

In the High Court of Judicature at Madras

Dated : 09.8.2017

Coram :

The Honourable Mr.Justice NOOTY.RAMAMOHANA RAO

and

The Honourable Mr.Justice M.Dhandapani

W.A.No.945 of 2017 & C.M.P.No.13135 of 2017

The Tamil Nadu Dr.MGR Medical
University, rep. by its Registrar,
69, Anna Salai, Guindy, Chennai-32. ...Appellant

Vs.

1.T.R.Shalini Priya.

2.The State of Tamil Nadu, rep.by its
Secretary, Department of Health
& Family Welfare, Fort St. George,
Chennai-9.

3.The Director of Medical Education,
Kilpauk, Chennai-10.

4.The Dental Council of India, rep.by
its Secretary, Aiwani E Galib Marg,
Korla Road, Temple Lane,
Mandi House, New Delhi-110002.

5.The Principal, K.S.R. Institute of
Dental Science and Research,
K.S.R. Kalvi Nagar, Kuchipalayam
(P.O.), Tiruchengode-637215.

6.The Principal, Tagore Dental College
and Hospital, Rathinamangalam,
Vandalur Post, Chennai-127. ...Respondents

APPEAL under Clause 15 of the Letters Patent against the
order dated 04.8.2017 passed in W.M.P.No.21140 of 2017 in
W.P.No.19578 of 2017.

WP.No.19578 of 2017:Writ Petition under Article 226 of the
Constitution of India praying that in the circumstances stated
therein and in the respective affidavit filed therewith the High

Court will be pleased to issue a Writ of Mandamus directing the 3rd respondent Tamilnadu Dr.M.G.R. Medical University to permit the petitioner to take the ensuing 2nd Professional Examination for Bachelor of Dental Surgery (BDS) Course scheduled to commence on 7.8.2017 or any other date and further direct the 3rd respondent University to publish the results thereof(in 19578/2017)

For Appellant : Mr. G.Hari Hara Arun Somasankar
For Respondent-1 : Mr.P.Godson Swaminathan for
M/s.Isaac Chambers
For Respondents
2 & 3 : Mr.P.Sivashanmugasundaram, SGP
For Respondent-4 : Dr.(Mrs).S.Seethalakshmi

JUDGMENT

(Judgment was delivered by Nooty.Ramamohana Rao,J)

This writ appeal under Clause 15 of the Letters Patent is preferred by Tamil Nadu Dr.MGR.Medical University calling in question the correctness of the order passed by a learned Single Judge of this Court, who allowed the writ petition instituted by the first respondent herein - writ petitioner and directed the appellant University to permit the writ petitioner to take part in the ensuing second year BDS examination scheduled to commence on 07.8.2017 and also directed that the results of the said examination of the writ petitioner shall not be declared or published until further orders.

2. This interlocutory order came to be passed in somewhat extraordinary circumstances. The writ petitioner was granted admission during the academic session 2015-16 in the sixth respondent - a private dental college. As ill-luck would have it, her father seems to have expired before she could join the BDS course. The family circumstances consequently necessitated her to migrate to another private college namely the fifth respondent college located at Tiruchengode, which is fairly far away by 400 Km from Chennai.

3. The writ petitioner applied for the no objection certificate from the Dental Council of India for shifting of her admission from the sixth respondent college to the fifth respondent college. That permission has been accorded by the Dental Council of India on 16.1.2017 conceding to the request of the writ petitioner. Immediately thereafter, the matter has been taken up with the appellant University, to which, both the fifth and the sixth respondent colleges are affiliated and which is the parent university conducting annual examinations for BDS

course and only upon qualifying at the examinations, the necessary degrees to the students should be awarded. The appellant university, through its proceedings dated 28.3.2017, granted the no objection certificate for shifting of college by the writ petitioner from the sixth respondent college to the fifth respondent college.

