

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 4.12.2017

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

W.A.No.1544 of 2017
and
C.M.P.No.20271 of 2017

The Dental Council of India,
rep. by its Secretary,
Aiwan-E-Galib Marg,
Kotala Road, Temple Lane,
New Delhi 110 002. Appellant

Versus

- 1 Fathima Thameema PK
- 2 The Secretary
Government of Tamilnadu
Health and Family Welfare (ME) Department
St. George Fort
Chennai- 600 009.
- 3 The Registrar
Tamil nadu Dr. MGR Medical University
No.69 Anna Salai Guindy
Chennai- 600 032.
- 4 The Director
Directorate of Medical Education
Kipauk Chennai- 600 010.
- 5 The Principal
Sri Venkateshwara Dental College and
Hospitals
Thalambur
Kancheepuram District - 600 130.
- 6 The Principal
Tamilnadu Government Dental College
and Hospital Chennai - 600 001.

Respondents

Prayer: Writ Appeal filed filed under Clause 15 of the Letters Patent against the order dated 7.11.2017 passed in W.P.No.10323 of 2017 on the file of this court.

WP.No.10323 of 2017:Writ of Certiorarified Mandamus calling for the entire records from the second Respondent for the order passed in No. DE - 114 - 2017 / 201 dated 05/04/2017 by the 2nd respondent and quash the same and directing the respondents to migrate the petitioner from the 5th respondent college to the 6th respondent dental college for the second year BDS Course on the application made by the petitioner on 24/11/2016 to the 1 to 4th respondent and also to direct the respondent to add the days attended in the fifth respondent college along with attendance of the Sixth respondent on migration from fifth respondent college to the Sixth respondent college.

For appellant : Mrs.S.Seethalakshmi
For R1 : Mr.K.P.Sathishkumar
For R3 : Mr.P.R.Gopinathan

JUDGMENT

(Judgment of the court was made by RMT.TEEKAA RAMAN, J.)

Challenging the order of the learned Single Judge, whereby the appellant-Dental Council of India was directed to approve the migration of the petitioner from the fifth respondent College to the sixth respondent College on medical grounds enabling her to continue her BDS course as stated.

2. The first respondent herein filed the writ petition seeking issuance of a writ of certiorarified mandamus calling for the entire records from the second Respondent for the order passed in No. DE-114-2017/201 dated 05/04/2017 by the 2nd respondent and quash the same and directing the respondents to migrate the petitioner from the 5th respondent college to the 6th respondent dental college for the second year BDS Course on the application made by the petitioner on 24/11/2016 to the 1 to 4th respondent and also to direct the respondents to add the days attended in the fifth respondent college along with attendance of the Sixth respondent on migration from fifth respondent college to the Sixth respondent college.

3. It appears that initially, the writ petitioner had filed another writ petition in W.P.No.43010 of 2016, which was disposed of on 6.1.2017 with a direction to the petitioner to approach the University with necessary certificates and recommendation from the College and on production of the same, the University shall give 'No Objection Certificate' and forward

the same to the Dental Council of India alongwith a copy of that order and on receipt of the same, the Dental Council of India would pass appropriate orders for migration. However, since the Dental Council of India had rejected the request for migration, the writ petitioner was constrained to file the present writ petition and obtained an order in his favour for migration, which is under challenge in the present writ appeal.

4. Having heard the learned counsel appearing for the parties and perused the materials available on record, we find that pending the writ petition, the writ petitioner was referred to Regional Medical Board, Rajiv Gandhi Government General Hospital and on examination of the writ petitioner, the Medical Board gave a report that the petitioner is suffering from lumbar disc disease with degeneration of L4, L5 and L5-S1 disc bulge and the above said condition would get aggravated due to prolonged travel. Such being the factual position, the writ petitioner, a resident of Chennai, having got admission in a Dental College at Kancheepuram, finding it difficult to travel about 84 Kms every day, seeks for migration on medical grounds.

5. However, the learned Standing Counsel appearing for the appellant would raise an objection that the case of the present writ petitioner is not a fit case for considering the migration on compassionate grounds as the revised BDS course Regulation 2007 would not permit such migration. She would also rely upon the decision of the Supreme Court in DENTAL COUNCIL OF INDIA v. ANHAD RAJ SINGH & ANOTHER (CDJ 2017 SC 1261) to substantiate her contention.

