

(2002) 10 MAD CK 0185

In the Madras High Court

Case No : Writ Petition No's. 7783, 7822, 7826 to 7830, 8071 and 8960 of 1999, 8041, 8043 of 2000 and 9370, 9371, 9384, 9403, 10237 and 10238 of 2001 and Writ Appeal No's. 2693 and 2694 of 2002

P.H. Raghuram, N. Ravikumar, S. Chidambaram, C.J.
Venkatakrishnan, J. Sivakumar, Sujatha Radhakrishnan,
Suman Jhansi Lakshmi, S. Sangita, Sankari, Pratibha
Ramani, Liza George, Ramesh Kumar, P. Abinaya, B.
Thayumanavan, S. Aravanindan, M. Aruna, Sripriya, A.
Kenneth J. Arul and B. Lakshmi Priya

APPELLANT

Vs

The State of Tamil Nadu, Union of India (UOI), Dental Council of India, The Secretary, Selection Committee, Directorate of Medical Education, Tamil Nadu Dr. M.G.R. Medical University, The Dean, Saveetha Dental College and Hospital, The Dean, Ragas Dental College, The Dean, Meenakshi Ammal Dental College and Hospital, The Dean, Sri Balaji Dental College, Controller of Examination, Office of the Directorate of Medical Edn., Vinayaga Mission Sankaracharyar Dental College and Rajas Dental College
The State of Tamil Nadu and Directorate of Medical Education Vs R. Murugesan, Edington Arumugham, The Dean, Saveetha Dental College and Hospital, The Dean, Ragas Dental College, The Dean, Meenakshi Ammal Dental College and Hospital, The Dean, Sri Balaji Dental College and Rajas Dental College

RESPONDENT

Date of Decision : 10-10-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Dentists Act, 1948 — Section 10A(5)

Citation : (2002) 10 MAD CK 0185

Hon'ble Judges : R. Jayasimha Babu, J;K. Raviraja Pandian, J

Bench : Division Bench

Advocate : R. Saravanakumar, in WP. No. 7783 of 1999, Fathimanathan, in WP. No. 7826 of 1999, K. Doraisamy for Muthumani Doraisamy W. Ps. Nos. 7826 to 7830 of 1999, S. Silambannan, W. Ps. Nos. 8071/1999, 8041 and 8043/2000 and 9370, 9371, 9384, 9403, 10237 and 10238 of 2001 and Mohd. Ibrahim Ali, in WP. No. 8960 of 1999, for the Appellant; V.R. Rajasekaran, Special Govt. Pleader (Education), V. Vaithialingam, Sr. Central Govt. Standing Counsel for Respondent 3 in WP. No. 7783 of 1999, Velliasamy, for Respondent 4 in WPs.

Final Decision : Dismissed

Judgement

R. Jayasimha Babu, J.—The writ petitioners are graduates in Dentistry and had sought admission to the M.D.S. Course in the Government Dental College. All of them had obtained a merit ranking which was below that required for securing admission to any one of the fourteen sanctioned seats - two in each of seven specialities, in that college. Petitioners contend that they are nevertheless entitled to be admitted as, according to them, by the operation of Section 10A(5) of the Dentists Act, 1948 additional 18 seats are deemed to have been sanctioned.

2. They obtained interim orders from this Court, the first of which was made on 02.07.1999 for the academic year 1999-2000 followed by similar orders for succeeding academic years 2000-01 and 2001-02, directing the State Government to increase the number of seats from 14 to 32 provisionally, and to admit the petitioners according to merit and in accordance with law against that increased number. The interim orders were based on the assumption now shown to be erroneous that there was, in fact, a deemed approval of the Central Government for such increase under that provision, Section 10A(5). The State, however, deliberately chose to submit to those interim orders. It is only when similar interim orders were made by the learned single Judge, for the current academic year 2002-03 the State preferred the present writ appeals against those interim orders.

3. Section 10-A and 10-B were introduced into the Dentists Act, 1948 by the Dentists (Amendment) Act 1993, in order to check the mushroom growth of Dental colleges, to regulate opening of new courses, and to regulate increase in admission capacity. They read as under:

10-A. Permission for establishment of new dental college, new courses of study, etc.

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

(a) no person shall establish an authority or institution for a course of study or training (including a post-graduate course of study or training) which would enable a student of such course or training to qualify himself for the grant of recognised dental qualification; or

(b) no authority or institution conducting a course of study or training (including a post-graduate course of study or training) for grant of recognised dental qualification shall -

- (i) open a new or higher course of study or training (including a post-graduate course of study or training) which would enable a student of such course or training to qualify himself for the award of any recognised dental qualification; or
- (ii) increase its admission capacity in any course of study or training (including a post-graduate course of study or training), except with the previous permission of the Central Government obtained in accordance with the provisions of this Section.

