
(2017) 01 MP CK 0143
In the Madhya Pradesh High Court
Case No : 152 of 2017

Uttam Patel & other

APPELLANT

Vs

State of Madhya Pradesh & others

RESPONDENT

Date of Decision : 16-01-2017

Acts Referred:

Citation : (2017) 01 MP CK 0143

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

Bench : Single Bench

Advocate : Amal Pushp Shroti, Vikram Singh, Mohan Sausarkar, R.N.Singh, Arpan J.Pawar, Ashwariya Singh, P. K. Kaurav

Judgement

1. Heard on the application for extension of time to comply with the order passed by this Court in W.P No.16373/2015 and other connected matters which were decided by this Court on 16.12.2016 filed by the Association of Private Dental and Medical Colleges of M.P. (APDMC) who was respondent no.5 in the original petition.

2. Before we advert to the application filed by the applicant APDMC, it is pertinent to note that the original writ petition had been filed by various colleges and students being aggrieved by order and direction of the Dental Council of India directing all concerned colleges to discharge and cancel the admissions of all students who have been granted admissions on the basis of the marks obtained by the students in the 10+2 Higher Secondary School Certificate Examination or equivalent examination as well as those students who had been granted admissions inspite of the fact that they had either not participated in the Competitive Entrance Examination or had obtained less marks than the qualifying marks that had been prescribed in the Competitive Entrance Examination held by the APDMC at the relevant point of time.

3. A similar and identical petition raising the same issues challenging the order of the Dental Council of India came up for hearing before the Gwalior Bench of this

Court in *Shraddha Varshney and others vs. Union of India and others*, W.P No.6637/2015 and the Gwalior Bench of this Court dismissed the petition on 6.10.2015 by holding that students could be admitted to B.D.S Courses only if they qualify in the Competitive Entrance Examination and that no admissions can be made on the basis of the marks obtained by them in the 10+2 examination. The Gwalior Bench, accordingly, dismissed the writ petition upholding the order of the Dental Council of India and the order and judgment of the Gwalior Bench has been affirmed and confirmed by the Supreme Court in SLP(C) No.30751/2015 which was dismissed by the Supreme Court on 6.11.2015.

4. Another petition *Aarshabh Shukla and another vs. M.P. Medical Science University and others*, W.P No.6698/2015 was also dismissed by the Gwalior Bench by order dated 14.10.2015 and this order has also been affirmed and confirmed by the Supreme Court while dismissing SLP(C) 30751/2015.

5. Apparently and admittedly similar orders passed by the Dental Council of India in the case of the original petitioners were assailed by them before this Court in W.P No.16373/2015 and connected matters by various Dental Colleges as well as students and these petitions have also been dismissed by this Court by order dated 16.12.2016 specifically in view of the fact that similar and identical petitions, as referred to above, had been dismissed by the Gwalior Bench and the dismissal has thereafter been affirmed by the Supreme Court.

6. This Court, while dismissing W.P No.16373/2015 and connected matters, also took note of the fact that subsequent to the dismissal of the SLP, the Dental Council of India had made an attempt to get the illegal admissions regularized by sending a proposal in that regard to the Central Government but the Central Government had categorically rejected the proposal of the Dental Council of India by its letter dated 9.12.2016 by stating that admissions made in violation of the Act and the Rules could not be regularized.

7. After passing of the order by this Court wherein this Court constituted a Committee for scrutinizing all admissions and discharging and cancelling the illegal admissions within two weeks, MCC No.3524/2016 was filed by the applicant APDMC seeking extension of time for implementing the order passed in W.P No.16373/2015.

8. Though the APDMC was neither the petitioner nor the respondent responsible to implement the order, however as all the parties appearing before this Court in the aforesaid MCC conjointly prayed for extension of time, this Court vide order dated 2.1.2017 extended the same till 14.1.2017. In the meanwhile, the applicant has filed a SLP before the Supreme Court which is pending and in which the matter has been ordered to stand over for four weeks granting liberty to the applicant to approach the High Court for further extension of time, pursuant to which the applicant has filed the present application seeking extension of time by another four weeks for implementing order dated 16.12.2016 passed by this Court in W.P No.16373/2015 and connected matters.

9. At the very outset, we would like to take note of the fact that the present applicant APDMC did not, at any point of time, challenge the order passed by the Dental Council of India directing cancellation of admissions made contrary to law on the basis of 10+2 marks or of those students who have not qualified or participated in the Competitive Entrance Examination.

