R.N.R,

Before Mukul Mudgal, C. J. & Ajay Tewari, J.

MEDICAL COUNCIL OF INDIA,—*Appellants*

versus

GOLD FIELD SIKSHA SANSTHA AND OTHERS,—*Respondents*

LPA No. 788 of 2010

in CWP No. 5948 of 2010

24th September, 2010

Constitution of India, 1950-Art. 226—Indian Medical Council Act, 1956—S. 10—Permission to establish medical College—MCI prescribing time schedule for establishment of new colleges as approved by Supreme Court—High Court does not have the power of Supreme Court under Article 142—Mandatory directions pursuant to order of Supreme Court cannot be disregarded and prescribed timeframe has to be followed—Appeal allowed.

Held, that we are bound by the mandatory directions of the Hon'ble Supreme Court of India stipulating a time schedule in *Mridul Dhar (minor) and others versus Union of India and others*. Even if there are certain directions in given cases permitting the relaxation of the said mandatory schedule approved in Mridul Dhar's case by the Hon'ble Supreme Court, it is not for this Court to relax the mandatory provisions of the scheme as this Court does not have the powers of the Hon'ble Supreme Court under Article 142 of the Constitution of India. The mandatory directions pursuant to the Supreme Court in Mridul's case cannot be disregarded and the prescribed timeframe has to be followed.

(Para 15)

Gurminder Singh, Advocate, *for the appellant*

Rajive Atma Ram, Sr. Advocate with Arjun Partap Atma Ram, Advocate, *for respondent No. 1*

Ramesh Hooda, Advocate, *for respondent No. 2*

MUKUL MUDGAL, C.J.

(1) This appeal has been filed against the judgment and order of the learned Single Judge dated 24th May, 2010. The facts may be briefly adumbrated as follows :—

(2) Respondent No. 1 set up a 300 bedded hospital in the year 2008. In the year 2009, it wanted to start a Medical College and for this purpose, moved an application dated 9th June, 2009 to the State of Haryana for grant of Essentiality Certificate. The State Government carried out an inspection on 20th July, 2009. The Essentiality Certificate was neither granted nor refused. On 17th August, 2009, respondent No. 1 moved an application to respondent No. 3 University i.e. Pt. B.D. Sharma, University of Health Sciences, Rohtak for affiliation. Before the same could be decided, it proposed a scheme for establishment of new Medical College under Section 10(A) of the Indian Medical Council Act, 1956 (hereinafter referred to as' the Act') to the Central Government. *Vide* order dated 22nd October, 2009, this application was returned by the Central Government pointing out the deficiencies as follows :—

(i) Essentiality Certificate from the concerned State Government

(ii) Consent of Affiliation from the Affiliating University

(iii) Proof of 300 bedded functional hospital.

(3) On 29th March, 2010, respondent No. 1 filed the writ petition praying for the following reliefs :—

(i) issue a writ in the nature of mandamus summoning the records of the case

(ii) issue a writ in the nature of certiorari quashing order dated 22nd October, 2009 Annexure P-11;

(iii) issue a writ in the nature of mandamus directing the respondent State to decide the petitioner's application (Annexure P-3) and grant Essentiality Certificate to the petitioner.

(iv) Issue a writ in the nature of mandamus directing the respondent University to decide the petitioner's application (Annexure P-6) and grant Consent of Affiliation to the petitioner.

(v) Issue a writ in the nature of mandamus directing respondents- Government of India and Medical Council of India to consider the scheme submitted by the petitioner for permission to establish a Medical College (Annexure P-7) on merits and to grant the said permission with effect from the session 2010-11 forthwith.

(vi) Any other suitable writ, order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case be issued.

