
(2016) 12 MP CK 0047
In the Madhya Pradesh High Court
Case No : Writ Petition No. 16373 of 2015

Radhika Tripathi

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 16-12-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) AIR(MP) 21

Hon'ble Judges : Shri R.S. Jha and Shri Anurag Shrivastava, JJ.

Bench : Division Bench

Advocate : Shri Mohan Sausarkar, Advocate, for the Respondent/DCI; Shri R.N. Singh, Senior Counsel with Shri Arpan J. Pawar, Shri R.N. Tiwari, Shri Ankit Agrawal, Shri Ashok Lalwani, Shri Sanjay K. Agrawal, Shri Rahul Mishra and Shri P.S. Tomar, Advocates, for the P

Final Decision : Disposed off

Judgement

Shri R.S. Jha, J. - The aforesaid petitions involve similar questions for adjudication and, therefore, are heard and decided concomitantly by a common order.

2. The present bunch of petitions have been filed by the Private Dental Medical Colleges as well as certain students being aggrieved by the directions issued by the Dental Council of India to the institution concerned for scrutinizing the admissions granted by them in the B.D.S Course in their respective colleges for the Sessions 2014-15 and 2015-16 and in case admissions have been granted in violation of the Dentist Act, 1948 as well as B.D.S Regulations 2007, as revised from time to time, the admissions be cancelled and the Dental Council of India be informed. Similar orders passed by the Dental Council of India in all the cases on different dates have been assailed in all these petitions.

3. For the purposes of ready reference, we take up the facts as mentioned in W.P Nos.16373/2015 and 16466/2015.

4. The petitioners in W.P No.16373/2015 had been granted admissions in the Hitkarni Dental College and Hospital, Hitkarni Hills, Dumna Road, Jabalpur for pursuing the B.D.S Course. According to the petitioners, they were granted admissions on the basis of the qualifying examination, i.e. 10+2 Examination, and have not qualified the Competitive Entrance Examination. It is submitted that the petitioners have been granted admissions on the basis of counselling that was conducted in which nominee of the Admission and Fee Regulatory Committee (AFRC); Controller of the All India Association of Private Dental and Medical Colleges (APDMC) and the Dean/Principal of the concerned institution.

5. It is submitted that subsequently the Dental Council of India sought information regarding the admissions given by the institution concerned and thereafter on finding that the admissions had been granted to students who had not participated in the Competitive Entrance Examination only on the basis of the marks obtained by some students in the qualifying examination i.e. 10+2 Examination as well as on finding that certain students, though they had participated in the Competitive Entrance Examination but had obtained less than the qualifying marks have been granted admissions, has issued the impugned directions to the Hitkarni Dental College on 13.7.2015 to take necessary action in the matter and to discharge all students admitted to B.D.S. Course for the academic Session 2014-15 on the basis of the marks obtained by them in the qualifying examination (10+2) and without passing in the Competitive Entrance Examination as the said requirement is mandatory as per the selection procedure prescribed in the revised B.D.S Course Regulation 2007.

6. For convenience, we have only referred to the order passed by the Dental Council of India in W.P No.16373/2015 and W.P No.16466/2015. However, it is an undisputed fact that similar orders and directions of different dates have been issued by the Dental Council of India in all the petitions which are subject matter of challenge before this Court.

7. The contention of the learned Senior Counsel for the petitioners is that the students have been granted admissions after conducting a proper counselling in which all the necessary authorities and stake holding agencies had participated and in such circumstances the question of reopening or rescruinizing the admissions does not arise. It is submitted that in such circumstances, the impugned direction issued by the Dental Council of India be set aside, moreso as the students have already been granted admission and are pursuing their studies.

8. The contention of the learned Senior counsel for the petitioners has been vehemently opposed by the learned counsel for the respondent Union of India, Dental Council of India, the Medical Science University and the AFRC, who have stated that admissions in BDS Course can only be granted on the basis of the select list of candidates prepared after conducting a Competitive Entrance Examination and that admissions on the basis of the marks obtained by students in the qualifying 10+2 examination cannot be granted as such admissions are totally illegal and contrary to the Regulations of 2007.

