

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2018

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

W.A.Nos.1795 to 1801 and 1888 to 1895 of 2018
and

C.M.P.Nos.14545 to 14551 and 15221 to 15228 of 2018

W.A.Nos.1795 to 1801 of 2018:

V.S.Subeeeksha		Appellant in W.A.No. 1795 of 2018
Nihal A.Sachdev	...	Appellant in W.A.No. 1796 of 2018
Saranya, M.		Appellant in W.A.No. 1797 of 2018
Dhanalakshmi, S.		Appellant in W.A.No. 1798 of 2018
V.S.Apoorva		Appellant in W.A.No. 1799 of 2018
Simon Chouhan		Appellant in W.A.No. 1800 of 2018
M.R.Mugilan	...	Appellant in W.A.No. 1801 of 2018

vs.

1.Dental Council of India,
rep.by its Secretary,
Aiwan-E-Galib Marg, Kotla Road, Temple Lane,
Opp. Mata Sundari College for Women,
New Delhi - 110 002.

2.The Additional Director of Medical Education/
Secretary of Selection Committee,
No.162, E.V.R. Periyar Salai,
Kilpauk, Chennai 600 010.

3.Tamil Nadu Dr.M.G.R. Medical University,
rep.by its Registrar,
No.69, Anna Salai,
Guindy, Chennai 600 032.

4.Saveetha University,
rep.by its Registrar,
No.162, Poonamallee High Road,
Rajankuppam, Chennai 600 072.

5.Saveetha Dental College & Hospital,
rep.by its Principal,
No.162, Poonamallee High Road,
Rajankuppam, Chennai 600 072. Respondents in all the
W.As.

W.A.Nos.1888 to 1895 of 2018:

1.Saveetha University,
rep.by its Registrar,
No.162, Poonamallee High Road,
Rajankuppam, Chennai 600 072.

2.Saveetha Dental College & Hospital,
rep.by its Principal,
No.162, Poonamallee High Road,
Rajankuppam, Chennai 600 072. ... Appellants in all the
W.As.

vs.

V.S.Subeeeksha ... 1st respondent in W.A.No.
1888 of 2018

Nihal A.Sachdev ... 1st respondent in
W.A.No.1889 of 2018

M.Saranya ... 1st respondent in W.A.No.
1890 of 2018

Adeline Persia Sorna Grace R. ... 1st respondent in W.A.No.
1891 of 2018

Dhanalakshmi S. ... 1st respondent in
W.A.No. 1892 of 2018

Apoorva V.S. ... 1st respondent in W.A.No.
1893 of 2018

Simon Chouhan

... 1st respondent in W.A.No.
1894 of 2018

M.R.Mugilan

... 1st respondent in W.A.No.
1895 of 2018

2.Dental Council of India,
rep.by its Secretary,
Aiwan-E-Galib Marg, Kotla Road, Temple Lane,
Opp. Mata Sundari College for Women,
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Kilpauk, Chennai 600 010.

4.Tamil Nadu Dr.M.G.R. Medical University,
rep.by its Registrar,
No.69, Anna Salai,
Guindy, Chennai 600 032.

... Respondents 2 to 4 in
all the W.As.

W.A.Nos.1795 to 1801 of 2018 filed under Clause 15 of the
Letters Patent, against the orders passed by this Court in
W.P.Nos.14342, 14343, 14344, 14346, 14347, 14348 and 14349 of
2018 dated 17.07.2018.

W.A.Nos.1888 to 1895 of 2018 filed under Clause 15 of the
Letters Patent, against the orders passed by this Court in
W.P.Nos.14342, 14343, 14344, 14345, 14346, 14347, 14348 and
14349 of 2018 dated 17.07.2018.

W.P.Nos.14342 to 14349 of 2018:-

Writ petitions filed under article 226 of the Constitution
of India praying for the issuance of Writ of Certiorarified
Mandamus to call for the records of the 1st Respondent relating
to its decision dated 01.06.2018 communicated to the petitioners
vide letter No.DE-114/Misc-III/2018-2360 dated 04.06.2018 quash
the same direct the 1st Respondent to issue 'No Objection
Certificate' enabling the petitioners to migrate to any of
affiliated colleges of the 3rd Respondent/University Forthwith
and consequently direct 2nd and 3rd Respondent to accommodate
petitioners in any one of the affiliated colleges of the 3rd
Respondent in the 2nd Year B.D.S. Course of the 2016-2017 batch.