(4) The appellant filed the written statement to the petition, in which it took the plea that the case of the petitioner-respondent could not be considered since the scheme moved by it was incomplete and thus 'there is no application within the meaning and provision of Section 10-A of the Act'. It further pleaded that it was permissible for the Government of India to reject the scheme since as mentioned above as per its stand there was no scheme in the eyes of law. Consequently, it pleaded that since no scheme had been placed before the Medical Council of India up to 30th September, 2009, the claim of respondent No. 1 could not be acceded to. The Government of India did not file any reply defending its action and on the

contrary, during the pendency of the petition on 30th April, 2010, issued the 'Essentiality Certificate'. A fortnight later, on 14th May, 2010, the University also issued provisional affiliation to respondent No.1. During the hearing before the learned Single Judge, learned Counsel for Government of India gave a concession that the Government of India was prepared to forward the scheme to the appellant even at that stage. On the basis of this concession and on the basis of an earlier finding in a similar case involving the Dental Council of India, as well as for the reason that in many cases, the time limit was not adhered to, learned Single Judge held that the Government of India had no power to reject the scheme and gave the following directions :—

> *"In view of the above position, the impugned communication (Annexure P-11) is hereby set aside. The petitioner shall resubmit the scheme to the Central Government within one week. The Central Government shall refer the same to the M.C.I within a period of one week thereafter. The M.C.I shall accordingly examine and evaluate the scheme in accordance with law and after carrying out the inspection etc. make its recommendations to the Central Government within two weeks from the date of receipt of the scheme from the Central Government. The Central Government will accordingly pass the appropriate order for grant of permission or therwise. Petition disposed of."*

(5) In a strange turn of events, the Government of India, who in normal course should have been aggrieved by the negation of its power to reject a scheme, did not file any appeal. Even more, curiously it has chosen to remain *ex-parte* before us in spite of service.

(6) The first plea of learned counsel for the appellant is that the findings of the learned Single Judge laying down that the Central Government had no power to reject the application is vitiated. This plea could very well have been negatived on the basic premise that it was the Central Government who would be aggrieved of this declaration and indeed the proper party to challenge this finding. This having not happened, it could well be argued that the appellant-Medical Council of India had no locus to question the same. However, considering the importance of this question, we feel it appropriate to address the same.

(7) Relevant provisions of Section 10-A of the Indian Medical Council Act, 1956 reads as follow : --

"Permission for Establishment of New Medical College, New Course of Study Etc.

10.A (1) Notwithstanding anything contained in this Act or any other law for the time being in force : -

(a) No person shall establish a medical college or

(b) No medical college shall :

(i) open a new or higher course of study or training (including a postgraduate course of study or training) which would enable a student of such course or training to qualify himself for the award of any recognized medical qualification; or

(ii) increase its admission capacity in any course of study or training (including a postgraduate course of study or training), except with the previous permission of the Central Government obtained in accordance with the provisions of this section.

Explanation 1 For the purposes of this section, "person" includes any University or a trust but does not include the Central Government.

Explanation 2. - For the purposes of this section "admission capacity" in relation to any course of study or training (including postgraduate course of study or training) in a medical college, means the maximum number of students that may be fixed by the Council from time to time for being admitted to such course or training.

(2) (a) Every person or medical college shall, for the purpose of obtaining permission under sub-section (1), submit to the Central Government a scheme in accordance with the provisions of clause (b) and the Central Government shall refer the scheme to the Council for its recommendations.

(b) The Scheme referred to in clause (a) shall be in such form and contain such particulars and be preferred in such manner and be accompanied with such fee as may be prescribed.

(3) On receipt of a scheme by the Council under sub-section (2) the Council may obtain such other particulars as may be considered necessary by it from the person or the medical college concerned, and thereafter, it may--

(a) if the scheme is defective and does not contain any necessary particulars, give a reasonable opportunity to the person or college concerned for making a written representation and it shall be open to such person or medical college to rectify the defects, if any, specified by the Council.

(b) consider the scheme; having regard to the factors referred to in sub-section (7) and submit the scheme together with its recommendations thereon to the Central Government."

(8) The stress of learned counsel for the respondent was on the words 'Central Government shall refer' in sub section 2(a) of Section 10 the Indian Medical Council Act, 1956 and it was submitted that the act of the Central Government was merely ministerial and the deficiencies, if any, were required to be examined by the Medical Council of India and the Central Government was not competent to do so.

