

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2020

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.32099 of 2019
and WMP.Nos. 32352 & 32353 of 2019

Sharanya Balaji Nadar,
residing at Block No.14,
Door TH Jains Sudarsana,
Madambakkam Main Road,
Rajakilpakkam, Selaiyur,
Chennai - 600 073.

... Petitioner

Vs

1. The Dental Council of India,
Alwan-E-Galib Marg,
Kotia Road,
New Delhi - 110 002.
2. The Registrar,
The Tamil Nadu Dr. M.G.R. Medical University,
No.69, Anna Salai,
Guindy, Chennai - 600 032.
3. The Secretary,
Selection Committee,
Directorate of Medical Education,
No.162, Periyar E.V.R. High Road,
Kilapauk, Chennai - 600 010.
4. Chettinad Dental College and Research Institute,
Represented by its Principal,
IT Highway, Kelambakkam,
Kanchipuram - 603 103.

..Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records of the respondents in relation to the letter issued by the first respondent bearing Ref. No.DE.BDS(236)/Admission-2019/4780 and dated 24.09.2019, and the consequential letter issued by the second respondent bearing Ref.No.ACII(1)/45898/2019 dated 15.10.2019 and quash the same being illegal and arbitrary.

For Petitioner: Mr.Sathish Parasuran
Senior Counsel for Mr. R. Parthasarathy
For Respondents:Mr.S.Haja Mohideen Gisthi [R1]
M/s. Ramalingam Associates [R2]
Mr. Abdul Saleem
Standing Counsel [R3]
Mr.S.T. Balaji [R4]

O R D E R

This writ petition has been filed challenging the impugned letter dated 24.09.2019 issued by the Dental Council of India and the consequential letter issued by the second respondent dated 15.10.2019.

2. The case of the petitioner is that she pursued with her school education in the United States of America. As per the curriculum in US, it is structured in such a way that the subjects are studied over a span of grades 9 to 12 and it is assessed within a period of one year. The petitioner came over to India and applied for participating in the NEET examination during the year 2019. Even before taking the NEET examination, the petitioner will have to satisfy the notification issued by the Dental Council of India which formed part of the 2007 regulations. Unless the candidates fulfill the criteria stipulated in the notification, he/she will not even be permitted to take NEET examination.

3. In view of the above mandate, the petitioner who fell under clause 3(f) of the notification sought for the equivalent certificate from the concerned authority. The Association of Indian Universities, which is the competent authority, issued the equivalence certificate on 10.07.2019. It will be relevant to extract the relevant portions from the equivalence certificate, for proper appreciation.

"EVALUATION OF EDUCATIONAL CREDENTIALS

SHARANYA BALAJI NADAR has passed High School Diploma from Briar Woods High School, Virginia, accredited by the Southern Association of Colleges and Schools, USA - this qualification is EQUATED with 12 Senior School Certificate of Central Board of Secondary Education, Delhi/other Boards in India."

4. The petitioner produced this equivalence certificate and she was thereafter permitted to take the NEET examination and she secured 258 marks. Based on her performance, an allotment order was issued by the third respondent and the petitioner was given admission in the first year BDS course for the academic year 2019-2020 at the fourth respondent college. The petitioner

paid the requisite fees and joined the college and was undergoing the course.

5. The petitioner received a letter from the second respondent dated 02.08.2019 questioning the eligibility of the petitioner to join the BDS course. The reason cited by the second respondent to question the eligibility of the petitioner was that the petitioner had not undergone the last two years of her study comprising of the subjects of Physics, Chemistry and Biology and therefore is not eligible to join the BDS course. The second respondent also sought for a clarification in this regard. Ultimately after receiving the reply from the petitioner as well as the second and third respondents, the first respondent namely the Dental Council of India intimated the decision through their impugned letter dated 24.09.2019 stating that the petitioner does not fulfill the conditions of the eligibility criteria and therefore she is not eligible for admission to the BDS Course. Consequently the second respondent informed the fourth respondent college about the decision taken by the Dental Council of India through their letter dated 15.10.2019. Both these letters are impugned in the present writ petition.

