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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 3828/2012

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Judgment dated 11.09.2012

RATHOD VIRENDRA SINGH J.S. Petitioner
Through : Mr.Sitab Ali Chaudhary, Adv.

versus

DENTAL COUNCIL OF INDIA & ANR Respondents
Through : Mr.Gaurav Sharma and Ms.Surbhi
Mehta, Advs. for DCI.

+ W.P.(C) 3829/2012

JAY MAHESH KUMAR KHATRI Petitioner
Through : Mr.Sitab Ali Chaudhary, Adv.

versus

DENTAL COUNCIL OF INDIA & ORS. Respondents
Through : Mr.Gaurav Sharma and Ms.Surbhi
Mehta, Advs. for DCI.

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. Both these writ petitions raise identical questions. Arguments have been heard jointly. With the consent of counsel for the parties both the writ petitions are being disposed of by a common order. For the sake of convenience the facts in W.P.(C) 3828/2012 are being noticed.
2. As per the petition, the petitioner completed his BDS course from Tribhuvan University, Kathmandu, Nepal in May, 2009. After completing his BDS the petitioner has completed internship from 3.11.2009 to

2.11.2010 from U.C.M.S. College of Dental Surgery, Nepal. On 28.9.2011 the petitioner applied for screening test for BDS conducted by respondent no.1, Dental Council of India. The petitioner paid the necessary fee and thereafter appeared for the screening test, which was finally conducted by respondent no.2 on 27.4.2012 at Maulana Azad Dental College, New Delhi. The respondents published the key answers in the website on 30.4.2012. According to the petitioner, some of the questions were wrongly answered in the key answers and, therefore, he challenged the same in the last week of April, 2012. The respondents conducted verification of the key answers by the subject expert on 7.5.2012 and displayed the key answers on the said date. The petitioner was awarded 64 out of 100 marks in Paper-I and 72 out of 150 marks in Paper-II.

3. Learned counsel for the petitioner submits that the qualifying marks have been set at 50% in each paper. Counsel further submits that although the petitioner qualified the Paper-I but he is short of three marks in the Paper-II. Counsel next submits that on 11.5.2011 the petitioner applied for re-totaling and verification of his marks. A representation was also made by him on 11.5.2012 to respondent no.2 that he should be granted three grace marks.
4. Learned counsel for the petitioner contends that it is the case of the petitioner that vide letter dated 17.5.2012 respondent no.1, Dental Council of India, directed respondent no.2, University, to take necessary action as per the provisions of DCI Revised BDS Course Regulations, 2007, as according to the petitioner, the petitioner is entitled to maximum 5 grace marks, provided the student has failed only in one subject but passed in other subjects. Counsel further contends that the grievance of the petitioner is that despite the letter dated 17.5.2012 and the Regulations

which provide grant of maximum 5 grace marks the respondents have failed to consider the case of the petitioner and the grace marks have not been awarded to the petitioner. In support of this submission, counsel for the petitioner has relied upon DCI Revised BDS Course Regulations, 2007, the relevant portion of which reads as under:

“GRACE MARKS : Grace marks upto a maximum of 5 marks may be awarded to students who have failed only in one subject but passed in other subjects.”

5. Learned counsel for the petitioner has relied upon a decision rendered by a Single Judge of this Court in the case of *Master Mohammad Akram Khan v. Jamia Senior Secondary School & Ors.*, titled as W.P.(C) 3270/2011 in support of his plea that the interest of the student has to be kept supreme while interpreting the instructions and in case if there is any ambiguity the student cannot be made to suffer.
6. Mr.Gaurav Sharma, learned counsel for the respondents, submits that the petitioners had completed their BDS from a University situated at Nepal. Mr.Sharma further submits that in order to achieve highest standard in dental education certain regulations have been framed for laying down minimum standards of infrastructure, teaching and other requirements for conduct of dental/medical courses. It is next submitted that the right to practice dentistry, under the scheme of the Act, has been conferred upon the citizens of India and it is possible that the citizens of India may hold recognized qualifications which were obtained from recognized dental institutions in the country or from recognized dental institutions abroad. Accordingly, for the purpose of grant of registration for practicing under the provisions of the Act certain qualifications have been laid down.
7. Learned counsel for the respondents has relied upon Section 10(4)(a) of the Act, which provides that for dental qualifications from the foreign

dental institutions, which are recognized by the DCI by incorporating them in Part-III of the Schedule of the Act and the dental qualifications from the institutions abroad, which already stand recognized, are included in Part III of the Schedule of the Act. It is further submitted that for further recognition of the dental qualifications from the dental institutions abroad, which are not included in Part-III of the Schedule to the Act – provision of Section 10(4)(b) stipulates that a dental qualification granted by any authority or institution outside India, held by a citizen of India may be recognized by the Central Government after consultation with the Dental Council of India. It is also submitted that Section 10(4)(b) stipulates that the Central Government after consultation with the Council by notification in the Official Gazette amend Part-III of the Schedule to include any dental qualification so recognized, granted by any institute outside India and held by a citizen of India. It is next submitted that the Section 10(5) stipulates that the DCI may enter into negotiations with any authority/institution in a foreign country which maintains the register of dentists for that foreign country, for the purpose of setting up a scheme of reciprocity for the recognition of dental qualifications and that the Central Government may by notification in the Official Gazette amend the Schedule, declare that any such qualification granted by any foreign institution shall be a recognized dental qualification for the purposes of the Act after a specified date.