9. The learned counsel for the respondent APDMC submits that there is a provision in the Admission Rules of 2008 framed under the M.P. Niji Vyavasaik Shikshan Sanstha (Pravesh Ka Viniyaman Evam Shulk Ka Nirdharan) Adhiniyam 2007, which permits granting of admission to students on the basis of the marks obtained by them in the qualifying examination and, therefore, no fault can be found with the admissions granted to the students in the petitioner's institution. In other words, the APDMC has tried to support the petitioner-private colleges. It is, however, pertinent to note that the APDMC has not filed any petition challenging the order passed by the Dental Council of India.

10. We may, at this stage, observe that the petitioners in all the petitions have categorically admitted and stated that admissions have been granted by the institutions on the basis of 10+2 examination.

11. It is observed that the issue involved in these petitions and raised by the petitioners before this Court does not survive for adjudication as it stands concluded and decided by the Division Bench of this Court at Gwalior in the case of Shraddha Varshney and others v. Union of India and Others, (W.P. No.6637/2015) decided on 6.10.2015 wherein identical and similar directions issued by the Dental Council of India have been upheld and affirmed in the following terms:-

"18. A bare perusal of the above said Rule 8(2) makes it clear that if contingency arises where seats are left unfilled even after two rounds of centralised counselling based on the merit, list prepared pursuant to Common Entrance Test(NE & ET) then the college authorities are extended liberty to fill these seats based on the marks obtained in qualifying examination (Class XII Examination). However, this liberty is circumscribed by limiting its application to certain type of courses. However this very provision in express terms excludes the course of MBBS and BDS from its application.

19. Thus, in regard to the course of MBBS and BDS, the college authorities have no jurisdiction to fill up the unfilled seats on the basis of Class XII qualifying examination. Thus the said contention of the petitioners in regard to Rule 8(2) is also of no avail.

20. Lastly, the ground of petitioners not being able to appear in the exam at the end of 1st year of the 5 year BDS course is also of no avail to the petitioners. The admission of the petitioners being in contravention of the mandatory statutory provisions, the same do not give them any right to continue or to appear in examination and therefore the said ground is untenable.

21. In view of the above, none of the grounds raised by the petitioners are tenable in law.

22. Grant of relief in this case shall lead to premium to default and shall encourage unscrupulous and undeserving elements becoming doctors thereby tarnishing the pristine profession in medicine and endangering the lives of many,

therefore no case for allowing of this petition is made out."

(underlined by us)

12. The Gwalior Bench in the case of Aarshabh Shukla and another v. M.P. Medical Science University and others, (W.P. No.6698/2015) decided on 14.10.2015 has again dismissed the petition challenging similar directions issued by the Dental Council of India in the following terms:-

"2. The petitioners who have passed 12th Class Examination under 10 + 2 pattern seek admission to Bachelor of Dental Surgery (BDS) course for the Academic Session 2014-15 in terms of Admission Rules, 2008 framed by invoking section 12 of M.P. Niji Vyavasayik Shikshan Sanstha (Pravesh Ka Vinियमान Avam Shulk Ka Nirdharan) Adhinyam, 2007.

3. It is undisputed fact that none of the two petitioners have appeared and passed the qualifying competitive examination of National Eligibility & Entrance Test (NE & ET) in terms of criteria fixed which after amendment to the BDS Course Regulation 2007 framed by the Dental Council of India and Admission Rules 2008 framed under the Adhinyam, 2007 has become mandatory.

4. Thus, there is no manner of doubt that mere passing of Class XII examination does not make a person eligible for seeking entry into BDS course.

5. The aforesaid controversy has since been resolved by dismissing W.P. No. 6637/2015 at admission stage by a detailed order dated 06.10.2015.

