

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 5100 OF 2019

1. Gitanjali D/o Bharatrao Sangale
Age 28 years, Occu. Student
R/o Bhagwan Shrikrushna Niwas,
Swarajya Nagar, Barshi Road,
Beed, Tal & Dist. Beed
 2. Ushatai D/o Panditrao Kamble
Age 28 years, Occu: Student,
R/o at Hansal, Tal. Mukhed,
Dist. Nanded
- ... Petitioners

Versus

1. The State of Maharashtra
Through its Principal Secretary,
Medical Education & Drug Department,
Mantralaya, Mumbai
 2. The Dental Council of India,
Aiwan-E-Galib Marg,
Kotla Road, New Delhi,
Through its Secretary
 3. The Controller of Examination,
Maharashtra University of Health Sciences,
Nashik Dist. Nashik
 4. Aditya Dental College
Sarda Estate, Pimpalner Road, Beed
Tal & Dist. Beed
- ... Respondents

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Mr. Avinash D. Aghav, Advocate for the petitioners
Mr. S. B. Yawalkar, AGP for respondent No.1-State
Mr. Alok Sharma, Standing Counsel for respondent No.2
Mr. K. M. Suryawanshi, Advocate for respondent No.3

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**CORAM : SUNIL P. DESHMUKH AND
R. G. AVACHAT, JJ.**

DATED : 06th OCTOBER, 2020

ORAL JUDGMENT (PER SUNIL P. DESHMUKH, J.) :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned counsel for the parties.
2. The petitioners are before this court against and aggrieved by a communication dated 04-04-2019, referring to a circular bearing No.90/2018 dated 05-12-2018, and returning their applications (examination forms) for appearing at the BDS course examinations.
3. A division bench of this court under its interim order dated 02-05-2019, had directed not to refuse to accept examination forms of petitioners only on the basis of aforesaid circular.
4. Learned counsel Mr. Avinash Aghav, with reference to impediment created under communication dated 04-04-2019 for appearance at third and fourth year of BDS examinations-2019, purportedly blocking petitioners' prosecution of the course,

contends that petitioners were admitted to BDS course in academic year 2010-2011 and have respectively pursued the same without any hindrance up to third and fourth year of the course.

5. He submits that the circular dated 05-12-2018 had been issued pursuant to amendment to the Dental Council of India (DCI) regulations in 2015, and naturally would be prospectively operative and would not affect appearance at examinations of students who had been given admissions before amended regulations of 2015.

6. He submits, over and above aforesaid, way back on 19-01-2016, DCI the apex body having control over the process, had specifically clarified that amended regulations are applicable only to students admitted to BDS course after 27-04-2015. He submits that impugned communication has been issued unmindful of the clarification.

7. He fairly refers to that petitioners had not passed first year of BDS course within a period of three years and have passed the same subsequently. It would be an argument in resistance, yet it cannot be denied that the petitioners have

been allowed to undertake further years' study courses after they have passed first year BDS course and have been through subsequent years' study courses.

8. He submits that present position is no longer *res-integra*. A division bench of this court at Nagpur in the case of *Ku. Teena Rajesh Ghate V. Maharashtra University of Health Sciences and another* bearing Writ Petition No.3674 of 2019, had set aside the blockade for students created in similar situation, while petitioner therein had been allowed to take subsequent course in further years of BDS, despite having failed to pass first year BDS course in three years. He submits that petitioner therein had been purportedly discharged from taking further course and under an interim order she was allowed to appear at the examination and the writ petition had been finally allowed.

9. On the other hand, Mr. K. M. Suryawanshi, learned counsel appearing for respondent No.3 - University submits that a division bench at the principal seat, in the case of *Bhavana Ahire Vs Mathurabai Thorat Dental College & Institution Amrutnagar Koliwadi and another* in writ petition No.5229 of 2019, had approached the situation differently taking into account the purpose underlying education

and had considered that this is a purely academic matter and an academic body comprising experts in the field has devised a mechanism whereby student enrolled for the course has to clear it within outer time limit, failing which he is not entitled to the bachelors degree. He also refers to that a division bench at Aurangabad (W.P.No.4326 of 2019) had an occasion to consider such a situation, when students had not been able to complete BDS course in nine years referring to that but petitioners therein had passed first year BDS course within three years. He, therefore, submits that, having regard to aforesaid, the decision taken by the authority of returning examination forms had been proper.

