

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.14560 of 2015
Date of Decision: 30.09.2015

Samriti

. . . .Petitioner

Versus

State of Haryana and others

. . . . Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr.Rishi Pal Rana, Advocate,
for the petitioner.

Mr.Deepak Manchanda, Addl. A.G. Haryana,
for respondents No.1 and 2.

Mr.Yagyadeep, Advocate,
for respondent No.3.

Mr.Ramesh Hooda, Advocate,
for respondent No.4.

None for respondent No.5.

RAKESH KUMAR JAIN, J.

The petitioner got admission in the Bachelor of Dental Surgeon Course [for short 'BDS Course'] in the SGT Dental College, Gurgaon vide registration No.7771 (SGT) in the academic session 2010-11. Her college is affiliated to Pt. Bhagwat Dayal Sharma University of Health Sciences, Rohtak [for short 'the University']. In the 1st year of BDS Course, there are three subjects, namely, (i) General Anatomy including Embryology and Histology, (ii) General Human Physiology and Biochemistry and (iii) Dental Anatomy, Embryology and Oral Histology. The petitioner appeared in the 1st

year examination of BDS course three times in the years 2011, 2012 and 2013 but she could pass only in one subject, namely, Dental Anatomy, Embryology and Oral Histology. However, she passed the practical examinations of all the three subjects but she was discharged from the BDS Course by the respondents in view of the provisions of BDS Course Regulations, 2007 [for short 'the Regulations 2007'] notified on 25.7.2007 in which it is provided that *"any student who does not clear the first BDS University Examination in all subjects within 3 years from the date of admission, shall be discharged from the course"*. Although, she could not pass two subjects out of three in the 1st academic year, yet she was allowed to study in the 2nd year of BDS Course but was not permitted to appear in the 2nd year examination of the BDS Course on the ground that she did not clear two subjects of the 1st year of the BDS Course. It is alleged that the Regulations 2007 has been further amended by the Regulations called Revised BDS Course Regulations, 2007, which has been notified in the month of February 2014 [for short 'the Regulations 2014'], in which the existing clause that *"any student who does not clear the 1st year BDS Examination in all subjects within 3 years from the date of admission, shall be discharged from the course"* has been substituted with the clause that *"any student who does not clear the BDS course in all the subjects within a period of 9 years including one year compulsory internship from the date of admission shall be discharged from the course"*. It is submitted that corrigendum was also issued on 25.2.2015 in the Regulations 2014 wherein it was provided that *"any student who does not clear the BDS course in all the subjects within a period of 9 years including one year compulsory internship*

from the date of admission shall be discharged from the course". The Dental Council of India further made amendment to the Existing principle Revised BDS Course Regulations, 2007 called the Revised BDS Course (7th Amendment) Regulations, 2015, which was notified on 27.4.2015 in which the following substitution was made: -

"In the existing Regulations under heading captioned as "EXAMINATIONS", sub-heading "SCHEME Examinations" and sub-heading "1 B.D.S. Examination:" the existing clause that "Any student who does not clear 1st year BDS course in all the subjects within 3 years from the date of admission shall be discharged from the course".

Substituted by the following clause that:

"Any student who does not clear the BDS course in all the subjects within a period of 9 years, including one year compulsory Rotary paid internship from the date of admission shall be discharged from the course".

The petitioner made a request to the University to allow her to appear as a regular student in July 2015 in BDS 1st semester in two subjects in terms of the notification dated 25.2.2015 but her request has been turned down by the University on the ground that the amendment cannot be applied retrospectively.

Learned counsel for the petitioner has submitted that the Regulation 2007 has already been held to be *ultra vires* and struck down by the Madurai Bench of Madras High Court in **W.P. (MD)**

No.8276 of 2013 titled as **“Nizvy Sunil Prakash Vs. The Secretary, Dental Council of India and others”** decided on 29.11.2013, therefore, the petitioner is eligible to complete her BDS Course within 9 years and there is no such restriction to complete 1st year within three attempts in order to appear in the 2nd year examination.

Reply has been filed by the University in which it is alleged that the corrigendum in the Regulations 2004 was published in the official gazette on 27.4.2015 and has come into force on the date of its publication in the official gazette and the amendment made by way of said notification in the Regulations 2007 does not have retrospective effect because the petitioner was admitted in BDS Course in the year 2010 and has followed by the Regulations 2007 which were applicable till the date on which the Revised BDS Course (7th Amendment) Regulations 2015 came into force, whereas the University had discharged the petitioner on the ground that she could not pass the 1st year examination of BDS Course within three years from the date of her admission i.e. upto 2013 and the said decision was taken as per Clause 6.8 of Ordinance No.13 of the University Calendar. It is further submitted that the decision of the Madurai Bench of the Madras High Court is not applicable to the case in hand because in the said case i.e. **Nizvy Sunil Prakash (Supra)**, the Court was of the opinion that it is mandatory provision to consult with the State Governments before issuing the regulations under Sections 20(2)(g) & (h) of the Dentist Act, 1984 [for short ‘the Act’].

