

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19129 of 2016

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1. Dr. B. R. Ambedkar Institute of Dental Sciences and Hospital,
having its office at Hari Om Nagar, P.S. Rupaspur, New Bailey
Road, Patna through its Principal, Dr. M. Shrinivasa Raju, Son
of M. Krishnam Raju, Resident of House No. 204, Jai Anoop
Apartment, Hariom Nagar, Patna

.... Petitioner

Versus

1. The Union of India through its Secretary, Ministry of Health and Family Welfare, Government of India, New Delhi - 110002
2. The Secretary, Ministry of Health and Family Welfare, Government of India, New Delhi - 110002
3. The Under Secretary, Dental Education Section, Ministry of Health and Family Welfare, Government of India, New Delhi - 110002
4. The Dental Council of India, through its Secretary, Aiwan-E-Galib Marg, Kotla Road, New Delhi - 110002
5. The Secretary, Dental Council of India, Aiwan-E-Galib Marg, Kotla Road, New Delhi - 110002
6. The State of Bihar through Health Secretary, Patna
7. The Controller of Examination, Health Services, Government of Bihar, Patna

.... Respondents

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Appearance :

For the Petitioner	:	Mr. Y. V. Giri, Sr. Adv. Mr. Anjani Kumar Jha, Advocate
For the Union of India	:	Mr. Abhay Shankar Jha, CGC
For Dental Council of India :		Mr. S. D. Sanjay, Sr. Adv. Ms. Priya Gupta, Advocate Ms. Vipula Kanoria, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

JUDGMENT AND ORDER
ORAL

Date: 19-05-2017



The very short question, which is involved in the present case, is as to whether the Central Government, exercising power under Section 16A of the Dentists Act, 1948 (hereinafter referred to as 'the Act'), can issue a direction to an institution finding place in Part I of the Schedule to the said Act, for stoppage of admission during the pendency of a procedure for withdrawal of recognition.

2. The writ application has been filed by Dr. B. R. Ambedkar Institute of Dental Sciences and Hospital, Patna, being aggrieved by an order, dated 03.10.2016, passed under the signature of the Under Secretary to the Government of India, Ministry of Health and Family Welfare, whereby decision to stop admission in B.D.S. course at Dr. B. R. Ambedkar Institute of Dental Sciences and Hospital, Patna, for the academic year 2016-17, has been communicated to the Principal of the said College.

3. This is to be noted that under the directions of the Supreme Court, the admission to M.B.B.S. and B.D.S. courses, throughout the country, are to be completed by 30th September of a calendar year.

4. The stand of the College is that before issuance of the impugned communication, dated 03.10.2016, they had already taken admissions to the B.D.S. course and a



communication subsequent to completion of the process of admission is arbitrary. It is the specific case of the College that admissions had already been taken in the B.D.S. course on 25.09.2016. This is also to be noted that subsequent to the communication of the said order, dated 03.10.2016, the Dental Council of India, through letter, dated 21.10.2016, addressed to the Principal of the College, asked the College to discharge all the 40 students admitted for the academic year 2016-17. The said communication, dated 21.10.2016, is also under challenge in the present writ application.

5. Regard may be had to the order, dated 23.03.2017, wherein after taking into account rival stand taken on behalf of the parties on the question of propriety of the Government of India issuing direction on 03.10.2016 asking the College not to take admission, following interim order was passed:-

“14. In the meanwhile, operation of the communications dated 03.10.2016 (Annexure-31 of the writ application) and 21.10.2016 (Annexure-35 of the writ application) shall remain stayed.”

6. The above mentioned interim order took into account the stand of the petitioner that the admissions were



made in the College on 25.09.2016, i.e. prior to issuance of the said letter, dated 03.10.2016, and the contention advanced on behalf of the petitioner that since the name of the College finds place in Part I of the Schedule of the Act, the Central Government could not have directed for stoppage of admission.

7. Accordingly, by the interim order, dated 23.03.2017, the operation of the impugned orders, dated 03.10.2016 and 21.10.2016, was directed to be stayed.

8. Mr. Y. V. Giri, learned Senior Counsel, appearing on behalf of the petitioner, has relied on Sections 10 and 16A of the Act to contend that till name of the College finds place in Part I of the Schedule to the Act and no notification, as contemplated under Section 16A (4) of the Act is issued by the Central Government, a College cannot be stopped from taking admission in the recognized course(s).

9. Mr. S. D. Sanjay, learned Senior Counsel, appearing on behalf of the Dental Council of India, has submitted that the power of withdrawal of recognition vests in the Central Government under Section 16A of the Act. Since the power of withdrawal of recognition vests in the Central Government, according to him, the Central Government has incidental power to issue such direction, as may be required



during pendency of a proceeding for withdrawal of recognition including a direction to a College not to take admission in the mean while.

10. Mr. S. D. Sanjay has relied on a decision of the Karnataka High Court, in the case of **Dr. B. R. Ambedkar Medical College, Bangalore and Another v. Union of India and Others (AIR 2005 Kant 50)**, in order to submit that such incidental power is there with the Central Government to issue direction for stopping admission if situation so requires. He has gone to the extent of submitting that if a College does not have sufficient infrastructure or other facilities required for conducting technical and professional course, like B.D.S., the Central Government has a duty to pass necessary orders, as has been done in the present case.

