

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION
WRIT PETITION NO. 3235 OF 2015**

- 1 Sinhgad Dental College and Hospital
 Having its office at S. No.44/1, Vadgaon (BK),
 Pune-411 041.
 - 2 Sinhgad Technical Education Society,
 Registered under Society's Registration
 Act, 1860, having its registered office at
 S. No. 44/1, Vadgaon (BK),
 Pune-411 041.
 Through its founder- President
 Shri M.N. Navale
-Petitioners.

Vs.

- 1 Maharashtra University of Health
 Sciences, Nashik,
 Through its Vice-Chancellor
 Having office at Vani-Dindori Road,
 Mhasrul, Nashik
 - 2 State of Maharashtra,
 through the Principal Secretary,
 Dept. of Medical Education and Drug,
 Govt. of Maharashtra, Mantralaya,
 Mumbai-400 032.
 - 3 The Director of Medical Education & Research
 Govt. Dental College & Hospital Building
 St. George's Hospital Compound,
 Mumbai 400 001.
 - 4 Pravesh Niyantran Samiti,
 through its Secretary,
 305, Govt. Polytechnic Building, 49,
 Kherwadi, Ali Yawar Jung Marg,
 Bandra (East), Mumbai 400 051.
-Respondents.

Mr. V.P. Sawant a/w Mr. Nitin S. Dhumal for the Petitioners.
Mr. S.B. Shetye for Respondent No.1.
Mr. S.S. Patwardhan for Respondent No.4.
Mr. C.P. Yadav, AGP for the State.

**CORAM : ANOOP V. MOHTA AND
K.R. SHRIRAM, JJ.
DATE : 21 APRIL 2015.**

ORAL JUDGMENT (PER ANOOP V. MOHTA, J.):

Leave is granted to amend the prayer clause. Amendment to be carried out forthwith.

2 Rule. Rule is made returnable forthwith. Heard finally by consent of the parties.

3 Petitioner No.1 is established and run by Petitioner No.2. Petitioner No.1 started its activities from Academic year 2006-2007. Petitioner No.1 was earlier associated with Association of Management of Unaided Private Medical and Dental Colleges (for short, "AMUPMDC") for admission to BDS Courses. Though it is permissible for the Petitioner College to admit the students through centralized admission process conducted by AMUPMDC, to get more meritorious students, Petitioner had dissociated from AMUPMDC and

got associated with MH-CET conducted by the Government of Maharashtra from academic year 2011-12 onwards. The selection of candidates was done by the Competent Authority of MH-CET only. For academic year 2014-15, the admission process was duly conducted by Director of Medical Education and Research (for short, “DMER”)- Respondent No.3.

4 On 20 August 2014, out of total number of 100 seats, 85 seats are required to be filled in through admission conducted by DMER and balance 15 seats are permitted to be filled in at management level. After the conclusion of second counseling round of DMER conducted from 28 July 2014 to 6 August 2014, out of 85 BDS seats, 63 candidates reported to Petitioner College and only four candidates filled the retention forms. The Petitioners requested Pravesh Niyantran Samiti-Respondent No.4 (for short, “PNS”), to permit the College to admit students on merit from Association CET (for short, “ASS-CET”). On 18 September 2014, after conclusion of final/third counseling round of DMER conducted from 10 September 2014 to 17 September 2014, out of 81 BDS seats, 38 candidates reported to them and only 11 candidates filled the retention forms.

Therefore, the Petitioners again requested PNS to permit them to admit students from ASS-CET or any other CETs recognized by the Dental Council of India. On 17 September 2014, vide notification the DMER granted permission to private medical and dental colleges to give admission at institute level on the basis of merit in MH-CET. Accordingly, as per the directions, Petitioners published advertisement on 23 September 2014, announcing seat availability and inviting application forms from eligible students. However, in response to the said advertisement less number of students submitted their forms, as compared to the vacant seats available in the college. On 18 September 2014, the Petitioner college requested Respondent No.3, which is a Competent Authority to conduct MH-CET for Health Science Courses viz. MBBS, BDS, to permit the Petitioner college to admit eligible students, who have qualified in CET's, on remaining vacant seats after admitting eligible candidates from MH-CET. On 29 September 2014, Respondent No.3 requested PNS to grant permission and approval for Petitioner No.1 College and another private unaided college to admit students from the other recognized CET's, as there are no intending eligible students available from the MH-CET to fill up the remaining vacancies in these two private unaided colleges. On 30

September 2014, PNS despite several requests did not inform the Petitioners either way, the last day for admission was 30 September 2014 and the Petitioners had no alternative except to admit students to First Year BDS course from other recognized CET.