6. Mr. Sathish Parasuran, learned Senior counsel appearing on behalf of the petitioner submitted that the notification of the Dental Council of India based on the 2007 Regulations, stipulates the eligibility criteria at Clause 3 of the notification. The learned Senior Counsel submitted that Clause 3 deals with 6 alternative eligibilities for a candidate to participate in the selection and each eligibility prescribed is independent of each other and one clause cannot be read into another. The learned Senior Counsel further developed his arguments by bringing to the notice of this Court the equivalence certificate given by the competent authority and submitted that once the equivalence certificate is granted on proper verification, unless the equivalence certificate is found to be bad, the first and second respondents cannot disregard the same and give an erroneous interpretation to the notification of the Dental Council of India. The learned Senior Counsel further submitted that the first and second respondents have attempted to read Clause (a) by telescoping it to Clause (f) and thereby they have come to a wrong conclusion that the petitioner has not undergone the subjects of Physics, Chemistry and Biology within the last two years of study. The learned Senior Counsel submitted that Clause (a) and Clause (f) are independent to each other and if a candidate is satisfying Clause (a), there is no requirement for a candidate to get even a equivalence certificate and therefore the impugned letters issued by the first and second respondents requires interference.

7. The first respondent has filed a counter affidavit and the relevant portions in the counter affidavit is extracted hereunder:

"17. That the answering respondent/DCI vide its letter No.DE-BDS(Gen)Admission-2019/3726 dated 02.08.2019 requested the Tamil Nadu Dr.M.G.R. Medical University to confirm, with supporting documents, as to whether the candidate namely Sharanya Balaji has fulfilled the conditions of eligibility criteria for admission to BDS Course as prescribed in Revised BDS Course Regulations, 2007 as amended from time to time, and also confirm that the candidate has secured minimum qualifying marks in the subjects of Physics, Chemistry, Biology & English in 10, +2 examination, so as to enable this council to evaluate the eligibility of the student for admission to BDS Course. A copy of DCI letter No.DE-BDS(Gen) Admission -2019/3726 dated 02.08.2019 is annexed with the typed set of papers.

18. That the Registrar, Dr.M.G.R. University, Tamil Nadu vide his letter No.ACII(1)/45898/2019 dated 30.08.2019 furnished the clarification regarding eligibility of Sharanya Balaji thereby informing that the candidate has not undergone last two years of study comprising of Physics, Chemistry and Biology as per DCI Regulations but the candidate has submitted an allotment order issued by the Secretary, Selection Committee, Directorate of Medical Education, Chennai. A copy of letter No.ACII(1)/45898/2019 dated 30.08.2019 issued by Dr.M.G.R.University, Tamil Nadu is annexed with the typed set of papers.

19. That the Executive Committee of the DCI in its meeting held on 05.09.2019 considered the letter dated 30.08.2019 of the Registrar, Dr.M.G.R. Medical University, Chennai and decided that the Dr.M.G.R.Medical University, Chennai be informed that the candidate Ms.Sharanya Balaji does not fulfill the conditions of the eligibility criteria as prescribed in Revised BDS Course Regulations, 2007, hence she is not eligible for admission to BDS Course at a Dental College.

.....

30. It is humbly submitted that the admission given to the petitioner is in violation of Revised BDS Course Regulation, 2007

as amended by its 5th Amendment notified on 31.05.2012. As a premiere standard evolving body. DCI's determinations are weighty, courts are expected to defer to its expert judgment particularly in regard to norms and standards of dental education, including norms for admission. The humble respondent states that remedy of principle of natural justice has no application in the instant case as the admission is illegal and not irregular. The illegality cannot be regularized merely on the ground of sympathy or factum of vesting their precious time or money. On the contrary, there is mass illegality in the admissions even in contravention to the statutory provisions of Section 10(d) of the Dentist Act, 2016 and Revised BDS Course Regulations, 2007 as amended on 31.05.2012.