11. Mr. S. D. Sanjay, learned Senior Counsel, has also submitted that the date of admission to B. D. S. course was extended to 07.10.2016 and, therefore, there is no illegality in the impugned order, issued prior to that date, i.e. on 03.10.2016.

12. I do not find any substance in the submission made on behalf of the Dental Council of India that the impugned order is justified because it was issued before



07.10.2016, up to which admission to the B. D. S. course could be taken in the College in view of the undeniable stand of the College that admissions against all the 40 seats were taken on 25.10.2016. There is no material on record to suggest that before 30.09.2016, there was any decision taken to extend the date of admission to B.D.S. course to any other date. Even that would have not made any difference, in my view.

13. So far as the decision in the case of **Dr. B. R. Ambedkar Medical College, Bangalore** (supra) is concerned, in my view, entirely different question was involved before the Karnataka High Court and that was as to whether it was the Central Government who had the jurisdiction to invoke provisions under Section 19 of the Medical Council of India Act, 1956 (*pari materia* with Section 16A of the Act) or such jurisdiction vested in the Medical Council of India.

14. Now, in order to advert to the submissions advanced on behalf of the parties on the question of the manner in which power under Section 16A of the Act can be exercised by the Central Government, I must reproduce herein below Section 16A of the Act, which reads thus:-

“16A. Withdrawal of recognition of recognized dental



qualification. — (1) When, upon report by the Executive Committee or the Visitor, it appears to the Council —

(a) that the courses of study and training or the examination to be undergone in order to obtain a recognised dental qualification from any authority or institution in a State, or the conditions for admission to such courses or the standards of proficiency required from the candidates at such examinations are not in conformity with the regulations made under this Act or fall short of the standards required thereby, or

(b) that an institution does not, in the matter of staff, equipment, accommodation, training and other facilities, satisfy the requirement of the Council,

the Council shall send a statement to that effect to the Central Government.

(2) After considering such a statement, the Central Government may send it to the Government of the State in which the authority exercises power or the institution is situated, and the State Government shall forward it, along with such remarks as it may think fit to make, to the authority or institution concerned, with an intimation of the period within which the authority or institution may



submit its explanation to the State Government.

(3) After considering the explanation, or where no explanation is submitted within the period fixed, then, on the expiry of that period, the State Government shall make its recommendations to the Central Government.

(4) The Central Government may, after considering the recommendations of the State Government and after making such further inquiry, if any, as it may think fit, by notification in the Official Gazette, direct that an entry shall be made in Part I of the Schedule against the qualification granted by the authority or institution declaring that it shall be a recognised dental qualification only when granted before a specified date or that the said recognised dental qualification if granted to student of a specified college or institutions affiliated to any University shall be a recognised dental qualification only when granted before a specified date or, as the case may be, that the said recognised dental qualification shall be a recognised dental qualification in relation to a specified college or institution affiliated to any University only when



granted after a specified date.”

15. Sub-Sections (1) (2) and (3) of Section 16A of the Act lay down the manner in which an exercise can be undertaken for withdrawal of recognition. The order, which can be made, or the decision, which can be taken, in exercise of said power is there under sub-Section (4) of Section 16A of the Act. It provides that the Central Government, after considering recommendation of the State Government, and after making such further enquiry, if any, by notification in Official Gazette (emphasis supplied), direct that an entry shall be made in Part I of the Schedule to the Act against the qualification granted by the authority or institution declaring that it shall be a recognized qualification only when granted before a specified date or that the said recognized dental qualification, if granted to the students of specified College or institution affiliation to any University shall be recognized dental qualification only when granted before a specified date, **or** as the case may be, that the said recognized dental qualification shall be recognized dental qualification in relation to specific College or institution affiliation to any University only when granted after a specified date.

16. This is not in dispute that no notification, as envisaged under sub-Section (4) of Section 16A of the Act,



has been issued by the Central Government.

17. Section 10 (1) of the Act unequivocally declares that dental qualifications granted by any authority or institution in India, which are included in Part I of the Schedule shall be recognized dental qualification for the purpose of the said Act. Since name of the College finds place in Part I of the Schedule to the Act, the effect of Section 10 of the Act will be that dental qualification granted by the institution shall have to be recognized as a dental qualification within the meaning of the Act. If, by operation of Section 10 of the Act, a College has the recognition to conduct B.D.S. course leading to recognized dental qualification, the Central Government, in my opinion, could not have stopped the College from taking admission and for that reason also, the impugned orders, in my opinion, are not sustainable.

18. Learned Senior Counsel appearing on behalf of the Dental Council of India has, as noted above, laid great emphasis on his submission that the said power to issue orders, by way of interim measure, is inherent.

19. The Act is self-contained code dealing with Dentistry. It does not confer any power on the Central Government to stop a dental college from taking admission without taking a decision, as contemplated under sub-Section



(4) of Section 16A of the Act. In my view, the impugned action of the Central Government stopping the College from taking admission for the academic sessions 2016-17 and directing the College to discharge their students, who have already been admitted, is *ultra vires* the provisions of Sections 10 and 16A of the Act.

20. Accordingly this application is allowed. The impugned orders, dated 03.10.2016 and 21.10.2016, are quashed.

21. There shall be no order as to costs.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	22.06.2017
Transmission Date	N/A

