REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C) NO. 441 OF 2015

DM Wayanad Institute of
Medical Sciences .....Petitioner(s)

versus

Union of India and another .....Respondent(s)

AND

WRIT PETITION (C) NO. 448 OF 2015

P. Krishna Das and another .....Petitioner(s)

versus

Union of India and others .....Respondent(s)

J U D G M E N T

M. Y. EQBAL, J.

Knocking the doors of this Court in the first instance under the garb of a petition under Article 32 of the Constitution, instead of approaching the High Court, for the enforcement of right claimed in these writ petitions is the preliminary question we are deciding herein.

2. In these two writ petitions, the petitioners have invoked the jurisdiction of this Court under Article 32 of the Constitution of India challenging the refusal of the Medical Council of India (MCI) to recommend the renewal of permission for admitting students for the academic year 2015-16 in the MBBS Course of the petitioner institutes and the consequent refusal of the Union Government to renew such permission.

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3. The petitioner institute was said to have been granted permission for admitting 150 students in the MBBS course for the academic year 2013-14 and permission was renewed for the academic year 2014-15. The petitioner applied for renewal of permission for the academic year 2015-16 pursuant to which the assessors from the MCI conducted an inspection on 12th and 13th December, 2014 and submitted a report dated 15.12.2014 in which no deficiencies were alleged to have been pointed out.

4. However, the assessors from MCI were alleged to have made another surprise inspection on 6th February, 2015 at 3.00 PM and directed the Dean to call for a faculty meeting at 3.30 PM. Many teachers could not attend the meeting alleged to have left the college for lunch or Friday prayers or having gone home for the weekend while many others who came after 3.30 PM from different parts of the campus were not allowed to attend the meeting. Many of the Resident Doctors were stated to have been absent on account of the imminent State Level PG Entrance Test. Another inspection was conducted on 7th February, 2015. The inspection report was alleged to have been inaccurate and signed in protest by the Dean.

5. The aforesaid report was considered by the Executive Committee of the MCI on 10th February, 2015 and it was decided not to recommend the renewal of the permission of the petitioner and the same was communicated to the Union Government, which sent letter dated 04.03.2015 to the petitioner to appear for a hearing. After the hearing where the

petitioner was said to have justified the deficiencies that were pointed out, the Central Government sent letter dated 22.05.2015 directing the MCI to conduct a reassessment. However, the MCI was alleged to have not done a re-inspection as directed on the ground that a decision had already been made not to recommend the renewal by invoking Regulation 8 (3) (1) (a) of the Establishment of Medical College Regulations, 1999.

6. Thereafter, the Union Government published a list on 17.06.2015 stating that the permission of the petitioner college for the academic year 2015-16 had not been renewed and a letter dated 15.06.2015 was sent to the petitioner informing the same.

7. The petitioner filed the present petition praying for declaring the second inspection conducted on 6th and 7th February, 2015 to be illegal and for directing the MCI to recommend the renewal of the approval of the petitioner college for the academic year 2015-16 on the basis of the first inspection conducted on 12th and 13th December, 2014. A

prayer has also been made for directing the Central Government to issue the letter of renewal accordingly.

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8. The petitioner-college was granted provisional affiliation for starting the MBBS course for the academic session 2014-15 with 150 students. It appears that a surprise inspection was made by MCI and many deficiencies were pointed out. The Executive Committee of MCI after considering the inspection report recommended disapproval of the college. The Central Government directed the MCI to reconsider the matter. However, the MCI reiterated its stand of not recommending the renewal of permission for the sessions 2015-16. The petitioner has challenged the decision of the Medical Council of India.

9. We have heard Mr. Kapil Sibal, learned senior counsel appearing in W.P. (Civil) No.441 of 2015 and Mr. V. Giri, learned senior counsel appearing in W.P.(Civil) No. 448 of 2015 on the maintainability of the writ petition under Article 32 of the Constitution of India.