Sections 20(2)(g) & (h) of the Act read as under:-

“20(2)(g) - Prescribe the standards curricular for the training of Dentists & Dental Hygienists and the conditions for admission to courses of such training.

(h) prescribe the standards of examinations and other requirements to be satisfied to secure for qualification recognition under this Act.

Provided that regulations under Clause (g & h) shall be made after consultation with State Governments”

It is further submitted, in regard to consultation, which has been recorded in para 23 of the judgment passed by the Madurai Bench Madras High Court in the case of **Nizvy Sunil Prakash (Supra)**, that DCI had consulted with all the State Governments to which State of Haryana had responded. The relevant observations made in the said judgment in this regard are that *“from the very admission made by the learned Solicitor General, based on the above letter of the officiating Secretary of Dental Council of India, it is crystal clear that except the Government of Haryana, no other State Government was effectively consulted”*. It is further observed that *“thus, there was consultation only with the Government of Haryana and there was no such consultation with any other State Governments, as required to be had under Section 90 of the Act, before bringing into force the above revised regulation, 2007”*. It is thus submitted that the judgment in the aforesaid case of the Madurai Bench could not be of any help to the petitioner as she belongs to the Haryana.

After hearing learned counsel for the parties, the judgment was reserved on 5.8.2015 but at that time, the petitioner

was permitted to take the examination of BDS 1st year of General Human Anatomy including Embryology & Histology, which was fixed for 6.8.2015 and General Human Physiology & Biochemistry, which was fixed for 8.8.2015 subject to the final outcome of the writ petition.

The facts in this case are not disputed because it is provided in Regulations 2007 that a student, who does not clear the first BDS University Examination in all subjects within 3 years from the date of admission, would be discharged from the course and the petitioner could not clear all the three subjects within 3 years of the 1st year examinations of BDS Course as she could pass only in one subject in the years 2011, 2012 & 2013 in theory and failed in two subjects but had cleared all the three subjects in practical examinations. It is also provided in Regulations 2007 that any candidate who fails in one subject in an examination is permitted to go to the next higher class and appear for the subject and complete it successfully before he/she is permitted to appear for the next higher examination. The petitioner was thus allowed to attend the next higher class i.e. 2nd year of the BDS course but she was not allowed to appear in the next higher examination as she had failed in the 1st year examination and was discharged from the course.

The question is thus as to whether in view of the decision taken by the Madurai Bench of the Madras High Court in the case of **Nizvy Sunil Prakash (Supra)**, the petitioner is entitled to appear in the examination of other two subjects of the 1st year and complete her course within 9 years in view of the Regulations 2014, wherein it is provided that the student will be discharged from the course, if he does not clear all the subjects of the BDS course within a period of 9

years including one year compulsory internship from the date of admission?.

It is pertinent to mention that though the finding has been recorded by the Madurai Bench of the Madras High Court in the case of **Nizvy Sunil Prakash (Supra)** that there was an effective consultation with the State of Haryana by the DCI before the issuance of Regulation 2007 but the impugned provision prescribing three years upper limit for the students to clear the 1st year BDS examination from the date of admission in the course has been struck on the ground that it was unconstitutional being arbitrary.

The relevant portion of the order read as under: -

“I hold that the impugned clause is unconstitutional and the same is liable to be struck down. In the result, these writ petitions are allowed, the impugned clause in “the Dental Council of India Revised BDS Course Regulations, 2007”, prescribing “any student who does not clear the first BDS University Examination in all subjects within 3 years from the date of admission, shall be discharged from the course” is hereby struck down. Consequently, the respondents are directed to permit the petitioners to writ the first year examination in the failed papers and then allow them to continue the course. Consequently, connected miscellaneous petitions are closed. No costs.”

Since, the Dental Council of India was also a party in that *lis* and nothing has been brought on record to show that the decision rendered in the case of **Nizvy Sunil Prakash (Supra)**, by the Madurai Bench of the Madras High Court, has been further

challenged or was set aside, this Court has to presume that the order has been maintained.

Once Regulations 2007 has been struck down by the High Court of Madras being unconstitutional, it cannot be used against the petitioner to deprive her of the benefit which she would derive from the subsequent Regulation 2014 as per which the student has to complete his/her BDS course within 9 years from the date of admission including one year compulsory internship before he/she could be discharged from the course.

Thus, in view thereof, the impugned order dated 25.6.2015 passed by the University/respondent is hereby quashed and the permission granted to the petitioner vide order dated 5.8.2015 to appear in the examination of General Human Anatomy including Embryology & Histology on 6.8.2015 and General Human Physiology & Biochemistry on 8.8.2015 is hereby made absolute.

30.09.2015

Vivek

(RAKESH KUMAR JAIN)
JUDGE