10B. Non recognition of dental qualifications in certain cases -

(1) Where any authority or institution is established for grant of recognised dental qualification except with the previous permission of the Central Government in accordance with the provisions of Section 10A, no dental qualification granted to any student of such authority or institution shall be a recognised dental qualification for the purpose of this Act.

(2) Where any authority or institution granting recognised dental qualification opens a new or higher course of study or training (including a post-graduate course of study or training) except with the previous permission of the Central Government in accordance with the provisions of Section 10A, no dental qualification granted to any student of such authority or institution on the basis of such study shall be a recognised dental qualification for the purposes of this Act.

(3) Where any authority or institution granting recognised dental qualification increases its admission capacity in any course of study or training (including a post-graduate course of study or training) except with the previous permission of the Central Government in accordance with the provisions of Section 10A, no dental qualification granted to any student of such authority or institution on the basis of the increase in its admission capacity shall be a recognised dental qualification for the purposes of this Act.

4. The State Government submitted an application to the Central Government on 17.11.1997 for increasing the number of MDS seats in the Government Dental Colleges from 14 to 32. The Central Government by it's letter of 22.12.1997 wrote to the State Government, pointing out certain deficiencies in that application and directed it to attend to those deficiencies. As the State Government did not respond, the Central Government returned the application on 16.03.1998. The State Government resubmitted the application on 02.04.1998, but did not remit the prescribed processing fee. The Central Government on 03.07.1998 reminded the State to send the processing fee of Rs.7.00 lakhs. As there was no response from the State Government, that application was returned on 29.10.1999. The State Government did not do anything thereafter for nearly two and half years. A fresh application was filed on 15.03.2002. That application also was returned on 08.04.2002 pointing out certain deficiencies. That application has not so far been resubmitted after removing the deficiencies, and as of now there is no application before the

Central Government seeking permission to increase the number of MDS seats in the Government Dental College from 18 to 32.

5. The sequence of events set out in the preceding paragraph clearly show that at no point of time was there any occasion for invoking Section 10-A(5) and deeming that permission of the Central Government for increasing the admission capacity in the MDS course from 14 to 32 in the Government Dental College, had been granted.

6. The provisional admission secured by the petitioners is now of no avail. Petitioners had no right in law to be admitted against non sanctioned seats. The course so far undergone by them will not count towards, nor will the qualification, if any granted on the strength of their having undergone the course, be recognised as a dental qualification for the purpose of the Dentists Act, 1948.

7. The State Government must share a good part of the blame for this, as it has, by it's acts of omission and commission, contributed greatly to the situation that has developed. The State Government after having applied in November 1997 for an increase in the intake, even without receiving the Central Government's permission had admitted students for the non sanctioned seats in the academic year 1998-99. Such admissions were clearly contrary to the provisions of the Dentists Act inviting the penalties provided in Section 10B. Though the State realised it's mistake and did not on it's own admit any one against non sanctioned seats for the academic year 1999-2000 onwards, the petitioners apparently emboldened by the wrongful action of the State Government in the previous academic year, commenced approaching this Court in the year 1999 and later years seeking admission against the seats for which approval had been sought but which had not been given. When they sought interim orders facts in sufficient detail were not placed before the Court by the State.

8. After the interim order was made for the academic year 1999-2000 the State did not appeal against the same. It chose to inform the Central Government that it was submitting to that order even while the State knew full well that Section 10A(5) was in no way attracted as it had not removed the deficiencies in the original application and in view of Section 10A(6). The State submitted to the interim order for the two succeeding academic years as well, even while knowing that it's application had been returned, and that it had not resubmitted or made a fresh application.

9. This conduct of the State is indicative of possible collusion with the petitioners. It's conduct in not diligently following up the application made by it in 1997 lends credence to the allegation made by some of the petitioners that the State was only desirous of helping the six self financing colleges which charge a substantially higher fee, to fill up their payment seats.

10. Section 10A of the Dentists Act clearly and unambiguously provides that there can be no increase in the number of seats in the Dental College unless the

scheme for such increase has been approved by the Central Government, in consultation with the Dental Council. Mere submission of the scheme by itself will not result in the scheme being sanctioned. Sub-section (5) of Section 10A, on which reliance was placed by the petitioners when they sought the interim order and which provision forms the basis for the interim order, is not an independent provision. That sub-section must be read along with sub-section (6) which provides that the time taken by the person, authority or institution concerned submitting the scheme in furnishing any particulars called for by the Council or by the Central Government shall be excluded.