10. We are constrained to state the aforesaid only to take note of the fact that the APDMC, without ever having challenged the order passed by the Dental Council of India directing cancellation of admissions or ever opposing the action taken by them has, for the first time, after decision of this Court came up for extension of time for implementing the order and inspite of not having raised any grievance against the same, has shown great alacrity in seeking extension of time for implementing the order although none of the petitioners have done so.

11. It is pertinent to note that none of the colleges or the students have filed any such application and it is the APDMC alone who has done so without having challenged the original order passed by the Dental Council of India and, therefore, having waived its right to challenge the order, we have serious doubts as to whether they can be permitted to do so.

12. We may also take note of the fact that before this Court, in the original writ petition, the applicant APDMC, who was a respondent in the petition, filed a return in which the stand taken by them was that the APDMC and the private colleges had the power as well as the authority to grant admission to students on the basis of 10+2 marks obtained by them however the APDMC did not, at any point of time, submit or place any document or the relevant records of the agency which conducted the examination on record to contend that the admissions granted to the students concerned were based on the marks obtained by them in the Competitive Entrance Examination and that these students had infact qualified in the entrance examination. On the contrary, in all the petitions the original petitioners including the colleges have specifically admitted that admissions had been granted to the students concerned on the basis of the 10+2 marks obtained by them. This fact was also taken note by the Dental Council of India when it drew up the list of the illegal admissions made by the colleges before directing them to cancel the said admissions.

13. We may also take note of the fact that the Gwalior Bench of this Court as well as this Court in W.P No.16373/2015 had specifically taken into consideration the stand of the APDMC that admissions could be made at the college level on the basis of 10+2 marks obtained by them and had emphatically rejected the same on the ground that such admissions were prohibited by the Admission Rules of 2008 apart from which they are also contrary to the directions issued by the Supreme Court in the case of Modern Dental College and Research Centre and Others vs. State of M.P. and others, (2009) 7 SCC 751, and other decisions of the Supreme Court wherein it has specifically been directed that admissions to all colleges would be made on the basis of a Competitive Entrance Examination strictly in accordance with merits. We are also constrained to observe that this

Court in the case of Subha Mishra and others vs. State of M.P. and others, 2008 (3) MPLJ 282, has already held that admissions to MBBS Courses cannot be made on the basis of 10+2 marks and that admissions can only be made strictly on the basis of merits of the marks obtained by a student in the competitive entrance examination held in the State of M.P. and that a student cannot be granted admission on the basis of the marks obtained by him in the competitive entrance examination held by another State and therefore the contention of the learned counsel for the applicant deserves to be rejected not just in view of the reasons mentioned by us in the main petition but also in view of the decision of this Court rendered in the case of Subha Mishra (supra).

14. Today when the matter has come up before this Court for considering the prayer of second extension of time, the respondents have placed before this Court the minutes of the meeting held on 11.1.2017 to 14.1.2017 of the committee constituted by this Court pursuant to the order dated 16.12.2016 passed in W.P. No.16373/2015 for scrutinizing the admissions, a perusal of which shows that the committee has completed the scrutiny of the cases and has also finalized the proceedings but has not passed the final order only on account of the fact that the Supreme Court has granted liberty to the applicant APDMC to seek extension of time for implementing the order from the High Court.

15. The applicant has also placed before this Court a letter issued by the Dental Council of India dated 11.1.2017 again seeking and recommending regularization of the illegal admissions made by the colleges as a one time measure for approval of the Government of India issued after the decision of this Court. On the basis of the said letter the learned counsel for the applicant submits that as the matter is pending consideration before the Government of India, therefore, the time for implementing the order passed by this Court in W.P. No.16373/2015 be extended by a further period of four weeks as by that time the Central Government would consider and take a decision on the recommendation for regularization forwarded by the Dental Council of India.

16. We have heard the learned counsel for the parties at length.

17. In the backdrop of the facts narrated by us in the preceding paragraphs namely that the issue regarding validity of the admissions made by the colleges as well as the validity of the directions issued by the Dental Council of India directing cancellation of all admissions that were made on the basis of the marks obtained by the students in the 10+2 examinations and of all those students who have not qualified or participated in the Competitive Entrance Examination has already been considered and finally decided by the Gwalior Bench and by this Court against the petitioners and the order passed by the Gwalior Bench has been affirmed and confirmed by the Supreme Court, we proceed to consider the request of the applicant for extension of time.