W.A.Nos.1795 to 1801 of 2018:

For Appellant in all the appeals :: Mr.AR.L.Sundaresan, Sr.Counsel for Mr.S.D.Venkateswaran

For Respondents in all the appeals :: Mr.Haja Mohideen Gisthi for R1
Mr.R.Govindasamy, Spl.GP for R2
Mr.D.Ravichandran for R3
Mr.P.Wilson, Sr.Counsel for
Mr.S.Saravanan for R4 and R5

W.A.Nos.1888 to 1895 of 2018:

For Appellants in all the appeals :: Mr.P.Wilson, Sr.Counsel for
Mr.S.Saravanan

For Respondents in all the appeals :: Mr.AR.L.Sundaresan, Sr.Counsel for Mr.S.D.Venkatesan for R1
Mr.Haja Mohideen Gisthi for R2
Mr.R.Govindasamy, Spl.GP for R3
Mr.D.Ravichandran for R4

COMMON JUDGMENT

(Delivered by HULUVADI G.RAMESH, J.)

It is the case of the appellants in W.A.Nos.1795 to 1801 of 2018 / first respondent in W.A.Nos.1888 to 1895 of 2018 (hereinafter referred to as 'students') that they were admitted in Saveetha Dental College & Hospital (Deemed University), the fifth respondent in W.A.Nos.1795 to 1801 of 2018 / second appellant in W.A.Nos.1888 to 1895 of 2018, during the academic year 2016-2017 in Bachelor of Dental Surgery (B.D.S.) Course as N.R.I. candidates. They attended seven months of classes towards completion of the 2nd year and completed part of the Examinations for the 2nd year. To their shock, on 08.05.2018, the officials of the 4th and 5th respondents in W.A.Nos.1795 to 1801 of 2018, ie., Saveetha University and Saveetha Dental College respectively, verbally informed the students that they cannot continue the Course, as the Dental Council of India, the first respondent in W.A.Nos.1795 to 1801 of 2018 / second respondent in W.A.Nos.1888 to 1895 of 2018 had directed the Saveetha Dental College to discharge 13 students from their batch including the students herein, in view of non-availability of exemption from NEET examination. Pursuant to the same, on 21.05.2018, the students herein approached the Dental Council of India for issuance of 'No Objection Certificate', thereby enabling them to migrate to any of the constituent affiliated Colleges of the Tamil Nadu Dr.MGR Medical University (hereinafter referred to as 'MGR University') from the Saveetha Dental College. As there was no response from the Dental Council of India regarding the grant of 'No Objection Certificate', they approached this Court by filing W.P.Nos.13855 of 2018, 13862 of 2018, 13858 of 2018,

13856 of 2018, 13860 of 2018, 13861 of 2018, 13859 of 2018 and 13857 of 2018, respectively, seeking a direction to the Dental Council of India to issue 'No Objection Certificate' to enable them to migrate to any of the affiliated Colleges of the MGR University forthwith and for a consequential direction to the Additional Director of Medical Education/ Secretary of Selection Committee, Chennai and MGR University to accommodate them in any of the affiliated Colleges of the MGR University in the 2nd year B.D.S. Course of 2016-2017 batch. During the pendency of the said writ petitions, the students received a letter vide No.DE-114/Misc-III/2018-2360, dated 04.06.2018, from the Dental Council of India, wherein, the request of the students for migration in 2nd year B.D.S. Course from Saveetha Dental College & Hospital, Chennai to any one of the institutions affiliated to the Tamil Nadu Dr.M.G.R. University, Chennai, has been rejected, on the ground that they were admitted in BDS Course under NRI Quota, without qualifying the mandated NEET 2016, in violation of the Dentists (Amendment) Act, 2016 and the proviso of Section 10D shall not be applicable to them. In view of the same, the students withdrew the said writ petitions, as the relief sought therein had become infructuous.

