

(2001) 10 MAD CK 0109
In the Madras High Court

Vinayaka Mission's Sankarachariar Dental College	APPELLANT
Vs	
Mary Neena D'cunha and Others	RESPONDENT

Date of Decision : 19-10-2001

Acts Referred:

Dentists Act, 1948 — Section 20

Citation : (2002) 1 LW 11 : (2001) 3 MLJ 707

Hon'ble Judges : B. Subhashan Reddy, C.J

Bench : Division Bench

Judgement

B. Subhashan Reddy, C.J.—At issue, is whether a letter by Dental Council of India can be relied upon for recognising a particular course as equivalent, per se, without it being issued as a Regulation u/s 20 of Dentists Act, 1948. Few facts are necessary to be stated leading to the filing of this writ appeal.

2. The first respondent has passed the Vocational Higher Secondary Examination (VHSE) conducted by the Board of Vocational Higher Secondary Examinations of the Government of Kerala with Food Processing Technology as the Vocational Subject. The course comprised of 3 Parts, Part I with English and General Foundation course; Part II with Vocational Subjects, both theory and practical and Part III with Optional Subjects consisting of Physics, Chemistry and Biology etc. While the disciplines Part I and Part II are compulsory, Part III is optional and choice is given to the students to opt the subjects having regard to their aptitude and also to undergo the degree courses or professional courses of their choice. Insofar as Kerala is concerned, passing of VHSE is treated as equivalent to Pre-Degree University course. The first respondent had opted Physics, Chemistry and Biology group in Part III of VHSE. course and has passed the same. Pursuant to her application to the appellant college, she was admitted to B.D.S. course for the academic year 1998-99 under the Management Quota. She also underwent First Year course. But she was found to be not eligible to be registered with the third respondent university on the ground that the VHSE course of Kerala was not equivalent to Pre-Degree course in Tamil Nadu and that

she was not entitled to continue her studies in B.D.S. course any further. The decision of the third respondent University was based upon G.O.Ms.No. 186, Health and Family Welfare Department, dated 26.3.1996, issued by the Government of Tamil Nadu. The case of the University is that the first respondent is not a student of its affiliated college, that her name has not been registered through a registration application, that the eligibility criteria for admission to B.D.S. course in Plus Two in Tamil Nadu with Physics, Chemistry, Botany, English and any other language or with the minimum five subjects of English, Physics, Chemistry, Botany and Zoology and obtaining of not less than 50% marks aggregate in Physics, Chemistry and Biology and even if the candidates from other States are applying, the qualifications should be equivalent to Plus Two of Tamil Nadu, that the respondent, who studied in Kerala in English and Vocational Subjects, Physics, Chemistry and Biology, is not eligible for admission to B.D.S. course in Tamil Nadu as per the regulations. But the first respondent laid stress on the eligibility certificate dated 28.7.1998 issued by Mahatma Gandhi University of Kerala State, which is to the following effect:

This is to certify that the Vocational Higher Secondary Examination conducted by the Board of Vocational Higher Secondary Examinations, Government of Kerala, has been recognised as equivalent to the Pre-Degree of Mahatma, Gandhi University, Kottayam/Kerala State. Those who passed his examination are eligible for admission to higher studies in this University.

