

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8510 of 2019

Dr. B. R. Ambedkar Institute of Dental Sciences and Hospital having its Office at Hari Om Nagar, P.S.-Rupaspur, New Baily Road, Patna through its Principal Dr. M. Shrinivasa Raju aged about 46 years Son of M. Krishnam Raju, Resident of House no. 204, Jai Anoop Apartment, Hariom Nagar, Patna

... .. Petitioner/s

Versus

1. The union of India through its Secretary, Ministry of Health and Family Welfare, Government of India, New Delhi-110002
2. The Secretary, Ministry of Health and Family Welfare, Government of India, New Delhi-110002
3. Under Secretary, Dental Education Section, Ministry of Health and Family Welfare, Government of India, New Delhi-110002.
4. The Dental Council of India, through its Secretary, Aiwan-E-Galib Marg, Kotla Road, New Delhi-110002
5. The Secretary, Dental Council of India, Aiwan-E-Galib Marg, Kotla Road, New Delhi-110002

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Y.V.Giri, Sr. Adv. Mr. Anjani Kumar Jha, Adv.
For the Union of India	:	Ms. Kanak Verma, Adv.
For the Dental Council of India:		Mr. S.D.Sanjay, ADDL.SG Mr. Alok Kumar Agrawal, Adv.

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
C.A.V. JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 01-07-2019

The petitioner is a College imparting education in Dental Sciences and is duly recognized by the Dental Council of India. The college is affiliated to the Magadh University.

The relief prayed by the petitioner in this writ



petition filed under Article 226 of the Constitution of India runs under:

“(i) For declaring the Regulation 11A of the Dental Council of India (Establishment of New Dental Colleges, Opening of New or Higher course Study or Training and Increase of Admission Capacity in Dental Colleges) Regulations, 2006 (hereinafter referred as Regulations, 2006) which was inserted through Gazette Notification dated 04.07.2017 by Dental Council of India (Establishment of New Dental Colleges, Opening of New or Higher course Study or Training and Increase of Admission Capacity in Dental Colleges) (9th Amendment) Regulation, 2017, ultra vires to the Dentist Act, 1948 and Regulations, 2006.
(ii) For any other relief/reliefs to petitioner is entitled for.”

Facts of the case lie in a very narrow compass as already stated above. The petitioner-College is imparting education in Dental Sciences and on its fulfilling the eligibility criteria for imparting dental education that it has been granted recognition and affiliation under Dentist Act, 1948 (hereinafter referred to as ‘the Act’). The petitioner has enclosed a gazette notification in support of his submission which was published in gazette of India on 15.04.2000.

Section 3 of ‘the Act’ inter alia provides for constitution and composition of Dental Council of India and Section 9 empowers the Council to constitute a Committee for general or special purposes as the Council may consider



necessary for carrying out its functions under 'the Act'. The provisions of Section 10 and 10A of 'the Act' inter alia deals with the recognition of dental qualifications and permission for establishment of new Dental College as well as the courses of study etc. Section 16 and 16A of 'the Act' deals with the withdrawal of such recognition. The provisions taken note of succinctly discusses the role of the Dental Council of India in either of the two situations i.e grant as well as withdrawal of recognition.

Section 20 of 'the Act' empowers the Council to frame regulations for carrying out the purposes which are not inconsistent with the provisions 'the Act'. It is in exercise of powers vested under Section 20 of 'the Act' that the Dental Council of India has framed regulations which are called the Dental Council of India (Establishment of New Dental Colleges, Opening of New or Higher course of Study or Training and Increase of Admission Capacity in Dental Colleges) Regulation, 2006 (hereinafter referred to as 'the Regulation'). The regulations have been notified vide Notification dated 12.01.2006 published in the Gazette of India.