2.With the above background, they filed W.P.Nos.14342 to 14349 of 2018 praying to quash the order dated 04.06.2018 passed by the Dental Council of India and for a direction to issue 'No Objection Certificate' enabling them to migrate to any of the affiliated colleges of the MGR University and to accommodate them in any one of the affiliated colleges of the MGR University in the 2nd year BDS Course of 2016-2017 batch.

3.The Dental Council of India has filed a counter affidavit before the writ Court wherein it has been stated that the students have filed the writ petitions in contravention and in violation of the directives of the Hon'ble Supreme Court of India and the Ordinance promulgated by the Central Government on 24.05.2016 with regard to the mode and manner for conducting NEET and subsequently replaced and repealed by the Dentists (Amendment) Act, 2016 enacted on 02.06.2016. According to the Dental Council of India, the admission of the students herein is not valid and void ab initio and that as per the Dental Council of India Revised BDS Course Regulations 2007, migration of a student is not a matter of right and it could be allowed only in exceptional cases on extreme compassionate grounds, that too, after fulfilling the requisite conditions. Hence, the question of migration of the students from Saveetha Dental College to any other constituent Dental Institution of the MGR University does not arise. It is further stated that the Dental Council of India scrutinised the list of students admitted by the Saveetha Dental College to B.D.S. Course for the academic session 2016-

2017 and found that 13 students including the students herein were admitted without qualifying the NEET and finally the Dental Council of India directed the Saveetha Dental College to discharge its 13 students including the students herein from B.D.S. Course and delete their names from the list. Pursuant thereto, the Saveetha Dental College discharged 13 students including the students herein from B.D.S. Course and deleted their names from the list.

4.A counter was filed by the MGR University before the writ Court wherein it is stated that the Saveetha Dental College had been admitting students to the Dental Course through a common entrance test on merits. For the NRI students, the Saveetha University had been admitting students on the basis of an Aptitude Test till the year 2015-2016. For the year 2016-2017, Saveetha University had commenced the admission process in the month of February 2016 by issuing advertisement. Thereafter, Government of India issued an Ordinance dated 24.05.2016 by inserting Section 10D to the Indian Dentists Act, 1948, whereby, it was provided that a Uniform Entrance Examination to all Dental Educational Institutions should be conducted for admitting students. Furthermore, there were litigations regarding the admission through NEET and there was no clarity regarding admission to NRI Quota for BDS. In fact, Dental Council of India did not issue any clarification regarding the procedure to be adopted by the Dental College and the Dental Council amended its Regulations stating that NEET is mandatory for NRI students seeking admission in July 2017. Therefore, Saveetha Dental College admitted students by conducting Aptitude Test for NRI Quota strictly on merit. It should be noted that all the students herein and the other NRI students (totalling to 13) were well informed of the risks involved and that the admissions were subject to the approval of the Dental Council of India. The Institution also provided only a provisional selection letter, which clearly mentions that the admissions were subject to the approval of the Dental Council of India. The Dental Council of India did not raise any objection regarding the admission of the students under NRI Quota. Subsequently, the Dental Council sent a letter on October 12, 2017, directing the Institution to discharge of 13 NRI students. However, the MGR University requested the Dental Council to reconsider the decision for the reason that similarly placed students from other Colleges filed a Writ Petition No.250 of 2017 before the Hon'ble Supreme Court and obtained an order of interim stay. The MGR University also pleaded to the Dental Council that many of the students were toppers in the first year exams and they want to protect their career. In fact, the students admitted under NRI Quota performed well in the 1st year University Examination than those admitted on the basis of NEET marks. Only thereafter, the Dental Council of India directed the MGR

University to discharge all the 13 students admitted under NRI Quota. According to the MGR University, they have no objection for the students herein getting 'No Objection Certificate' from the Dental Council of India and joining some other College in the State of Tamil Nadu.

5. After hearing the parties and perusing the materials on record, the learned single Judge dismissed the writ petitions by a common order dated 17.07.2018 with a direction to the Saveetha University to refund the fees paid by the students herein for the I and II year B.D.S. Course under all heads, together with interest @ 12% per annum from the date of receipt of the amount, within 30 days from the date of receipt of a copy of the order. Further directions have been issued to the University to issue Transfer Certificate to the students herein and to return all their Original Certificates and pay a sum of Rs.25 lakhs (Rupees Twenty Five Lakhs only) as compensation to each of the students, by means of crossed cheque, within a period of 45 (forty-five) days from the date of receipt of the order, failing which the State Government shall attach the properties of the Saveetha University, to bring it to sale.

