

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.08.2020

Delivered on: 08.09.2020

C O R A M

The Hon'ble Mr. A.P.SAHI, THE CHIEF JUSTICE
and

The Hon'ble Mr. Justice SENTHILKUMAR RAMAMOORTHY

Writ Appeal No.482 of 2020 &
C.M.P.No.7294 of 2020

The Dental Council of India,
Aiwan-E-Galib Marg,
Kotla Road, Temple Lane,
Opposite to Mata Sundari College for Women,
Mandi House, New Delhi-110 002.

...Appellant

Vs

1. PSR Lakhmi Bhuvaneshwari Preethi
2. The Registrar,
The Tamilnadu Dr.MGR Medical University,
No.69, Anna Salai,
Guindy, Chennai-600 032.
3. Madha Dental College and Hospital,
Represented by its Principal,
Kundrathur,
Chennai-600 050.
4. Ragas Dental College and Hospital,
Represented by tis Principal,
No.2/102, East Coast Road,
Uthandi.

...Respondents

PRAYER : Writ Appeal is filed under Clause 15 of Letters Patent,
to set aside the order dated 11.03.2020 passed in Writ Petition
No.32782 of 2019.

WP.NO.32782 OF 2019: Writ of Certiorarified Mandamus to call
for the records pertaining to the proceedings of the 1st
Respondent in its letter bearing No.DE-114-Misc-I/2019/4651
dated:18.09.2019 and Quash the same as illegal, incompetent and
Ultravires and Consequently direct the 1st respondent to issue No
Objection Certificate for migration of the petitioner from Madha

Dental College and Hospital, Chennai to Ragas Dental College and Hospital, Chennai.

For Appellant :Mr.S.Haja Mohideen Gisthi

For Respondents :Mr.Om Prakash, Senior Counsel
for Mr.AR.Karthik Lakshmanan for R1

JUDGMENT

SENTHILKUMAR RAMAMOORTHY J.,

The first Respondent herein was a student of the third Respondent College in the Bachelor of Dental Surgery (BDS) course. According to the first Respondent, the third Respondent demanded exorbitant tuition and examination fees and donations from her over a period of time. These problems entailed the filing of three writ petitions, namely, W.P. No.14867 of 2017 for revaluation; W.P. No.3572 of 2019 for a mandamus to direct the respondents therein to conduct the III year BDS examination for the first Respondent herein as a special case; and W.P. No.8192 of 2019 for a mandamus to transfer her to the Government Dental College, Chennai. While the latter writ petitions were pending, the first Respondent obtained a transfer certificate from the third Respondent College. W.P. Nos.3572 and 8192 of 2019 were disposed of by directing the Dr. M.G.R. Medical University to forward the request for migration of the first Respondent/Petitioner to the Dental Council of India (the Dental Council), along with the University's recommendation, for approval in accordance with the Dental Council's regulations. In these circumstances, the first Respondent decided to migrate to the fourth Respondent College, and the fourth Respondent agreed to admit her in the III year BDS course for the academic year 2020-2021. Therefore, the approval of the Dental Council, i.e. the Appellant herein, was requested for by the Dr. M.G.R. Medical University by letter dated 14.08.2019. By order dated 18.09.2019, the Appellant rejected the request for approval of migration on the ground that it is contrary to the Dental Council of India BDS Course Regulations, 2007 (the BDS Regulations). The said order was impugned in the writ petition. The writ petition was allowed by order dated 11.03.2020, whereby the order dated 18.09.2019 of the Appellant was quashed and, consequently, the Appellant was directed to give permission to the first Respondent herein to join the fourth Respondent College in the third year of the BDS Course for the academic year 2020-2021. The said order is impugned in this appeal.

2. We heard Mr.S.Haja Mohideen Gisthi, the learned counsel for the Appellant and Mr.Om Prakash, the learned senior counsel for the first Respondent.