Upto this stage there is no dispute. The dispute is because by the 9th Amendment to 'the Regulation' published



vide Notification dated 05.07.2017 Regulation 11A has been incorporated in the Regulations, which inter alia, enables the Council to make recommendations to the Central Government, for withdrawal of recognition of any such dental qualification at undergraduate and/or Post- Graduate level where any recognized Dental institution does not satisfy the statutory requirements in relation to staff, building, equipment, accommodation, training and other facilities as mandated in 'the Act', the rule and regulation framed thereunder. The amendment while empowering the Dental Council to make such recommendation alongside enables the Central Government to take appropriate action on such recommendation including stoppage of admissions at such course of study and training with due opportunity of hearing to the concerned dental institution. It is this 9th Amendment whereby Regulation 11A has been incorporated in the Regulations, which aggrieves the petitioner to move this Court through the writ petition in question.

Heard Mr. Y.V. Giri, learned Senior counsel appearing for the petitioner along with Mr. Anjani Kumar Jha, Advocate on record, the respondent Union of India is represented by Ms. Kanak Verma and the respondent- Dental Council of India is represented by Mr. S.D. Sanjay who appears



with Mr. Alok Kumar Agrawal.

Mr. Giri, while inviting the attention of this Court to the provisions of Section 10 of 'the Act' submits that once a recognition to impart dental qualification is granted to any institution, the recognition continues until it is withdrawn in accordance with law by a specific order. According to Mr. Giri, the mandate coming from the Parliament, the Dental Council of India has no business to dilute the mandate and it is the Central Government alone who is empowered to interfere with the recognition so granted. Learned counsel while referring to the gazette notification at Annexure-1 submits that the qualification granted by this petitioner institution stood recognized way back in the year 2000 and consequently a bachelor degree in Dental Surgery is being granted by the petitioner institution since after 09.03.1999 which is a recognized qualification.

According to Mr. Giri, until this recognition of the qualification continues, the right of the petitioner institution to admit students cannot be interfered with simply because, in the fractured opinion of the Council, the petitioner did not fulfill the requirements. Mr. Giri while disputing the reasons assigned by the Council submits that even if the Council has its reasons for such recommendations they may recommend to the Central



Government for withdrawal of the recognition but it cannot advice the Central Government on the consequential action which has been done vide the amended Regulation 11A, introduced by way of 9th Amendment.

Learned counsel next referred to the provisions underlying Section 10A to submit that the said provision regulates establishment of New Dental College or new courses but those who have already been granted recognition on the courses imparted under Section 10, are not covered by this provision. Learned counsel next referred to the provisions of Section 16 and 16A to submit that it deals with the withdrawal of recognition of recognized dental qualification but the power has to be exercised by the Central Government.

Mr. Giri, next turns to the provisions of Section 16A of 'the Act' to submit that the provision deals with the withdrawal of recognition of a recognized dental qualification and in such case the Council is to send a statement to such effect to the Central Government who after obtaining the opinion of the State Government, is to take necessary decision thereon. Mr. Giri, has next turned to the power vested in the Council to make regulation and in reference to the provisions present at Clause (h) of Section 20(2) he submits that no power has been vested in



the Dental Council of India to frame regulations on admission of students or to tender advice to the Central Government as to how it is to proceed on a recommendation made by the Council in relation to a recognition granted to any institution in respect of any dental qualification. According to Mr. Giri, the Dental Council of India while framing Regulation 11A under the 9th Amendment has travelled beyond the regulation making power inasmuch as the stipulation present in the amendment in so far as the consequential action to be taken by the Central Government is concerned, is illegal and beyond the regulation making jurisdiction conferred on the Council under 'the Act'. According to Mr. Giri, the Dental Council of India itself being a delegatee cannot empower the Central Government as to the course of action.

