

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1054 of 2017

IN

Civil Writ Jurisdiction Case No. 19129 of 2016

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1. The Dental Council of India, constituted under the Dentist Act having its Office at Aiwan-E-Galib Marg, Kotla Road, New Delhi-110002 through its Joint Secretary (Legal & Admin.), M.L. Meena, Son of Late Murari Lal Meena, Resident of Temple Lane, Kotla Road, New Delhi.

2. The Secretary, Dental Council of India, Aiwan-E-Galib Road, Kotla Road, New Delhi.

.... Respondents/Appellants

Versus

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/Respondent

2. The Union of India through its Secretary, Ministry of Health and Family Welfare, Government of India, New Delhi – 110002.

3. The Secretary, Ministry of Health and Family Welfare, Government of India, New Delhi – 110002.

4. The Under Secretary, Dental Education Section, Ministry of Health and Family Welfare, Government of India, New Delhi – 110002.

5. The State of Bihar through Health Secretary, Patna.

6. The Controller of Examination, Health Services, Government of Bihar, Patna.

.... Respondents/Respondents



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Appearance :

For the Appellants : Mr. S.D. Sanjay, Sr. Adv.
Mr. Mohit Agrawal, Adv.
Ms. Priya Gupta, Adv.

For the Respondents : Mr. Y.V. Giri, Sr. Adv.

For the UOI : Mr. Abhay Shankar Jha, CGC

For the State : Mr. Suryadeo Yadav, AAG-9

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

C.A.V. JUDGMENT & ORDER

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date: 01-11-2018

The appellants/Dental Council of India (*in short the **D.C.I.***) has questioned the judgment and order dated 19.05.2017, passed by a learned Single Judge of this Court in C.W.J.C. No. 19129 of 2016, holding that the Central Government does not have the power to stop a Dental College from taking admission without first taking a decision in terms of Section 16-A(4) of the Dentists Act, 1948 (*in short the **Act***), thereby setting-aside and quashing the orders dated 03.10.2016 and 21.10.2016, respectively issued by the Government of India, whereby the respondent/Dr. B.R. Ambedkar Institute of Dental Sciences and Hospital (*in short the **institute***) was intimated to stop admissions in the B.D.S. course for the academic session 2016-17, failing



which, Section 10-B of the Dentists (Amendment) Act, 1993 and Section 16-A of the Act would be attracted.

2. Before adverting to the issues involved in this present Letters Patent Appeal, it would be relevant to refer to the two letters, referred to above, issued by the Government of India to the respondent/ institute, which have been quashed by the learned Single Judge.

3. By letter dated 03.10.2016, the Principal of the respondent/institute was intimated that the Dental Council of India (*in short the **D.C.I.***) had recommended to the Ministry of Health and Family Welfare to stop admissions both at Graduate and Post-Graduate levels at Dr. B.R. Ambedkar Institute of Dental Sciences and Hospital, Patna (respondent) and to initiate the process for withdrawal of recognition under Section 16-A of Act. The aforesaid letter also referred to the fact that the D.C.I. had informed the Ministry *vide* letter dated 21.09.2016 that inspection had been conducted on 7th and 8th September, 2016 pursuant to the orders passed by this Court in C.W.J.C. No. 9150 of 2016 and gross deficiencies were reported. It was thus decided to stop the admission in B.D.S. course at the institute for the academic session 2016-17 and the respondent/institute was directed not to take admissions in violation of the aforesaid order.



4. By another letter dated 21.10.2016, issued under the signature of the Joint Secretary (L & A), D.C.I., the Principal of the respondent/institute was informed that the Executive Committee of the D.C.I. in its meeting held on 13th and 14th October, 2016 at New Delhi, after considering the letter of the institute and after discussions and deliberations, had decided that the respondent/institute be directed to discharge all 40 students immediately, under intimation to D.C.I., admitted in B.D.S. course for the academic session 2016-17 in violation of the order dated 03.10.2016 referred to above, failing which, Section 10-B of the Dentists (Amendment) Act, 1993 and Section 16-A of the Act shall be attracted.

5. The aforesaid two letters were challenged by the respondent/institute (original writ-petitioner) primarily on two grounds, viz., (i) that pursuant to the directions of the Supreme Court, which required the admissions to M.B.B.S. and B.D.S. courses throughout the country to be completed by 30th September of a calendar year, admissions were given to the students for the academic session 2016-17 prior to the issuance of letter dated 03.10.2016 referred to above, and (ii) that in the absence of any notification as envisaged under sub-Section (4) of Section 16-A of the Act, the D.C.I. or the Central Government could not have directed for stoppage of



admissions in the B.D.S. course in the institute.

6. It may also be noted that the learned Single Judge, while dealing with the petition, had by order dated 23.03.2017 passed in C.W.J.C. No. 19129 of 2016, stayed the operation of the communications dated 03.10.2016 and 21.10.2016 respectively.

7. The learned Single Judge by order impugned has held that in the absence of any notification under Section 16-A(4) of the Act, the direction to stop taking admissions in the courses run in the respondent/institute cannot be issued.