6. In view of above, this petition also paves way of extinction in terms of order dated 06.10.2015 passed in W.P. No. 6637/2015 which is adopted mutatis mutandis for deciding this petition.

7. Consequently in terms of order passed in W.P. No.6637/2015, this petition also stands dismissed."

13. It is also an undisputed fact that the order passed by the Gwalior Bench in W.P No.6637/2015 has been affirmed and confirmed by the Supreme Court in S.L.P. (Civil) 30751/2015 dismissed on 6.11.2015.

14. In view of the aforesaid decisions of the Division Bench of this Court at Gwalior it is clear that admissions on the basis of 10+2 Examination cannot be granted to B.D.S Courses and that all such admissions granted on the basis of the 10+2 Examination to students who have either not qualified or have not participated, in the qualifying Competitive Entrance Examination is illegal and de hors the provisions of law and has to be cancelled and, therefore, the issue raised by the petitioners in the present petitions being identical also deserve to be and is hereby decided against the petitioners and the impugned orders passed by the Dental Council of India are hereby affirmed and confirmed.

15. We reiterate that we are in respectful agreement with the view taken by the Division Bench of this Court at Gwalior in W.P. Nos. 6637/2015 which has been

affirmed and confirmed by the Supreme Court. It is pertinent to note that the Division Bench of this Court at Gwalior had specifically taken into consideration the contention of the petitioners that in case seats remain vacant even after counselling was conducted on the basis of the marks obtained by the students in the Competitive Entrance Examination, the college concerned could have filled up the seats on the basis of the marks obtained by the candidates in the qualifying examination i.e. 10+2 examination even if such students had failed or had not participated in the Competitive Entrance Examination and after duly considering the said contention has referred to Rule 8 of the Admission Rules 2008, framed under the M.P. Niji Vyavasaik Shikshan Sanstha (Pravesh Ka Viniyaman Evam Shulk Ka Nirdharan) Adhiniyam 2007, to emphatically reject the said contention by specifically taking note of the last sentence of Rule 8(2) of the Admission Rules 2008, which specifically excludes the applicability of such a relaxation in admissions being made to MBBS and B.D.S Courses. The Division Bench has thereafter specifically and clearly held that admissions to BDS Course should be made only on the basis of the select list prepared pursuant to the Competitive Entrance Examination and that too only after ascertaining that the candidate has obtained the minimum qualifying marks as prescribed in the Rules governing the Competitive Entrance Examination and, therefore, the contention that admissions to B.D.S Courses can be made only on the basis of the qualifying examination marks i.e. 10+2, having already been decided by the Gwalior Bench and affirmed by the Supreme Court deserves to be and is hereby rejected.

16. In view of the aforesaid law laid down by the Division Bench of this Court at Gwalior which has been affirmed by the Supreme Court, all contentions to the contrary raised either by the petitioners or the APDMC are hereby rejected and it is directed that the authority concerned shall undertake the exercise as directed by the Dental Council of India strictly on the basis of the marks of the candidates obtained in the Competitive Entrance Examination, that too in case the candidate has passed in the same. No other criteria or eligibility qualification shall be considered. We are also of the opinion that the decision of the Gwalior Bench of this Court is in line with the decision of the Supreme Court rendered in the case of Christian Medical College, Vellore and others v. Union of India (2014) 2 SCC 305 and Modern Dental College and Research Centre v. State of M.P. (2016) 7 SCC 353.

17. It is, however, observed that when these petitions were listed before this Court on the previous occasion, the learned counsel for the respondent Dental Council of India had informed this Court that the Dental Council of India, looking to the fact that there were large number of students all over the country who had been granted such admissions that were dehors the Regulations, had forwarded the recommendation to the Government of India for regularizing the same as a one time measure.

18. On the basis of the statement made by the learned counsel for the respondent Dental Council of India and on his producing the letter dated

16.11.2016, this Court had granted time to the respondent authorities including respondent Government of India to take a decision on the proposal/recommendation of the Dental Council of India.