31. That the statutory legal provision is very clear and without being any infirmity it can clearly be inferred from the perusal of the same that the admission of petitioner in BDS Course without undergoing last two years of study comprising of Physics, Chemistry, Biology and English as per DCI Revised BDS Course Regulations, 2007 is per se illegal and void-ab-initio, Thus the admissions made in violation of DCI Regulations is without any substance and cannot be said to be justified in any manner."

8. Mr.Haja Mohideen Gisthi, learned counsel appearing on behalf of the Dental Council of India apart from reiterating the stand taken in the counter affidavit, submitted that the first respondent has acted upon the letter given by the second respondent dated 30.08.2018 and had come to a conclusion that the petitioner does not fulfill the conditions of the eligibility criteria as per 2007 regulations. The learned counsel submitted that even if a candidate had joined the course, there is no restriction on the part of the authorities to go into the eligibility of the candidates and scrutinize the same. The learned counsel would submit that the petitioner has not undergone last two years of her study comprising of Physics, Chemistry, Biology and English as per the 2007 regulations and therefore the petitioner does not have the minimum eligibility to join the course and the very admission of the petitioner into the course is illegal. The learned counsel therefore submitted that the impugned letter issued by the first respondent is strictly in accordance with the 2007 regulations of the Dental Council of India.

9.The learned counsel appearing on behalf of the second

respondent apart from supporting the submissions made by Mr.Haja Mohideen Gisthi, also brought to the notice of this Court the letter dated 30.08.2019 issued by the second respondent to the first respondent. The learned counsel by relying upon the letter submitted that the petitioner had studied the subjects over a period of four years from 2014-2017 from grade 9 to 12 and therefore the petitioner admittedly has not studied the required subjects in the last two years, which is clear violation of the 2007 regulations. The learned counsel therefore submitted that the second respondent University considering the fact that the minimum eligibility criteria has not being fulfilled by the petitioner, had informed the same to the Dental Council of India and the Dental Council of India had acted upon this letter and found that the petitioner not eligible for admission to the BDS course and consequently the petitioner cannot continue in the course in the fourth respondent college.

10. The learned counsel appearing on behalf of the third respondent had responded to the query made by the first respondent and the stand of the third respondent is that the petitioner had obtained an equivalence certificate from the competent authority and therefore the petitioner was permitted to right the NEET examination and on successful completion, was allotted a seat in the fourth respondent college.

11. The learned counsel appearing on behalf of the fourth respondent submitted that the college is only a formal party in the present writ petition and it will bound by the final orders passed by this Court in this writ petition.

12. This Court has carefully considered the submissions made on either side and the materials available on record.

13. For proper appreciation of the relevant notification made under 2007 regulations of the Dental Council of India, the same is extracted hereunder:

a) The higher secondary examination or the Indian School Certificate Examination which is equivalent to 10 +2 Higher Secondary Examination after a period of 12 years study, the last two years of study comprising of Physics, Chemistry, Biology and Mathematics or any other elective subjects with English at a level not less than the core course for English as prescribed by the National Council or Educational Research and Training after the introduction of the 10+2+3 years educational structure as recommended by the National Committee on education;

Note: Where the course content is not as

prescribed for 10+2 education structure of the National Committee, the candidates will have to undergo a period of one year preprofessional training before admission to the dental colleges;

or

b. The intermediate examination in science of an Indian University/Board or other recognised examining body with Physics, Chemistry and Biology which shall included a practical test in these subjects and also English as a compulsory subject;

or

c) The pre-professional/pre-medical examination with Physics, Chemistry and Biology, after passing either the higher secondary school examination, or the pre-university or an equivalent examination. The pre-professional/pre-medical examination shall include a practical test in Physics, Chemistry and Biology and also English as a compulsory subject;

or

d) The first year of the three years degree course of a recognized university, with Physics, Chemistry and Biology including a practical test in three subjects provided the examination is a "University Examination" and candidate has passed 10+2 with English at a level not less than a core course;

or

e. B.Sc examination of an Indian University, provided that he/she has passed the B.Sc.examination with not less than two of the following subjects Physics, Chemistry, Biology (Botany, Zoology) and further that he/she has passed the earlier qualifying examination with the following subjects-Physics, Chemistry, Biology and English.

