

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07-05-2015

CORAM :

THE HONOURABLE DR.JUSTICE S.TAMILVANAN

W.P.No.11096 of 2015  
and M.P.No.1 of 2015

Dr.B.Priakardiya

..... Petitioner

vs

1. The Chairman  
Mahatma Gandhi Post Graduate  
Institute of Dental Science,  
Gorimedu, Puducherry - 605 006.
2. The Chief Secretary to Govt - cum-  
Vice Chairman  
Mahatma Gandhi Post Graduate  
Institute of Dental Sciences,  
Gorimedu, Puducherry - 605 006.
3. The Dean  
Mahatma Gandhi Post Graduate  
Institute of Dental Sciences,  
Gorimedu, Puducherry - 605 006.

..... Respondents

Writ Petition filed under Article 226 of the Constitution of India, for the issuance of writ of mandamus directing the respondents to admit the petitioner in the reserved category for the post graduation study in MDS PG course through the PGDEE at Mahatma Gandhi Post Graduate Institute of Dental Sciences, Gorimedu, Puducherry for the academic year commencing from the year 2015-2016.

For Petitioner : Mr.v.Manohar  
For Respondents : Mr.A.Tamilvanan  
Government Pleader(Puducherry)

ORDER

By consent of the learned counsel of both sides, the writ petition itself is taken up for final disposal.

2. The writ petition has been filed invoking Article 226 of the Constitution of India, seeking an order in the nature of writ of mandamus, directing the respondents to admit the petitioner in the reserved category for the post graduation study in MDS PG course through the PGDEE at Mahatma Gandhi Post Graduate Institute

of Dental Sciences, Gorimedu, Puducherry for the academic year commencing from the year 2015-2016.

3. The factual matrix is not in dispute that the petitioner is a Scheduled Caste candidate applied for Post Graduate Dental Entrance Examination (PGDEE) conducted by Mahatma Gandhi Post Graduate Institute of Dental Sciences, Gorimedu, Puducherry for admission to MDS PG course for the academic year 2015-2016, she has secured 79 marks out of 200 marks in the Test, which works out to 39.50% and her Registration Number is S-401. There was only one seat for SC reserved category for MDS PG course in Mahatma Gandhi Post Graduate Institute of Dental Sciences, which is also not in dispute. The petitioner submits that she is eligible to get admission for MDS PG course, by way of securing the minimum required marks, however, she was not considered by the respondents on the ground that the petitioner has not secured the minimum required marks, i.e., 40%. The respondents have stated that the petitioner has obtained only 39.50% and not the minimum required marks of 40%.

4. In this regard, Mr.V.Manohar, learned counsel appearing for the petitioner submitted that the petitioner has secured the minimum required marks, however, she was not selected by the respondents without any justification and also drew the attention of this Court to the following decisions :

(i) State of U.P & another v. Pawan Kumar Tiwari, (2005) 2 SCC 10

(ii) Dr.Ravinder Singh v. Medical Council of India and another in W.P.(C).No.2877 of 2003 and CM.Appeal No.4883 of 2003, dated 22.02.2010.

(iii) State of Punjab v. Asha Mehta, (1997) 11 SCC 410

5. It is not in dispute that in the instant case, only one seat is available for SC category for admission to MDS PG course and the petitioner is the first rank holder in the particular category of reservation. However, she was not given admission for the said course, on the ground that she has not secured 40%, but secured only 39.50% marks. Learned counsel for the petitioner argued that she should have been considered for admission to the said course under SC category, as 39.50% marks has to be construed as 40% of marks, as per law laid down by the Hon'ble Supreme Court and it is a denial of opportunity and injustice has been done to her. Hence, she has approached this Court, by way of filing writ petition with the aforesaid prayer.

6. Per contra, learned counsel appearing for the respondents submitted that Dental Council of India, New Delhi is a necessary party and according to him, without impleading the said party, this writ petition would not be maintainable, however, this Court is not inclined to accept the view of the counsel for the respondents, to meet the ends of justice, since his plea is not legally

sustainable.

