

(2010) 07 MAD CK 0362

Madras High Court

Case No: Writ Petition No. 15804 of 2010 and M.P. No's. 1 and 2 of 2010

Priya Darshini Dental College
and Hospital

APPELLANT

Vs

Union of India (UOI), Dental
Council of Indian, The Tamil
Nadu Dr. M.G.R. Medical
University and The Directorate of
Medical Education

RESPONDENT

Date of Decision: July 29, 2010

Acts Referred:

- Dentists (Amendment) Act, 1993 - Section 10A, 10A(4)

Hon'ble Judges: K.B.K. Vasuki, J

Bench: Single Bench

Advocate: V.T. Gopalan, for the Appellant; M.V. Raja, for RI, P. Chandrasekaran, for R2, A. Saravanan, for R3 and E. Ranganayaki, for R4 Government Advocate (Education), for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

K.B.K. Vasuki, J.

On consent, this writ petition is taken up for final hearing.

2. The writ petition is filed to quash the order of the first Respondent dated 15.07.2010 and to consequently direct the Respondents to permit the Petitioner to admit the students for BDS course for the current academic year 2010-2011 and to further direct the Respondents to grant renewal permission to run the 4th year BDS course for the academic year 2010-2011.

3. The brief facts relevant for consideration are set out hereunder: The Petitioner Priya Darshini Dental College and hospital was established to run BDS course from

the academic year 2007-2008 and the permission was periodically renewed after satisfying with the facilities available therein for the subsequent years 2008-2009 and 2009-2010. The Petitioner has for the academic year 2010-2011 submitted an application along with necessary fee to the second Respondent for renewal of permission for running 4th year. On receipt of the application, the second Respondent carried out the inspection on 26.04.2010 and the outcome of such inspection is the report dated 17.05.2010, in and under which, the college is asked to make good the deficiencies noted therein and to furnish the compliance report. The college authority has accordingly furnished detailed compliance report on 19.05.2010. Thereafter, the Petitioner was served with notice dated 21.06.2010 from the office of the Ministry of Health and Family Welfare, under which, the Petitioner college was directed to make a personal appearance before three member committee constituted under the chairmanship of Director General, Health Services, Ministry of Health and Family Welfare, to consider the Petitioner's proposal for the renewal of permission for the year 2010-2011 and the notice is issued for the personal hearings fixed on 23rd, 24th or 25th June 2010 from 11.00 a.m. to 4.00 p.m. at DG's Chamber in 446/A Wing, Nirman Bhavan, New Delhi. The copy of the postal cover with which the notice dated 21.06.2010 is sent is enclosed at pages 14 and 16 of the typed set of papers. The perusal of same reveals that the notice dated 21.06.2010 for the personal hearing fixed on 23rd to 25th of June is despatched at New Delhi on 22.06.2010 and was received by the Petitioner college on 25.06.2010. In view of the same, the Petitioner college was unable to attend the personal hearing between 23rd to 25th. The Petitioner college has immediately on receipt of the notice i.e. on 25.06.2010 itself, sent a communication to the Undersecretary, Government of India about the receipt of the intimation of the personal hearing by the college only at 1.00 p.m. On 25.06.2010 and their inability to attend the personal hearing as stipulated in the notice, with further request to allot a fresh date preferably on 29.06.2010 or 30.06.2010. The Petitioner has also requested the authority concerned to intimate by return fax the proposed date of hearing and the fax number is also furnished in the same letter. Finding no reply from the under Secretary, the Petitioner college has sent another communication on 28.06.2010 to the first Respondent/Secretary, Ministry of Health and Family Welfare, communication dated 28.06.2010 with the copy of earlier communication dated 25.06.2010. Again the Petitioner college did not hear any further intimation from Ministry of Health and Family Welfare. The Petitioner college again sent another representation on 06.07.2010 to the Minister of Health and Family Welfare, explaining the facts in detail and with request to grant renewal of permission to run the 4th year BDS course. Even thereafter, no communication was received by the Petitioner college with regard to fresh date of hearing, whereas the Petitioner was communicated with the impugned order dated 15.07 2010, thereby, the first Respondent has mainly on the basis of the report of the second Respondent/Dental Council of India, dated 12.06.2010 negatived the Petitioner's request to renew the permission and has directed the Petitioner college not to admit any students for the

academic year 2010-2011. The impugned order would in para-3 of the same further say that the Petitioner college were given opportunity of personal hearing on 23rd to 25th June before disapproving the scheme as contemplated under the relevant provisions of Dentists (Amendment) Act, 1993. The impugned order is sent along with copy of the report of the second Respondent dated 12.06.2010, pointing out various deficiencies of dental, medical and infrastructure aspects.