or

f. Any other examination which, in scope and standard is found to be equivalent to the intermediate science examination of an Indian University/Board, taking Physics, Chemistry and Biology including practical test in each of these subjects and English.

(i) There shall be a single eligibility-cum-entrance examination namely "National Eligibility-Cum-Entrance Test for admission to BDS Course "in each academic year."

(ii) In order to be eligible for admission

to BDS Course for a particular academic year, it shall be necessary for a candidate to obtain minimum of marks of 50th percentile in 'National Eligibility-cum-entrance Test to BDS Course' held for the said academic year. However, in respect of candidates belonging" to Scheduled Castes, Scheduled Tribes, other Backward Classes, the minimum marks shall be at 40th percentile in respect of candidates with locomotory disability of lower limbs terms of sub-regulation 4 above, after the commencement of these amendments, the minimum marks shall be at 45th percentile. The percentile shall be determined on the basis of highest marks secured in the All-India common merit list in "National Eligibility-Cum-Entrance Test for admission to BDS Course".

Provided when sufficient number of candidates in the respective categories fail to secure minimum marks as prescribed in National Eligibility-Cum-Entrance Test held for any academic year for admission to BDS Course, the Central Government in consultation with Dental Council of India may at its discretion lower the minimum marks required for admission to BDS Course for candidates belonging to respective categories and marks so lowered by the Central Government shall be applicable for the said academic year only.

(iii) The reservation of seats in dental colleges for respective categories shall be as per applicable laws prevailing in States/Union Territories. An all India merit list as well as State-wise merit list of the eligible candidates shall be prepared on the basis of the marks obtained in National Eligibility-Cum-Entrance Test and candidates shall be admitted to BDS course from the said lists only.

(iv) No candidate who has failed to obtain the minimum eligibility marks as prescribed in Clause(ii) above shall be admitted to BDS course in the said academic year.

(v) All admissions to BDS course within the respective categories shall be based solely on marks obtained in the National Eligibility-Cum-Entrance Test.

(vi) To be eligible for admission to BDS course, a candidate must have passed in the subject of Physics, Chemistry, Biology/Biotechnology and English individually

and must have obtained a minimum of 50% marks taken together in Physics, Chemistry and Biology/Biotechnology at the qualifying examinations as mentioned in Sub-regulation 2 of Regulation I and in addition must have come in the merit list of "National Eligibility-Cum-Entrance Test" for admission to BDS course. In respect of candidates belonging to Scheduled Castes, Scheduled Tribes or other Backward Classes the minimum marks obtained in Physics, Chemistry and Biology/Bio-technology taken together in qualifying examination shall be 40% instead of 50%. In respect of candidates with locomotory disability of lower limbs in terms of sub-regulation 4, after the commencement of these amendments, of Regulation I above, the minimum marks in qualifying examination in Physics, Chemistry and Biology/Bio-Technology taken together in qualifying examination shall be 45% instead of 50%.

Provided that a candidate who has appeared in the qualifying examination the result of which has not been declared, he/she may be provisionally permitted to take up the National Eligibility-Cum-Entrance Test and in case of selection for admission to the BDS course, he/she shall not be admitted to that course until he fulfils the eligibility criteria under Regulation I.

(vii) The Central Board of Secondary Education shall be the organisation to conduct National Eligibility-Cum-Entrance Test for admission to BDS Course."

