

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2018

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.Nos.14342 to 14349 of 2018

V.S.Subeeeksha	... Petitioner in W.P.No.14342 of 2018
Nihal A. Sachdev	... Petitioner in W.P.No.14343 of 2018
Saranya, M.	... Petitioner in W.P.No.14344 of 2018
Adeline Persia Sorna Grace,	R.Petitioner in W.P.No.14345 of 2018
Dhanalakshmi, S.	... Petitioner in W.P.No.14346 of 2018
V.S.Apporva	... Petitioner in W.P.No.14347 of 2018
Simon Chouhan	... Petitioner in W.P.No.14348 of 2018
M.R.Mugilan	... Petitioner in W.P.No.14349 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 W.Ps.

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 the affiliated Colleges of the 3rd Respondent/University forthwith and consequently direct the 2nd and 3rd Respondents to accommodate the 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.

For Petitioner in all W.Ps. : Mr.S.D.Venkateswaran
For 1st Respondent in all W.Ps.: Mr.Haja Mohideen Gisthi,
Sr.Central Govt.Standing Counsel

For 2nd Respondent in all W.Ps. : Mrs.V.Annalakshmi,
Government Advocate
For 3rd Respondent in all W.Ps. : Mr.D.Ravichander
For Respondents 4 & 5
in all W.Ps. : Mr.S.Saravanan

C O M M O N O R D E R

As the issue involved in all the above Writ Petitions is one and the same, the cases are taken up for disposal by a common order.

2. According to the Petitioners, they were admitted in the 5th Respondent/Saveetha Dental College & Hospital (Deemed University) 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 verbally informed the Petitioners that they cannot continue the Course, as the 1st Respondent/Dental Council of India had directed the 5th Respondent/College to discharge 13 students from their batch including the Petitioners, in view of non-availability of exemption from NEET examination. Pursuant to the same, on 21.05.2018, the Petitioners approached the 1st Respondent/Dental Council of India for issuance of 'No Objection Certificate', thereby enabling them to migrate to any of the constituent affiliated Colleges of the 3rd Respondent/University from the 5th Respondent/College.

3. As there was no response from the 1st Respondent/University regarding the grant of 'No Objection Certificate', the Petitioners 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 1st Respondent/Dental Council of India to issue 'No Objection Certificate' to enable them to migrate to any of the affiliated Colleges of the 3rd Respondent/University forthwith and for a consequential direction to the 2nd and 3rd Respondents to accommodate them in any of the affiliated Colleges of the

3rd Respondent in the 2nd year B.D.S. Course of the 2016-2017 batch.

4. During the pendency of the said Writ Petition, the Petitioners received a Letter vide No.DE-114/Misc-III/2018-2360, dated 04.06.2018, from the 1st Respondent/Dental Council of India, wherein, it is stated as follows:

"That the above 8 applicants be intimated that their request 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, cannot be acceded to, as 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 as is in respect of the State Government seats only."

5. In view of the said decision of the 1st Respondent, the Petitioners withdrew the said Writ Petitions, as the relief sought therein had become infructuous. Left with no other efficacious, alternative remedy, the Petitions are before this Court with the above Writ Petitions, challenging the 1st Respondent's Letter No.DE-114/Misc-III/2018-2360, dated 04.06.2018 and for a direction to the 1st Respondent to issue 'No Objection Certificate' enabling them to migrate to any of the affiliated Colleges of the 3rd Respondent/University forthwith and for a consequential direction to the 2nd and 3rd Respondents to accommodate them in any one of the affiliated Colleges of the 3rd Respondent in the 2nd year B.D.S. Course of the 2016-2017 batch.

6. The 1st Respondent/Dental Council of India has filed counter affidavit and stated that the Petitioners have filed the present 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 1st Respondent/Dental Council of India, the admission of the Petitioners is not valid and void ab initio and that as per the Dental Council of India Revised BDS Course Regulation 2007, migration of a student is not a matter of right and 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 Petitioners from Saveetha Dental College to any other constituent Dental Institution of the 3rd Respondent/University does not arise.