Mr. Giri, has next referred to the Division Bench judgment placed on record by the Dental Council of India at Annexure -R-4 and R5/2 in L.P.A. No. 1054 of 2017 to submit that the amendment in question was notified on 05.07.2017 after the writ petition filed by the petitioner arising from C.W.J.C. No. 19129 of 2016 was allowed by the learned Single Judge by this Court on 19.05.2017. According to Mr. Giri, it is with the view to provide justification to the illegal action of stopping



admissions that a recourse to the 9th Amendment has been made by the Dental Council of India. He submits that though the judgment and order of the learned Single Judge was interfered with by the Division Bench in L.P.A. No. 1054 of 2017 but on the Special Leave Petition preferred by the writ petitioner herein giving rise to Civil Appeal No.12064 of 2018 (Special Leave Petition (C) No. 31048 of 2018), the Supreme Court has given protection to the students who have been admitted as manifest from the order at running page 43 of the counter affidavit filed on behalf of the Council.

In sum and substance the argument of Mr. Giri is that:

(a) Regulation 11A incorporated by way of 9th Amendment is an exercise in excess of the power vested in the Council under Section 20 of 'the Act';

(b) The Dental Council of India itself being a delegatee, cannot confer power on a body superior to the Dental Council of India i.e the Central Government in the manner of regulating admission to institutions against whom recommendations for withdrawal of recognition of qualification has been made.

(c) Regulation 11, in so far as it provides for



stoppage of admissions, is not only contrary to the statutory provisions of Section 10 and Section 16A but is also contrary to the regulations, as originally framed.

Learned counsel in support of his submissions that a subordinate legislation cannot travel beyond the scope of 'the Act' nor can be inconsistent with the provisions present therein, has relied upon following judgments:

(1) (1988) 2SCC 351 (General Officer, Commanding in Chief versus Dr. Subhash Chandra Yadav) paragraphs 12, 13 and 15

(2)(2011)8 SCC 274 (Academy of Nutrition Improvement versus Union of India) paragraphs 64 and 66.

(3) (2008)5 SCC 416 (A. Satyanarayana versus S. Purushotham & Ors.) paragraphs 23, 24 and 34.

The arguments of Mr. Giri, has been contested by Mr. S.D. Sanjay learned Senior counsel appearing for the Dental Council of India who in reference to the different provisions of 'the Act' submits that the very object of 'the Act' is to maintain the standard of dental education within the country. Learned counsel while making reference to the regulations at Annexure-3 submits that these were framed by the Council for carrying out the purposes of 'the Act' as well as for discharge of obligations



conferred on the Council under 'the Act'. He submits that the petitioner- institution was though established in 1993 but introduced a Post- Graduate course subsequently and thus this introduction of the P.G. course invited the applicability of Regulation 2(b) and consequently 2(c) of 'the Regulations' which deals with introduction of a New courses including at Post- Graduate level as well as for increase in admission capacity. Learned counsel after taking this Court to the various provisions of the Regulation has addressed on the amended regulation 11A introduced through 9th Amendment to submit that until such time that it would effect the petitioner adversely or travel beyond Section 10A, the petitioner has no cause of action. Learned counsel in reference to the provisions of Section 20(2)(g)(h)(i) which amply empowers the Council to frame such regulation which has also the approval of the Central Government.

Learned counsel has referred to a judgment of the Supreme Court reported in **(2012)1 SCC 321 (Ashok Kumar Lingala versus the State of Karnataka)** and in particular reference to the opinion expressed at paragraphs 17 and 21 to 23 he submits that the power to pass interim orders stands recognized and specially where recommendation is made



against an institution on non fulfillment of the criteria for granting such qualification, it is in order to save the students from being mislead into believing and gathering impression that such a provision has been incorporated.

Learned counsel has next referred to a judgment reported in **(2001)8 SCC 427 (MEDICAL COUNCIL OF INDIA vs. SARANG AND OTHERS)** and in particular reference to the observation present at paragraph 6, submits that it has been opinion of the Supreme Court that Courts should normally, not be interfering or interpreting rules concerning academic standard which should be left for the experts in the field. According to Mr. Sanjay, it is with a view to maintain the standard of Dental Education and where any institution is found wanting on eligibility that keeping the larger interest of the students in mind, the regulation in question has been framed which neither oversteps jurisdiction nor violates any rule.