14. A careful reading of the above regulations makes it clear that a candidate even at the time of taking NEET examination must fulfill the eligibility criteria that is prescribed in Clause 3 which is extracted supra. Clause 3 contains six sub clauses from (a) to (f). Each sub-clause is independent of the other and none of the sub-clauses can be read together. For the purposes of this case, sub-clause (a) and sub-clause (f) requires consideration.

15. The case of the petitioner is that she falls under sub-clause (f) of the regulations. Any candidate who falls under sub-clause (f) of the regulations, has to obtain an equivalence certificate from the concerned authority. The concerned authority is the Association of the Indian Universities. This authority considered the degree/diploma obtained by the petitioner in as educational institution at USA. The concerned

authority found that the qualification of the petitioner is equivalent to the senior school certificate of CBSE/other boards in India. The evaluation of the educational credentials has been extracted supra.

15. It is based on this equivalence certificate, the petitioner was allowed to write the NEET examination and the petitioner secured 258 marks and she was allotted a seat in the fourth respondent college by the allotment order passed by the third respondent, dated 24.07.2019. The petitioner is undergoing the course.

16. The second respondent by a letter dated 30.08.2019 had informed the Dental Council of India that the petitioner has not undergone the subjects of Physics, Chemistry, Biology and English within the last two years and it was spread out over a period of four years from 2014 to 2017 from grade 9 to 12. If this sub-clause is to be read into every other sub-clause provided under clause 3 of the regulations, the regulation itself must provide for the same and it will not depend upon how the second respondent wants to read the regulations. The regulations make it clear that sub-clause (a) to sub-clause (f) are independent to each other and there is no requirement to read sub-clause (a) into sub-clause (f) and that is the reason why the second respondent came to an erroneous conclusion. If a candidate fulfills the criteria fixed under sub-clause (a), there will not even be any requirement to get an equivalence certificate. Sub-clause (a) covers the scenario as is prevalent in India both in CBSE and other boards. The same structure may not be available in other countries and that is the reason why an equivalence certificate is insisted even at the time of writing the NEET examination to determine the eligibility criteria. The concerned authority has issued a certificate and it was not even referred by the second respondent in the letter dated 30.08.2019. In the considered view of this Court, the second respondent has misread the regulations and unfortunately has come to an erroneous conclusion by trying to fit in the case of the petitioner in Sub-clause (a) of Clause 3 of the regulations.

17. The first respondent has issued the impugned letter dated 24.09.2019 purely based on the letter given by the second respondent University and the same is clear even from the counter affidavit filed by the first respondent. The consequential letter dated 15.10.2019 is only a continuation of the decision taken by the Dental Council of India.

18. From the above discussion it is clear that the second respondent completely misdirected itself by giving their own interpretation to the 2007 regulations, which is otherwise very

clear. The case of the petitioner squarely falls under Sub-Clause (f) of Clause 3 and it required an equivalence certificate which was produced by the petitioner even before she took the NEET examination. There was no need for the second respondent to have read Sub-Clause (a) by telescoping it into Sub-Clause (f) and that has lead to all this confusion. In view of the same, this Court has no hesitation to interfere with the impugned letter of the first respondent dated 24.09.2019 and the consequential letter dated 15.10.2019 and the same is hereby quashed. In is a considered opinion of this Court, the petitioner possesses the eligibility criteria as per the 2007 Regulations and she is entitled to continue with the course in the fourth respondent college.

This writ petition is accordingly allowed. No costs. Connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Dental Council of India,
Alwan-E-Galib Marg, Kotia Road,
New Delhi - 110 002.
2. The Registrar,
The Tamil Nadu Dr. M.G.R. Medical University,
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3. The Secretary,
Selection Committee,
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No.162, Periyar E.V.R. High Road,
Kilapauk, Chennai - 600 010.

+1cc to Mr.T.Balaji and Mr.M.Praveen Kumar, Advocate, Sr.No.24719

W.P.No. 32099 of 2019

VS (CO)
GS (24/08/2020)