3. Other certificates issued by Government Vocational Higher Secondary School, Narakkal and the Board of Vocational Higher Secondary Examinations, Government of Kerala, Thiruvananthapuram, are also to the same effect. What is more, by letter dated, 1.9.1999 to the third respondent, the Director of Vocational Higher Secondary Education, Thiruvananthapuram, has reiterated that a pass in the Vocational Higher Secondary Education course in the State of Kerala with requisite percentage, enables the candidates for the admission to the respective professional courses and that the said course was also approved as eligible for admission to Pharmacy course. The letter also contains a recital to the effect that the said vocational course of Kerala has been approved by Rajeev Gandhi University of Health, Science, Bangalore. In support of that, the first respondent/writ petitioner had also filed admission ticket for Common Entrance Test conducted by Government of Karnataka for admission to medical, dental and engineering colleges for 1998. A letter dated 28.9.1998, issued by the Pharmacy Council of India, New Delhi, constituted under the Pharmacy Act, 1948, to the Director, Directorate of Medical Education, Thiruvananthapuram, has also been filed in support of the contention. The said letter states that the Pharmacy Council of India, in its meeting held in September, 1998, has ratified the recommendations as conveyed by the said Director and approved the Vocational Higher Secondary Education of Kerala as a qualifying course of the purpose of admission to Diploma in Pharmacy Part I course. Latest is the letter dated 29.5.2000 by the Dental Council of India, New Delhi, constituted under the Dentists Act, 1948, which has been projected as a final say in the matter of

acceptance of the discipline of VHSE obtained by the first respondent entitling her admission into B.D.S course by the appellant University. It reads thus:

DENTAL COUNCIL OF INDIA (CONSTITUTED UNDER THE DENTISTS ACT, 1948)

Aiwan-E, Galib Marg, Kotla Road, NEW DELHI-110 002. No. De-34-2000/902 SPEED POST 29TH May, 2000 To Marry Neena D" Cunha Merry Land, Elankunnapuzha COCHIN-1 Sub: Request for issue of eligibility certificate. Sir, Kindly refer to your letter dated 13.11.1999 thereby sending a copy of certificate awarded by the Kerala Vocational Higher Secondary Examination with Physics, Chemistry and Biology as optional subjects and requesting the Council to issue an eligibility certificate for admission to B.D.S Course in any University in India.

In this connection, I am directed to state that as per letter No. Acd/B1/7049/HSE/2000, dated 17/5/2000 from the Director, Higher Secondary Education, Thiruvananthapuram, two, years Kerala Vocational Higher Secondary Course with Physics, Chemistry and Biology as optional subjects under Part III conducted by the Directorate of Vocational Higher Secondary Education is equivalent to the Plus Two (Higher Secondary) course for the purpose of admission to B.D.S Course.

Yours faithfully Sd/S.S.ARORA Asst. Secretary

CC: Dr. R.K. BALI, B.D.S (Pb), MPH (US) Dental Council of India Padmashree Awardee FRSH, FADI, FPFA, FICD, FNAMS President-Dental Council of India New Delhi.

But the/Rules framed by the Government of Tamil Nadu in G.O. (Ms.) No. 186, Health and Family Welfare (MCA) Department, dated 26.3.1996 are otherwise. It is apt to extract the relevant paragraph 4, which reads:

4. MINIMUM QUALIFICATION FOR ELIGIBILITY FOR MBBS/B.D.S/B.PHARMACY/B.Sc. (NURSING) B.P.T. COURSE

Candidate who have passed the Higher Secondary Certificate (Academic) Examination conducted by the Tamil Nadu Secondary State Board with the following groups of subjects shall be eligible for the I year. MBBS/B.D.S/B.PHARMACY/B.P.T. Course:

(a) Physics, Chemistry, Botany and Zoology; (or)

(b) Physics, Chemistry, Biology with any other subjects;

The candidates, who have passed other equivalent examinations with the same group of subjects, as mentioned above, also shall be eligible for admission to the courses subject to the condition that the candidates should obtain the necessary eligibility certificate from the Tamil Nadu Dr. M.G.R. Medical University.

Diploma holders in Pharmacy will be admitted only to I year B. Pharmacy course and their selection will be made on the basis of marks obtained in the Final Examination of the Diploma in Pharmacy Course.

Higher Secondary Certificate Vocational stream candidates and P.U.C. candidates are not eligible for admission to MBBS/BDS/B.PHARMACY/B.Sc. (NURSING) B.P.T. Course.