8. In order to appreciate the contentions raised on behalf of the respective parties, it is necessary to refer to certain provisions of Dentists Act, 1948.

9. For the sake of ready reference as well as for completeness, the provisions of Sections 10(1), 16, 16-A and 17 of the Act are being extracted hereinbelow:-

10. Recognition of dental qualifications.—(1) The dental qualifications, granted by any authority or institution in India, which are included in Part I of the Schedule shall be recognised dental qualifications for the purposes of this Act.

16. Withdrawal of recognition.—
(1) When upon report by the Executive Committee it appears to the Council—

(a) that the courses of study and training or the examinations to be undergone in order to obtain a recognised 35[***] dental



hygiene qualification from any authority in a 36[State] 37[***] 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 regulations made under this Act or fall short of the standards required thereby, or

(b) that an institution does not satisfy the requirements of the Council, the Council may send to the Government of the State in which the authority or institution is situated a statement to such effect, and the 38[State] Government shall forward it, along with such remarks as it may think fit, to the authority or institution concerned with an intimation of the period within which the authority or institution may submit its explanation to the 38[State] Government.

(2) On receipt of the explanation, or where no explanation is submitted within the period fixed, then on the expiry of the period, the 38[State] Government shall after consulting the 38[State] Council, forward its recommendations and those of the 38[State] Council, if any, to the Council.

(3) The Council, after considering the recommendations of the 38[State] Government and the 38[State] Council and after such further inquiry, if any, as it may think fit to make, may declare that the qualification granted by the authority or institution shall be a recognised 35[***] dental hygiene qualification only when granted before a specified date.

(4) The Council may declare that any recognised 35[***] dental hygiene



qualification granted outside the 39[States] 37[***] shall be recognised as such only if granted before a specified date.

[16-A. Withdrawal of recognition of recognised 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 requirements 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 students of a specified college or institution 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.]

17. Mode of declarations.—(1) All declarations under section 11 or section 16 shall be made by a resolution passed at a meeting of the Council and shall forthwith be published in the Official Gazette.

10. Section 10(1) of the Act clearly stipulates that any degree granted by an institute in India, which is included in Part I of the Schedule, would be a recognised



dental qualification.

11. Section 16 of the Act deals with withdrawal of recognition. If the Executive Committee of the Dental Council finds that an institution does not satisfy the requirements of the Council, a statement shall be issued by the Council to the Government of the State in which the institution is situated and such a statement shall be forwarded along with the remarks, as it may deem fit, to the institution concerned with an intimation of the period within which the institution has to submit its explanation to the State Government. On receipt of the explanation, the State Government, in consultation with the State Council, has to forward its recommendations to the D.C.I. The D.C.I., thereafter, on considering the aforesaid recommendations, may declare that the qualification granted by the institution shall be recognised only when granted before a specified date.

12. For the purposes of withdrawal of the recognition of a recognised dental qualification, the procedure stipulated under Section 16-A of the Act is that the Executive Committee or the Visitor would report to the D.C.I. and if the D.C.I. is of the view that the institution is lacking in the required standards of proficiency in running the institute, it shall recommend to the Central Government



a statement in that regard. The Central Government, thereafter, would send it to the State Government and the State Government shall along with its remarks, would again revert to the institution concerned for submitting its explanation. After the explanation is received, the State Government shall make its recommendations to the Central Government, which alone has the authority to notify in the Official Gazette, derecognising an institution.

13. Under Section 17 of the Act, all declarations under Section 11, which is with respect to qualifications of dental hygienists, and Section 16 of the Act is to be made by a resolution passed by a meeting of the Council and which shall be forthwith published in the Official Gazette.

14. Such are the detail procedures for removing an institution from Part I of the Schedule, thereby derecognising the qualification imparted by it.

15. It was argued before the learned Single Judge that since the admissions had already been taken in the institute prior to the first letter dated 03.10.2016 and that there was no such resolution as contemplated under Section 16-A(4) of the Act, there was no authority of either the Central Government or the D.C.I. to issue any direction with regard to stopping of admissions or asking for discharging the students who have already been admitted in



the institute.

16. On behalf of the D.C.I., it was argued before the learned Single Judge that since the power of withdrawal of recognition vests in the Central Government, the Central Government has incidental powers to issue such direction, as may be required during the pendency of a proceeding for withdrawal of recognition including a direction to the college not to take admission in the meanwhile.

17. The aforesaid contentions raised on behalf of the D.C.I. was not accepted by the learned Single Judge, who was of the view that the Act is a self-contained code dealing with Dentistry and in the absence of any resolution, the letters impugned could not be sustained/countenanced.

18. In the present Letters Patent Appeal, this Court *vide* order dated 07.08.2017 had issued a direction to the Secretary, Government of India, Ministry of Health and Family Welfare to issue necessary directions to the D.C.I. to constitute a team of senior officials for conducting inspections. The District Magistrate and the Senior Superintendent of Police, Patna were directed to facilitate the inspection of the college (respondent/institute) and the inspecting team was further directed to report along with the recommendation of the D.C.I. to the Government of India, who would take a decision and submit a report to this Court



with regard to the aforesaid matter. In the meanwhile, a liberty was given to the respondent/institute to continue with the admissions, but with the caveat that the students taking admission in the respondent/institute would be clearly told that the admission was at their risk which could be cancelled, subject to the outcome of the present Letters Patent Appeal and in that event, the students would be entitled to no relief. By way of abundant precaution, the respondent/institute was directed to inform the students through proper process that the admission was purely provisional.