7. It is further stated that the 1st Respondent/Dental Council of India scrutinized the list of students admitted by the 5th Respondent/College to B.D.S. Course for the academic session 2016-2017 and found that 13 students including the Petitioners were admitted without qualifying the NEET. Ultimately, on 12.10.2017, the 1st Respondent issued Show Cause Notice to the 5th Respondent/College as to why those 13 students including the Petitioners should not be discharged from the Course and deleted their names from the list. In reply thereto, the 5th Respondent/College furnished their Show Cause Notice, which was placed before the Executive Committee on 21.12.2017. As the Executive Committee Meeting was not satisfied by the Show Cause Notice, the 1st Respondent, on 18.01.2018, 31.01.2018 and on 23.05.2018, directed the 5th Respondent/College to discharge its 13 students including the Petitioners from B.D.S. Course and delete their names from the list. Pursuant thereto, the 5th Respondent/College discharged 13 students including the Petitioners from B.D.S. Course and deleted their names from the list and sent its final revised list on 30.05.2018 to the 1st Respondent/Dental Council of India.

8. The 3rd Respondent/Tamil Nadu Dr.M.G.R. Medical University has filed counter affidavit, relevant portion of which, reads as under:

(i) The 4th Respondent College had been admitting students to the Dental Course through a common entrance test on merits. For the NRI students, the 4th Respondent had been admitting students on the basis of an Aptitude Test till the year 2015-2016. For the year 2016-2017, the 4th Respondent 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.

(ii) In fact, DCI did not issue any clarification regarding the procedure to be adopted by the 5th Respondent Institute and the DCI amended its Regulations stating that NEET is mandatory for NRI students seeking admission in July 2017. Therefore, the 5th Respondent admitted students by conducting Aptitude Test for NRI Quota strictly on merit. It should be noted that all the Petitioners and the other NRI students (total 13) were well informed of the risks involved and that the admissions were subject to the approval of the DCI. The Institution also provided only a provisional selection letter, which clearly mentions that the admissions were subject to the approval of the DCI.

(iii) Immediately thereafter, the 5th Respondent uploaded the list of students, who were admitted to the Undergraduate Dental Programme including the 13 students admitted under NRI Quota in the web portal of DCI in the month of October 2016 itself. The 5th Respondent had also submitted the list of students including the 13 students, who were admitted under NRI Quota, for BDS programme for the year 2016-2017 through e-mail as well as by post. The DCI did not raise any objection regarding the admission of the students under NRI Quota. Furthermore, the DCI had removed other discontinued students from the initial list, but they continued to keep these students enlisted in the portal till date. Meanwhile, 3 NRI students had left the College in the 1st year itself. Remaining students completed the 1st year of study and began their second year in October 2017. Subsequently, the DCI sent a surprising letter on October 12, 2017, demanding the discharge of the 13 NRI students.

(iv) The 3rd Respondent requested the DCI to reconsider the decision, subjudice to the interim stay granted to similar students in other Colleges by the Supreme Court in W.P.No.250 of 2017. The 3rd Respondent also pleaded to the DCI that many of the students were toppers in the first year exams and they want to protect their career. The marks obtained by these students were submitted to the DCI on October 30, 2017. 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 DCI directed the 3rd Respondent to discharge all the 13 students admitted under NRI Quota.

9. According to the 3rd Respondent/University, they have no objection for the Petitioners getting 'No Objection Certificate' from the Dental Council of India and joining some other College in the State of Tamil Nadu.

10. Heard the learned counsel on either side and perused the material documents placed on record.

11. It is seen that the Dentists Act, 1948 was amended as the Dentists (Amendment) Act, 2016 and the same was published in the Gazette of India, Extraordinary, Part II - Section 1, dated 05.08.2016, thereby inserting Section 10D, which reads as under:

"10D. There shall be conducted a uniform entrance examination to all dental educational institutions at the undergraduate level and post-graduate level through such designated authority in Hindi, English and such other languages and in such manner, as may be prescribed and the designated authority shall ensure the conduct of uniform entrance examination in the aforesaid manner:

Provided that notwithstanding any judgment or order of any Court, the provisions of this section shall not apply, in relation to the uniform entrance examination at the undergraduate level for the academic year 2016-17 conducted in accordance with any regulations made under this Act, in respect of the State Government seats (whether in Government Dental College or in private Dental College), where such State has not opted for such examination."