4. It was contended before the learned single Judge that inasmuch as the Dental Council of India has issued a clear clarification on 29.5.2000 addressed to the first respondent, in response to her applications for the issuance of eligibility certificate for admission to B.D.S. course in any University, wherein, basing upon the letter dated 17.5.2000 from the Director, Higher Secondary Education, Thiruvananthapuram, the Council has stated that two years Kerala Vocational Higher Secondary course with Physics, Chemistry and Biology as Optional subjects under Part III conducted by the Directorate of Vocational Higher Secondary Education, is equivalent to the Plus two (Higher Secondary) course for the purpose of admission to B.D.S. Course, the third respondent has no choice but to obey the same and that the admission granted by the appellant (fourth respondent in the writ petition) was valid and that it was not liable to be interfered with by the third respondent University. The same was conducted by the State Government and the University supporting the action of the University and G.O.Ms.No. 186 referred to above, relying upon the decision in Dr Preeti Srivastava and Another Vs. State of M.P. and Others, . The learned single Judge upheld the contention of the respondents 2 to 4 herein holding that according to the legal principles stated by the Supreme Court in the above decision, while the State Government cannot prescribe the standards lower than the one prescribed by the Dental Council of India, it can always prescribe higher standards and as G.O. Ms. No. 186 prescribes higher standards, they cannot be found fault with and accordingly upheld the decision of the University contained in proceedings Lr. No. ACII (2) 19996/99, dated 6.7.1999, which reads as follows:

TAMIL NADU DR. M.G.R. MEDICAL UNIVERSITY Post Bag No. 1200, 40, Anna Salai, Guindy, CHENNAI 600 032

By Regd. Post DR. C.L. ASHOK KUMAR, M.B.MS., M.CH. FICS (URO) Academic Officer Lr.No. ACII(2) 19996/99 Dated 6/7/1999 To The Registrar Vinayaka Missions Sankarachariyar Dental College Sankari Main Road No. 47, Ariyanoor SALEM 636 308. Sir, Sub: B.D.S. Course - The Tamil Nadu Dr. M.G.R. Medical University Chennai - Eligibility Certificate for admission of Ms. Mary Neena D. Cunha - Regarding.

Ref: Your letter No. Nil dated 20/5/1999, With reference to above, I am to inform you that as per the G.O.(Ms.)No. 186, dated 26/3/96 of Health and Family Welfare Department of Government of Tamil Nadu, the Higher Secondary Certificate Vocational stream and P.U.G. candidates are not eligible for admission to MBBS/BDS/B. PHARM/B.SC (Nursing)/B.P.T. COURSE.

Hence, the candidate Ms. Mary Neena. D. Cunha who have passed the State Board of Vocational Higher Secondary Examinations conducted by Government of Kerala is not eligible for admission to any of the above courses as mentioned in

the Government order of Tamil Nadu referred above including B.D.S Course and returning her certificate.

Yours faithfully Sd/xxxxxxxx Academic Officer

End: 1. Marks Statement & 2. Transfer Certificate

Hence this Appeal.

5. The Dentists Act, 1948, is a central enactment and has been enacted to regulate the profession of dentists. Similarly, the Indian Medical Council Act, 1956, is also a central enactment regulating the medical profession. The Dentists Act, 1948 being a specific statute dealing with dental profession is relevant for adjudication in this case. But, the Indian Medical Council Act, 1956 contains similar provisions as in the Dentists Act, 1948, and the language employed is in *pari materia*. Both the Acts deal with the recognition of qualifications for undergoing dental and medical courses, which, includes permission for establishment of the institution, the courses of study, the strength of the students, criteria for recognition of the colleges imparting dental and medical education, monitoring of the same, steps to give effect to that monitoring, empowering in respect of appointment of visitors and to withdraw the recognition should there be violation of the provisions of the Act and the conditions stated while issuing recognition, professional conduct, maintenance of registers of the professionals after completion of the course and registration of practice, maintenance of registers, etc. To give effect to all these provisions, the Council be it under Dentists Act or the Indian Medical Council Act, which are called Dental Council or the Medical Council, as the case may be, is entitled to make regulations, and such regulation making power is conferred on the Dental Council u/s 20 of the Dentists Act, and in so far as the Medical Council is concerned, it is u/s 33 of the Indian Medical Council Act. There are several judicial pronouncements touching upon the provisions of the Medical Council Act, and in view of the similarity in the language employed in both the Acts, as also the similarity in the object and intendment of the said Acts, as the common objective is to ensure the quality in the discipline of medicine including the Dentistry, and the standards to be maintained by the Doctors including Dentists. This aspect need not be elaborated any further, in view of the fact that the Supreme Court has said in *Medical Council of India Vs. State of Karnataka and Others*, to the effect that "what we have said about the authority of the Medical Council under the Indian Medical Council Act would equally apply to the Dental Council under the Dentists Act", in paragraph 21 thereof.

