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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 08.09.2025% **W.P.(C) 4941/2025 & CM APPL. 22676/2025****MAMTAZ FOUNDATION THROUGH ITS DIRECTOR****.....Petitioner****Through: Mr. Murari Lal Sharma, Adv.****versus****DENTAL COUNCIL OF INDIA & ORS.****.....Respondents****Through: Mr. T. Singhdev, Mr. Abhijit Chakravarty, Mr. Tanishq Srivastava, Mr. Anum Hussain, Ms. Ramanpreet Kaur, Ms. Yamini Singh, Mr. Saurabh Kumar and Mr. Bhanu Gulati, Adv. for R-1.****Mrs. Dr. Monika Arora, CGSC with Mr. Subhrodeep Saha, Ms. Anamika Thakur and Mr. Prabhat Kumar, Adv. for R-3.****CORAM:****HON'BLE THE CHIEF JUSTICE****HON'BLE MR. JUSTICE TUSHAR RAO GEDELA****DEVENDRA KUMAR UPADHYAYA, C.J. (ORAL)**

1. Heard the learned counsel for the parties.
2. By instituting these proceedings under Article 226 of the Constitution of India, the petitioner which is a foundation and intends to set up a dental college in Assam, has challenged the provisions of Clause 6(2)(e) of the regulations known as Dental Council of India (Establishment of New Dental Colleges, Opening of New or Higher Course of Study or Training and increase of Admission Capacity in Dental Colleges) Regulations, 2006



(hereinafter referred to as the “**2006 Regulations**”) issued by Dental Council of India by notification dated 10.01.2006.

3. The petitioner further prays that a direction be issued to the respondent Nos. 1 and 2 to consider the application for seeking approval to establish new Dental College & Ayurveda College respectively without insisting for NOC from State Government.

4. The thrust of the arguments made by learned counsel for the petitioner insofar as the prayer relating to the provisions of Regulation 6(2)(e) of 2006 Regulations is that Section 10A of the Dentists Act, 1948, which is in relation to permission for establishment of new dental college, new courses of study, etc., does not require any such NOC to be obtained from the State Government and further that the provisions of impugned regulation 6(2)(e) of 2006 Regulations are not enforceable for the reason that the Regulations, 2006 have not been placed before the Parliament in terms of the requirement of Section 20(4) of the Dentists Act, 1948.

5. Mr. Singhdev, Advocate representing the Dental Council of India has, however, vehemently opposed the prayers and has submitted that the arguments made by the petitioner are absolutely misconceived for the reason that Section 10A of the Dentists Act, 1948, mandates seeking permission of the Central Government in case any new Dental College is to be established or any new course of study in Dental Sciences is intended to be conducted. He has drawn our attention to the said provision and has submitted that no such new Dental College or new course of study can be permitted except with the previous permission of the Central Government which is to be obtained in accordance with the provisions given in the Dentists Act, 1948, itself.



6. He further states that in terms of the requirement of sub-Section (4) of Section 20 of the Dentists Act, 1948, the 2006 Regulations must have been placed before each House of the Parliament, and only thereafter, they have been notified, and thus, these Regulations are in vogue. Mr. Singhdev has also drawn our attention to an earlier order dated 17.03.2025 passed by a Co-ordinate Bench of this Court in W.P.(C) No. 3235/2025 which was instituted by the petitioner foundation with identical prayers. He has stated that the said writ petition was dismissed as withdrawn with the liberty to the petitioner to approach the appropriate authority seeking requisite permission under the Regulations. Paragraph 4 of the said order dated 17.03.2025 is extracted herein below:

“4. On being pointed out that the petition appears to be pre-mature, learned counsel for the petitioner states that the petitioner may be permitted to withdraw this writ petition with the liberty to approach the appropriate authority seeking requisite permission under the Regulations and further that in case, the permission is refused, the petitioner may be permitted to seek redressal of its grievances by instituting appropriate proceedings before an appropriate Forum/Court.”

7. It is the submission of learned counsel for the Dental Council of India as also the Central Council of Indian Medicine that no such application has been made by the petitioner and as such the instant writ petition may not be entertained.

8. Be that as it may, since the petitioner insists on adjudicating the prayer made in the petition regarding Regulation 6(2)(e) of 2006 Regulations, we proceed to consider the same.

