitioner(s)

VERSUS

MALLA REDDY INSTITUTE OF MEDICAL SCIENCES & ORS. Respondent(s)
(With appln.(s) exemption from filing c/c of the impugned
judgment and interim relief and office report)

WITH

SLP(C)No.30742/2015

(With appln.(s) for exemption from filing c/c of the impugned
judgment and Interim Relief and Office Report)

Date : 27/04/2016 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ANIL R. DAVE
HON'BLE MR. JUSTICE SHIVA KIRTI SINGH
HON'BLE MR. JUSTICE ADARSH KUMAR GOELFor Petitioner(s) Mr. Vikas Singh,Sr.Adv.
Mr. Gaurav Sharma,Adv.
Ms. Amandeep Kaur,Adv.
Mr. Prateek Bhatia,Adv.
Mr. Dhawal,Adv.

For Respondent(s) Mr. K. parameshwar,Adv.

UOI Mr. R.K. Rathore,Adv.
Ms. Rekha Pandey,Adv.
Mr. M.P. Gupta,Adv.
Mr. R.S. Nagar,Adv.
Mr. R.R. Rajesh,Adv.
For Mr. D.S. Mahra,Adv.CBSE Mr. Tara Chandra Sharma,Adv.
Ms. Neelam Sharma,Adv.
Mr. Ajay Sharma,Adv.UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeals are allowed with no order as to costs in
terms of the signed Non-reportable judgment.

(Sarita Purohit)
Court Master

(Sneh Bala Mehra)
Assistant Registrar

(Signed Non-reportable judgment is placed on the file)