4. However, while granting permission, two caveats have been entered by the appellant university. One is that there should be a clear cut vacancy at the transferee college as per the norms of the Dental Council of India. The other is that the writ petitioner has to complete 240 teaching days in the second year BDS course before appearing at the second Professional Bachelor of Dental Surgery (BDS) examination at the transferee dental college.

5. Accordingly, the fifth respondent intimated the Academic Officer of the appellant university that the writ petitioner joined the second BDS course on 30.3.2017 in their college. She also produced the transfer certificate from the sixth respondent dental college. In that transfer certificate, against column No.11 relating to the date on which, the student actually left the institution, it was noted as 05.9.2016. It was also noted therein that the transfer certificate has been applied for on 31.3.2017 and it has been granted on 31.3.2017 itself. From 31.3.2017 onwards, the attendance marked in the fifth respondent college alone was sought to be taken into account and consideration by the appellant university for purpose of enabling the writ petitioner to appear for the second year BDS examinations.

6. The appellant university, by its communication dated 20.6.2017, informed the fifth respondent college that the request of the candidate (writ petitioner) to appear for the university examination of second year BDS in August 2017 could not be considered before completing 240 days of prescribed study from 30.3.2017 subject to fulfillment of other regulations pertaining to the examinations. It is in this backdrop, the writ petition came to be instituted and the learned Single Judge granted interim directions to permit the writ petitioner to appear for the examinations. The learned Single Judge directed the result of the writ petitioner not to be announced. It is against that order, the present writ appeal is preferred.

7. Sri.Hari Hara Arun Soma Sankar, learned Standing Counsel for the appellant university made two submissions to point out that the order passed by the learned Single Judge is not sustainable in law. The first one is that as per the norms of the Dental Council of India, which is also entrusted with the task of maintaining necessary academic standards and also as per the regulations framed by the appellant university, unless the students complete compulsorily the minimum required number of

days of study in professional dental colleges, such students cannot be permitted to appear for the examinations. Admittedly, the writ petitioner was granted admission by the fifth respondent college only on 30.3.2017 and when reckoned from that date, the writ petitioner could not have attended to a minimum of 240 days, which is the required attendance and hence, the university is right in communicating its decision on 20.6.2017 not to allow the writ petitioner for the second year BDS examinations.

8. The learned counsel for the appellant has also contended that the Dental Council of India framed regulations in consultation with the Central Government and those regulations are called as the Dental Council of India Revised BDS Course Regulations, 2007. They were published on 10.9.2007 in the Gazette of India. Regulation IV deals with migration of students from one dental college to another. Clause (1) thereof made it abundantly clear that migration from one particular college to another is not a right of the student and that migration of students from one college to another may be considered by the Dental Council of India only in exceptional cases on extreme compassionate grounds provided the criteria specified therein are satisfied. The compassionate grounds criteria specified are :

- (i) death of supporting guardian;
- (ii) disturbed conditions as declared by Government in the area, in which, the dental college is located.

9. Clause (4) makes it clear that the candidate shall submit his application, seeking 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. Note 2 appended to Regulation IV clearly brings out that all the applications for migration shall be referred to the Dental Council of India (DCI) by the College Authorities. No institution/university shall allow migration directly, without the prior approval of the Dental Council.

10. Hence, Sri.G.Hari Hara Arun Somasankar, the learned counsel would urge that as per the transfer certificate issued by the sixth respondent/ college, the writ petitioner stopped attending the sixth respondent/college from 05.9.2016 onwards. Admittedly, the writ petitioner was granted admission only on 30.3.2017 by the fifth respondent/college. When reckoned from 30.3.2017, the writ petitioner could not have secured attendance of 240 days of teaching, practical training and clinical study and hence, the appellant/ university is legitimately right in preventing the writ petitioner from appearing for the examination for want of putting in minimum of 240 days attendance.