12. Admittedly, the Petitioners sought admission in the 5th Respondent/College under NRI Quota and they were provisionally admitted in B.D.S. Course. As per Section 10D of the Dentists (Amendment) Act, 2016, the Petitioners will have to qualify NEET, without which, admission cannot be granted. While so, the 5th Respondent/College has misled the students by granting provisional admission merely on the basis of Aptitude Test.

13. The 1st Respondent/Dental Council of India has categorically stated that the 5th Respondent/College has admitted 13 students including the Petitioners herein under NRI Quota for B.D.S. Course for the academic year 2016-17, without qualifying NEET. It is seen that only pursuant to the Show Cause Notice issued by the 1st Respondent/Dental Council of India to the 5th Respondent/College, 13 students including the Petitioners herein were discharged from B.D.S. Course in the 5th Respondent College and their names were deleted from the list.

14. It is to be noted that the Supreme Court has held that NEET is mandatory to all seeking admission to M.B.B.S./B.D.S. Course and it is applicable to those seeking admission under Government Quota, Management Quota and NRI Quota and that exemption was given in the academic year 2016-17 only for admissions under Government Quota and not with regard to admissions under Management Quota. Even though, it has been contended that there are seats still vacant under Management Quota and that some of the students have been asked to join the Course, this Court is of the view that the 5th Respondent/College has played fraud on the Petitioners and their parents.

15. In view of the amended provision viz. Section 10D of the Dentists (Amendment) Act, 2016 and that one seeking admission for MBBS/BDS Course from the academic year 2016-17 has to qualify NEET, even with regard to NRI Quota, the decision taken by the 1st Respondent/Dental Council of India, vide the order impugned dated 04.06.2018, declining the request of the Petitioners for migration to any College affiliated with the 3rd Respondent/University, is perfectly in

16. It is very unfortunate that education in India, more particularly in the State of Tamil Nadu has become business and Universities like the 4th Respondent/Saveetha University is ruining the career of students for the sake of their business.

17. Though the relief sought by the Petitioners cannot be granted, it is saddening to note that the Petitioners are not able to continue the Course pursued by them for two years, due to the fraud played by the 5th Respondent/College. As the Petitioners have lost 2 years of their studies, this Court directs the 4th Respondent/Saveetha University and the 5th Respondent/Saveetha Dental College and Hospital, to refund the fees paid by the Petitioners 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 this order. Further, the 4th Respondent/Saveetha University shall issue Transfer Certificate to the Petitioners and also return all their Original Certificates, within a period of one week from the date of receipt of a copy of this order.

18. Apart from the refund of fees to the Petitioners, the 4th Respondent/Saveetha University is directed to pay a sum of Rs.25 lakhs (Rupees Twenty Five Lakhs only) as compensation to each of the Petitioners, by means of crossed cheque, within a period of 45 (forty-five) days from the date of receipt of a copy of this order, failing which it is open to the State Government to attach the properties of the 4th Respondent/Saveetha University, to bring it to sale.

19. In fine, Writ Petitions are dismissed with the above direction and observations. No costs.

20. List the Writ Petitions for 'reporting compliance of the directions of this Court in paragraphs 17 and 18,' on 08.10.2018.

Sd/-

Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

(aeb)

To:

- 1.The Additional Director of Medical Education/
Secretary of Selection Committee,
No.162, E.V.R. Periyar Salai,
Kilpauk, Chennai 600 010.
Guindy, Chennai 600 032.

W.P.Nos.14342 to 14349 of 2018

+8CC TO S.D.VENKATESWARAN ADVOCATE SR.NO.46860

+1CC TO MR.D.RAVICHANDRAN ADVOCATE SR.NO.46935

+1CC TO MR.S.HAJA MOHIDEENGOTHI ADVOCATE SR.NO.46975

+8CC TO MR.S.SARAVANAN ADVOCATE SR.NO.47291,47292,
47293,47294,47295,47296,47297,47298

+1CC TO GOVERNMENT PLEADER SR.NO.48043

AR(CS-VII)

ASK(31/07/2018)



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