10. Mr. Sibal, learned senior counsel appearing for the petitioner, submitted that because of the time schedule fixed in *Priya Gupta's case*, 2012 (7) SCC 433, the petitioner has no option but to move this Court in order to get the relief by issuance of appropriate directions to the respondents. Learned senior counsel also drawn our attention to para 13 of the judgment rendered by this Court in ***Priyadarshini Dental College and Hospital vs. Union of India & Ors.***, *(2011) 4 SCC 623.*

11. Mr. V. Giri, learned senior counsel appearing in one of the writ petitions, advanced the same arguments for filing the writ petition before this Court under Article 32 of the Constitution instead of approaching the High Court.

12. Both the learned senior counsel, however, claimed their right guaranteed under Article 19(1)(g) of the Constitution of India.

13. At the very outset, we wish to extract the relevant portion of Article 19 of the Constitution which reads as under:-

"19. Protection of certain rights regarding freedom of speech etc

(1) All citizens shall have the right

(a) to freedom of speech and expression;

(b) to assemble peaceably and without arms;

(c) to form associations or unions;

(d) to move freely throughout the territory of India;

(e) to reside and settle in any part of the territory of India; and

(f) omitted

(g) to practise any profession, or to carry on any occupation, trade or business

(2) ----------

(3) ----------

(4) ----------

(5) ----------

(6) Nothing in sub clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub clause, and, in particular, nothing in the said sub clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,

(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or

(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise."

14. From a bare reading of the provision contained in Article 19(1)(g) it is evidently clear that the citizens have been

conferred with the right to practice any profession or carry on any occupation, trade or business, but such right is subject to the restriction and imposition of condition as provided under Article 19(6) of the Constitution.

15. In ***Unni Krishnan's case***, 1993 (1) SCC 645, the right guaranteed under Article 19(1)(g) has been elaborately discussed by the five Judges Constitution Bench. The Court held that imparting education cannot be treated as a trade or business. Trade or business normally connotes an activity carried on with a profit motive. This Court observed that education has never been nor can it be allowed to become commerce in this country. Education has always been treated in this country as religious and charitable activity and making it commercial is opposed to the ethos, tradition and sensibilities of this nation. A citizen of this country may have a right to establish an educational institution but no citizen,

person or institution has a right much less of fundamental right to affiliation or recognition. Their Lordships observed:-

> "67. Even on general principles, the matter could be approached this way. Educational institutions can be classified under two categories:
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> 1. Those requiring recognition by the State and
> 2. Those who do not require such a recognition.
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> 67a. It is not merely an establishment of educational institution, that is urged by the petitioners, but, to run the educational institution dependent on recognition by the State. There is absolutely no fundamental right to recognition in any citizen. The right to establishment and run the educational institution with State's recognition arises only on the State permitting, pursuant to a policy decision or on the fulfilment of the conditions of the statute. Therefore, where it is dependent on the permission under the statute or the exercise of an executive power, it cannot qualify to be a fundamental right. Then again, the State policy may dictate a different course.
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> xxx xxx xxx
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> 72. Accordingly, it is held that there is no fundamental right under Article 19(1)(*g*) to establish an educational institution, if recognition or affiliation is sought for such an educational institution. It may be made clear that anyone desirous of starting an institution purely for the purposes of educating the students could do so but Sections 22 and 23 of the University Grants Commission Act which prohibits the award of degrees except by a University must be kept in mind."

16. Considering the facts of the case as averred by the petitioners and the rights claimed therein, we are of the considered opinion that the petitioners, even though have a right to establish institutions for imparting medical and technical education, such right is not a fundamental right.

17. From reading of Article 32, it is manifest that clause 1(i) of Article 32 guarantees the right to move the Supreme Court for an appropriate writ for the purpose of enforcing the Fundamental Rights included in Part-III of the Constitution. The sole object of Article 32 is the enforcement of Fundamental Rights guaranteed by the Constitution. It follows that no question other than relating to the Fundamental Right will be determined in a proceeding under Article 32 of the Constitution. The difference between Article 32 and 226 of the Constitution is that while an application under Article 32 lies only for the enforcement of Fundamental Rights, the High Court under Article 226 has a wider power to exercise its

jurisdiction not only for the enforcement of Fundamental Rights but also ordinary legal right.

