
(2014) 12 KAR CK 0300

In the Karnataka High Court

Case No : Writ Petition Nos. 53873 and 53874 of 2014 (EDN-REG-P)

Akash Education and Development Trust and Others

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 17-12-2014

Acts Referred:

Indian Medical Council Act, 1956 — Section 10-A(2)

Citation : (2015) 2 KarLJ 3

Hon'ble Judges : A.S. Bopanna, J

Bench : Single Bench

Advocate : Shashikiran Shetty, Senior Counsel for Farah Fatima, Advocate for Shetty and Hegde, Advocates for the Appellant; Aravind Sharma for Krishna S. Dixit, Assistant Solicitor General, Advocates for the Respondent

Judgement

A.S. Bopanna, J.—The petitioners are assailing the communication dated 16-10-2014 by which the scheme as submitted by the petitioners for establishment of a new Medical College at Devanahalli has been returned by the respondent-Central Government. In that view, the petitioners are seeking that the same be quashed and the respondents be directed to receive the application/scheme submitted by the petitioners and process the same in accordance with law by forwarding the same to the Medical Council of India ("MCI" for short). The petitioners submitted the scheme for establishment of a new Medical College on 27-8-2014. The said scheme has been returned by the respondents since along the same, the consent of affiliation had been submitted and the same has been submitted separately on 25-9-2014 after the cutoff date i.e., 31-8-2014.

2. Learned Senior Counsel for the petitioners while assailing the said notification would contend that as per the schedule, the application was required to be filed on or before the 31st September of the particular year and therefore even assuming that the consent of affiliation was filed separately on 25-9-2014, the same is in accordance with law. The schedule as notified and published on 1-10-2012 is relied upon in this regard. It is further alternatively contended that

admittedly, the scheme has been filed on 27-8-2014 i.e., prior to 31st August of the particular year even if the notification dated 26-8-2009 is kept in view. In that view, it is contended that the respondents are required to receive the application as contemplated under Section 10-A(2) of the Indian Medical Council Act, 1956 ("the Act" for short) and the same is to be forwarded to the MCI. Subsequent thereto, the procedure as contemplated under sub-sections (4) and (5) would have to be followed. Even at that stage, there would be an opportunity to the College to rectify the lacuna or make good the deficiency if any, pointed out by the MCI and therefore, the respondents in any event were not justified in returning the application of the petitioners at this juncture by indicating that the enclosure had been filed belatedly.

3. Learned Counsel for the respondents who has filed his written submissions would elaborate and contend that due to the change of procedure from the Board of Governors to the MCI subsequently and since the Ordinance which had subsequently prescribed the procedure providing the date till 31st August of the particular year had lapsed, the procedure as contemplated under the notification dated 26-8-2009 was to be followed. In that light, it is contended that the application in its complete form was required to be submitted before 31st August of the particular year to the respondent, who would thereafter verify and forward it to the MCI before 30th September. In the instant case, it is evident that the consent of affiliation was submitted only on 25-9-2014 after the cutoff date and therefore the application being not complete, the respondents were not obliged to forward the same to the MCI and the return as made is justified. It is contended that when the Hon"ble Supreme Court has fixed the schedule to be adhered to, any lapse on the part of the respondents in accepting the application beyond the date would not be sustainable and therefore the action as taken by the respondents is justified.

4. In the light of the above, at the outset, it is to be noticed that as relied in the petitions, there are two notifications whereunder the schedule indicating the time frame is provided. Considering that in the instant case, the application enclosing the scheme has been filed to the Central Government, the schedule indicating the last date as 31st August would be the relevant date. While saying so, this Court cannot also ignore the order passed by the High Court of Kerala at Ernakulam passed in W.P. (C) No. 26350 of 2014, dated 24-10-2014, wherein the Court in a similar set of situation on taking note that the Essentiality Certificate submitted by the petitioners was belated had taken note of the fact that the same in any event had been filed prior to 30-9-2014 and had thereafter permitted the applicant to re-submit the application and directed the respondents to reconsider the same. I have referred to this aspect of the matter only to indicate that there has been certain misconception or certain misunderstanding with regard to the actual date to be taken as the last date for filing.

5. Therefore, keeping that in the background, if the present facts are considered,

in any event, the application enclosing the scheme as filed by the petitioners was prior to the last date even as per the notification dated 26-8-2009 i.e., before 31st August as provided therein. The consent of affiliation was an additional document which has been filed by the petitioners and the same is furnished subsequent to the said date indicated therein, but prior to the date which is indicated in the schedule to the notification dated 1-10-2012. Even otherwise, if the notification dated 26-8-2009 is also kept in view, the date for forwarding of the application by the Central Government to MCI is 30th September and before that date, the petitioners have admittedly submitted the consent of affiliation. In that circumstance, the question for consideration at this juncture is as to whether there is any prejudice or irreversible violation of law by the petitioners contrary to the time frame in making their application and whether the scheme as submitted by them deserves to be rejected in the manner as has been done?

6. To the said extent, as already noticed, the application enclosing the scheme was filed prior to the admitted last date i.e., before the 31st August and even the additional document was provided to the Central Government prior to the last date available to them to dispatch the same to MCI i.e., before 30th September. In such situation, though the Central Government would have to verify the application, the procedure as contemplated under Section 10-A(2) of the Act would indicate that they would have to receive the application and thereafter forward the same to the MCI. In any event, the consent of affiliation in the instant case had been submitted to the respondents prior to the process being completed by the Central Government as noticed.

7. Therefore, at that stage, when the consent of affiliation was filed, it was still open for the respondent-Central Government to receive the same on record and thereafter transmit the papers to the MCI. I am of the said opinion for the reason that in a circumstance when the scheme/application is submitted to the MCI by the Central Government, if any other requirements are pointed out by the MCI, the College would still have an opportunity of satisfying the MCI in this regard to enable it to thereafter come to the conclusion. Hence, in the present facts, I am of the opinion that the respondents were not justified in unilaterally rejecting the application of the petitioners by the communication dated 16-10-2014. Since in any event the consent of affiliation is also available at this juncture, the petitioners shall now re-submit the application forthwith on receipt of a copy of this order and the respondent is directed to forward the same to the MCI and thereafter the MCI would consider the same in accordance with law.

In terms of the above, the petitions stand disposed of.