3. Mr. Haja Mohideen Gisthi contended that the impugned order in the writ petition is not sustainable inasmuch as it is directly contrary to the BDS Regulations, which were framed by the Dental Council under Section 20 of the Dentists Act, 1948. According to Mr. Gisthi, these are statutory regulations and, therefore, the Dental Council is obligated to comply strictly with the BDS Regulations. He invited our attention to Regulation IV of the BDS Regulations. Regulation IV is as under:

"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 the exceptional cases on extreme compassionate grounds*, provided the following criteria are fulfilled. Routine migrations 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.

Note 1:

- (i) Migration is permitted only in the beginning of IInd year BDS Course in recognised Institution.
- (ii) All applications for migration shall be referred to Dental Council of India by college authorities. No Institution/University shall allow migration directly without the prior approval of the Council.
- (iii) Council reserved the right not to entertain 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. (emphasis added)

Note 2: *Compassionate ground criteria:

(i) Death of supporting guardian.

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

4. By relying upon the aforesaid BDS Regulation IV, he pointed out that migration from one dental college to another is not a student's right and that a request for migration may be considered and approved by the Dental Council only in exceptional cases on extreme compassionate grounds. Besides, he pointed out that the said migration is permitted only in the beginning of the II year BDS Course in recognized institutions and not in the III year. Even with regard to compassionate grounds, he pointed out that the compassionate grounds criteria are specified in the regulations, namely, death of a supporting guardian or disturbed conditions, as declared by the Government, where the dental college is situated.

5. In this case, he pointed out that the fourth Respondent College had agreed to admit the student in the third year BDS Course if the Dental Council approved the migration. The request for approval of the proposed migration was rejected by the Dental Council because such approval would be contrary to the BDS Regulations. In addition, the reasons cited by the student are problems relating to the demand of exorbitant tuition and examination fees and these do not qualify as compassionate grounds for migration. Thus, the learned counsel contended that the order of the Dental Council should not have been quashed, whereas the learned single Judge issued an order that is not in conformity with the BDS Regulations. In support of this contention, he invited the attention of the Court to paragraph 10 of the impugned order in the writ petition wherein the Writ Court recognized and recorded the fact that the first Respondent/Petitioner cannot be allowed to migrate to the fourth Respondent College if one complies with the regulations of the Dental Council strictly. He also referred to the order dated 18.09.2019 of the Dental Council wherein the relevant Regulation IV was set out and the first Respondent was informed that the Executive Committee of the Dental Council discussed and deliberated upon the matter before deciding that the request is liable to be rejected because it is not in accordance with law. Therefore, he submitted that the Dental Council had taken a decision after duly considering the request in light of the applicable regulations.

6. He also referred to the order of the High Court of Madhya Pradesh in W.P. No.7836 of 2016, wherein the Madhya Pradesh High Court cautioned the Medical Council of India and the Dental Council of India to be careful and vigilant and not to give any undue benefit to influential people while applying the regulations and to instead apply regulations uniformly without discrimination. For all these reasons, the learned counsel concluded by submitting that the order in the writ petition is liable to be reversed.

7. In response, the learned senior counsel for the first Respondent contended that the case has a long history and that the first Respondent was constrained to seek migration on account of compelling circumstances. In support of this contention, he referred to the list of dates and events wherein the repeated demands for exorbitant fees, including examination fees and tuition fees, are detailed. He pointed out that these events took place on various dates commencing from the year 2014 all the way through till 2019 and entailed the filing of three previous writ petitions. These events even included the lodging of a police complaint on 02.02.2019 by the father of the first Respondent before the Superintendent of Police, Ambattur. Therefore, he contended that the first Respondent had been constrained to seek migration to a different college. Pursuant to order dated 30.07.2019 in W.P. No.8190 of 2019, he pointed out that this Court directed the Dr.M.G.R. Medical University to consider the request for migration and forward the same with its recommendation to the Dental Council. Pursuant thereto, the fourth Respondent gave its 'no objection' letter on 05.08.2019 to admit the first Respondent in the III year of the BDS Course. On 14.08.2019, the Registrar of the Dr. M.G.R. Medical University also forwarded the letter requesting approval for transfer to the Dental Council. The impugned order of the Dental Council came to be issued thereafter and the same was interfered with by interpreting the BDS Regulations liberally and on compassionate grounds.

