

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 434 of 2017

1. Deshmukh Araib Afridi Nisar Ahamed S/o Mr. Nisar Ahmed Deshmukh, Aged About 19 Years R/o Boys Hostel Room No. 10, New Horizon Dental College & Research Institute, Sakri, Bilaspur, Distt Bilaspur (Chhattisgarh)
2. Shahien Debbarma, S/o Mr. Nikunja Debbarma, Aged About 19 Years R/o Boys Hostel Room No. 05, New Horizen Dental College & Research Institute, Sakri, Bilaspur, Distt Bilaspur, (Chhattisgarh)

---- Petitioners

Versus

1. State Of Chhattisgarh Through Secretary, Department Of Medical Old Nurses Hostel Behind D. K. Hospital, Raipur, Distt Raipur (Chhattisgarh)
2. Chhattisgarh Ayush And Health Science University, Through Its Chancellor, G. E. Road, Raipur, Distt. Raipur (Chhattisgarh)
3. New Horizon Dental College & Research Institute, Sakri, Bilaspur, Distt. Bilaspur (Chhattisgarh) Through Its Chairman, Sakri, District Bilaspur (Chhattisgarh)
4. Dental Council Of India, Through The Secretary Aiwan A Galib Marg, Kotla Road, Temple Lane, New Delhi 110002

---- Respondents

And

WPC No. 425 of 2017

1. Radhika V. Barde D/o Shri Vijayrao Ganpatrao Barde, Aged About 21 Years R/o Hostel (2) Room No. 71 Capos Of Rungta College Of Dental Science & Research, Kohka Road, Kurud, District Durg Chhattisgarh.
2. Srushti Shripal, D/o Narendra G. Shripad, Aged About 21 Years R/o Hostel (2) Room No. 41 Capos Of Rungta College Of Dental Science & Research, Kohka Road Kurud, Bhilai District Durg (Chhattisgarh)
3. Madhurima Kuri D/o Shri Jagdish Kuri, Aged About 21 Years R/o Hostel (2) Room No. 72 Capos Of Rungta College Of Dental Science & Research, Kohka Road Kurud, Bhilai District Durg (Chhattisgarh)

---- Petitioners

Vs

1. State Of Chhattisgarh Through Secretary, Department Of Medical Nurses Hostel Behind D. K. Hospital Raipur, District Raipur Chhattisgarh.
2. Chhattisgarh Aysuh And Health Science University Through Its Chancellor, G. E. Road Raipur, Dist. Raipur Chhattisgarh.
3. Rungta College Of Dental Science & Research Through Its Chairman Sanjay Rungta, Kohka Road Kurud, Bhilai Dist. Durg Chhattisgarh.

---- Respondents

And

WPC No. 435 of 2017

- Debarati Sutradhar D/o Shri Bijoy Kumar Sutradhar Aged About 20 Years R/o Hostel- (2) Campos Of Rungta College Of Dental Sciences & Research, Kohka Road, Kurud, Bhilai, Distt. Durg (Chhattisgarh)

---- Petitioner

Vs

1. State Of Chhattisgarh Through Secretary, Department Of Medical Nurses Hostel Behind D. K. Hospital Raipur, District Raipur Chhattisgarh.
2. Chhattisgarh Ayush And Health Science University Through Its Chancellor, G. E. Road Raipur, Dist. Raipur Chhattisgarh.
3. Rungta College Of Dental Science & Research Through Its Chairman Sanjay Rungta, Kohka Road Kurud, Bhilai Dist. Durg Chhattisgarh.