7. The petitioner is seeking admission only in the Mahatma Gandhi Post Graduate Institute of Dental Science, based on the admitted facts of the respondents. Hence, the Dental Council of India is only a formal party and not a necessary party, as argued by the learned counsel for the petitioner. Further, the Dental Council of India has sent its report in a sealed cover, that was opened before this Court, in the presence of both the learned counsel, which reveals the fact that only one seat is available for SC reservation category and the petitioner herein, has secured first rank in the said category of reservation, for the MDS course, having secured 79 marks out of 200 marks.

8. As per order, dated 16.04.2015 passed in M.P.No.1 of 2015 in W.P.No.11096 of 2015, this Court (Hon'ble Mr. Justice M.Sathyanarayanan), having considered the facts and circumstances of the case, directed the respondents to permit the petitioner to participate in the counseling to be held on 17.04.2015, subject to certain conditions and it was also made clear that the results of the petitioner's participation in the counseling shall not be declared and to be kept in a sealed cover and shall be produced before this Court at the time of next hearing. Accordingly, the result of the petitioner's participation was sent by the Mahatma Gandhi Post Graduate Institute of Dental Sciences, Puducherry, which reads as follows :

"The Committee, after detailed discussion resolved to allot the specialities, according to the merit, choice and availability of seats in specialities. As per the seat allotment, only one seat is available in the Department of Oral Pathology & Microbiology and Dr.B.Priakardiya has been allowed for the counseling as per the direction of the Hon'ble High Court of Madras, Chennai and she has agreed to take up the available seat in the Department of Oral Pathology & Microbiology. However, she has not fulfilled the eligible criteria of Dental Council of India, New Delhi and the seat is not allotted and kept under sealed cover, as per the direction of Hon'ble High Court of Madras."

9. The Letter of the Dental Council of India, New Delhi in No.DE-MDS (138) Students -2014/18546, dated 27th March 2015, reads as follows :

"I am directed to refer to your letter No.338/MGPGI/Aca/A5/2015-2016/362, dated 11.03.2015 thereby stating that your institute has conducted Postgraduate Dental

Entrance Examination 2015 (PGDEE-2015) for admission to MDS courses and one of the candidate Dr.B.Priakardiya (SC candidate) has secured 79 marks out of 200, i.e., below 40%, which is the highest mark in the SC category and only one seat is ear-marked as per reservation policy, and requesting the Council to give directions / advice to do further action in this regard.

In this connection, I am directed to say that the Executive Committee of the DCI, in its meeting held on 26.03.2015 at New Delhi, considered your letter referred to above, and after discussion & deliberations decided as under :

As per selection of postgraduate students prescribed in Revised MDS Course Regulations 2007, wherever entrance test for Postgraduate admissions is held by a State Government or a university or any other authorized examining body, the minimum percentage of marks for eligibility for admission to postgraduate Dental courses shall be 50% for general category candidates and 40% for the candidates belonging to Scheduled Castes and Scheduled Tribes, therefore, Dr.B.Priakardiya under reserved category (SC candidate), who has secured only 79 marks out of 200, which is less than 40% cannot be admitted in MDS course in a Dental college, failing which it shall be a clear cut violation of provisions of Selection of Postgraduate Students as per Revised MDS course Regulations, 2007."

10. In State of U.P & another v. Pawan Kumar Tiwari reported in (2005) 2 SCC 10, the Hon'ble Supreme Court has held that where the marks secured by the candidate was 46.50%, it could have been treated as 47% for the purpose of considering the candidate. The said decision reads as follows :

"We do not find fault with any of the two reasoning adopted by the High Court. The rule of rounding off based on logic and common sense is: if part is one-half or more, its value shall be increased to one and if part

is less than half then its value shall be ignored. 46.50 should have been rounded off to 47 and not to 46 as has been done. If 47 candidates would have been considered for selection in general category, the respondent was sure to find a place in the list of selected meritorious candidates and hence, entitled to appointment."

11. The Delhi High Court in Dr. Ravinder Singh v. Medical Council of India & Anr, referring State of Punjab v. Usha Mehta, held that 49.7% marks secured by the petitioner therein in +2 examination should be rounded off to 50%.