6. Now something has to be said about the role of the State Government in imparting the medical education and to prescribe qualifications for admission to medical courses, including B.D.S. There had been the view right from State of Madhya Pradesh and Another Vs. Kumari Nivedita Jain and Others, that prescription of qualifications for admission into medical course comes within the competence of the Medical Council u/s 33 of the Indian Medical Council Act, and

such regulations are mandatory while the process or procedure for selection from amongst eligible candidates for admission is the State subject, and any regulation in that regard by the Medical Council laying down the process or procedure for selection for admission of candidates out the candidates eligible or qualified for such admission is only recommendatory and not binding on the State Governments. The said view was affirmed in a later judgment of the Supreme Court in *Ajay Kumar Singh and Others Vs. State of Bihar and Others*, . But, coming to the *Medical Council of India Vs. State of Karnataka and Others*, the ratio laid down in *State of Madhya Pradesh and Another Vs. Kumari Nivedita Jain and Others*, and *Ajay Kumar Singh and Others Vs. State of Bihar and Others*, that the Regulation-1 is mandatory and the Regulation-2 is directory, has not been followed, and it was held that the Medical Council of India is an Apex body entitled to prescribe not only the standards and eligibility, but also prescribe the rules for admission among other aspects.

7. Presently, we are concerned with the rules of admission. There are no rules framed by the Dental Council of India prescribing particular qualification for the admission to B.D.S Course in the country. It is pertinent to mention that while the State (Governments are not entitled to prescribe qualifications lower than those prescribed by the Dental Council, it is always open to the State Governments to prescribe higher standards than the standards prescribed by the Dental Council. This view is fortified in several decisions rendered in that regard, which have been tested and approved by the Supreme Court in *Dr Preeti Srivastava and Another Vs. State of M.P. and Others*, . It is also held in the above judgment of the Supreme Court, which is the latest one on the subject, that if the eligibility criteria for admission into medical course, is" not covered by the regulations made by the Medical Council, the State Government is empowered to prescribe such qualifications. In view of the above, the clear legal principle which emerges is that if the Dental Council frames any regulation relating to the qualifying examination to admission into B.D.S Course, then the State Government is not empowered to make any such statutory provision, be it principal or subordinate legislation, repugnant to the one prescribed by the Dental Council in the regulations.

8. The question is whether the letter dated 29.5.2000 addressed by the Dental Council of India to the first respondent/writ petitioner can be construed as a regulation u/s 20 of the Dentists Act. If it is to be construed as a regulation u/s 20 of the Dentists Act, then the writ appellant has to succeed, as the 3rd respondent/University is bound by this. Otherwise not.