(9) Learned counsel for the appellant, however, has based his plea on sub section 2(b) of the Act which states that the scheme referred to in clause (a) shall be in such form and contain such particulars and be preferred in such manner and be accompanied with such fee as may be prescribed.

(10) Mr. Gurminder Singh, learned counsel for the appellant submitted that even if it was assumed that the act of the Central Government was ministerial, nevertheless without going into the merits of the validity and viability of the scheme, the Central Government could only forward a scheme which complied with all the requirements of the Regulations. He submitted that if the three essential documents namely; "(a) Essentiality Certificate from the concerned State Government; (b) Consent of Affiliation

from the affiliating university ; (c) Proof of 300 bedded functional hospital." were not available along with the scheme, the application was incomplete and thus could not be forwarded to the Medical Council of India.

(11) Mr. Rajive Atma Ram the learned Senior Counsel for the Respondent Institution also referred to Clause 5 of the scheme framed under Section 10-A and 33 of the Act which reads as follows :—

> "5. Application referred by the Ministry of Health and Family Welfare to the Council will be registered in the Council for evaluation and recommendations. Registration of the application will only signify the acceptance of the application for evaluation. Incomplete applications will not be registered and will be returned to the Ministry of Health and Family Welfare along with enclosures and processing fee stating the deficiencies in such applications. The Council shall register such incomplete applications, if so directed by the Central Government for evaluation but shall submit only a factual report in respect of them and shall not make any recommendations."

(12) Relying upon the above Clause 5, it was submitted that incomplete application referred to it by the Government of India could be returned to the Government of India, Ministry of Health, by the Medical Council of India without registration indicating the deficiencies and even such incomplete applications would have to be evaluated by M.C.I. if so directed by the Government of India, if it sent the applications returned by the Government to it again. In light of the above stipulation in the Regulation it was submitted by Shri Atma Ram and in our view with some justification that even incomplete applications had to be forwarded to the MCI by the Government of India and upon the return of the incomplete application with the deficiencies/defects pointed out by the MCI, the Government could again forward it to the MCI for evaluation. Mr. Gurminder Singh for the appellant apart from relying upon the time schedule mandated in Mridul Dhar's case (*supra*) also sought to rely upon Clauses 2 and 3 and in particular Clause 3 which stated as under in its preamble :—

> "3. **Form and Procedure :** Subject to the fulfilment of the above eligibility and qualifying criteria, the application to establishment of medical college in form —I shall be submitted by the person in the following parts, namely :—
>
> xxx xxx xxx

...3. Necessary certificates/documents as prescribed in qualifying criteria under paragraph 2 ...

xxx xxx xxx"

He argued that as per clause (3) a scheme could be proposed only after meeting the essential conditions of eligibility.

(13) The other plea of learned counsel for the appellant is that the finding of the learned Single Judge that the time schedule provided by the Medical Council of India is directory and not mandatory is not justified as it is based on the reason that the Medical Council of India as also the Central Government having been granting letters of intent and permissions beyond the time prescribed and therefore, the respondent (petitioner before the Single Judge) college cannot be treated differently. Learned counsel for the appellant has argued that pursuant to the directions given in **Mridul Dhar (minor) and others** *versus* **Union of India and others, (1)** the Hon'ble Supreme Court had mandated the time bound schedule. The relevant portion of the Hon'ble Supreme Court's judgment in Mridul Dhar's case is as follows :

"Schedule for Receipt of Applications for Establishment of new Medical Colleges and processing of the applications by the Central Government and the Medical Council of India

State of processing		Last date
1.	Receipt of applications by the Central Government	From 1st August, to 31st August, (Both days inclusive) of any year
2.	Receipt of applications by the MCI from Central Government	30th September
3.	Recommendations of Medical Council of India to Central Government for issue of Letter of Intent	31st December
4	Issue of Letter of Intent by the Central Government	31st January