5 On 10 October 2014, after completion of admission procedure on 30 September 2014, PNS has directed the colleges to submit their list of selected candidates on 15 October 2014. Accordingly, Petitioner college on 10 October 2014 submitted list of 53 selected students for approval along with all the necessary data. Though Petitioner college has duly admitted 53 students qualified in the respective CET's for academic year 2014-15, on 28 October 2014 Respondent No.1 (MUHS) declined to consider applications of 13 students for grant of eligibility and returned the same. On 14 November 2014, PNS again directed to submit details of all admitted students for academic year 2014-15. On 19 November 2014, Petitioner college has again submitted entire list of 53 students along with all necessary details and documents to PNS.

6 On 12 December 2014, in the meeting, PNS considered the

request of Petitioner college for grant of approval to the admitted 53 students for academic year 2014-15, however directed to pay an amount of Rs.25,000/- towards penalty. On 5 January 2015, without disputing the correctness or validity of the imposition of penalty for no fault, Petitioner No.1 college forwarded demand draft of Rs.25,000/- and complied with the directions. On 16 January 2015, in the meeting, PNS approved 53 admissions in Petitioner college. Despite the fact that the Petitioner college has categorically pointed out the aforesaid undisputed facts vide letters dated 6 January 2015 and 9 February 2015 and as even the Supreme Court matter of Islamic Academy of Education Vs. State of Karnataka¹ has not barred interchangeability among CET's, as well as, admitting students from more than one CET because of the non-availability of sufficient students from opted CET, MUHS again, arbitrarily declined to accept the forms of 12 students by reiterating their earlier stand that the Petitioner College was permitted to admit students from MH-CET and the college was expected to admit the students from MH-CET only. Once the PNS grants approval, as done in the case, the scope and power of MUHS is quite limited. The concerned parties are bound by

1 2003(6) SCC 697

approval granted by PNS.

7 We have, in Dr. D.Y. Patil Vidyapeeth Deemed University Trust and Anr. Vs. Maharashtra University of Health Sciences, Nashik, (Writ Petition No.11281 of 2014, today i.e. on 21 April 2015), considering the issue so far as the No Objection Certificate (NOC) from the Maharashtra State Government and exhaustion of MH-CET list concluded and held that no such NOC is necessary in the facts and circumstances of the case. The situation in the present matter is also same, with regard to the insistence of students of MH-CET and the exhaustion of the list. However, following additional factors in the present matter are required to be considered revolving around prayer clauses (a) and (b).

8 After going through the documents and the averments so made, we have noted that PNS in meeting dated 16 January 2015, item No.1A, while approving the admission of the Petitioner's college for the academic year 2014-15, put condition of payment of penalty as decided and directed at item No.7. The statement is made by the Petitioners, on instructions, that the said penalty of Rs.25,000/- has

already been paid on 5 January 2015. Therefore, once PNS has granted the permission/admission to the students, subject to payment of penalty, all other issues, even if agitated and/or insisted upon the earlier, are of no consequences. The Petitioners, having once completed with the order/directions issued by PNS, are entitled to proceed further including various steps for submitting the requisite examination forms of the students. The University (MUHS), as recorded, cannot refuse to accept the forms pertaining to the admissions, for the course of first BDS examination which will be commencing in May of 2015. The Petitioners, therefore, as they have filed the present Petition on 27 March 2014, are entitled for waiver of late fees, as the MUHS ought not to have refused such forms submitted by the Petitioners pursuant to the order of PNS so recorded above.

9 There is no adverse communication received by the Petitioners even after letter dated 9 February 2015 whereby, the Petitioners again requested PNS for appropriate directions against the MUHS to accept the eligibility forms, in question. Therefore, taking over all view of the matter and in view of above admitted position on record, the Petitioners have made out a case. We see no reason not to

grant the reliefs prayed for to avoid further delay in the matter.

10 Resultantly, the Petition is allowed in terms of prayer clauses (a) and (b), which read thus:-

- “(a) that this Honourable Court may be pleased to issue appropriate writ, order or direction call for the relevant records and proceeding from the office of the Respondent No.1 and after going into the legality of the same, be please to quash and set aside the impugned order/communication dt. 28.10.2014 passed by the Respondent No.1 and appropriate writ, order or direction hold and declare that these 12 students admitted through Ass-CET/AIPMT/Deemed University in Petitioner No.1 College are eligible and entitled to pursue the BDS course and for that purpose issue appropriate writ and/or order.*
- (b) that this Honourable Court may be pleased to issue appropriate writ, order or direction and thereby direct the Respondent Maharashtra University of Health Sciences to grant eligibility certificate to these 12 students admitted through Ass-CET/AIPMT/Deemed University in Petitioner No.1 College and allow them to continue their studies in petitioner No.1 Dental College namely Sinhgad Dental College & Hospital, Pune.”*

11 Rule made absolute accordingly. There shall be no order as to costs.

The parties to act on the basis of an authenticated copy of this order.

(K.R. SHRIRAM, J.)

(ANOOP V. MOHTA, J.)