6. Regulation IV of Dental Council of India revised BDS course regulation 2007, deals with migration. Note 2 of Regulation IV specifically speaks about migration on compassionate grounds. We consider it apt to extract Regulation IV hereunder:

"IV.Migration:

(1) Migration from one dental college to another is not a right of a student. However, migration of students from one dental college to another dental college in India may be considered by the Dental Council of India. only in exceptional cases on extreme compassionate grounds*, provided the following criteria are fulfilled. Routine migrations on other ground shall not be allowed.

(2) Both the colleges, i.e. one at which the student is studying at present and one to which migration is sought, are recognised by the Dental Council of India.

(3)The applicant candidate should have passed first professional BDS examination.

(4)The applicant candidate submits his application for migration, complete in all respects, to all authorities concerned within a period of one month of passing

(declaration of results) the first professional Bachelor of Dental Surgery (BDS) examination.

(5) The applicant candidate must submit an affidavit stating that he/she will pursue 240 days of prescribed study before appearing at IInd professional Bachelor of Dental Surgery (BDS) examination at the transferee dental college, which should be duly certified by the Registrar of the concerned University in which he/she is seeking transfer. The transfer will be applicable only after receipt of the affidavit.

Note 1:

(i) Migration is permitted only in the beginning of IInd year BDS Course in recognised Institutions.

(ii) All applications for migration shall be referred to Dental Council of India by the college authorities. No Institution/University shall allow migration directly without the prior approval of the Council.

(iii) Council reserves the right not to entertain any application which is not under the prescribed compassionate grounds and also to take independent decisions where applicant has been allowed to migrate without referring the same to the Council.

Note 2: *Compassionate ground criteria:

(i) Death of supporting guardian.

(ii) Disturbed conditions as declared by Government in the Dental College area.

7. On going through the said regulation, the learned Single Judge appreciated the facts that the writ petitioner was referred to Medical Board and the Medical Board, on examination of the writ petitioner, gave its report to the effect that the petitioner is suffering from lumbar disc disease with degeneration of L4, L5 and L5-S1 disc bulge and that her condition would aggravate if she undertakes travel and finding that she had to travel 84 Kms every day, which is not advisable medically, and has come to the conclusion that the petitioner's position fits into the definition of compassionate ground.

8. The learned Single Judge also appreciated the fact that though the governing regulation viz., Regulation IV speaks only about two grounds viz., death of supporting guardian and disturbed condition as declared by Government Dental College area, and has rightly held that such regulation is not an exhaustive one and the petitioner's case has to be viewed with compassion only in view of her health condition as evidenced by the proceedings of the Medical Board dated 13.10.2017.

9. So far as the decision relied upon by the learned counsel appearing for the appellant is concerned, we find that it has arisen out of an interim order passed by the Delhi High Court and the candidate concerned therein was said to have been suffering from Asthma, whereas the medical condition of the writ petitioner in the case on hand is very pathetic as she is

suffering from lumbar disc disease with degeneration of L4, L5 and L5-S1 disc bulge and that her condition would aggravate if she undertakes travel. Moreover, in the said decision itself, it was observed that the attention of the Court was invited to the earlier decisions which had expounded that such transfer can be only in exceptional situation and that it is not a right of the student.

10. Therefore, we are of the view that the learned Single Judge has rightly observed that the governing Regulation is not an exhaustive one and the petitioner's position fits into the definition of compassionate ground and the petitioner's case has to be viewed with compassion only, in view of her health condition as evidenced by the proceedings of the Medical Board dated 13.10.2017. We do not find any reason to interfere with the said order passed by the learned Single Judge as we find that the petitioner's case, in the peculiar facts and circumstances of its own and the pathetic condition of the petitioner, is an exceptional one for grant of migration. Accordingly, the order passed by the learned Single Judge is confirmed and the appellant Dental Council of India is directed to comply with the order passed by the learned Single Judge within a period of three weeks from today so that the precious time of the student in pursuing the course shall not be wasted.

11. With the above observation, the writ appeal stands disposed of. No costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

ssk.

To:

- 1 The Dental Council of India,
rep. by its Secretary,
Aiwan-E-Galib Marg,
Kotala Road, Temple Lane,
New Delhi 110 002.
- 2 The Secretary
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and Hospital Chennai - 600 001.

+1 cc to M/s.S.SeethaLakshmi Advocate sr 85614

+1 cc to M/s.P.R.Gopinathan Advocate sr 85570

+1 cc to M/s.Bobby portia Alex Advocate sr 85393

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