18. The narration of the facts in the preceding paragraphs indicates that during the pendency of W.P. No. 16373/2015, the Dental Council of India had previously

made an attempt to get the admissions regularized by forwarding a recommendation in that regard to the Central Government, which has been rejected by the Central Government vide its letter dated 9.12.2016.

19. Once this Court and the Supreme Court has held that the admissions made on the basis of 10+2 marks of students who had either not qualified or had not appeared in the Competitive Entrance Examination was illegal and that the direction of the Dental Council of India to cancel all such admissions and discharge such students was valid, we have serious and grave doubts in our mind as to whether the Dental Council of India, in the teeth of the orders passed by this Court, could have forwarded another recommendation for regularizing such admissions, moreso as a favourable decision by the Central Government on that count would amount to nullifying the judgments of this Court as well as the Supreme Court which is prima facie impermissible. It is pertinent to observe that inspite of our repeated query, no provision of law has been placed before us which empowers the Central Government to validate or legalize illegal admissions in M.B.B.S. and B.D.S. Courses or to review its previous order dated 9.12.2016 rejecting such a recommendation, moreso when this Court has already held such admissions to be illegal and contrary to law and has also put a stamp of approval on the order of the Central Government dated 9.12.2016 rejecting the proposal of the Dental Council of India.

20. In the light of the above, we are of the considered opinion that the letter dated 11.1.2017 on the basis of which the applicant APDMC is seeking extension of time is itself misconceived.

21. We are also of the considered opinion that once petitions of a number of colleges and students have been dismissed by the Gwalior Bench as far back as in October, 2015 and the SLP filed against the same has also been dismissed in December, 2015 itself and those orders have become final and binding in respect of those students and colleges as well as the Dental Council of India and others, any recommendation granting relief to another set of students in other parts of the State of Madhya Pradesh would amount to discrimination and victimization of those students and in such circumstances, as the law has to apply uniformly to all, we are of the considered opinion that the decisions of this Court have to bring about uniformity and have to be applied uniformly and, therefore, no further extension of time can be granted for the purposes of implementing the orders passed by this Court merely because the Dental Council of India under some misconception of law has forwarded an untenable recommendation to the Central Government for reconsideration.

22. We may also take note of the fact that though on the previous occasion it was stated that the parties needed more time to furnish information to the Committee constituted by us, however, the original decision of the Dental Council of India was made on the basis of the information furnished by the colleges themselves which information is still available with the committee and this fact has specifically been recorded by the committee constituted by this Court

pursuant to order passed by this Court in W.P. No.16373/2015 wherein the Committee has recorded that the colleges have stated and contended before the Committee that they have furnished all the necessary information in the format as required by the committee which is duly signed by them and, therefore, the committee may rely upon that information to decide the matter.

23. It is therefore, also apparent that all the necessary information has already been furnished by the colleges before the Committee which has been duly considered and thereafter the committee on scrutiny has found several admissions, about 871, to be illegal and contrary to law and the committee does not need any further time to decide the matter.

24. We would be failing in our duty if we fail to take into account and seriously deprecate the conduct of the respondent Dental Council of India in the present case. In the instant case it was the Dental Council of India itself which issued the initial orders directing discharge and cancellation of admissions of those students who had been granted admission who have either not appeared or had not qualified in the Competitive Entrance Examination and had been granted admission only on the basis of the marks obtained by them in the 10+2 Examination. The Dental Council of India was well aware of the fact that its orders have been affirmed and confirmed by the Gwalior Bench of this Court as well as in the present batch of petitions. The Dental Council of India was also aware of the fact that the Supreme Court had also approved its action by dismissing the SLP's filed against the orders passed by the Gwalior Bench and, therefore, inspite of having full knowledge of the fact that the matter stood finally concluded after dismissal of the SLP by the Supreme Court, the Dental Council of India again proposed regularization of the illegal admissions as a one time measure to the Central Government. The Dental Council of India was also aware and infact it was the Dental Council of India itself who produced the order/ letter of the Central Government dated 9.12.2016 before this Court during the hearing of W.P No.16373/2015 rejecting the aforesaid proposal of the Dental Council of India. The Dental Council of India is also aware of the fact that this Court while dismissing W.P No.16373/2015 has affirmed and granted a stamp of approval to the decision of the Central Government dated 9.12.2016 rejecting the proposal for regularization of illegal admissions. It is also surprising that though the Dental Council of India was represented before this Court and was fully heard in W.P No.16373/2015 and while presenting its case specifically stated that the petition filed by the petitioners deserved to be dismissed on account of rejection of its proposal by the Central Government vide its order dated 9.12.2016, the Dental Council of India did not, at any point of time, seek any permission or liberty from this Court for sending a second proposal to the Central Government before or after the dismissal of the petition.