11. An analysis of Regulation IV of the Dental Council of India Revised BDS Course Regulations, 2007 clearly brings out that in case of death of supporting guardian, the student, pursuing BDS Course, can seek migration. The writ petitioner sought for migration on that ground only. The second condition that there shall be a vacancy in the transferee college available within the sanctioned student strength of the fifth respondent/college. The material on record discloses that the sanctioned intake of students to the fifth respondent/college was one hundred students. Though one hundred students have been admitted during the academic session 2015-16, finally, one student did not take the admission and one other student dropped out.

12. Thus, two vacancies are lying in the fifth respondent/college. Therefore, for according migration of the writ petitioner from the sixth respondent/college to the fifth respondent/College, there was no legal hurdle. In these circumstances, the Dental Council of India had no difficulty whatsoever to grant the permission sought for by the writ petitioner, when it accorded necessary permission on 16.1.2017. Earlier thereto, necessary data was collected by the Dental Council of India and then permission has been accorded to the writ petitioner. It is thereafter the appellant/university granted necessary permission on 28.3.2017. The appellant/University has clearly pointed out that the applicant has to possess 240 days attendance to write the second year BDS Course examinations at the transferee dental college.

13. The question, in these circumstances, arises as to how does one compute 240 days. If a student was attending the previous dental college upto the point of sanction of the no objection certificate by the appellant/ university, the period of such attendance in the transferor college is not liable to be ignored. Obviously, the appellant/university would not have raised any such objection, if the writ petitioner has attended to the sixth respondent/ college from 05.9.2016 upto 29.3.2017. Surely, the appellant/university would have added the attendance in the sixth respondent/college to the attendance, which the petitioner, would have put in, in the fifth respondent/ college from 30.3.2017. In such an event, the writ petitioner would not have fallen behind the requirement of 240 days attendance and consequently, the appellant/university would not have prevented the writ petitioner from appearing for the second year BDS course examination, which was slated to commence on 07.8.2017.

14. However, in the instant case, because of distressful conditions, in which, the writ petitioner found herself, she started attending the college of the fifth respondent from 19.9.2016 in anticipation of securing permission being granted from both the Dental Council of India and the appellant/university. The attendance put in by the writ petitioner from

19.9.2016 upto 29.3.2017 is now objected to be reckoned by the appellant/university on the ground that the fifth respondent/college could not have allowed the student to migrate, without, first of all, the Dental Council of India granting any such permission for migration and also without prior approval of the appellant/ university, to which, the said college is affiliated. Both these contentions canvassed on behalf of the appellant/university are based on technicalities. If a student, who is in distressful condition, is desirous of prosecuting her education further in slightly favourable conditions nearer to her home, the Public Institutions, such as the Dental Council of India and the appellant/ university must come to the rescue of such a student.

15. We had the benefit of perusing the marks secured by the writ petitioner at the first year BDS Course Examination, which were published on 11.11.2016, by the appellant/university. In General Anatomy, bearing Subject Code 544201, the petitioner secured in one paper 74% and another paper 82%. In General Human Physiology and Biochemistry bearing Subject Code 544202, she secured 63% and 74% and in Dental Anatomy Embryology and Oral Histology Theory bearing Subject Code 544203, she secured 77% and 85%. In two papers, she secured more than 80% of marks. In three papers, she secured 74%, 77% and 74% and only in one paper, she secured 63%. This reflects the merit of the writ petitioner, in spite of distressful family circumstances, in which, the writ petitioner is pursuing her academic activity with all sincerity and is able to put in hard work to fetch such a meritorious result.

16. We fail to see as to how a technical view should be allowed to come in the way of such a student. It is, for this, that the fifth respondent/ college has allowed the petitioner to attend the BDS Course in its College, albeit, initially from 15.9.2016. That was in anticipation of the necessary approval from both the Dental Council of India and the appellant/university. The writ petitioner attending to the classes in the fifth respondent/College from 19.9.2016 cannot be considered as a case of migration, for, the word 'migration' has a different connotation. If the Dental Council of India has not granted necessary permission, the writ petitioner would have reverted back to the sixth respondent-college and would have continued to study the course suffering further hardship. That was the reason why she did not obtain the transfer certificate from the 6th respondent in September 2016. Therefore, we are of the view that there is no illegality committed by the fifth respondent nor by the writ petitioner in attending to the classes from 19.9.2016 in the fifth respondent/College, in anticipation of granting permission for migration by the Dental Council of India and the appellant/ university.