---- Respondents

And

WPC No. 481 of 2017

1. Eliza Debbarma Aged About 22 Years C/o Girls Hostel, Maitri College Of Dental Science And Research Centre, Anjora, District Durg, (Chhattisgarh)
2. Mayuri Vijay Parade, D/o Shri Vijay Parde, Aged About 22 Years C/o Girls Hostel, Maitri College Of Dental Science And Research Centre, Anjora, District Durg, (Chhattisgarh)
3. Tuhina Sultana, D/o M D Zakir Hussain, Aged About 21 Years Girls Hostel, C/o Maitri College Of Dental Science And Research Centre, Anjora, District Durg, (Chhattisgarh)

---- Petitioners

Vs

1. State Of Chhattisgarh Through The Secretary, Department Of Health And Family Welfare, Mahanadi Bhawan, Naya Raipur, District Raipur, (Chhattisgarh)
2. Ayush And Health Science University Chhattisgarh, Through The Registrar, G. E. Road Raipur, District Raipur, (Chhattisgarh)
3. Maitri College Of Dental Science & Research Centre, Through Its Dean, G. E. Road, Anjora, District Durg, (Chhattisgarh)
4. Dental Council Of India, Through The Secretary, Aiwan-A-Galib Marg, Kotla Road, Temple Lane, New Delhi 110002

---- Respondents

And

WPC No. 971 of 2017

1. Sandipan Sarkar S/o Shri Subrata Sarkar, Aged About 21 Years R/o House No. 1, Rabindra Nagar, P. O. Rabindra Sarani Siliguri, District Darjeeling, West Bengal.
2. Sudesh Thakur, S/o Shri Home Singh Majhi, Aged About 20 Years A/o R/o Paraskhol, P. S. Nuapada, District Nuapada, Odisha.

---- Petitioners

Vs

1. State Of Chhattisgarh Through Secretary, Department Of Medical, Mahanadi Bhawan, New Mantralaya, Raipur (C.G.)
2. Chhattisgarh Ayush And Health Science University, Through Chancellor, G. E. Road, Raipur, District Raipur, Chhattisgarh.
3. Dental Council Of India, Aiwan-A- Galib Marg, Kotla Road, Temple Lane, New Delhi 110002.

4. Chairman, Chhattisgarh Dental College And Research Institute P. B. No. 25, N. H. 6, Sundra District, Rajnandgaon, Chhattisgarh.
5. General Administration Department, Through Secretary, Mahanadi Bhawan, Mantralaya, Naya Raipur, Raipur, Chhattisgarh.

---- Respondents

For Petitioners	:	Shri Sourabh Dangi, Shri Jitendra Pali and Shri Aditya Tiwari, Advocate
For Respondent/State	:	Shri Prafull N. Bharat, Additional Advocate General
For C.G. Ayush University	:	Shri N. K. Vyas, Advocate
For Rungta College of Dental Science	:	Shri Kshitiz Sharma, Advocate
For Chhattisgarh Dental College And Research Institute	:	Ms. Aditi Singhvi, Advocate

Hon'ble Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Justice Sharad Kumar Gupta

Order on Board

Per Thottathil B. Radhakrishnan, Chief Justice

28.08.2017

1. These writ petitions are by the students who were admitted to the Bachelor of Dental Science Course; for short, "BDS Course", in different institutions which are governed by the provisions of the Dentists Act, 1948; hereinafter referred to as the "Act" and the Dental Council of India Revised BDS Course Regulations, 2007; hereinafter referred to as the "Regulations", issued by the Dental Council of India; "DCI" for short as well as Ordinance No.11 issued by the Ayush and Health Science University; hereinafter referred to as the "University Ordinance" which governs, among other things, admission to the BDS Course. That Ordinance also prescribed, the method of selection of students.
2. After being admitted to the BDS Course commencing with the academic year 2014-15, the Petitioners were handed down the impugned decision removing them from the college based on the University's objection as to the eligibility of the Petitioners to be registered as students came to hold the field.