12. In State of Punjab v. Asha Mehta, reported in (1997) 11 SCC 410, the question was whether 32.5% marks could be rounded off to 33%, which was answered by the Hon'ble Supreme Court in the affirmative as follows :

"The question whether 32.5% could be rounded off to 33% is purely an arithmetical calculation, a procedure which the Public Service Commission in fairness has been adopting in all other cases. The High Court noticed this aspect of the matter and also relied upon earlier procedure in support thereof. In that view of the matter, we do not think that it is a fit case for interference under Article 136 of the Constitution."

13. It is well settled that in view of Article 141 of the Constitution of India, the Judgment of the Supreme Court will be binding on all Courts in India, as law declared by the Supreme Court and as such, it is binding on all authorities in the Territory of India. When the Hon'ble Supreme Court has laid down the law, stating with all fairness for round off to the next figure, if fraction is 0.5, so as to treat it as 1, the Dental Council of India cannot have a different interpretation, stating that 39.5% cannot be treated as 40%. When there is a clear interpretation by the Hon'ble Apex Court, failure in following the interpretation would be construed only as a violation in applying the law.

14. Based on undisputed fact by applying the law, this Court can decide the writ petition and cannot permit to cause any delay, detrimental to the rights of any candidate, who is expecting admission or appointment, on the clear interpretation of law.

15. It is not in dispute that the petitioner herein has secured 79 marks out of the total 200 marks in the test, which comes to 39.50% marks, which has been admitted by Dental Council of India, by its report, dated 27th March 2015, sent in the sealed

cover. Hence, the plea of the counsel for the respondent, seeking an order to implead the Dental Council of India is unreasonable, which would cause only delay, that may lead to denial of the right of the petitioner. In the light of the decisions rendered by the Hon'ble Supreme Court and the Delhi High Court cited above, the respondents should have properly treated 39.50% marks obtained by the petitioner as round figure of 40% marks and selected the petitioner. Unfortunately, without selecting the petitioner, they have simply stated that she was not selected, on the ground that she has not obtained the minimum of 40% marks. This Court cannot appreciate the improper attitude of the respondents, as the view taken by the respondents is contrary to the law laid down by the Supreme Court of India and also against social justice.

16. Learned counsel for the petitioner submits that MDS PG course is going to be commenced on 15.05.2015, which is not in dispute. In view of the clear verdict of the Hon'ble Supreme Court and the Delhi High Court, referred to above, the writ petition need not be adjourned for impleading the Dental Council of India as a formal party or for filing counter by the respondents, without passing appropriate orders, to meet the ends of justice.

17. In the light of the decision rendered by the Hon'ble Supreme Court, if the petitioner an eligible candidate is not permitted to join the MDS course on the trivial and unsustainable grounds raised by the respondents, that would be nothing but preventing illegally the eligible candidate from pursuing her studies in MDS PG course, during the academic year 2015-2016 and that would be an act against reservation policy and social justice. Rendering justice is the paramount consideration and it is a clear case that injustice has been caused to the petitioner, as her legitimate claim was rejected, without following the guidelines of the Hon'ble Supreme Court of India.

18. On the aforesaid circumstances, this Court has no hesitation in directing the respondents to admit the petitioner in MDS PG course for the current academic year, as per the procedure known to law.

19. In the result, the writ petition is allowed, directing the respondents to admit the petitioner in the reserved category for the MDS PG course at Mahatma Gandhi Post Graduate Institute of Dental Sciences, Gorimedu, Puducherry for the academic year 2015-2016. However, no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Chairman  
Mahatma Gandhi Post Graduate  
Institute of Dental Science,  
Gorimedu, Puducherry - 605 006.
  2. The Chief Secretary to Govt - cum-  
Vice Chairman  
Mahatma Gandhi Post Graduate  
Institute of Dental Sciences,  
Gorimedu, Puducherry - 605 006.
  3. The Dean  
Mahatma Gandhi Post Graduate  
Institute of Dental Sciences,  
Gorimedu, Puducherry - 605 006.
- 2 cc to Mr. V.Manohar, Advocate, SR.No.25027  
1 cc to Mr. A.Tamilvanan, Government Pleader, SR.No.25039

W.P.No.11096 of 2015

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pmk.12.5.2015



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