8. Mr.Sharma, learned counsel for the respondents, contends that only those Indian citizens who obtain a dental qualification from a recognized foreign institution, which is included in the Schedule of the Act, is entitled for registration. It is further contended that various representations were received from the students, who had completed their BDS and MDS courses from dental colleges abroad, which were not recognized and the

Council was requested to recognize their qualifications to enable them to practice dentistry in India. Since the respondents received a number of representations and to benefit such students, it was decided by the Council to introduce a screening test in order to enable the students to practice medicine. Accordingly, Council in exercise of the powers conferred by Section 20 read with Section 10(4) or 10(5) of the Dentist Act, 1948, with the prior approval of the Central Government, has notified the Dental Council of India Screening Test, 2009, in the gazette of India dated 13.8.2009. Mr.Sharma contends that after the notification of the Dental Council of India Screening Test Regulations, 2009, those Indian citizens who possess primary dental qualification or post-graduate diploma or post-graduate dental qualification awarded from any dental institution outside India and are desirous of getting registration with any State Dental Council would have to qualify a Screening Test. It is further submitted that in these circumstances the petitioner appeared in the screening test but did not qualify the same as the petitioner in WP.(C) 3828/2012 had only 64 marks out of 100 marks in Paper-I and petitioner in WP(C) 3829/2012 had 80 marks out of 150 marks. Admittedly, the petitioner was short by three marks. It is also submitted that the Regulations, sought to be relied upon by the petitioner, are not applicable to the petitioner and the said Regulations only apply to those students who appeared in the BDS/MDS course examination in India itself. It is next submitted that there is no corresponding provision for grant of grace marks in the Dental Council of India Screening Test Regulations, 2009, a copy of which has been placed on record and, thus, no grace marks can be given to the petitioners. Mr.Sharma submits that as far as the judgment relied upon by counsel for the petitioner in the case of ***Master Mohammad Akram Khan*** (supra) is concerned the same is not applicable to the facts of this case as

there is no ambiguity in the Regulations which have been relied upon by the Council as there is no provision at all in the said regulations of providing grace marks.

9. I have heard learned counsel for the parties, considered their rival contentions and also perused the short reply filed by Dental Council of India and the Regulations relied upon by counsel for the respondents. The basic facts of the case are not in dispute that the petitioner in WP.(C) 3828/2012 completed his BDS course from Tribhuvan University, Kathmandu, Nepal, in May, 2009. The petitioner completed his internship from 3.11.2009 to 2.11.2010 from U.C.M.S. College of Dental Surgery, Nepal. On 28.9.2011 the petitioner applied for screening test for BDS conducted by respondent no.1, Dental Council of India. The petitioner paid the necessary fee and appeared for the screening test, which was finally conducted by respondent no.2 on 27.4.2012 at Maulana Azad Dental College, New Delhi. The respondents published the key answers in the website on 30.4.2012. As per the petitioner, some of the questions were wrongly answered in the key answers and, thus, he challenged the same in the last week of April, 2012. The respondents conducted verification of the key answers by the subject expert on 7.5.2012 and displayed the key answers on the said date. The petitioner was awarded 64 out of 100 marks in Paper-I and 72 out of 150 marks in Paper-II. The qualifying marks have been set at 50% in each paper. Although the petitioner qualified Paper-I but he is short of three marks in Paper-II. On 11.5.2011 the petitioner applied for re-totaling and verification of his marks. A representation was also made by the petitioner on 11.5.2012 to respondent no.2 that he should be granted three grace marks. Grievance of the petitioner is that despite the letter dated 17.5.2012 and the Regulations which provide grant of maximum 5 grace marks the respondents have

failed to consider the case of the petitioner and the grace marks have not been awarded to the petitioner.

10. Reliance on DCI Revised BDS Course Regulations, 2007, by the petitioners, are completely misplaced as the said regulations are not applicable to the case of the petitioners as the petitioners fall in a completely separate category. It is not in dispute that both the petitioners have qualified from foreign dental institutions, which are not recognized and not included in Part III of the Schedule to the Act. In order to grant such students an opportunity to practice in India the Council in exercise of the powers conferred by Section 20 read with Section 10(4) or 10(5) of the Dentist Act, 1948, with the prior approval of the Central Government, has notified the Dental Council of India Screening Test, 2009, in the gazette of India dated 13.8.2009 and thereafter Screening Test Regulations, 2009, were formulated. There is no doubt or ambiguity that the petitioners are governed by the Screening Test Regulations, 2009, and as per the said Regulations there is no provision for awarding grace marks. I do not find any infirmity with the stand taken by the respondents. Accordingly, present writ petitions must fail and the same are dismissed with no order as to costs.

G.S.SISTANI, J

SEPTEMBER 11, 2012

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