According to Mr. Sanjay, the issue relating to stoppage of admissions has earlier been addressed before this Court at the instance of this very petitioner and though the opinion of the learned Single Judge went in favour of the petitioner, the same was set aside on an appeal filed by the Dental Council of India bearing L.P.A. No.1054 of 2017



enclosed at Annexure- R/4 of the counter affidavit bearing note of the career of the students which as opined by the Division Bench, needed protection. He submits that the view of the Division Bench was not interfered with by the Supreme Court on the Special Leave Petition filed by the petitioner- College rather the Supreme Court allowed inspection of the College but while doing so, it is protecting the interest of the students who had been admitted in the meanwhile, that they were allowed to continue and appear in examinations, with direction to declare their results. According to Mr. Sanjay, the issue is already concluded and the petitioner, unsuccessful in the earlier round, has chosen to move again raising the same very issues while assailing the 9th Amendment incorporating Regulation 11A, in the Regulations.

We have heard learned counsel for the parties and we have perused the records and the only issue which falls for consideration is, “whether Regulation 11A added by way of 9th Amendment, is beyond the regulation making power conferred on the Dental Council of India under Section 20 of ‘the Act’, in so far as it advises the Central Government for stoppage of admissions.”

Before recording my opinion on the inter party



contest, I deem it necessary to record some of the relevant provisions of 'the Act' and also to the opinion expressed by the coordinate bench in the earlier round of litigation which has not been interfered with by the Supreme Court.

Section 2(a) of 'the Act' defines "the Council" and means the Dental Council of India constituted under Section 3 of 'the Act'.

Section 2(j) defines "recognized dental qualification" and means any qualification included in the schedule.

The two provisions which are relevant for the purpose of consideration of the dispute is the provision relating to the grant of recognition as well as the withdrawal thereof.

Section 10 of 'the Act' lays down the procedure for recognition of dental education and it is in exercise of such powers that the Central Government after consulting the Dental Council of India, amended part I of the Schedule of 'the Act' to include the petitioner at Serial No. 37 thus giving recognition for imparting a bachelor degree course in Dental Surgery which qualification was held, a recognized dental qualification. This position is manifest from the notification dated 04.04.2000 published in the Gazette of India Extraordinary dated



15.04.2000 at Annexure-1. The qualification was certified as a recognized dental qualification when granted on or after 09.03.1999. According to Mr. Sanjay, though the institution was established in 1993 with undergraduate course but they introduced a Post- Graduate course subsequently.

Section 10A of 'the Act' provides for permission for establishment of new dental college, new courses of study, etc. and inter alia restrains any person from establishing any institution or conducting a course including a post-graduate course or increase its admission capacity without obtaining permission of the Central Government in accordance with the provisions. In so far as the enhancement of admission capacity is concerned, Explanation 2 provides that it is the number of students fixed by the council from time to time for admitting students to such course or training.

Section 16 deals with the withdrawal of the recognition and provides that where on a report given by the Executive Committee, it appears to the Council that- the courses of study or the conditions for admission to such course or the standards of proficiency, is not in conformity with the regulations or where any institution does not satisfy the requirements, the Council may recommend to the State



Government and the State Government shall forward the same along with its remarks to the authority or the institution concerned seeking its explanation. It is on receipt of the recommendations from the State Government that the Council may pass appropriate order with regard to validity of the qualification granted by such institution.

Section 16A of 'the Act' deals with withdrawal of recognition of recognized dental qualification and empowers the Central Government to pass appropriate orders on the report submitted by the Council as well as the recommendation of the State Government. The declaration so made are to be published in the official gazette. The regulation which pains the petitioner is Regulation 11A and which reads under:

“The following regulations 11A has been inserted vide (9th Amendment) notification dated 05.07.2017.