6. Challenging the common order passed by the learned single Judge, the students have come up with W.A.Nos.1795 to 1801 of 2018 in respect of W.P.Nos.14342, 14343, 14344, 14346, 14347, 14348 and 14349 of 2018 and the Saveetha University and Saveetha Dental College have come up with W.A.Nos.1888 to 1895 of 2018. No appeal has been filed in respect of W.P.No.14345 of 2018 by the student concerned.

7. It is argued by learned senior counsel appearing for the appellants that for the academic year 2016-2017, the State of Tamil Nadu was exempted from NEET examination. Further, the students herein have acquired more than the qualifying cut-off marks required for admission to BDS Course. It is also his specific submission that there are about 319 Government Seats available for the academic year 2016-2017 and that it is not correct on the part of the Dental Council of India to deny approval to these students on the ground that they have not qualified in NEET. Stating so, he vehemently contended that the students have been admitted to the BDS Course and they have completed two years and suddenly on one day, they were asked to go out of the college on the ground that they have to qualify in the NEET examination. He further submitted that there is no reason or grounds for which the students' request for issuance of 'No Objection Certificate' by the Dental Council of India, can be rejected and as such there are various cases in the past when discharged students of various colleges have been admitted to Government colleges pursuant to the 'No Objection

Certificate' given by the Medical Council of India and also pursuant to the orders passed by this Court.

8.The learned counsel for the Dental Council of India, the learned Special Government Pleader appearing for the Additional Director of Medical Education / Secretary of Selection Committee, the learned counsel for MGR University and the learned counsel for the Saveetha University and Saveetha Dental College, have reiterated the submissions that were put forth on behalf of their respective parties, before the writ Court.

9.Heard the learned counsel on either side and perused the materials available on record.

10.It appears that insofar as admission to medical courses for the year 2016-2017 is concerned, even though the examination in NEET has been made compulsory by the Central Government, as per the request of the Tamil Nadu Government, NEET was not made compulsory for the State of Tamil Nadu for the academic year 2016-2017. The Gazette Notification published by the Central Government on 24.05.2016 states that Section 10D of the Dentists Act, 1948, inserted through the Ordinance, which mandates uniform entrance examination to all Dental Educational Institutions at the undergraduate and post-graduate level shall not apply for the academic year 2016-2017 conducted in accordance with any regulations made under this Act, in respect of the State Government seats (whether in Government Dental College or in a private Dental college) where such State has not opted for such examination.

11.Relying on the above notification, the learned Special Government Pleader appearing for the State has submitted that NEET is exempted for the Government seats in Government Dental College and Government seats in self-financing Dental Colleges in Tamil Nadu; the admission to BDS course in Tamil Nadu and self financing colleges were made based on the aggregate marks obtained in the select subjects in the plus-two examination; the management quota seats in the self-financing colleges and the seats in Deemed Universities are not exempted from NEET examination. It is his submission that having known that admission to MBBS / BDS courses in other than Government seats for the academic year 2016-2017 is based on NEET marks only, the parents of the students ought not to have admitted their children under NRI quota offered by the University. Thus, it is not possible to accommodate the students of Saveetha Dental College in the Government Dental College or in the Government seats in Self-financing Dental Colleges, since the Dental College has made the admissions clearly in violation of the Dentists Amendment Act, 2016 and the directions of the Hon'ble Supreme Court.

12. On a perusal of the papers, it is seen that for the letter dated 24.03.2017 made by the Dental Council of India in respect of admission in BDS course for the academic session 2016-2017, the Ministry of Health and Family Welfare (Dental Education Section), Government of India, New Delhi, has replied to Dental Council vide letter dated 12.07.2017, in which it is stated that in respect of the States / Union Territories which did not opt for NEET for admission to their State Quota seats in Government and Private Dental Colleges for the academic session 2016-17, it is for the Dental Council of India to seek confirmation from the concerned States / Union Territories. It has been reiterated in the said letter that exemption from NEET for 2016-2017 was limited only to Government quota seats.

