

Writ Petition No.5715 of 2016**28.04.2016**

Shri Sanjay K. Agrawal, learned counsel for the petitioner.

Shri Anoop Nair, learned counsel for the Medical Council of India.

Shri Sandeep K. Shukla, learned counsel for the Union of India.

Shri Kapil Duggal, learned counsel for the respondent No.3.

Heard counsel for the parties on admission.

By this petition filed under Article 226 of the Constitution of India, the petitioner has taken exception to the decision of the Medical Council of India dated 19.10.2015 (Annexure P-4) and communication vide Annexure P-5 of not processing the application submitted by the petitioner for permission to open a new medical college.

The sole reason noted by the Medical Council of India is that the application submitted by the petitioner was incomplete or defective. Inasmuch as, consent of affiliation in Form-3 for opening of the proposed medical college as submitted by the petitioner was invalid. Resultantly, the

application was defective and did not comply with the mandatory requirement.

It is not in dispute that the petitioner had submitted consent of affiliation in Form-3 issued by Barkatullah University dated 28.08.2014 along with the application for permission to open a new medical college, filed on 28.08.2015. It is also not in dispute that the respondent No.3 – University was established on 25.09.2014 and all the existing medical colleges in the State stood affiliated to the respondent No.3 – University. Similarly all the future medical colleges to be started or additional courses to be commenced in any existing medical colleges could be permitted only by respondent No.3 – University. It is for this reason the Medical Council of India considered the application filed by the petitioner as incomplete and negatived the proposal submitted by the petitioner in that behalf.

Counsel for the petitioner relying on the decision of the Division Bench of this Court in the case of **Gyanjeet Sewa Mission Trust Vs. Union of India and others** reported in **2015 (3) MPLJ 657** would contend that the Medical Council of India instead of rejecting the proposal submitted by the petitioner on the ground that the

application was incomplete ought to have given opportunity to the petitioner to cure the defect and to produce similar certificate issued by the respondent No.3 – University.

Reliance placed on the decision of the Division Bench of this Court adverted to above, in our opinion, is misplaced. That decision is on the facts of that case. In that case, the petitioner Institute had submitted application on 26.08.2014, before the respondent No.3 was established. Along with the said application, it had submitted consent of affiliation in Form-3 issued by the University who at the relevant time was competent to grant affiliation to medical colleges. The ratio of the said decision, therefore, will have to be understood in the context of the facts of that case and will be of no avail to the petitioner, who knowing fully well that the respondent No.3 – University was established on 25.09.2014, chose to rely on the certificate issued by the Barkatullah University dated 28.08.2014 and submitted that certificate along with the application filed for opening of a new medical college on 28.08.2015. We have no hesitation in taking the view that the Medical Council of India was justified, in the facts of the present case, to treat the application submitted by the petitioner as incomplete

and defective.

Counsel for the petitioner would then contend that there is ample power bestowed on the Medical Council of India and also in the Central Government to give opportunity to the applicant to cure such technical defect. Reliance is placed on the decision of the Division Bench in the case of **RKDF Medical College Hospital and Research Centre Vs. Union of India and another** reported in **2015 (3) MPLJ 611**.

We are afraid, non-submission of a valid consent of affiliation in Form-3 along with the application submitted by the institution for opening of a new medical college cannot be treated as a directory requirement. Counsel for the respondents has justly relied on the decision of the Supreme Court in the case of **D.Y.Patil Medical College Vs. Medical Council of India and another** reported in **(2015) 10 SCC 51** to buttress this submission. In paragraph 10 of the said decision, the Supreme Court has restated the legal position expounded in the case of **Dental Council of India Vs. S.R.M. Institute of Science & Technology** reported in **(2004) 9 SCC 676**. The requirement of filing essentiality certificate along with the application for permission has been held to be mandatory.

Applying the same logic, the requirement of filing a valid consent of affiliation in Form-3 issued by the competent University must be considered as mandatory as that condition is ingrained in Regulation 2 of the Regulations of 1999.

The argument of the petitioner proceeds that as per Regulation 8, it is open to the Central Government to remit the matter to the Medical Council for reconsideration. Reliance placed on Regulation 8, in our opinion, is inappropriate. Reconsideration can be in respect of new or additional information and not for giving opportunity to cure the defect in the application, which renders the application invalid in terms of Regulation 2 of the Regulations of 2009 read with Section 10A (2) (b) of the Indian Medical Council Act, 1956.

The counsel for the petitioner then placed reliance on Section 10A (3) (a) to contend that even this provision is indicative of power invested in the Authority to give opportunity to the applicant for curing the defect such as the present one. In the present case, the application submitted by the petitioner was accompanied by a consent of affiliation in Form-3 issued by the University which was not competent to grant affiliation for opening of medical

college after establishment of respondent No.3 on and from 25.09.2014. If the petitioner chose to rely on the certificate issued by Barkatullah University dated 28.08.2014 must take the risk of being labeled as ineligible, as the said consent of affiliation submitted by the petitioner was invalid and of no consequence after the establishment of respondent No.3 – University on 25.09.2014. In our opinion, therefore, this petition fails and the same is **dismissed**.

After this order has been dictated, learned counsel for the petitioner pointed out that one more point was argued by him which has remained to be mentioned by us. He submitted that the petitioner had subsequently obtained consent of affiliation in Form-3 from respondent No.3 – University and which could be relied by the petitioner for pursuing the application filed by him on 28.08.2015.

This argument deserves to be stated to be rejected for the same logic which has been noted earlier. The mandate of the Regulation read with Section 10A is that the application must be accompanied by a valid consent of affiliation in Form-3. Meaning thereby, issued by a University which was competent to affiliate medical college at the relevant point of time, when the application

for permission for opening of new medical college was submitted by the petitioner to the Medical Council of India. That application in the present case was submitted by the petitioner on 28.08.2015 on which date Barkatullah University was not competent to affiliate medical colleges and it is only respondent No.3 who could have granted such affiliation.

Accordingly, this petition is **dismissed**.

(A. M. Khanwilkar)
Chief Justice

(J.P.Gupta)
Judge

AM.