

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 7765 OF 2014

Dr. Dipalee Bharatrao Borade

... Petitioner

Vs

1. National Board of Examinations & Ors.

... Respondents

Mr. O.S. Kutty with Ms. Rajalaksmy Mohandas for the Petitioner.

Mr. L.S. Shetty with Mr. Nitish Sabhnani i/b L.S. Shetty & Associates for the Respondent No.1.

Mr. Rui A. Rodrigues with Mr. P.S. Gujar for the Respondent No.2.

**CORAM : S.C. DHARMADHIKARI &
G.S. KULKARNI, JJ.**

WEDNESDAY, 6TH APRIL, 2016

P.C. :

1. On this petition, an ad-interim order was passed by this

Court in the following terms :

"1. Considering the averments made and the certificate dated 12.08.2014 issued by the Controller of Examinations of Pravara Institute of Medical Sciences (Deemed University) wherein they have recorded that they were unable to declare the result of Post Graduate Diploma Examination (D.M.R.T.) before 30th June this year, which is the requisite condition for P.D.-CET-July 2014. Prima facie, at this stage, for default of University, we are not inclined to accept the submission of the learned Counsel appearing for Respondent no.1 that the Petitioner

cannot now be permitted even to participate in counselling which is to be held on 25.08.2014.

2. In the interest of justice and to avoid further complication and if a case is made out by the Petitioner, she should not lose this year. Therefore, ad-interim relief in terms of prayer clause (c).

3. However, it is made clear that there is no question of claiming any equity and this order will be subject to further order of this Court. The Petitioner's result will not be declared till the next date.

4. Stand over to 23.09.2014 for disposal.

5. Parties to act on the basis of an authenticated copy of this order.

6. As the order is passed in open Court after hearing the counsel for the parties, we are inclined to observe that want of an authenticated copy of this order shall not be the reason not to implement this order.

2. The prayer in the writ petition is that the impugned e-mail communication dated 14th August, 2014, be cancelled and the petitioner be allowed to participate in a merit based counselling which was scheduled on 25th August, 2014, for admission to Radiation Therapy stream for the academic year 2014-2016. This is a Diploma awarded by the first respondent - National Board of Examinations.

3. By virtue of the ad-interim order, the petitioner attended

the counselling session and secured admission. She has undergone studies and completed the course. Now, the two year Diploma course is coming to an end with an examination scheduled to be held in the month of June, 2016.

4. The petitioner's prayer is that 10th April, 2016, is the last date for filling up the examination forms and to submit thesis and if that is not permitted, she would lose the entire benefit and which she has derived in terms of the ad-interim order.

5. Mr. Kutty appearing on behalf of the petitioner would submit that she is a meritorious student. In the light of the ad-interim order, she has completed the two year Diploma course. The ad-interim order passed on 22nd August, 2014, the same was challenged by the first respondent Board in the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India did not interfere with that order but directed this Court to dispose of the petition expeditiously.

6. Though the Writ Petition could not be disposed of, what we find is that the Diploma course itself has come to an end.

7. If we examine the rival contentions as also the legal provisions in the backdrop of the facts of this petition at this belated stage that will only serve an academic purpose.

8. We are mindful of the fact that such ad-interim order as passed by this Court has very serious consequences and wide repercussions. The ramifications are such that sometimes in competitive examinations and courses where there are few seats, students who are next in the line of merit lose their opportunity and the educational prospects totally. Such examinations as held by the DNB are taken by those students who study prior thereto, prepare themselves thoroughly and are devoted to becoming super-specialized doctors and medical practitioners. Some times this Court, unmindful of all this and only to accommodate one student on account of sympathetic and humanitarian considerations, passes an ad-interim order. That ad-interim order results in deprivation of opportunities and chances of other meritorious students. The petitioner, who moved this Court, does not even bother to join those awaiting admissions as party-respondents. Equally, the authority such as the National Board of

Examinations does not espouse their cause by producing relevant documents and records and filing comprehensive affidavits. They do not bring to the notice of the Court, the impact of an ad-interim order. Even if it is passed, steps and measures are not taken to get it vacated.

9. It is futile now to urge and as is urged before us by Mr. Shetty that the entire schedule of the admissions and the sanctity attached to the cut-off dates is disturbed by the ad-interim order passed by this Court. The affidavit-in-reply may raise these concerns, but if we are to really go into these aspects and in depth, it would be the Board's fault equally. The Board has also not bothered to move in this matter. The Board should have indicated at the threshold that passing of such orders would deprive the students next in line and who may be equally and more meritorious, of their opportunities.

10. In such circumstances, while we take the affidavit-in-reply on record, we clarify that all the legal contentions are kept open for being examined and in an appropriate case.

11. Possibly this order will sound a note of caution so that even academic bodies and experts in the field would act promptly and bring to the notice of the Court the hardships that the students and academicians would face if their decisions are interfered with without the necessary satisfaction being recorded even *prima facie*. It is too well settled that cut-off dates and determined and decided by academic experts are not to be tinkered with, leave alone altered or changed, if such dates and the conduct of the authorities is not found to be vitiated by non compliance with the mandate of Article 14 of the Constitution of India. Meaning thereby, if the decisions of such bodies are not arbitrary or vitiated by *mala fides* or perversity, this Court should not interfere in writ jurisdiction on broad and general principles of sympathy. Sympathy does not displace the law as is clear from the judgments of the Hon'ble Supreme Court itself.

12. In the circumstances, we direct the Board to accept the examination forms of the petitioner and allow her to appear for the examination which is scheduled in June, 2016, provided she complies with all other requirements and rules laid down by the academic bodies as also by the Board.

13. We have passed this order because each of the prayers and which seek a final relief stand granted by the ad-interim order passed in the Writ Petition and which is operating from 22nd August, 2014, till date. Somebody should take care and at least advocates appearing for the Board to peruse the prayers so that while the Court grants reliefs, its orders can be appropriately moulded as not to cause any injustice. While there is no prohibition against granting mandatory orders and issuing mandatory directions at the ad-interim stage that is an exceptional exercise and should not be undertaken as a matter of routine or as a matter of course. If the advocates had bothered to read the prayers in the petition, possibly the entire issue now raised could have been averted.

14. By clarifying that this order should not be treated as precedent for any other cases and the Board should not be bound by it in future, we dispose of this Writ Petition.

G.S. KULKARNI, J.

S.C. DHARMADHIKARI, J.