13. In the letter dated 03.10.2018 of the Dental Council of India, addressed to their counsel, it is stated that they requested all Dental Colleges vide their Circular dated 28.09.2016 to upload the details of students admitted in BDS course for the academic session 2016-2017. It is also stated that as per the letter of the Government of India dated 12.07.2017, the Dental Council has started scrutiny of the details of each and every student, state-wise and placed the matter before the meeting of the Executive Committee held on 21.09.2017 and the Committee decided to discharge 13 students since they were not qualified in the NEET examination for the year 2016. Thus, it is stated that there is no delay on the part of the Dental Council of India in pursuing the matter, since they have followed a cumbersome procedure to scrutinise the cases in accordance with law.

14. It is not disputed that the students herein have been admitted in the Dental College in June 2016 under the Management quota / NRI quota and the same have been duly intimated to the Dental Council of India in the month of June 2016 itself. They have also written examinations for the first and second year of their course. Even though it is submitted by the learned counsel for Dental Council of India that there is no delay on their part in pursuing the matter, the fact remains that they have not sought proper clarification from the Central Government as regards what should be done in the case of students already admitted under the Management quota / NRI quota, for the academic year 2016-2017, at the time when NEET was not opted by the State of Tamil Nadu. The Government also did not file proper counter before the learned single Judge to clarify the matter. Unfortunately, no sincere steps have been taken by the Dental Council of India to take a stand either to accept or reject the case of the students herein who have been admitted in the NRI quota / Management quota. For the academic year 2016-2017, the students have been admitted in June / July 2016 itself, but subsequently decisions were taken not to allow them to continue

their course on the ground that they have not qualified in the NEET examination. Only on 05.08.2016, the Dentists (Amendment) Act, 2016 has been passed amending the Dentists Act, 1948. Since already these students have been admitted, proper clarification should have been obtained from the Government of India to take further course of action. Even the Central Government has come to the aid of the State Government by issuing Presidential Notification stating that the provisions of the amendment to the Dentists Act, 1948 shall not apply, in relation to the uniform entrance examination at the undergraduate level for the academic year 2016-2017 conducted in accordance with any regulations made under this Act, in respect of the State Government seats (whether in Government Dental College or in a private Dental college) where such State has not opted for such examination.

15. Though the Dental Council of India issued letters dated 28.09.2016 and 05.12.2016 seeking information of the students who were admitted in the BDS Course for the academic year 2016-2017, however, it seems no decision has been taken with regard to the admission of students in the Dental Colleges. Thus, the matter was prolonged without taking any decision at the appropriate time, which led to this predicament. Further, it is not disputed that the students herein have obtained more than the cut-off marks fixed for admission, and they have excelled well in the first and second year examinations. Furthermore, there is availability of Government seats to accommodate the students herein, for the academic year 2016-2017.

16. It was for the Dental Council of India to have initiated proper steps in clarifying the issue, but nothing is forthcoming as to the decision taken in respect of the students who have been admitted in the Dental Colleges under the Management quota/ NRI quota for the academic year 2016-2017. It is seen that the total vacancies available for the academic year 2016-2017 in Tamil Nadu Dr.MGR Medical University affiliated Dental Colleges is 319. The students herein are only 7 in number and hence admitting them in the existing vacancy would not cause any prejudice to any one.

17. It is pertinent to note that no allegations have been made by the writ petitioners against the Institution and their selection was only provisional subject to approval by the Dental Council of India. However, the Writ Court, overlooking the material facts narrated supra, in Paragraph-16 of the judgment, has stated that it is very unfortunate that education in India, more particularly in the State of Tamil Nadu has become business and Universities like Saveetha University is ruining the career of students for the sake of their business. But, it is seen that only in view of the delay on the part of the authorities in not properly pursuing the issue, this type of situation has arisen.

The Hon'ble Apex Court has time and again has deprecated the practice of making casual, uncalled for and unnecessary comments against the parties. Hence, we are of the view that the observations do not deserve approval of this Court and accordingly, they are expunged.