19. Various factual issues have been raised by the appellant and the respondent/institute respectively, thereby seeking to buttress their respective claims/entitlement of passing an interim order for stopping of admission or castigating of several such inspections of the respondent/institute and the action taken against the institute being a fallout of some dispute of the respondent/institute with one of the members of the D.C.I.

20. We are not inclined to enter into such issues as those would be in the realm of disputed questions of fact which may not be possible for us to decide in the present proceeding.

21. However, we have given our anxious consideration over the seminal question raised in the present



Letters Patent Appeal as to whether the Central Government or the D.C.I. has the powers to pass an interim order which is a step-in-aid to passing a final order followed by resolution as contemplated under Sections 16-A(4) and Section 17 of the Act.

22. As has been noticed in the provisions contained in Section 16, Section 16-A and Section 17 of the Act, the process of derecognition and striking off the name of an institute from Part I of the Schedule is an elaborate and lengthy process, requiring the Executive Committee or the Visitor of the D.C.I., the D.C.I., the Central Government, the State Government in which the institute is situated and the respective State Dental Council, to play their role in a fair and transparent manner. The process also requires giving of time to the concerned institute for making up the deficiency within a particular time. All this, no doubt, would require time and any unscrupulous institution can utilize this time to its advantage and to the distinct disadvantage of the students who would take admission in the meanwhile and, thereby, playing with the career as well as future prospects of such unsuspecting students. If ultimately, an institute is derecognised, the entire academic session of a student having taken admission in such institute would be wasted and no amount of compensation can make up for the same.



23. There is another aspect to it as well. The certificates of qualification handed over to the students have to be used for public purposes, *i.e.*, for giving treatment to the patients. If the training is not up to the mark or commensurate with the standards of proficiency set-down by the D.C.I., not only would the recipients of such degree by such an institute would be incomplete, but even the persons who would be treated by them would suffer in the long run.

24. Conversely, it would also not desirable that on mere complaint of a competing private institute, the recognition of any institute in question be struck off from the Schedule. It is only for this purpose that an elaborate procedure has been laid down for derecognition. In the entire process, some play in the joints is bound to be exercised by the organizations which are in-charge of the affairs.

25. If a final order is to be passed by any entity/organization, it is inherent in such powers to pass interim orders as a step-in-aid or in furtherance of the final order. Such powers of passing interim direction, unless specifically proscribed, can always be resorted to.

26. The Supreme Court in ***Ashok Kumar Lingala Vs. State of Karnataka & Ors.; (2012) 1 SCC 321***, while dealing with the mining rights under a mining lease,



has held as follows:-

23. The power to make an interim order is, except where it is specifically taken away by the statute, implicit in the power to make a final order. It is exercised by the authority who has to make the final order or an authority exercising appellate or revisional jurisdiction, against an order granting or refusing an interim order. The exercise of the power implies that the authority seized of the proceedings in which such an order is made will eventually pass a final order; the interim order serving only as a step in aid of such final order. The law, in our view, does not permit the making of an interim order by one authority or court pending adjudication of the dispute by another except in the situation mentioned above. Ms. Shenoy was, therefore, right in her submission that the order of restraining mining operation was meant to be a temporary and interim arrangement meant to remain in force only till such time the Director (Mines) examined the issue regarding the alleged overlapping of the area and passed a final order on the subject.

27. We are conscious of the fact that the future prospects and the career of students have to be protected. Nonetheless, the future of the students cannot be used as a shield for any institute, lacking in many respects to take advantage of continuing with the process of admission till the process of derecognition is over and the resolution to that effect is issued and gazetted.



28. Thus, we set-aside the order passed by the learned Single Judge, whereby the two letters dated 03.10.2016 and 21.10.2016, respectively, have been quashed.

29. However, keeping in mind the fact that this Court had directed the Government of India as well as the D.C.I. to conduct an inspection, we hope and trust that after the inspection, necessary orders, whatsoever it may be, shall be passed by the Central Government in accordance with the procedure prescribed under the Act.

30. We are afraid, if the final order of derecognition is passed, there is no way in which career of those students who have been admitted in violation of the direction issued by the Central Government and the D.C.I. can be salvaged. Now, it is upon the report of the inspection and the decision taken by the Central Government and the D.C.I., which would matter. It is precisely for this reason that this Bench had indicated with utmost clarity that any admission was subject to the outcome of the present Letters Patent Appeal and that the students ought to be clearly informed about such tentative nature of admission. However, in case the institute is aggrieved by the final order by the Central Government and the D.C.I., it can avail of the remedy available to it under the law.



31. The present Letters Patent Appeal is accordingly allowed and disposed off.

32. There shall be no order as to costs.

(Mukesh R. Shah, CJ)

(Ashutosh Kumar, J)

Praveen-II/-

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