18. It is equally well settled that this Court under Article 32 will not interfere with an administrative order where the constitutionality of the statute or the order made thereunder is not challenged on the ground of contravention of Fundamental Rights. At the same time if the validity of the provisions of statute is challenged on the ground other than the contravention of Fundamental Rights, this Court will not entertain that challenge in a proceeding under Article 32 of the Constitution.

19. In the case of ***Northern Corporation vs. Union of India,*** (1990) 4 SCC 239, a petition under Article 32 of the Constitution of India was moved by the transferee licence holder. The maintainability of the application under Article 32 of the Constitution of India was seriously objected by the

Union of India. Writing the judgment, Hon'ble Sabyasachi Mukherjee, the then CJI, held:-

> "11. However, there is a far more serious objection in entertaining this application under Article 32 of the Constitution, Article 32 of the Constitution guarantees the right to move the Supreme Court for enforcement of fundamental rights. If there is breach of the fundamental rights, the petitioner can certainly have recourse to Article 32 of the Constitution provided other conditions are satisfied. But we must, in all such cases, be circumventive of what is the right claimed. In this case, the petitioner as such has no fundamental right to clear the goods imported except in due process of law. Now in the facts of this case, such clearance can only be made on payment of duty as enjoined by the Customs Act. In a particular situation whether customs duty is payable at the rate prevalent on a particular date or not has to be determined within the four corners of the Customs Act, 1962. The petitioner has no fundamental right as such to clear any goods imported without payment of duties in accordance with the law. There is procedure provided by law for determination of the payment of customs duty. The revenue has proceeded on that basis. The petitioner contends that duty at a particular rate prevalent at a particular date was not payable. The petitioner cannot seek to remove the goods without payment at that rate or without having the matter determined by the procedure envisaged and enjoined by the law for that determination. The petitioner without seeking to take any relief within the procedure envisaged under the Act had moved this Court for breach of fundamental right. This is not permissible and should never be entertained. In a matter of this nature where liability of a citizen to pay a particular duty depends on interpretation of law

> and determination of facts and the provision of a particular statute for which elaborate procedure is prescribed, it cannot conceivably be contended that enforcing of those provisions of the Act would breach fundamental right which entitle a citizen to seek recourse to Article 32 of the Constitution. We are, therefore, clearly of the opinion that relief under Article 32 of the Constitution is wholly inappropriate in the facts and the circumstances of this case. It has further to be reiterated that for enforcement of fundamental right which is dependent upon adjudication or determination of questions of law as well as question of fact without taking any resort to the provisions of the Act, it is not permissible to move this Court on the theoretical basis that there is breach of the fundamental right. Whenever a person complains and claims that there is a violation of law, it does not automatically involve breach of fundamental right for the enforcement of which alone Article 32 of the Constitution is attracted. It appears that the facts of this nature require elaborate procedural investigation and this Court should not be moved and should not entertain on these averments (*sic*) of the Article 32 of the Constitution. This position is clearly well settled, but sometimes we are persuaded to accept that an allegation of breach of law is an action in breach of fundamental right."

20. In the case of ***Kanubhai Brahmbhatt vs. State of Gujarat,*** AIR 1987 SC 1159, this Court took serious concern of the litigants coming to this Court under Article 32 of the Constitution instead of first moving the appropriate High

Court for the redressal of their grievances. This Court observed as under:

> "3. If this Court takes upon itself to do everything which even the High Court can do, this Court will not be able to do what this Court alone can do under Article 136 of the Constitution of India, and other provisions conferring exclusive jurisdiction on this Court. There is no reason to assume that the concerned High Court will not do justice. Or that this Court alone can do justice. If this Court entertains writ petitions at the instance of parties who approach this Court directly instead of approaching the concerned High Court in the first instance, tens of thousands of writ petitions would in course of time be instituted in this Court directly. The inevitable result will be that the arrears pertaining to matters in respect of which this Court exercises exclusive jurisdiction under the Constitution will assume more alarming proportions. As it is, more than ten years old civil appeals and criminal appeals are sobbing for attention. It will occasion great misery and immense hardship to tens of thousands of litigants if the seriousness of this aspect is not sufficiently realized. And this is no imaginary phobia. A dismissed government servant has to wait for nearly ten years for redress in this Court. Kashinth Dikshita v. Union of India, (1986) 3 SCC 229: (AIR 1986) SC 2118). A litigant whose appeal has been dismissed by wrongly refusing to condone delay has to wait for 14 years before his wrong is righted by this Court. Shankarrao v. Chandrasenkunwar, Civil Appeal No.1335(N) of 1973 decided on January 29, 1987. The time for imposing self-discipline has already come, even if it involves shedding of some amount of institutional ego, or raising of some eyebrows. Again, it is as important to do justice at this level, as to inspire confidence in

> the litigants that justice will be meted out to them at the High Court level, and other levels. Faith must be inspired in the hierarchy of courts and the institution as a whole, not only in this Court alone. And this objective can be achieved only this Court showing trust in the High Court by directing the litigants to approach the High Court in the first instance. Besides, as a matter of fact, if matters like the present one are instituted in the High Court, there is a likelihood of the same being disposed of much more quickly, and equally effectively, on account of the decentralisation of the process of administering justice. We are of the opinion that the petitioner should be directed to adopt this course and approach the High Court."

21. In the case of ***Ram Jawaya Kapur vs. State of Punjab,*** AIR 1955 SC 549 = (1955) 2 SCR 225, the petitioner was carrying on business of printing, publishing books for sale including text books used in the schools of State of Punjab. The State of Punjab decided in furtherance of their policy of nationalization of text books for the school students. According to the Policy, all recognized schools had to follow the course of studies approved by the Government. The petitioners alleged in support of their petitions under Article 32 that the Punjab Government has in pursuance of their

policy of nationalization of text books issued a series of notifications regarding the printing, publication and sale of these books and thereby ousted them from the business altogether. Dismissing the writ petition, a five Judges Constitution Bench, headed by the then Chief Justice observed:-

> "21. As in our view the petitioners have no fundamental right in the present case which can be said to have been infringed by the action of the Government, the petition is bound to fail on that ground. This being the position, the other two points raised by Mr Pathak do not require consideration at all. As the petitioners have no fundamental right under Article 19(1)(*g*) of the Constitution, the question whether the Government could establish a monopoly without any legislation under Article 19(6) of the Constitution is altogether immaterial.
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> Again a mere chance or prospect of having particular customers cannot be said to be a right to property or to any interest in an undertaking within the meaning of Article 31(2) of the Constitution and no question of payment of compensation can arise because the petitioners have been deprived of the same. The result is that the petition is dismissed with costs."

22. In the case of ***Hindi Hitrakshak Samiti vs. Union of India,*** (1990) 2 SCC 352, a similar question relating to the maintainability of the writ petition under Article 32 of the

Constitution came for consideration before a three Judges' Bench of this Court for the enforcement of any Government policy. In the writ petition, the petitioner sought for issuance of the writ of mandamus directing Central Government to hold pre-medical and pre-dental examination in Hindi and regional languages, which according to the petitioner is mandated by Article 29(2) of the Constitution of India. While permitting the petitioner to withdraw its petition, the Court observed that Article 32 of the Constitution guarantees enforcement of Fundamental Rights but violation of Fundamental Right is the *sine qua non* for seeking enforcement of those rights by the Supreme Court. In order to establish the violation of fundamental right, the Court has to consider the direct and inevitable consequences of the action which is sought to be remedied or the guarantee of which is sought to be enforced. Where the existence of fundamental right has to be established by acceptance of a particular policy, or a course of action for which there is no legal compulsion or statutory imperative and on which there are divergent views, the same

cannot be sought to be enforced by Article 32 of the Constitution.

23. In the case of ***J. Fernandes & Co. vs. Dy. Chief Controller of Imports and Exports***, (1975) 1 SCC 716, this Court, while considering writ petition under Article 32 of the Constitution, observed that a petition under Article 32 will not be competent to challenge any erroneous decision of an authority. A wrong application of law would not amount to a violation of fundamental right. If the provisions of law are good and the orders passed are within the jurisdiction of the authorities, there is no infraction of fundamental right if the authorities are right or wrong on facts.