8. We examined the submissions of the learned counsel / learned senior counsel for the respective parties and examined the records.

9. The limited question that arises for consideration is whether the first Respondent is entitled to the approval of the Dental Council for the proposed migration from the third Respondent to the fourth Respondent College. The BDS Regulations of the Dental Council govern the aforesaid question. The BDS Regulations relating to migration were considered by the Hon'ble Supreme Court in Dental Council of India v. Anhad Raj Singh (2018) 1 SCC 723, wherein the interim order of the Division Bench of the Delhi High Court that directed the

authorities to permit the candidate to join the transferee college was reversed not only on the ground that the interim direction amounted to granting the final relief but also because Regulation IV of the BDS Regulations and the objections on that basis were not considered by the Division Bench. On perusal of Note 1(i) of Regulation IV of the BDS regulations, it is clear that migration is permitted only in the beginning of the II year BDS Course in recognized institutions. The proposed migration by the first Respondent is for the purpose of joining in the third year BDS Course in the fourth Respondent College. Apart from Note 1(i), we find that Regulation IV (4) and (5) also provide that the candidate should apply within a stipulated period and also submit an affidavit stating that she will complete 240 days of prescribed study before appearing for the II year examination. These requirements underscore the fact that migration is permissible only at the commencement of the II year. Indeed, the learned single Judge was also conscious of the fact that the BDS Regulations do not permit migration, in these facts and circumstances, and recorded the same in paragraph 10 of the impugned order. Thus, the order of the learned single Judge cannot be sustained and is liable to be set aside.

10. Nevertheless, we note that Regulation IV also stipulates that migration is not a student's right and a request for migration would be considered by the Dental Council only in exceptional cases on extreme compassionate grounds, and that routine migrations on other grounds shall not be allowed. Note 1(iii) stipulates, inter alia, that the "Council reserved the right not to entertain any application which is not under the prescribed compassionate grounds". Note 2 specifies 'compassionate ground criteria' as the death of a supporting guardian or disturbed conditions, as declared by Government, in the Dental College area. The present request for migration is on the basis that the student encountered various problems, as detailed above, in the third Respondent College especially with regard to the demand of exorbitant fees. While the reason for seeking migration does not satisfy the aforementioned prescribed compassionate grounds criteria, this is, undoubtedly, not a request for a routine migration. It also cannot be construed as a whimsical or unreasonable request when the facts and circumstances are viewed in totality. While two compassionate grounds criteria are specified in Note 2 (i) and (ii) of Regulation IV, Note 1 (iii) thereof appears to provide some latitude and discretion to the Dental Council by stipulating that the Dental Council reserves the right to reject an application that does not satisfy the prescribed compassionate grounds criteria. This clause, in our view, confers a discretion but does not impose an obligation on the Dental Council to reject an application that does not meet the prescribed compassionate grounds criteria. Nonetheless, this discretion is

intended to be exercised reasonably and non-arbitrarily and the test would always be whether the application for migration satisfies the compassionate grounds requirement, be it on the compassionate grounds criteria prescribed in Note 2 (i) and (ii) or otherwise. For example, a student may be subject to physical violence or sexual harassment in a college and may seek migration for these reasons. In each case, the Dental Council would have to examine if it qualifies as a compassionate ground by exercising its discretion judiciously. Thus, in our view, the compassionate grounds criteria in Note 2 (i) and (ii) are illustrative and not exhaustive.