10. Both the petitioners have passed the first year of BDS in 2014 and subsequently, were allowed to undertake further years studies of BDS course.

11. In the meanwhile, DCI under a communication dated 19-01-2016 (annexed to petition at page 22) appears to have issued clarification to regulation of 2015, as under;

*“The provision of revised BDS Course (7th Amendment Regulation 2015) are **applicable only to those students who have been admitted in BDS course in any Dental institution after the date of commencement of these regulation i.e. 27.4.2015** (Date of publication of this regulation in official gazette of India).”*

12. It further appears that petitioner No.1 has undergone third year course and petitioner No.2 has completed fourth year and while they were to appear in 2019 at third and fourth year BDS examinations with reference to aforesaid circular dated 05-12-2018, acceptance of application forms for examination had been declined and refusal has not exactly been for the reason that petitioners had not completed their first year BDS course within three years pursuant to earlier prevailing regulation.

13. Relevant portion of the circular dated 05-12-2018, is as under;

"It is mentioned in the amendment in DCI's Regulations 2007 dated 27th April 2015 that, "Any student, who does not clear the BDS course in all subjects within a period of Nine years, including one-year compulsory Rotatory paid internship from the date of admission shall be discharged from the Course."

14. A closely similar situation as in the case of present petition appears to have been already treaded upon by a division bench of this court at Nagpur in its judgment in the case of *Ku. Teena Rajesh Ghate* (supra). It can be seen, in said decision the division bench had taken into account that DCI pursuant to its powers under the provisions of Dentists Act, 1948 had revised BDS course regulations and has also further

purported to modify those in 2017. Paragraph No.5 of said judgment is, thus;

“5. On 27.04.2015, the Dental Council of India in exercise of the powers conferred by Section 20 of the Dentists Act, 1948, with the previous sanction of the Central Government, made the amendment to the existing revised BDS Course Regulations 2007, which were published in Gazette of India on 10.09.2017. The Notification says that the amendment shall come into force on the date of its publication in the Official Gazette. The existing clause which we have already reproduced was substituted by the following clause.

“Any student who does not clear the BDS course in all the subjects within a period of nine years, including one-year compulsory Rotatory paid internship from the date of admission shall be discharged from the course”.

Subsequently, in the year 2017, further modification to the Regulation was done, which we reproduced below:

“In partial modification of DCI’s Revised BDS Course (7th Amendment) Regulations, 2015 approved by GOI letters dated 27.01.2015 & 25.02.2015 and notified in the Official Gazette on 27.04.2015, the following proviso is hereby added:-

“Provided these regulations shall also applicable to the students admitted in BDS Course in any Dental Institutions from the academic session 2008-09 onwards but has not clear their 1st year BDS Course within a period of 3 years from the date of admission.”

Pending approval of the Central Government for inserting the said proviso, the respective Hon’ble Court wherever the issue is pending be approved of this position and also that during pendency of the approval of GOI, this Council would have no objection if the students affected by 7th Amendment are allowed/permitted to continue their course in their respective Dental College but subject to approval of Central Government.”

15. With respect to above, it may be pertinent to refer to affidavit-in-reply on behalf of present respondent No.2 - Dental

Council of India, filed in August 2019, in paragraph No.7, as under;

"7. That the answering respondent DCI, in order mitigate the hardship being faced by the student, again proposed to the Central Government to implement the DCI Revised BDS Course (7th Amendment) Regulations 2015 notified on 27.04.2015 retrospectively from the students admitted from the academic year 2008-2009 onwards and the proposal to this effect was sent on 06.07.2016. In reply thereto, the Central Government vide its Order dated 11.09.2017 turned down the proposal of the Answering Respondent. Accordingly, the Answering Respondent on 13.09.2017 vide Circular No.DE-87(1)(7)-M2-2017/9897 informed all the Stake holders including 2nd Respondent-University. In the Circular dated 13.09.2017 of the Answering Respondent it was very categorically made clear that the provisions of DCI Revised BDS Course (7th Amendment) Regulations 2015 shall be applicable only to the students who have been admitted on or after 27.04.2015."