3. Challenging the aforesaid, the Petitioners have contended and their learned Counsel has argued that the prescription of a lower percentage of marks, for the Scheduled Caste / Scheduled Tribe applicants, at the qualifying examination, is not confined to the State of Chhattisgarh and therefore, such prescription cannot be confined to the applicants domiciled in the State of Chhattisgarh. The learned counsel for the Petitioners argued that the entrance examination that led to the Petitioners' admission was an All India Examination and therefore, there is no question of prescribing any benchmark on the basis of the domicile of the candidates. This plea is pressed into service on the strength of the judgment of the Hon'ble Supreme Court in **Subhash Chandra and Another Vs. Delhi Subordinate Services Selection Board and Others; (2009) 15 SCC 458**.
4. The issue in hand becomes relevant because the State Government and the University have taken the stand that for admission to BDS Course, the candidates ought to have obtained 50% marks taken together in Physics, Chemistry and Biology at the qualifying examination and in addition to that, they must have come in the merit list prepared as a result of such competitive entrance examination by securing not less than 50% marks in Physics, Chemistry and Biology taken together in the competitive examination.
5. Adverting to Clause II (5) ii of the Regulations, which applies, it can be seen that the prescription of 40% marks is regarding qualifying examinations as well as the competitive entrance examinations insofar as they relate to candidates belonging to Scheduled Castes, Scheduled Tribes or any other categories notified by the Government. With reference to Article 341 and 342 of the Constitution, it needs to be noted that the enumeration of Scheduled Castes and Scheduled Tribes are in relation to the State or Union Territory, as the case may be. Obviously, therefore, there cannot be an All India determination of the identity of any particular individual for inclusion in the category of Scheduled Castes or

Scheduled Tribes, particularly, in relation to admission in institution governed by a State University and the State laws. The reduced prescription of 40% marks in the qualifying examination and competitive entrance examination is confined to Scheduled Castes, Scheduled Tribes or any other categories notified by the Government, meaning thereby, the Government of Chhattisgarh and therefore, such reduced qualification as to marks is available only to Scheduled Castes, Scheduled Tribes and Other Backwards Class candidates belonging to the State of Chhattisgarh. In the light of the aforesaid situation, we cannot but hold that the prescription of lower benchmark regarding the marks obtained at the qualifying examination as well as in the competitive entrance examination is confined to the Scheduled Castes and Scheduled Tribes or any other categories notified by the Government of Chhattisgarh. Hence, having regard to the clear terms of Clause II (5) ii of the Regulations, admissions could not have been granted to persons claiming to be members of Scheduled Castes and Scheduled Tribes, without reference to the question whether they belong to communities which are included in the list of Scheduled Castes and Scheduled Tribe for the State of Chhattisgarh.

6. The peculiar situation of the Petitioners is that, after securing admissions in the college, they had carried forward their education for BDS course for more than two academic years. Their studies continued to be protected through interlocutory orders issued by this Court. They are still continuing in the institutions. The 12 seats which may fall vacant, if they were to vacate, cannot be filled up with reference to the academic years in question. It is not as if the Petitioners were unqualified if they were to be treated as belonging to certain categories on All India basis. The situation in hand need not necessarily result in wrecking the prospects of the writ petitioners. Taking a cue from the decision of the Hon'ble Supreme Court in **Sanjeev Kumar & another Vs. State of Bihar & others; AIR 2017 SC 1501**, though that dealt with a case of reservation in public

appointment, we are inclined to take the view that this is an eminently fit case where the Petitioners could be permitted to continue with their education by treating them as lawfully admitted to the course of study, thereby permitting and facilitating their continued study and completion of the course without any objection in that regard, either by the University or the State Government.

7. In the result, these writ petitions are ordered directing that notwithstanding the impugned order, the Petitioners shall be permitted to continue with the course to which they were admitted, leading to their due examination and publication of results from time to time, by the University, in accordance with law. It is clarified that this order is issued solely for the purpose of enabling the Petitioners to complete the BDS Course which they are undergoing and earn such qualification.

Sd/-
(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-
(Sharad Kumar Gupta)
Judge