(1) J.T. 2005 (1) S.C. 340

5.	Receipt of reply from the applicant by the Central Government requesting for Letter of Permission	28th February
6.	Receipt of Letter from Central Government by the Medical Council of India for consideration for issue of Letter of Permission	15th March
7.	Recommendations of Medical Council of India to Central Government for issue of Letter of Permission	15th June
8.	Issue of Letter of Permission by the Central Government	15th July

Note : (1) The information given by the applicant in Part-I of the application for setting up a medical college that is information regarding organization, basic infrastructural facilities, managerial and financial capabilities of the applicant shall be scrutinized by the Medical Council of India through an inspection and thereafter the Council may recommend issue of Letter of intent by the Central Government.

(2) Renewal of permission shall not be granted to a medical college if the above schedule for opening a medical college is not adhered to and admissions shall not be made without prior approval of the Central Government."

In light of the above schedule the Hon'ble Supreme Court further held as under :

"14. Time schedule for establishment of new college or to increase intake in existing college, shall be adhered to strictly by all concerned.

15. Time schedule provided in Regulations shall be strictly adhered to by all concerned failing which defaulting party would be liable to be personally proceeded with."

Accordingly, the Medical Council of India had prescribed the said schedule approved by the Supreme Court. Learned counsel further submitted that learned Single Judge could not dilute the impact and effect of the said mandatory schedule prescribed by Medical Council of India and approved by the Hon'ble Supreme Court of India.

(14) Learned Counsel for the respondent has referred to certain cases where appellant has itself departed from the time schedule and argued that there was no reason for the appellant to have taken such an arduous stand only in the present case where the direction given by the learned Single Judge is to merely conduct an inspection. As per learned counsel, it would have been different if the learned Single Judge had directed the Medical Council of India to grant permission but in the persent case only a direction to conduct the inspection was given. We have noted that the Medical Council of India in certain departures from the time schedule for instance as directed by the Delhi High Court judgment in **Azeezia Institute of Medical Sciences and Research** *versus* **Union of India (W.P.(C) No. 4901/2010),** has accepted the said departures but has sought to challenge the present judgment of the Single Judge. The learned counsel for the respondent also cited certain other instances which indicate departures from the Mridul Dhar case's schedule. Even though there is substance in this argument of learned counsel for the appellant and there may have been cases where the appellant has chosen not to take such a legal stand, yet as mentioned above, we are bound by the mandatory directions of the Hon'ble Supreme Court of India stipulating a time schedule in Mridul Dhar's case. The learned Counsel for the Respondent relied upon a news item dated 19th September, 2010 reporting a statement of the reforms suggested by the present Medical Council of India which had estimated a requirement of about 500 new Medical Colleges. As per learned counsel, it is very strange that on one hand the Medical Council of India is stressing on the need for increase in medical colleges and on the other hand, it has taken such a harsh and pedantic view in the present case where it has obdurately refused to even conduct an inspection.

(15) Further more, even if there are certain directions in given cases permitting the relaxation of the said mandatory schedule approved in Mridul Dhar's case (*supra*) by the Hon'ble Supreme Court it is not for this Court to relax the mandatory provisions of the scheme as this Court

does not have the powers of the Hon'ble Supreme Court under Article 142 of the Constitution of India. The mandatory directions pursuant to the judgment of the Hon'ble Supreme Court in Mridul's case (*supra*) cannot be disregarded and the prescribed time frame has to be followed.

(16) In our view the absence of the very requirements indicated in Regulation 3 could lead to the return of the incomplete applications to the Govenment of India by the MCI with the deficiencies specified and Mr. Atma Ram's plea may have been accepted. However, we can not disregard the position of law specifying the time schedule in Mridul Dhar's case and can not accept any interpretation which could negate or dilute the impact of Mridul Dhar's case. We consequently hold that Mr. Atma Ram's plea cannot be accepted only on account of the time limits fixed in Mridul Dhar's case (*supra*).

(17) In the circumstances, following the position of law laid down by the Supreme Court, we allow the appeal with no order as to costs. The writ petition would consequently stand dismissed.

R.N.R