9. As noticed above, in terms of the requirement of Section 10A of the Dentists Act, 1948 no person is permitted to establish a new Dental College or introduce a new course of study etc., without the previous permission of



the Central Government which is to be obtained in accordance with the provisions of Section 10A of the Dentists Act, 1948.

10. According to Section 10A of the Dentists Act, 1948 every institution granting recognized dental qualification is required to submit to the Central Government a scheme in accordance with the provisions of the said Act for the purposes of obtaining permission, and thereafter, the Central Government is to refer the said scheme to the Council for its recommendations.

11. Sub-Section 10A(2)(b) requires that any such scheme has to be in such form and should contain such particulars and may be preferred in such manner and be accompanied with such fee as may be prescribed. Sub-Section 10A(3) provides that the Medical Council shall obtain such particulars as may be considered necessary from the person, authority or institution concerned and thereafter the council shall consider the scheme and submit the same together with the recommendations thereon to the Central Government.

12. Sub-Section (4) of Section 10A provides that the Central Government may after considering the scheme and the recommendations of the Dental Council of India and such other particulars as may be considered necessary either approve such scheme or disapprove the scheme and any such approval shall be construed to be a permission under Section 10A(1) of the Dentists Act, 1948.

13. Accordingly, Section 10A(3) permits the Dental Council to obtain such other particulars as may be considered necessary by the Council from the institution seeking such permission.



14. Section 20 of the Dentists Act, 1948, empowers the Dental Council to make regulations to carry out the purposes of the provisions contained in Chapter II of the Dentists Act, 1948.

15. Section 20(2)(fa) of the Dentists Act, 1948, permits the Council to make regulations for prescribing the form of the scheme, the particulars to be given in such scheme, the manner in which the scheme is to be preferred and the fee payable with the scheme under Section 10A(2)(e). Section 20(1)(fb) provides that by making regulations, the Dental Council may prescribe any other factors as per Section 10A(7)(g) of the Dentists Act, 1948.

16. It is in exercise of the powers vested in Section 20 of the Dentists Act, 1948, that the 2006 Regulations have been framed by the Dental Council of India with the previous approval of the Central Government.

17. We will now examine the impugned Regulation 6(2)(e) of the 2006 Regulations. Regulation 6 pertains to eligibility and qualifying criteria. Regulation 6(2) provides that an organization under sub-regulation (1) shall qualify to apply for permission to establish a dental college on fulfillment of certain conditions which are given thereunder. Sub-clause (e) requires production of Essentiality Certificate in Form 4 regarding 'no objection' of the State Government or Union Territory administration for establishment of the proposed dental college at the proposed site and availability of adequate clinical material as per the Council's regulations. Such Essentiality Certificate is to certify that such particulars have been obtained by the person/ organization applying for opening of a new dental college, and such certification is to be given by the concerned State Government or Union



Territory administration. As noticed above, Section 20 of the Dentists Act, 1948, empowers the Dental Council to make regulations with the approval of the Central Government on certain subjects.

18. In our considered opinion, Section 20(2)(fa) of the Dentists Act, 1948, clearly permits the Dental Council to formulate a regulation wherein the form of the scheme can be prescribed, and particulars to be given in such a scheme, the manner in which the scheme i.e., the application for opening up of a new dental college is to be preferred, and the fee payable with such an application, can also be prescribed.

19. Regulation 6(2)(e), thus, have been framed by the Dental Council in exercise of authority vested in it under Section 20 of the Dentists Act, 1948, that too with the approval of the Central Government, and accordingly, we do not find any illegality in this respect on the part of the Dental Council of India.

20. Further, we may also observe that Section 10A(3) of the Dentists Act, 1948 also permits the Council to obtain such other particulars as may be considered necessary on receipt of the scheme/ application by an organization/ person seeking to open up a new Dental College. The particulars to be sought for the purposes of processing any such application in terms of Section 10A(3) are not restricted, rather, whatever particulars are thought to be appropriate and necessary by the Council, such particulars can be asked for to be submitted by the person/ organization seeking to open such new Dental College.

21. In this view as well, the provisions contained in Regulation 6(2)(e) of the 2006 Regulations are supported by the statutory provisions contained in



Section 10A(3) of the 1948 Act.