11. On the facts of this case, we are acutely conscious of the fact that the student has obtained a transfer certificate from the third Respondent College and her career is likely to be severely affected unless some arrangement is made for the continuation of her education. Keeping in mind this situation and the discussion in the preceding paragraph, in case the first Respondent is willing to join the II year BDS course and the fourth Respondent College is willing to admit her in the II year, we grant leave to the first Respondent to make a fresh representation to the Dental Council through the Dr. M.G.R. Medical University for permission to migrate by joining the II year of the BDS course. Upon receipt of such representation, the Dental Council is directed to consider the same in light of the observations contained herein and pass orders thereon on merits within a period of four weeks from the date of receipt of such representation. Before parting with the case, we note that the facts and circumstances set out above highlight the necessity for the Dental Council to revisit the BDS Regulations on migration so as to create a framework that ensures high standards of dental education while also enabling migration, on reasonable grounds, in a wider range of situations.

12. For reasons set out above, the impugned order in the writ petition is set aside and the writ appeal is disposed of on the above terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Registrar,
The Tamilnadu Dr.MGR Medical University,
No.69, Anna Salai,
Guindy, Chennai-600 032.

2. Madha Dental College and Hospital,
Represented by its Principal,
Kundrathur,
Chennai-600 050.

3. Ragas Dental College and Hospital,
Represented by its Principal,
No.2/102, East Coast Road,
Uthandi.

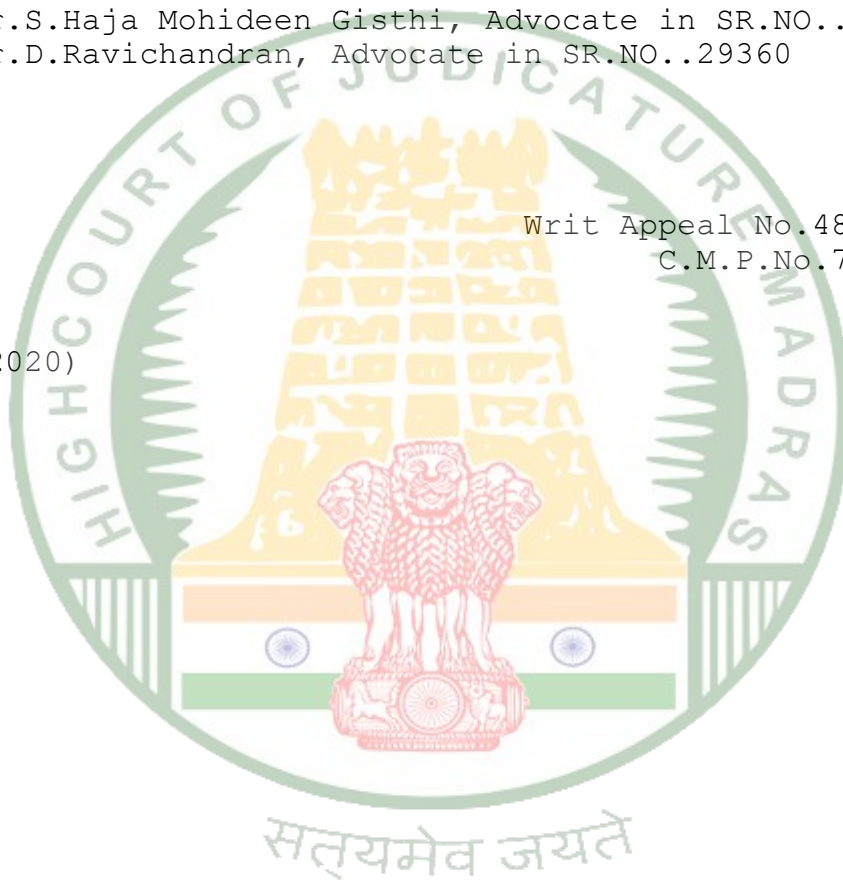
+1cc to Mr.K.Moorthy, Advocate in SR.NO..29494

+1cc to Mr.S.Haja Mohideen Gisthi, Advocate in SR.NO..29375

+1cc to Mr.D.Ravichandran, Advocate in SR.NO..29360

Judgment in
Writ Appeal No.482 of 2020 &
C.M.P.No.7294 of 2020

CA (CO)
RV(16/10/2020)



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