Stop of admissions

11A When, upon report by the Executive Committee or the Visitor it appears to the Council that-

Any recognized Dental institution does not satisfy the requirement of the Council at undergraduate and/or postgraduate level in terms of staff, building, equipment, accommodation, training and other facilities as prescribed in the Dentist's Act, 1948 and Rules & Regulations made thereunder, as amended from time to time it may recommend to the Central Government for withdrawal of recognition of such dental qualification at undergraduate and/or



postgraduate level under section 16A of the Dentists Act and the Central Government may take appropriate action thereon as it may think fit in the facts and circumstances of each case including stoppage of admission at such course(s) of study and training, after an opportunity of hearing is granted to such dental institution.

Now while according to Mr. Giri this regulation is in excess of the jurisdiction conferred on the Council under 'the Regulation' making power present in Section 20 of 'the Act', the exercise is justified by Mr. Sanjay, in reference to the provisions of Section 20(2)(g)(h)(i).

Before proceeding further I am persuaded to take notice of the inter party contest which was subject matter of previous round litigation and a plain reading of the issue which lay at the foundation of the contest as noted at paragraph 1 of the Division Bench judgment, would confirm that the petitioner herein had questioned the power of the Central Government to stop a dental college from taking admission without taking a decision in terms of the provisions underlying Section 16A (4) of 'the Act' which empowers the Central Government to take final decision on the withdrawal of recognition of a recognized dental qualification.

A submission was made by Mr. Giri that the amended Regulation 11A was notified after the judgment of the



learned Single Judge passed on the writ petition dated 19.5.2017. Perhaps, according to Mr. Giri, it is to meet the situation that such exercise was carried out. In my opinion, even if the amendment was made to meet the situation, if it is in tune with the regulation making power vested in the Council under Section 20, the same cannot be assailed on this ground.

Reverting back to the Division Bench judgment it is seen that it is questioning this very power of the Central Government to stop admission in the Dental College and the orders issued by the Central Government in this regard, whereby the petitioner institution was intimated to stop admissions in the BDS course for the academic Session 2016-17 that the petitioner herein moved in C.W.J.C. No.19129 of 2016 and though he did succeed before the learned Single Judge but the said opinion was set aside by the Division Bench in L.P.A. No. 1054 of 2017 and which opinion of the Division Bench was not interfered with by the Supreme Court on the Special Leave Petition of the petitioner even though the academic session of the students so admitted, was protected. It is a matter of utmost importance that even when there was no regulation present to empower the Central Government to interfere with the admissions, during the pendency of any enquiry against any



institution imparting dental education, yet its power was recognized by this Court and not interfered with by the Supreme Court. As we have noted, the petitioner raised this very issue regarding the power of the Central Government to restrict admissions by way of interim order and until the Supreme Court, remained unsuccessful. In fact, the Supreme Court while recording its opinion in favour of the students who had been admitted in the meanwhile, has taken note of the amended regulations which empowered the Central Government to stop admission as an interim measure, as manifest from the opinion expressed at paragraph 3, the extract of which is reproduced hereinunder:

- “1. Leave is granted.
2. Heard the learned counsel for the parties. We need not retain these matters before this Court. The question involved is that the proceedings for withdrawal of recognition have been initiated and they have not been finalised so far. However, at the same time, there was an interim order issued by the Dental Council of India not to admit the students.
3. But since the students have been admitted, under the order of the Court, their careers cannot be made dependent upon the outcome of the pending withdrawal proceedings. The students who are obtaining instructions, cannot be said to be provisionally admitted since there is no withdrawal of their cognition so far. Even assuming, there is a power in the amended regulations to stop the admission, byway of interim measure, nonetheless, the fact remains that the students have been admitted and they are



obtaining instruction and their careers cannot be spoiled. Once they have been admitted and obtained the instruction in the institution, the education which has been obtained by them, is required to be saved.”

(Emphasis is mine)

In view of the legal position that we have taken note of above, there is no scope for a second round challenge by the petitioner. However since the challenge is on grounds of lack of competence, it is to be seen whether the amended regulations travel beyond the regulation making power vested in the Council under Section 20 and/or whether the Council can be an advisor for the Central Government in the matter of stoppage of admission in institution against whom enquiry is initiated under Section 16A of ‘the Act’.

