

W.P. No.21223/2015

(RKDF Medical College Hospital and Research Center vs.
Union of India and another)

11.05.2016

Shri Nidhesh Gupta, Senior Advocate with Shri Amalpushp Shroti, Advocate for the petitioner.

Shri Vikram Singh, Advocate for the respondent No.1-Union of India.

Shri Rajas Pohankar, Advocate for the respondent No.2-Medical Council of India.

Heard counsel for the parties. As short question arises for consideration, petition taken up for final disposal by consent. Counsel for the respondents waive notice for final disposal.

2. Although diverse reliefs have been claimed in this petition, the petitioner submits that petitioner would be more than content if the Court were to deal with the limited grievance of the petitioner in this petition, leaving all other questions open to be pursued if and when occasion arises.

3. The submission proceeds that the Government of India vide communication dated 29.03.2016 has committed manifest error in accepting the recommendation of the Hearing Committee which is founded *inter alia* on

letter No.MCI-34(41)/(R-47)/2014-Med./106541 dated 11.05.2015. That letter was the subject matter of challenge in the earlier round of writ petition as Annexure P-14 and has been set aside. Therefore, it is not open to the Authorities to invoke the same ground which has been considered and answered in the earlier round of writ petition with reference to the appointment of one Dr. Navneet Mishra and to invoke Regulation 8(3)(1)(d). Inasmuch as, this Court has already considered the scope of Regulation 8(3)(1)(d) and has held that the same is not applicable when it is a case of solitary appointment of one teaching Faculty, but, may be applicable only in case of multiple such appointments by the Institution.

4. The petitioner submits that if these two points are answered in favour of the petitioner, the other issues can be raised by the petitioner-institution only after the Medical Council of India undertakes inspection and submits report to the Central Government before 15.05.2016, which is the cut off date specified for the purpose.

5. Counsel for the respondents, on the other hand, submit that the communication dated 29.03.2016 is not limited to the irregularity noted about appointment of Dr.

Navneet Mishra ascribable to Regulation 8(3)(1)(d), but, also other matters. However, at the same time, counsel appearing for the respondents fairly accept that the letter noted in the impugned communication (Annexure P-12), namely, dated 11.05.2015, has already been set aside by this Court and which decision has been confirmed by the Supreme Court. Further, the reason for setting aside the said communication was not limited to non-adherence to principles of natural justice, but, also on merits of the applicability of relevant provisions of the Regulation in particular Regulation 8(3)(1)(d).

6. Having considered the rival submissions, we have no hesitation in taking the view that since the letter dated 11.05.2015, which was Annexure P-14 in W.P. No.7521/2015, having been set aside by this Court and that decision was also confirmed by the Supreme Court, it was not open to the Hearing Committee or for that matter, the Under Secretary to the Government of India to reckon the same for taking any decision that too forming adverse opinion against the petitioner. The fact that letter dated 11.05.2015 has been set aside by this Court in the earlier writ petition, can be discerned from paragraph 40 of the said judgment.

7. Notably, the same letter dated 11.05.2015, formed the basis of satisfaction recorded by the Hearing Committee as also the Government of India. That is manifest from the impugned communication dated 29.03.2016 (Annexure P-12). The opening part of this communication clearly refers to this letter dated 11.05.2015. Not only that, the ground regarding inappropriate appointment of Dr. Navneet Mishra as Professor, which was specifically noted in letter dated 11.05.2015, has also been taken into account by the Hearing Committee and by the Government of India as noted in the impugned communication dated 29.03.2016 (Annexure P-12).

8. The ground regarding inappropriate appointment of one Professor having fake degree, as is already held by this Court cannot be the basis to apply Regulation 8(3)(1)(d). That provision can be invoked only when there are multiple cases – as the expression used in the said provision is “Teachers”, in plural. That view has been taken in paragraph 29 and restated in the latter part of the said decision.

9. In the case of petitioner-institution neither the letter dated 11.05.2015 nor the impugned letter (Annexure P-12)

even remotely indicate that besides Dr. Navneet Mishra any other or more teaching staff has been employed by the petitioner-institution. Therefore, application of Regulation 8(3)(1)(d) is ruled out. Nevertheless, the impugned communication dated 29.03.2016 unambiguously proceeds on the basis of Regulation 8(3)(1)(d) which is a manifest error committed by the Government of India.

10. As a result, the impugned communication Annexure P-12 dated 29.03.2016, in our opinion, suffers from the vice of non-application of mind and of having invoked ground which is not available, if non-existing to attract Regulation 8(3)(1)(d). Hence, this communication deserves to be set aside and the parties must be relegated to the position as obtained on 29.03.2016 or prior to the issuance of impugned communication (Annexure P-12).

11. In this view of the matter, the appropriate course is that the Medical Council of India must undertake inspection of the College and submit its recommendation before 15.05.2016, which is the cut-off date. After such recommendation is submitted, the Government of India will be free to take decision in accordance with law while keeping in mind the observations made in the earlier decision of this Court, which has been upheld by the

Supreme Court in Special Leave Petition No.19153/2015 decided on 22.09.2015.

12. The writ petition, therefore, must succeed on the above terms. As aforesaid, no other relief is pressed by the petitioner for the time being with liberty to pursue the same or other grounds raised in the writ petition, if and when occasion arises.

13. We make it clear that if in the inspection by the concerned Authority it is revealed that there is possibility of invoking Regulation 8(3)(1)(d), will be free to pursue that option in accordance with law.

14. Writ Petition **disposed of** accordingly.

(A. M. Khanwilkar)
Chief Justice

(J.P. Gupta)
Judge