18. In the light of the above discussions and findings, we are of the considered view that the students cannot be left in lurch, because of the lapse committed by the authorities in not pursuing the matter in a proper way. Hence, the order passed by the learned single Judge is set aside. We hereby direct the Dental Council of India to approve the admission of the students herein, ie., the appellants in W.A.Nos.1795 to 1801 of 2018, and to issue No Objection Certificate to enable them in pursuing their remaining years of studies either in the Government Colleges or in the Government quota in the Private Dental Colleges, in the available vacancies.

19. We are also of the view that the directions of the learned single Judge ordering compensation to the tune of Rs.25 lakhs to each student, and the consequential default clause to attach the properties of the college, appears to be unwarranted and hence the said directions are set aside, but instead, the Saveetha University and the Saveetha Dental College and Hospital, shall refund the fees paid by the students herein for the I and II year B.D.S. Course under all Heads, as ordered by the learned single Judge.

20. The writ appeals are disposed of accordingly. No costs. Consequently the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

KM/rns

To

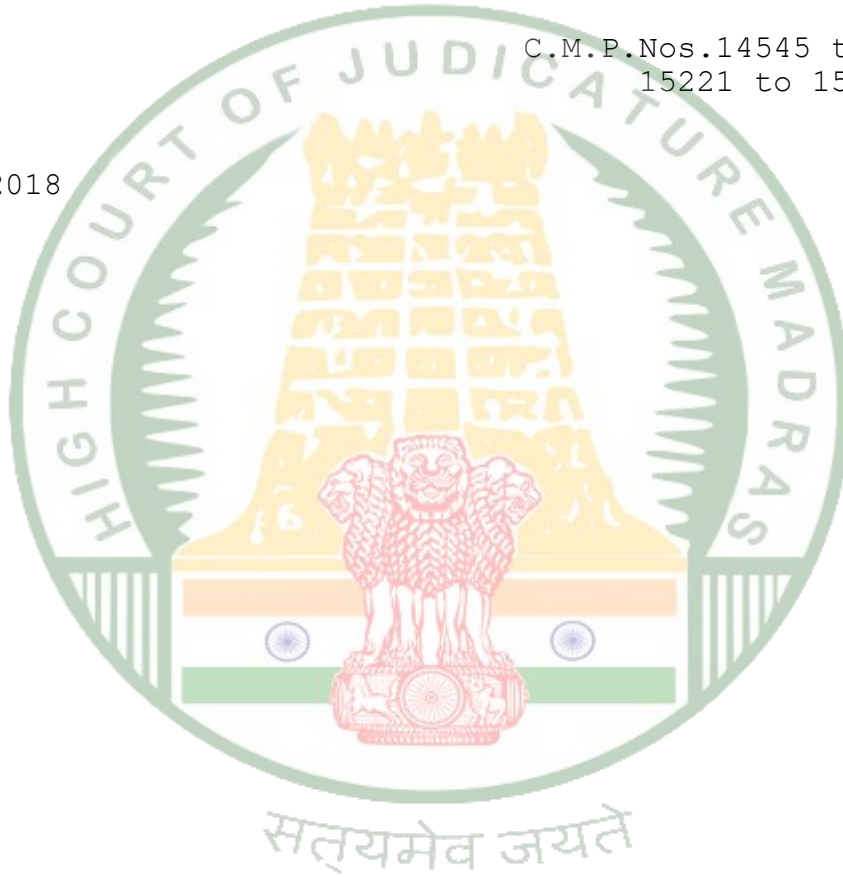
1. The Secretary, Dental Council of India,
Aiwan-E-Galib Marg, Kotla Road, Temple Lane,
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3. The Registrar,
Tamil Nadu Dr.M.G.R. Medical University,
No.69, Anna Salai, Guindy, Chennai 600 032.

+7cc to Mr.S.D.Venkateswaran, Advocate, S.R.No.68749
+2cc to Mr.S.Saravanan, Advocate, S.R.No.69035, 69034
+1cc to Mr.Haja Mohideen Gisthi, Advocate, S.R.No.68759
+1cc to the Government Pleader, S.R.No.69654

W.A.Nos.1795 to 1801 and
1888 to 1895 of 2018
and
C.M.P.Nos.14545 to 14551 and
15221 to 15228 of 2018

JP (CO)
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