11. We have already noticed the relevant dates. The application was filed on 17.11.1997, deficiencies were pointed out on 22.12.1997 and the application itself was returned on 16.03.1998 as the deficiencies had not been attended to. The application was resubmitted only one year later on 02.04.1999, but without the Processing Fee. Despite reminder sent on 13.07.1998 to send the Processing Fee the fee was not sent and the application was, therefore, returned on 29.10.1999. It was only over two years later in March 2002 that application was resubmitted. That application was again returned on 08.04.2002 as several deficiencies were noticed. Government Counsel states that the application has not been resubmitted till date.

12. Thus, for the year 1998-99 there was no application at all before the Central Government. For the academic year 1999-'00, there was no occasion for invoking Section 10A(5) and after October 1999 there was no application before the Central Government. For the academic years 2000-01 as also 2001-02 there was no application before the Central Government. For the year 2002-03 also as of now there is no application pending before the Central Government.

13. There was, therefore, no occasion at all at any point of time for invoking Section 10A(5) and to proceed on the basis that there was a deemed approval for the scheme submitted by the State Government. The provisional admission of the petitioners is clearly contrary to the provisions of the Act and they can derive no benefit from such admission.

14. Learned counsel for the Central Government invited our attention to the rulings of the apex Court in *Union of India Vs. Era Educational Trust and Another*, and *C.B.S.E. and Another Vs. P. Sunil Kumar and Others*, . The apex Court in these decisions has emphasised, in the strongest possible terms, the need for the Court to refrain from being moved by considerations of sympathy and making interim orders, compelling academic authorities to act contrary to law.

15. Learned counsel for some of the petitioners submitted that the petitioners have undergone the course in part or in full and they should be allowed to complete the M.D.S. Course and receive the degree if successful in the examination. Learned counsel invited our attention to the decision of the Constitution Bench in the case of *State of Maharashtra vs. Milind*, AIR 2001 SC 393. The Court therein, with reference to a student who had undergone the

professional course 15 years earlier, had obtained his degree and had been practising medicine, refrained from cancelling his admission. That situation is in no way comparable to the one before us.

16. Despite the sympathy that one feels for students who have spent precious years in the institution in the belief that the efforts put in by them will enable them to obtain a professional post-graduate degree, the stark violation of the provisions of law cannot be allowed to be sidelined. As observed by the apex Court in the case of *A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Another*, , "We cannot imagine anything more destructive of the rule of law than a direction by the Court to disobey the laws." The provisions of the Dentists Act clearly do not permit the increase in the sanctioned strength either by the State Government or by the institution on their own, nor does it provide for such increase by interim orders made by the Courts on the petitions filed by students who seek admission to such courses.

17. Without expressing any opinion on the correctness of the submission made, we place on record the submission made by counsel for the petitioner in Writ Petition No. 7783 of 1999 that the petitioner therein after re-counselling has been admitted to one of the sanctioned seats.

18. It is the duty of the State to enquire into and take action against those found responsible for the omission to promptly bring to the notice of the Court the fact that Section 10A(5) was on facts not in any way applicable for the academic year 1999-2000, and that there was, in fact, no application pending before the Central Government for the academic years 2000-01 and 2001-02. A copy of this order shall be sent to the Chief Secretary to the State Government for taking necessary action.

19. The interim order made for the academic year 2002-03 following the interim order made for earlier years is clearly unsustainable. There is no question of permission being deemed to have been granted when there is no application before the Central Government.

20. Statutory provisions are not to be bypassed by assuming a state of affairs which does not in reality exist. The final relief sought in the petition is not to be granted as an interim relief and at a stage when all the relevant facts are yet to be placed before the Court. The proper course to follow in cases where the final disposal of the case brooks no delay, is to hear the case on merits after giving reasonable opportunity to the parties to file their affidavits and documents and make their submissions.

21. The Court must guard against making interim orders of the kind made in these petitions and of the kind made in the orders impugned in these appeals, on grounds of sympathy or on account of a similar order having been made for an earlier year, in a pending petition. Such orders, as demonstrated in these cases, have the wholly unintended effect of blessing and perpetrating violation of law. As observed by a three Judge Bench of the apex Court in the case of *Gurunank*

Dev University vs. Parminder Kr. Bansal, (1993) 4 SCC 40, .."We are afraid that this kind of administration of interlocutory remedies, more guided by sympathy quite often wholly misplaced, does no service to anyone. The courts should not embarrass academic authorities by themselves taking over their functions.

22. Again, the apex Court in the case of State of Punjab and others Vs. Renuka Singla and others, , a case in which Section 10A of the Dentists Act and increase in sanctioned seats rose for consideration, the Court after taking note of the trend of candidates who are not able to get admissions against seats fixed by different statutory authorities, "file writ application and interim or final directions are given to admit such petitioners", observed: - "We fail to appreciate as to how the High Court or this Court can be generous or liberal in issuing such directions, which in substance amount to directing the authorities concerned to violate their own statutory rules and regulations, in respect of admission of students."

23. The writ petitions fail and are dismissed. The writ appeals are allowed.