19. Today, when the matter was taken up, the learned counsel for the respondent Union of India has produced before this Court letter/order dated 9.12.2016 passed by the Ministry of Health and Family Welfare addressed to the Secretary to the Dental Council of India informing the Dental Council of India that its recommendation and proposal was in violation of the Dentist Act 1948 and the Rules and Regulations made thereunder and, therefore, could not be accepted. The relevant part of the letter/order dated 9.12.2016 which has been placed before this Court reads as under:-

"3. DCI's Revised BDS and MDS Course Regulations 2007 pertains to mode of selection of students in the dental colleges whereby the admission is based solely on merit as determined by marks obtained in qualifying examination or competitive entrance examination subject to other provisions as prescribed thereunder for the BDS course and strictly on the basis of academic merit as determined by competitive test or individual cumulative performance at B.D.S. Examination subject to other provisions as prescribed thereunder for the MDS Course. A bare perusal of these provisions of BDS/MDS Regulation makes it amply clear that DCI is circumventing mandatory provisions of Regulations and its stand for regularization of the admissions to dental courses in complete violation of the same cannot be acceded to.

4. DCI, being a statutory body constituted under the Dentist Act 1948, is responsible for discharging the duty of maintenance of highest standard of dental education throughout the country. DCI has unilaterally taken erroneous stand and decision on material factual and policy issues at different forums without the concurrence or prior approval of this Ministry.

5. In view of above, the Central Government do hereby convey its decision NOT TO ACCEPT the recommendation of the DCI to accord approval for regularization of BDS and MDS admissions made for the academic session 2014-15 and 2015-16 in violation of the Dentists Act, 1948 and Rules & Regulations made thereunder. Further DCI is accordingly directed to take necessary action in the matter as per law including discharging such students with immediate effect, under intimation to this Ministry and all concerned."

20. In view of the aforesaid facts and circumstances prevailing in the present bunch of petitions, we are constrained to observe and hold that the College concerned is required to comply with the directions issued by the Dental Council of India and undertake the exercise of cancelling all admissions and discharge all students who have either not qualified the Competitive Entrance Examination or have not appeared and been selected through the same but have been granted admissions by the institution only on the basis of the marks obtained by them in the 10+2 qualifying examination.

21. While dismissing the petition it is observed that admissions had been granted by the nominee of the AFRC in the presence of the Controller of APDMC and the college concerned who are again required to undertake the exercise of discharge/cancellation of admissions. However, with a view to give finality to the controversy involved in the petition and as it is the duty of the other respondents to ensure compliance of the law, we are of the considered opinion that a nominee of the Dental Council of India; a nominee of the Director, Medical Education Madhya Pradesh; and a nominee of the Medical Science University which has now come into existence be also involved in the process.

22. In the circumstances, while upholding the directions issued by the Dental Council of India and dismissing the petitions, we hereby direct that in compliance of the directions of the D.C.I, the aforesaid exercise be undertaken by the AFRC in the presence of and with the co-ordination of the nominee of the DCI; the Medical Science University; the APDMC and the management of the College concerned. It is further directed that the Director, Medical Education shall ensure proper implementation of the orders passed by this Court as well as co-ordination between all the authorities who have directed to scrutinize the admissions and he shall also make sure that a nominee of the Director Medical Education is also present during the proceedings.

23. The aforesaid exercise of scrutinizing the admissions and passing necessary orders of cancellation/discharge of admissions shall be undertaken and completed by the aforesaid committee within two weeks from today. It is observed that the AFRC, APDMC, Medical Science University, Dental Council of India, DME as well as the management are all represented and are present before this Court and, therefore, no further notice or intimation in respect of compliance of the orders and directions issued by this Court is separately required to be issued to any of the parties.

24. With the aforesaid direction, the petitions filed by the petitioners, stands disposed of.

25. A free copy of this order be handed over to the learned Government Advocate for the State to enable him to transmit the same to the concerned authority for the purpose of information and compliance.

26. Certified copy today.