16. While resistance to petition appears to be with reference to order passed by division bench at principal seat in *Bhavana Ahire Vs. Mathurabai Thorat Dental College & Institution (Writ Petition No.5229 of 2019)*. Developments in respect of operation of regulations do not appear to have been brought to the notice of said division bench and had not fallen for its consideration. It does not appear in said case petitioner could appear at the examination.

17. Further in *Ku. Teena Rajesh Ghate (supra)* in paragraphs 9 to 12, it has been observed thus;

"9. Undisputedly, the petitioner neither did pass her first year BDS Course within a period of three years from the date of

admission nor has completed the said course within a period of nine years. The question involved, therefore, is whether the petitioner could be discharged from the BDS Course on the ground that she failed to clear first year BDS Examination in all subjects within three years from 29.09.2010 to 28.09.2013 or for failing to complete entire BDS Course within a period of nine years upto Winter-2019.

10. In our view, though the Regulation dated 25.07.2007 was applicable to the petitioner and she could have been validly discharged from the course immediately after 28.09.2013. The University permitted her on its own to continue with the first year BDS Course, which she completed successfully in Summer-2015 Examination. It is not possible to accept the stand of the University that because of some confusion arising out of the Rules of the Dental Council of India, the petitioner was permitted to appear in the first year examination of BDS after 29.09.2010, i.e. after completion of three years from the date of admission. The earlier Regulation of completing of first year BDS Course in all subjects within a period of three years from the date of admission was substituted by an amended Regulation brought into force w.e.f. 27.04.2015. The effect of the earlier Regulation, therefore, did not survive and the petitioner could not have been discharged under the old Regulation, after 27.04.2015. This is also the view taken by the Division Bench of this Court in the case of Akshay Wamanrao Kale vs. The State of Maharashtra and others, delivered on 03.03.2015 in Writ Petition No. 9412/2014 at Aurangabad . Be that as it may, the University itself has considered the aspect and decided not to discharge the petitioner from the course though she failed to complete first year BDS Course within a period of three years. We, therefore, reject the contention of the University that the petitioner could be discharged from the course now on the ground that though she has failed to clear complete first year BDS Examination within a period of three years from the date of her admission.

11. In the decision of the Apex Court in case of Dr. Dinesh Kumar and others vs. Motilal Nehru Medical College, Allahabad and others reported in (1985) 3 SCC 22, it is held that the candidate would be governed by the Rules which were in operation on the date of his admission to the course and the subsequent change in the Rules which is to the detriment of a candidate would not be applicable. The proviso introduced to the Regulation dated 27.04.2015, to the effect that the modified regulation brought into force on 27.04.2015 shall also be applicable to the students admitted in BDS Course in any Dental Institutions from the Academic year 2008-09, onwards but have not cleared their first year BDS Course within a period of three years on the date of admission. Consequently the modification to

it, made subsequently shall also not apply to the case of the petitioner.

12. The position which emerges is that the petitioner who was admitted to the BDS Course on 29.09.2010 was not discharged from the course, upon failure to clear first year BDS Examination in all subjects within a period of three years from the date of admission and regulation brought into force on 27.04.2015 along with modification were not applicable to the case of the petitioner. The petitioner could not have been discharged from the course on the basis of any such restrictions. The petitioner is entitled to be continued in the course, till she obtains degree in BDS Course.”

18. Having regard to facts and circumstances, it appears that it would be in fitness of things to follow the suit of aforesaid decision taking into account that the petitioners under interim orders of this court, have appeared at the examination. As such, it would be expedient that the result of their examinations be declared.

19. In view of aforesaid, we dispose of the petition directing the concerned authority to declare the result of petitioners within a period of one week from the date of receipt of writ of this order.

20. Rule is made absolute in aforesaid terms.

[R. G. AVACHAT, J.]

[SUNIL P. DESHMUKH, J.]

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