24. In the case of ***Ujjam Bai vs. State of U.P,*** AIR 1962 SC 1621=(1963) 1 SCR 778, before the seven Judges' Constitution Bench, a question came for consideration as to whether an assessment made by an authority under the taxing statute which is *intra vires* and in the undoubted exercise of its

jurisdiction can be challenged under Article 32 of the Constitution of India? Answering the question, Their Lordships held as under:

> "21. In my opinion, the correct answer to the two questions which have been referred to this larger Bench must be in the negative. An order of assessment made by an authority under a taxing statute which is intra vires and in the undoubted exercise of its jurisdiction cannot be challenged on the sole ground that it is passed on a misconstruction of a provision of the Act or of a notification issued thereunder. Nor can the validity of such an order be questioned in a petition under Article 32 of the Constitution. The proper remedy for correcting an error in such an order is to proceed by way of appeal, or if the error is an error apparent on the face of the record, then by an application under Article 226 of the Constitution. It is necessary to observe here that Article 32 of the Constitution does not give this Court an appellate jurisdiction such as is given by Arts 132 to 136. Article 32 guarantees the right to a constitutional remedy and relates only to the enforcement of the rights conferred by Part III of the Constitution. Unless a question of the enforcement of a fundamental right arises, Article 32 does not apply. There can be no question of the enforcement of a fundamental right if the order challenged is a valid and legal order, in spite of the allegation that it is erroneous. I have, therefore, come to the conclusion that no question of the enforcement of fundamental right arises in this case and the writ petition is not maintainable."

25. Their Lordships further observed:

> "38. As I have said above, the submission of the learned Additional Solicitor General is well founded. It has the support of the following decisions of this Court which I shall now deal with. In Gulabdas v. Assistant Collector of Custom 1957 AIR(SC) 733, 736.) it was held that if the order impugned is made under the provisions of a statue which is intra vires and the order is within the jurisdiction of the authority making it then whether it is right or wrong, there is no infraction of the fundamental rights and it has to be challenged in the manner provided in the Statute and not by a petition under Article 32. In that case the petitioner was aggrieved by the order of the Assistant Collector of Customs who assessed the goods imported under a licence under a different entry and consequently a higher Excise Duty was imposed. The petitioners feeling aggrieved by the order filed a petition under Article 32 and the objection to its maintainability was that the application could not be sustained because no fundamental right had been violated by the impugned order it having been properly and correctly made by the authorities competent to make it. The petitioner there contended that the goods imported, which were called &'Lyra&' brand Crayons were not crayons at all and therefore imposition of a higher duty by holding them to be crayons was an infringement of fundamental right under Article 19(1)(f) & (g)."

26. Coming back to the instant writ petitions, indisputably, the petitioners have challenged the decision of MCI and the Central Government refusing to grant permission or renewal to carry on their courses for the Academic Session 2015-16. The

decisions are based on the inspection reports submitted by the teams of MCI. The jurisdiction of MCI or the Central Government to grant or refuse to grant permission has not been challenged. Hence, it is well within the jurisdiction of MCI which is statutory body to take a decision based on the inspection of the college to satisfy itself the compliance of various provisions of the acts, rules and regulations.

27. Under Article 32 of the Constitution, this Court is not supposed to go into finding of facts recorded by the authorities and to come to a different conclusion. Moreover, having regard to the law settled by Constitution Bench of this Court in number of decisions, in our considered opinion, the rights so claimed by the petitioners are not fundamental rights; hence the same cannot be agitated directly before this Court under Article 32 of the constitution.

28. We, therefore, dismiss these writ petitions filed under Article 32 of the Constitution. However, this will not prevent the petitioners from agitating their grievances before the appropriate forum including the High Court having jurisdiction to deal with the matter.

.....J.
(M.Y. Eqbal)

.....J.
(Arun Mishra)

New Delhi
July 23, 2015