9. A reading of all the provisions of the Dentists Act, as also understanding the scope and scheme there of, shows that the Dental Council is not empowered to issue any individual advice in a particular case. Anything to be imposed by the Dental Council has to be only in the shape of regulation and in the manner indicated u/s 20 of the Dentists Act. It is a settled proposition that the statutory authority has to act only in the manner indicated by the Statute and not

otherwise. Pertinent rulings on this point, particularly, as to whether the letter of the kind issued by the Dental Council mentioned above can be construed and treated as regulation came to be discussed in several decisions, and prominent among them are:-

(1) Medical Practitioners" Association, Nagpur and others v. The Medical Council of India ILR 1970 Bom. 223; (2) Kumari Darsha Ahuja Vs. University of Agra and Another, (3) Dr. H.K. Sahoo v. State of Orissa and others 1984 L.I.C. 14. (4) Dr. Sivasankar Lal Bajoria v. State of Orissa 1986 L.I.C. 1146 Ori 5 Arun H. Bakle Vs. Union of India and Others, ; (6) Mahesh Kumar Jindal v. Vice Chancellor, Banaras Hindu University 1991 All L.J. 126.

10. The legal principle stated in the above decisions is to the effect that any resolution or letter issued by the Medical Council of India does not ipso facto become the regulation u/s 33 of the Medical Council Act, unless they are framed as regulations in the manner indicated u/s 33 thereof. As stated above, the regulations can be framed by the Dental Council only with the approval of the Central Government, and even after such approval of the Central Government, it has to be gazetted so as to have the force of subordinate legislation, and it has to be placed before the Parliament for approval. Admittedly, the letter dated 29.5.2000 issued by the Dental Council did not undergo that process, and has just been issued in response to the letter of the first respondent/writ petitioner. It is also relevant to state that in all the decisions rendered by the Supreme Court, dealing with the standard of medical education, the regulations which have been cited were framed in exercise of the power contained u/s 33 of the Medical Council Act.

11. In Ajay Kumar Singh and Others Vs. State of Bihar and Others, it was held that the regulations framed by the Medical Council of India, which were not approved by the Central Government, and not published as regulations u/s 33 of the Medical Council Act, had no statutory force. It was so clearly held in paragraph 20 thereof, which reads,

so far as 1992 recommendations are concerned, they have not yet been approved by the Central Government nor have they been published as Regulations u/s 33. No more need be said with respect to them for they cannot obviously govern the admission..

12. It was held in Medical Council of India's case, supra, that "regulations framed u/s 33 of the Medical Council Act with the previous sanction of the Central Government are statutory. These regulations are framed to carry out the purposes of the Medical Council Act and for various purposes of the Medical Council Act and for various purposes mentioned in Section 33. If a regulation falls within the purposes referred to u/s 33 of the Medical Council Act it will have mandatory force.

13. Surveying all the decisions mentioned supra, a Division Bench of the Andhra Pradesh High Court, to which one of us was a party (Chief Justice) had in Dr. B.

Srinivas Vs. Dr. P. Krishna Malakonda Reddy and others, speaking for the Division Bench and in similar circumstances, where the letter of the Medical Council was treated by the Medical College accepting the qualification mentioned therein for admission to Post Graduate Super Speciality Medical Course, held that such letter issued by the Medical Council does not partake the character of a regulation u/s 33 of the Medical Council Act.

14. In view of what is stated supra, we hold that the letter dated 29.5.2000 addressed by the Dental Council to the first respondent/writ petitioner has got no force of regulation u/s 20 of the Dentists Act. As such, that field is left open to the State Governments, and for that reason, merely because the Government of Kerala has recognised VHSE as an eligible qualification for admission to B.D.S Course, it is not incumbent upon the State Government of Tamil Nadu to accept the same as an eligible qualification for admission to B.D.S Course. The State of Tamil Nadu by virtue of the legislative power traceable to Entry 25 of List 3 of VII Schedule of the Indian Constitution is entitled to make its own enactment and also frame regulations governing the admission to B.D.S Course, and accordingly it prescribed pre-university qualification setting the standards and the same are not liable to be interfered with.

15. In view of what is stated above, we confirm the order passed by the learned single Judge, and/accordingly dismiss this writ appeal. No costs. Consequently, connected C.M.Ps. are also dismissed.