22. At this juncture, we may also refer to a judgment of the Hon'ble Supreme Court in ***Dental Council of India v. S.R.M. Institute of Science & Technology and Another***, (2004) 9 SCC 676, wherein, it has been clearly observed that in cases of recognition of dental colleges or starting of higher courses, law regulating opening of new dental colleges is mandatory in nature and have got to be complied with. The Hon'ble Supreme Court has further proceeded to observe that in the absence of permission of Essentiality Certificate, no Court could make any interim order for the reason that such an application will not be complete without being accompanied by permission or essentiality certificate by the State Government." The Hon'ble Supreme Court has further observed in ***Dental Council of India (supra)*** that it is not correct to say that the State Government has no role to play in the matter and if such an argument is permitted, it will amount to only bypassing the law. Paragraph 10 of the said judgment is extracted herein below:

"10. In this case, the High Court made an interim order to complete the processing of the application including inspection even in the absence of the permission or essentiality certificate from the State Government in terms of the Regulations framed by the Dental Council of India. The process of the courts or the process of law should not be allowed to subvert the law. In cases of recognition of dental colleges or starting of higher courses, this Court has in several cases including Islamic Academy of Education v. State of Karnataka [(2003) 6 SCC 697] , State of Maharashtra v. Indian Medical Assn. [(2002) 1 SCC 589] etc. held that they are of mandatory character and have got to be complied with. When that is the position in law, the High Court ought not to have made an interim order to process the application even in the absence of the permission or essentiality certificate because the application will not be complete without being accompanied by permission or essentiality certificate by the State Government along with certain other documents. An incomplete application cannot be processed either by the Central



Government or the Dental Council. The argument advanced on behalf of the respondents will set at naught the law that in certain cases the courts need not insist on production of permission or essentiality certificate of the State Government, particularly, when the regulations insist upon the same. To decide such a matter even in the absence of the Dental Council and the State Government as if they have no role to play in the matter is only to bypass the law, when statutory duties have been assigned and each one of those authorities has got a separate role to play. It may be that the Government of India takes the ultimate decision in the matter but to state that these authorities only aid the Government of India and hence it is not necessary to make them a party to the proceedings is not at all appropriate or acceptable to us. However, that would not be the end of the matter. In the present case, pursuant to the interim direction issued by the High Court, inspection has taken place and a report has been submitted by an inspection team appointed by the Dental Council of India which is kept in a sealed cover by the Dental Council of India. It would be more appropriate to process the application on the first respondent furnishing the permission or essentiality certificate and other relevant documents as provided under the relevant Regulations and the scheme framed for the purpose of filing an application for starting a new or higher course in the college. On furnishing such permission or essentiality certificate, the Dental Council and the Government of India shall take appropriate steps as provided under the relevant Act and Rules or Regulations. Shri P.P. Rao submits that a time of eight weeks may be granted to furnish the permission or essentiality certificate to the Government of India. We, therefore, direct that if such permission or essentiality certificate issued by the State Government is furnished within a period of eight weeks, the proposal of the first respondent for starting new/higher courses shall be processed by the Dental Council of India and the Government of India and appropriate orders made thereon within eight weeks thereafter.”

23. If we peruse the prayer clause of the writ petition, the petitioner has also challenged Clause 6(1)(c) of the notification dated 11.07.2019 notifying “Establishment of New Medical College Opening of New or Higher Course of Study or Training and Increase of Admission Capacity by a Medical College Regulations, 2019” (hereinafter referred to as the 2019 Regulations) framed by the Central Council of Indian Medicine under Section 36 of the Indian Medicine Central Council Act, 1970.

24. For the reason for which we have held that Regulation 6(2)(e) of the



2006 Regulations to be *intra vires*, this prayer of the petitioner also does not have any legs to stand, and accordingly, the petition deserves to be dismissed in this respect as well. Further, it has been informed by learned counsel representing the Central Council of Indian Medicine that the 2019 Regulations have been repealed and have been replaced by another set of Regulations framed in the year 2024.

25. In view of the aforesaid, we do not find any good ground to entertain this writ petition which is hereby dismissed with a cost of Rs.10,000/- to be deposited with the Delhi State Legal Services Authority within a month from today.

DEVENDRA KUMAR UPADHYAYA, CJ

TUSHAR RAO GEDELA, J

SEPTEMBER 08, 2025

N.Khanna