

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE MS. JUSTICE J. UMA DEVI

WRIT PETITION No. 915 of 2017

ORDER: (*Per VRS,J*)

The petitioner, who was admitted to the 1st year of the B.D.S. course during the academic year 2015-2016, has come up with the present writ petition, seeking a direction to the 5th respondent-College to relieve her to enable her to join the 6th respondent-College.

2. Heard Mr. Gade Venkateswara Rao, learned counsel for the petitioner, Mr. P. Vishnuvardhan Reddy, learned standing counsel for Dental Council of India, appearing for the respondents 2 and 3, and Mr. Taddi Nageswara Rao, learned standing counsel for Dr. NTR University of Health Sciences, appearing for the 4th respondent.

3. This is the second round of litigation for an unfortunate student, who joined the first year of the B.D.S. course in the 4th respondent-College for the academic year 2015-2016 and which College was denied permission to admit students for the academic year 2016-2017. The petitioner, after joining the 5th respondent-College for the academic year 2015-2016, did not attend the College for nearly four months, on account of which, the College detained her in the first year. In the normal course, the petitioner ought to have continued as a student of the 1st year for the next academic year, namely, 2016-2017. But, the 5th respondent-College was denied approval by the Dental

Council of India (DCI) for admission of students to the 1st year for the academic year 2016-2017. Therefore, the petitioner came up with a writ petition in W.P.No.37215 of 2016. The said writ petition was disposed of by this Court, by an order dated 28.11.2016. The operative portion of the said order reads as follows:

“The power to grant migration vests with the Dental Council of India. The facts are not disputed. Therefore, the Dental Council of India is directed to consider the case of the petitioner and take a decision within a period of 2 (two) weeks from the date of receipt of a copy of this order. The writ petition is disposed of accordingly.”

4. Pursuant to the said direction, the DCI examined the case of the petitioner and passed the order impugned in this writ petition, which reads as follows:

“I am directed to refer to your representation dated 03.12.2016 along with a copy of an order dated 02.12.2016 passed by the Hon’ble High Court of Judicature at Hyderabad, on the subject mentioned above and to say that the representation has been considered in the Council in conformity with the statutory provision of revised BDS Course Regulation 2007, which provides for – that the migration of the student from one dental college to another dental college is permissible only after passing 1st year BDS Course and only in 2nd BDS Course, but in the present case, the candidate/petitioner has not passed her 1st year BDS Course, the provision of migration is not applicable in this case. As such, the request may not be acceded to.

Moreover, after the commencement of Dentist (Amendment) Act, 2016, and Information Bulletin on National Eligibility Cum Entrance Test (in short NEET) issued by Central Board of Secondary Education, as per the Dentist (Amendment) Act, 2016, each and every student desirous for admission in MBBS and BDS Course from the academic session 2016-17 onwards has to appear and qualify in NEET otherwise, nobody including the petitioner student is entitled for admission in any Medical and Dental Institution in the country. The admissions made contrary to the

provisions on NEET would be void ab-initio. The provisions of Migration as provided for in preceding paragraph is not applicable to the case of the candidate/petitioner as she has not fulfilled the condition of passing her 1st year BDS course.”

5. Therefore, challenging the said order, the petitioner has come up with the present writ petition.

6. Though we ordered notice to the respondents on 08.02.2017 and the learned counsel for the DCI also took notice, he has not been able to get instructions. Since the academic year itself would come to a close in another couple of months, we are left with no alternative except to decide the case without a counter affidavit on the part of the DCI.

7. In the order impugned in the writ petition, the DCI has taken a stand that the migration of a student from one Dental College to another Dental College is permissible, only after passing the 1st year of the B.D.S. course and only in the 2nd year of the B.D.S. course. The stand taken by the DCI is that since the petitioner was detained in the 1st year, she is not entitled for migration.

8. But, the aforesaid contention of the DCI loses sight of the fact that the petitioner was detained in the 1st year and she will not be able to pursue the 1st year of the course in the same College for the academic year 2016-2017 for no fault of hers, but due to the cancellation of approval for the 5th respondent-College. In cases of this nature where a detained candidate is prevented from pursuing the

course in the 1st year, it is not possible to apply the regulations relating to migration, purely in letter and not in spirit. Candidates like the petitioner, who were detained for want of attendance beyond their control, cannot be left without any alternative. The regulations of the DCI cannot be taken to be so inflexible as to ignore an eventuality. If there is no specific regulation relating to migration of such candidates, the DCI will have to fall back upon the residuary powers conferred upon them under the B.D.S. Course Regulations, 2007. The non-exercise of such a residuary power will cause gross injustice to candidates like the petitioner.

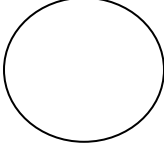
9. In view of the above, the Writ Petition is allowed, the impugned order is set aside, and the Dental Council of India is directed to reconsider the matter and pass orders afresh, within two (2) weeks from the date of receipt of a copy of this order. Since it is a case of migration, it is needless to point out that the failure of the petitioner to appear in NEET-2016 or NEET-2017 cannot be put against her.

Consequently, miscellaneous petitions if any pending in the writ petition shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

J. UMA DEVI, J.

1st March, 2017
cbs



THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN ✓
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI



Writ Petition No. 915 of 2017
(disposed of)

1st March, 2017

cbs