25. Inspite of having full knowledge of the aforesaid facts including the two most important facts of the finality of the decision of the Supreme Court and the affirmation of the order of rejection of its proposal by the Central Government

and during implementation of the order passed by this Court in W.P No.16373/2015, the Dental Council of India has forwarded a second proposal for regularizing admissions by giving reference to pendency of various petitions in several High Courts totally ignoring the fact that the matter has finally been concluded by the Supreme Court while dismissing the SLP filed against the judgment of the Gwalior Bench.

26. We have already held that such a second proposal in the backdrop of the aforesaid facts is totally misconceived and untenable and amounts to interference in the judicial process and abuse and misuse of the process of law and, therefore, we severely deprecate the conduct of the Dental Council of India in the present case.

27. There is yet another very important reason for rejecting the application filed by the applicant. This application has been filed by the applicant APDMC seeking extension of time only for the purposes of giving time to the Central Government to take a decision on the second recommendation forwarded by the Dental Council of India for regularizing the illegal admissions.

28. We are of the considered opinion that such a course is absolutely impermissible. If any such application is entertained by us and allowed, it would amount to giving powers to the Central Government to nullify and set at naught the judgment of this Court as well as the Supreme Court on the strength of the order passed in the present application granting them liberty to do so, which to our mind is absolutely impermissible in law. If we permit the Central Government to do so and the Central Government, under some misconception of law allows it, that would result in perpetuating an illegality and would send a very wrong message to the academic community that if private educational institutions practice illegality on a large scale they can get away with it even after their petitions have been dismissed by the High Court and the Supreme Court and would pave the path of laying down a precedent that judicial pronouncements could be nullified by the executive authority which is a course that is neither contemplated nor permissible in law. In fact we are of the considered opinion that the application filed by the APDMC amounts to abuse and misuse of the process of law and is absolutely misconceived, mischievous and vexatious.

29. For the aforesaid reasons and the facts and circumstances namely, that the APDMC who is the applicant in the present case had never challenged the original order passed by the Dental Council of India cancelling the admissions nor had it opposed the same before any Court of law; that the Gwalior Bench of this Court had already dismissed the petitions way back in the year 2015 which orders have been affirmed and confirmed by the Supreme Court; and as this Court while dismissing W.P No.16373/2015 has taken into consideration and approved the order of the Central Government dated 9.12.2016 rejecting the proposal of the Dental Council of India to regularize the illegal admissions thereby giving finality to it and that as we have expressed our serious doubts as to whether the Dental Council of India or the Central Government can thereafter regularize such illegal

admissions which would not just send a very bad message to the academic community at large but, would also result in nullifying the judgments of this Court and the Supreme Court and have, therefore, stated that any such attempt is impermissible and misconceived and as the Committee has already assimilated, considered and scrutinized the entire material before it which was placed by the colleges before the said committee and as the exercise in respect of cancellation of admissions is complete except for passing of the final order, therefore, the extension of time prayed for by the applicant APDMC cannot be accepted merely because the Dental Council of India has forwarded a second misconceived recommendation to the Central Government which is prima facie untenable. The prayer is accordingly rejected.

30. We, accordingly, direct the committee constituted by us to immediately pass orders to implement the order passed by this Court in W.P No.16373/2015 and connected matters and the decision taken by them in its meeting held on 11.1.2017 to 14.1.2017 and while doing so to keep in mind not just the order passed by this Court in W.P No.16373/2015 but also keep in view the law laid down by the Division Bench of this Court in the case of Subha Mishra (supra).

31. In the facts and circumstances of this case and in view of the detailed discussions in the preceding paragraphs, we would normally have imposed heavy exemplary penal cost upon the applicant, however looking to the fact that the applicant has filed this application pursuant to the liberty granted by the Supreme Court, a cost of Rupees Twenty Thousand is imposed upon the applicant as a deterrent, not just for the applicant but also for all concerned, towards making any such attempt in future. The cost of Rupees Twenty Thousand shall be deposited by the applicant before the High Court Legal Services Committee, Jabalpur within a week from today.

32. With the aforesaid directions, the MCC filed by the applicant stands dismissed.

33. Certified copy of this order be supplied to all concerned.

34. Registry is directed to send a copy of this order to all the parties immediately.