4. The learned senior counsel appearing for the Petitioner would seriously attack the validity of the impugned order mainly on two grounds:

(1) That the same is passed without giving reasonable opportunity to the Petitioner as contemplated under the relevant provisions of Act and is hence, in violation of the mandatory requirement.

(2) The impugned order is based on the report of the second Respondent/Dental Council, the copy of which is not furnished to the Petitioner and the contents of which are not known to the Petitioner, as such the impugned order is in violation of the principles of natural justice.

5. The list of dates and events above referred to would fully support the first objection raised on the side of the Petitioner against the validity of the impugned order. As rightly argued by the learned senior counsel, the personal hearings are fixed that too at Delhi from 11.00 a.m. to 4.00 p.m. on 23rd to 25th of June 2010, but the intimation regarding the same was admittedly signed on 21.06.2010 and despatched at Delhi on 22.06.2010 and was received by the Petitioner college only on 25.06.2010. First of all, the notice sent on 22.06.2010 for the personal hearing on 23rd to 25th without providing reasonable time to the Petitioner college to make arrangements to come to Delhi by itself is not proper and not in substantial compliance of the rule regarding adequate personal hearing. Further despite the representations made by the Petitioner college explaining the reasons for their inability to attend the personal hearing on the dates so fixed and despite the request made by the Petitioner college to fix fresh date of hearing to enable them to appear before the committee to explain their stand in the matter of rectification of the deficiencies pointed out by the second Respondent/Dental Council, the first Respondent has not only failed to consider the Petitioner's request, but also proceeded to pass the impugned order, that too by treating the hearings fixed on 23rd to 25th June as amounting to due personal hearing given to the Petitioner.

6. In this regard, the relevant provisions of law to be looked into is Section 10A of The Dentists Act, dealing with the procedure for granting permission for establishment of new Dental College and new course of study. The same procedure is applicable for renewal of permission already granted as in the instant case and the renewal sought herein is for running 4th year course during academic year 2010-2011. As far as the issue involved in the present case is concerned, the relevant Sub-section is 10A(4) and the same is extracted below for better appreciation

10A(4). The Central Government may, after considering the scheme and the recommendations of the Council under Sub-section (3) and after obtaining, where necessary, such other particulars as may be considered necessary by it from the person, authority or institution concerned, and having regard to the factors referred to in Sub-section (7), either approve (with such conditions, if any, or it may consider necessary) or disapprove the scheme and any such approval shall be a permission under Sub-section(l):

Provided that no scheme shall be disapproved by the Central Government except after giving the person, authority or institution concerned granting recognised dental qualification a reasonable opportunity of being heard:..

The reading of the relevant section reveals that the opportunity as contemplated under the Act is not mere opportunity but reasonable opportunity of being heard. The authority concerned is also quite aware of the mandatory requirement. That is why it is specifically referred to in para-3 of the impugned order as if one such opportunity is given to the Petitioner college. But the opportunity given herein is only for mere formality sake. The Petitioner is unfortunately not afforded reasonable opportunity as statutorily required. The first Respondent is also unable to give any explanation as to why such reasonable opportunity is denied to the Petitioner college. The failure to strictly or substantially adhere to the mandatory requirement is totally in violation of the procedure laid down under the statute. As no disapproval of any scheme shall be made except after giving reasonable opportunity of being personally heard, the impugned order is, for non compliance of the statutory mandatory provision, liable to be set aside.