The judgments relied upon by Mr. Giri are sound on the legal position. A regulation must conform to the provisions of the parent Act under which it is framed and also should be within rule making power. There thus, cannot be any dispute on the proposition advanced by Mr. Giri, save and except that it fails to apply to the contest in hand. That the Council is amply empowered to prescribe standard curricula for training of dentists as well as for laying down conditions for admission to courses of such training; to prescribe standards of examination and other requirements to be satisfied for securing



qualifications recognition under ‘the Act’; or any other matter prescribed under ‘the Act’; is manifest from the provisions underlying Section 20(2)(g)(h)(i) which runs under:

“20 (1).....
(2).....
(a).....
.....
(g)prescribe the standard curricular for the training of dentists and dental hygienists, and the conditions for admission to courses of such training;
(h)prescribe the standards of examinations and other requirements to be satisfied to secure for qualifications recognition under this Act;
[(ha) the designated authority, other languages and the manner of conducting of uniform entrance examination to all dental educational institutions at the undergraduate level and post-graduate level;]
(i) any other matter which is to be or may be prescribed under this Act:
Provided that regulations under clauses (g) and (h) shall be made after consultation with [State] Governments.”

Section 10A of ‘the Act’ deals with the permission for establishment of New Dental College, new courses and confers jurisdiction on the Dental Council of India for fixing the maximum number of students for being admitted to any such course. No doubt the ultimate decision is to be taken by the Central Government on such permission but in so far as the issue of admission capacity is concerned, the Dental Council of India has a definite role to play.



Section 16 and 16A on the other hand deals with issue of withdrawal of recognition and withdrawal of recognition to recognized dental qualification and even if the Central Government is the ultimate statutory authority to take a decision in this regard, the role of the Dental Council of India as well as the role of the Executive Committee as well as the State, stands discussed.

Section 20 empowers the Council to frame regulations on the issue of prescribing standards for qualification and recognition under 'the Act' under Section 20(2)(h) as well as to lay down conditions for admission to courses under Section 20(2)(g) besides the residuary power under Clause (i) of Section 20(2) amply empowers the Dental Council of India to frame Regulation 11A which inter alia enables the Council to recommend to the Central Government for withdrawal of recognition of any recognized dental institution which does not satisfy the requirements at undergraduate course or Post- Graduate level in terms of the staff, building, equipment accommodation etc. as well as for appropriate action at the level of the Central Government including stoppage of admissions.

Having expressed on complete lack of foundation



to maintain this writ petition in view of the earlier judicial opinion as well as the statutory provision present, I, completely fail to appreciate as to how the stipulation present in Regulation 11A which simply reminds the Central Government of proposed consequential action, where a recommendation for derecognition of the present kind is in consideration, can render the provision ultra vires or an exercise in excess jurisdiction even when the provisions confirm that issues relatable to admissions including fixation of strength thereof is within the power vested in the Dental Council of India. In fact, as rightly canvassed by Mr. Sanjay, the provisions available at Section 20(2)(g)(h)(i) is a sufficient explanation to the power conferred on the Dental Council of India to frame such regulation. The regulation neither confers power on the Central Government as canvassed by Mr. Giri nor issues any such directions in this regard rather in view of the jurisdiction reserved in the Dental Council of India in the matter of admission or fixation of strength for any course as present in the Explanation 2 attached below Section 10A together with the regulation making power present at Section 20(2)(g) that the option is left open for the Central Government to take decision on admission which, in no manner oversteps the jurisdiction reserved in



the Council under the statute.

In my opinion it is on a complete misconception of the legal position and despite being unsuccessful in his challenge to question the authority of the Central Government to stop admissions in any institution imparting dental education that the writ petition is filed which is bereft of merit and is dismissed accordingly.

No order as to costs.

(Jyoti Saran, J)

Anjani Kumar Sharan, J:- I agree

(Anjani Kumar Sharan, J)

Bibhash

AFR/NAFR	AFR
CAV DATE	16.05.2019
Uploading Date	18.07.2019
Transmission Date	NA