17. Human conduct must be viewed in its proper context. The writ petitioner, a meritorious student, is obviously facing hardship in prosecuting her studies at a fairly expensive place like that of Chennai. When she preferred to prosecute studies at a nearby and less expensive place, like Tiruchengode, a semi-urban area, nearly 400 kilometres away from Chennai and possibly, located nearby to her home town, it would have been really easier for her to prosecute her studies. The appellant/university, being a reputed university, should encourage all meritorious students and help them to prosecute their studies, as, after all, the aim of the university is to promote best standards of academic training and research in Under Graduate, Post Graduate Medical Courses. If a meritorious student is facing hardship, the rigour of the relevant provision must be relaxed to the extent necessary while not departing from the core values and the interpretation must be placed to enable the meritorious student to prosecute studies uninterruptedly and complete the course and further it is, this kind of students, who will really turn out to be the kind of professionals this Country is in dire need of.

18. Today, the learned Standing Counsel for the University has placed a copy of the communication received by the appellant/university from the fifth respondent/college. The fifth respondent/college has bowed before the appellant/university and submitted that it made a mistake in allowing the writ petitioner to attend the classes in the college from 19.9.2016 onwards prior to obtaining the no objection certificate from the appellant/university. We declare that the conduct of the fifth respondent/college in permitting the writ petitioner to attend the classes of the second year BDS Course from 19.9.2016 onwards in its college, is not a mistake, perhaps, it is a facility created pending anticipated approval from the Dental Council of India and the appellant/university. Consequently, no penal action of whatsoever nature, shall be initiated by the Dental Council of India as well as the appellant/university, either against the fifth respondent/college or the sixth respondent/college and more importantly against the writ petitioner till she completes the BDS Course. The appellant/University shall show necessary magnanimity in not subjecting the writ petitioner even remotely to any hardship, bearing in mind that she has started attending the classes in the fifth respondent/college, from 19.9.2016 even before permission was accorded by the Dental Council of India and the appellant/university.

19. Because of moving this writ appeal by way of lunch motion before us, the appellant/university has not permitted the writ petitioner to attend the examination held on 07.8.2017 at 9.30 a.m. We have taken up the motion on out of order basis at

12 'O' Clock itself and then, we have indicated our mind that the student is not at fault, as is opined by the learned Single Judge also. Hence, the appellant/University has allowed the writ petitioner to appear for subsequent examinations (yesterday). In so far as the examination, that was not attended by the writ petitioner on 07.08.2017 is concerned, the appellant/university shall conduct a special examination for the petitioner in that subject, before the other examinations, including the practical examination, get completed. We modify the direction issued by the learned Single Judge by directing the appellant/university not only to evaluate the performance of the writ petitioner, but also, to declare her results and permit her to prosecute further education, if she clears the said examination.

20. With this, the writ appeal stands disposed of. No costs. Consequently, the above CMP is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

rs/sd
To

1.The Secretary, Department of Health
& Family Welfare, Fort St. George,
Chennai-9.

2.The Director of Medical Education,
Kilpauk, Chennai-10.

3.The Dental Council of India, rep.by
its Secretary, Aiwan E Galib Marg,
Korla Road, Temple Lane,
Mandi House, New Delhi-110002.

4.The Principal, K.S.R. Institute of
Dental Science and Research,
K.S.R. Kalvi Nagar, Kuchipalayam
(P.O.), Tiruchengode-637215.

5. The Principal Tagore Dental College
Rathinamangalam, Vandalur Post, Chennai-127

+1 cc to M/s.G.Harihara Arun Somasankar Advocate
sr 57718

+1 cc to M/s.Essac Chamber Advocate sr 58059

+1 cc to M/s.P.S.Seetha lakshmi Advocate sr 58632

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