7. Regarding the other objection, here again it is not disputed that the report of the second Respondent dated 12.06.2010 which is referred to in and enclosed with the impugned order is for the first time brought to the notice of the Petitioner only along with the impugned order. Though the Petitioner college has submitted their compliance report as early as on 19.05.2010, the second Respondent/council does not appear to have made any re-inspection to verify the status of the compliance report. The learned standing counsel for the second Respondent is also unable to furnish any particulars as to whether any re-inspection was done after the compliance report dated 19.5.2010 is received from the Petitioner college. In that event the report dated 12.06.2010 is to be necessarily treated as not based on any re-inspection, because the only inspection referred to in the report dated 12.06.2010 in the subject column is inspection carried out on 26.04.2010. Though the rectification report dated 19.05.2010 is duly referred to in this document, the second Respondent / Dental Council has not thought fit to verify the same and to forward away fresh report to the three member committee.

8. Be that as may be, the failure to make the copy of the report, which is the basis for rejection of renewal of permission for the Petitioner college is totally in violation of the principles of natural justice and is unfair and unjustifiable. The learned senior

counsel has also cited two authorities of the Apex Court reported in [Union of India and others Vs. Mohd. Ramzan Khan](#), and (2008) 16 SCC 276 in Nagarjuna Construction Company Limited v. Government of Andhra Pradesh and Ors. in support of his contention, that the failure to supply the copy of the adverse material based on which the main order is passed vitiates the impugned order. The supreme court has in the judgment reported in 2008 SCC dealt with the manner of adherence of principles of natural justice and has laid down guidelines with regard to the nature and contents of the notice and the manner in which and the time at which the same shall be issued.

It is observed by the Supreme Court as follows:

15. The first and foremost principle (principles of natural justice) is what is commonly known as audi alteram partem rule it says that no one should be condemned and heard. Notice is the first limb of principle, it must be precise and unambiguous. It should apprise the party determinatively of the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time....

9. In the same judgment the supreme court has also considered in detail the objection raised by the Appellants therein regarding the non supply of copies of document on which the department case is rested and the impugned order passed. There also the adverse material based on which the impugned order is passed is for the first time referred to in the impugned order and the availability of one such document was not made known to the Appellant on earlier occasion and one of the grounds on which the impugned order challenged was failure to make the Petitioner aware and the failure to supply to the Petitioner the copy of such adverse material. The Supreme Court has under identical circumstance held that the same is in total disregard of the principles of natural justice and the Supreme Court is pleased to set aside the impugned order and remitted back the matter for fresh consideration. The same view is expressed in the earlier case of Supreme Court reported in 1991 SCC wherein the Supreme Court has in different context clearly held that non furnishing of the report would amount to violation of principles of natural justice which renders the final order under challenge liable to be quashed.

10. This Court is at this juncture inclined to reproduce the observation of the Apex Court in 2008 SCC case as to what is principles of natural justice. It is laid down in para 16 at page 287 of judgment

Principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice.

The supreme court has in para 17 referred to the observation of Lord Wright in the judgment reported in 1943 AC 627 in *General Medical Council v. Spackman* that it was not desirable to attempt "to force it into any Procrustean bed" and mentioned that one essential requirement was that the tribunal should be impartial and have no personal interest in the controversy, and further that it should give "a full and fair opportunity" to every party of being heard.

11. In my opinion the Petitioner college is denied one such full and fair opportunity of being heard before passing the impugned order and such denial decides the fate of the order impugned herein. The impugned order now held unlawful, invalid, arbitrary and wholly vitiated and is hence quashed and the matter is remitted back for reconsideration by the first Respondent.

12. In the result, the writ petition is disposed of by remitting the matter back for reconsideration by the first Respondent by giving reasonable opportunity to the Petitioner college for being personally heard by the three member committee and to consider the Petitioner's request for renewal of permission for the academic year 2010-2011.. For the said purpose, the first Respondent is directed to fix the date of hearing by the three member committee on 06.08.2010 at 11.00 a.m. at the same venue as mentioned in the earlier notice. The Petitioner is permitted to appear before the three member committee with all relevant documents in connection with the proposal for renewal and the three member committee will pass final order within one week thereafter. In the meantime, the second Respondent/Dental Council may, if warranted, make re-inspection to verify the status of the compliance report and to forward further report, if any, so as to reach the first Respondent and three member committee on or before 06.08.2010. The Respondents 1 and 2 are directed to proceed with the matter without insisting for the production of the copy of the detailed order.

13. With this observation, the writ petition is disposed of. The connected miscellaneous petitions are closed. No costs.