

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.32037 of 2017
and
W.M.P.No.35198 of 2017

Ms.A.Nisshanthi

... Petitioner

Vs.

1. The Registrar,
Pondicherry University,
Kalapet, Puducherry-605 014.
 2. The Convenor,
Centralised Admission Committee (CENTAC),
Pondicherry Engineering College Campus,
Puducherry-605 014.
 3. The Principal,
Mahe Institute of Dental Science & Hospital,
Chalakkara, Mahe.
 4. The Principal,
Sri Venkateshwaraa Dental College,
No.13-A, Pondicherry-Villupuram Main Road,
Ariyur, Puducherry-605 102.
 5. The Dental Council of India (DCI),
Represented by its Secretary,
Aiwan-E-Ghalib Marg,
Kotla Road, New Delhi-110 002.
- ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for records relating to impugned Notice, vide No.DE-114-Mis.III/2017/14703, dated 22.11.2017 passed/issued by the fifth respondent and quash the same as highly illegal, unlawful, arbitrary, untenable, unreasonable and unconstitutional and consequentially direct the fifth respondent to grant permission to the petitioner for migration for the course of B.D.S-II Year from the third respondent College to the fourth respondent-College.

For petitioner : Mr.Prakash Adiapadam

For respondents : Mr.Stalin Abhimanyu for R-1
Mr.C.T.Ramesh, Addl.G.P.(Pondicherry)
for R-2
No appearance for RR-3 and 4
Dr.S.Seethalakshmi for R-5

ORDER

The petitioner has come forward with the above Writ Petition praying for issuance of a Writ of Certiorarified Mandamus to call for records relating to impugned Notice, vide No.DE-114-Mis.III/2017/14703, dated 22.11.2017 passed/issued by the fifth respondent and quash the same as highly illegal, unlawful, arbitrary, untenable, unreasonable and unconstitutional and consequentially direct the fifth respondent to grant permission to the petitioner for migration for the course of B.D.S-II Year from the third respondent College to the fourth respondent-College.

2. Learned counsel for the petitioner submitted that the impugned order passed by the fifth respondent states that as per the provision of BDS Course Regulations, 2007, migration is permitted from recognised Dental College to recognised Dental College only in the beginning of 2nd year BDS Course on compassionate ground criteria, i.e. (i) Death of supporting guardian and (ii) Disturbed conditions as declared by Government in the Dental College area as per DCI norms.

3. Learned counsel for the petitioner submitted that the petitioner's mother is unwell and hence, her request ought to have been considered and that apart, the petitioner stated that the fourth respondent-Sri Venkateshwaraa Dental College has agreed to admit the petitioner/student and that the third respondent-Mahe Institute of Dental Science and Hospital where the petitioner studied, has given its willingness for the petitioner to join the fourth respondent-College.

4. It is further submitted that there are 14 vacancies in the fourth respondent-College and that there cannot be any hurdle on the part of the fifth respondent-Dental Council of India (DCI) to permit the migration of the petitioner.

5. The learned counsel for the respondents relied on the DCI Regulations dealing with the aspect of Migration, in Chapter IV, reads as follows:

IV. Migration:

(1) Migration from one dental college to other 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 ground, provided following criteria are fulfilled. Routine migration 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.

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Note 2:Compassionate ground criteria:

(i) Death of supporting guardian.

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

6. It is further submitted by the learned counsel for the respondents that when there are only compassionate grounds with regard to the migration of students from one Dental College to the other, and that the petitioner has not satisfied the conditions and hence the request of the petitioner has got to be rejected.

7. Heard both sides and perused the materials available on record.

8. It is the main contention of the petitioner that for migration of the petitioner, the transmitting College is agreeing to accommodate the petitioner/student. The petitioner has referred to Clause 2 and 3 of the "Migration" clause quoted above and contended that she has cleared the first year BDS examinations and that the student is studying at present in the Dental College recognised by the DCI and the transfer/migration is sought for is only to the College recognised by the DCI. What is provided in Clauses 1 to 5 with regard to the migration is the procedure(s) to be followed/contemplated. But with regard to the migration on compassionate grounds, the petitioner will have to fulfill the criteria prescribed therein. If the petitioner has not fulfilled any other conditions and if the contention of the petitioner is accepted that her mother is unwell, the other students may also knock at the doors of the DCI after getting No Objection Certificate from the College where the students originally studied to the College they want to join, thereby creating disturbance to the functioning of the College and it is a wrong signal.

9. Moreover, as long as the BDS Course Regulations published in the Gazette of India Extraordinary Part-3 Section 4, dated 10.09.2017, which Regulations were approved by the Central Government under the Dentists Act, vide letter dated 25.07.2007, which are in force, which are more or less similar to the DCI Regulations quoted supra, the petitioner cannot as a matter of right, seek for transfer/migration. The relevant portion with regard to the Migration mentioned in the BDS Course Regulations, reads as follows:

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.

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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 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.

... .."

10. In view of the above Regulations of the BDS Course Regulations as notified in the Gazette of India, stated supra, which are almost similar to the DCI Regulations quoted above, the petitioner is not entitled to the relief sought for in this Writ Petition. Hence, the Writ Petition is dismissed. No costs. Consequently, W.M.P. is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Registrar,
Pondicherry University,
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Represented by its Secretary,
Aiwan-E-Ghalib Marg,
Kotla Road, New Delhi-110 002.

+1cc to Mr.Prakash Adiapadam, Advocate Sr.47955

+1cc to Mr.S.Seethalakshmi, Advocate Sr.47426

W.P.No.32037 of 2017

srg 01/08/2018



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