



WEB COPY

W.P(MD)No.15000 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **11.11.2021**

CORAM:

THE HONOURABLE MR.JUSTICE C.V. KARTHIKEYAN

W.P (MD)No.15000 of 2021

and

W.M.P (MD)No.11940 of 2021

V.M.Akilaa

...Petitioner

vs.

- 1.The Dental Council of India,
Represented by its Secretary,
Aiwan-E-Galib Marg, Kotla Road,
Temple Lane, New Delhi - 110 002.
- 2.The Tamil Nadu Dr.MGR Medical University,
Represented by its Registrar,
69, Anna Salai, Chennai - 600 032.
- 3.The Principal,
Mookambika Institute of Dental Sciences,
Padanilam, Kulasekaram, Kanniyakumari.
- 4.The Principal,
CSI College of Dental Sciences
and Research Centre,
East Veli Street, Madurai.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, challenging the impugned order of the first respondent in proceedings DE-Academic-114-2021/1184, dated 29.07.2021 and quash the same and consequently directing the first respondent to approve the petitioner's application seeking for migration from the third respondent college namely, Sree Mookambika Institute of Dental Sciences, Kulasekaram to the fourth respondent CSI College of Dental Sciences and Research, Madurai.

For Petitioner	:	Mr.S.Ramsundar Vijay Raj
For R.1	:	Mr.S.Haja Mohideen Gisthi
For R.2	:	Mr.S.Ramesh
For R.3	:	Ms.Nivitha Jothi for M/s. Isaac Chambers
For R.4	:	No appearance



O R D E R

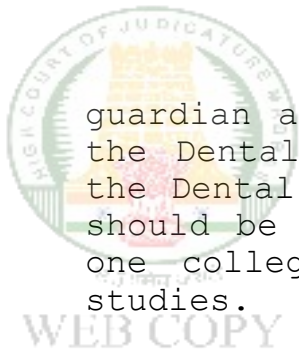
The Writ Petition has been filed by a student who is now studying in Sree Mookambika Institute of Dental Sciences at Kanyakumari District. She had obtained admission in the year 2018-2019. She is a resident of Madurai. She stayed in the hostel. In the affidavit, it is very specifically stated that she has health problems, like head ache and giddiness and then, she took treatment for the same and upon some examination done, it was detected that she was suffering from Microadenoma, which in effect, is a small non-cancerous tumor which develops in the Pituitary Gland and causes severe symptoms of head ache, dizziness and fatigue and also unnatural menstrual periods, for which, she has to undergo continuous treatment. The petitioner, who is a young lady of 22 years, requires parental and guardian support. This can hardly be obtained while staying in a hostel and also at the same time, when she is compelled to undergo course in BDS.

2.Under these circumstances, the petitioner had taken a decision to shift her College from Kanyakumari to Madurai in order that she may be able to look after her health and also those looking after her, would be able to provide such help.

3.In this connection, she made necessary applications and before me, documents have been presented along with the Writ Petition. The College, in which, she is studying, namely, Sree Mookambika Institute of Dental Sciences at Kanyakumari District had given No Objection Certificate for her transfer from that particular college to CSI College of Dental Sciences and Research Centre, Madurai.

4.It is to be mentioned that both the Colleges come under the purview of the second respondent, namely, the Tamil Nadu Dr.MGR Medical University. The University also comes under the purview of the Dental Council of India. Ultimately, the Dental Council of India which is the first respondent, has a duty to ensure that the students who are studying under various colleges recognized by it, are provided with not just conducive atmosphere for the purposes of their education but also to ensure that during the course of study, they are, to a reasonable extent, their health issues are also addressed. This is just humanity and it comes from the fact that the Dental Council of India acts as the parens patriae of all the students under head.

5.But, unfortunately, this request by the petitioner herein, has not been examined in its proper light by the Dental Council of India. It appears, a high-handed attitude had been taken with strict adherence to the rules governing transfer of students from one college to another. The rules which, have been criticised by the Dental Council of India, stipulate that such transfers can be made only when two primary grounds prevail, namely, death of a supporting



guardian and disturbed conditions as declared by the Government in the Dental College area. It would be extremely inappropriate for the Dental Council of India to expect that one of these two grounds should be fallen on the petitioner for her to get a transfer from one college to another within the State itself to continue her studies.

6.It will be highly unreasonable to even presume that the petitioner can expect a transfer only one of those two conditions is satisfied viz, death of a supporting guardian and the further condition relating to the area of her college being declared as a disturbed area by the Government.

7.The first condition, can never be insisted as a principal condition though it is there in the rules. The second condition will indicate supervening circumstances to occur which affects the area in general and for that, the place where the petitioner is now undergoing education in Kanyakumari District should be declared as a disturbed area.

8.The application of the petitioner, has been rejected by a communication dated 29.07.2021, though both the transferor college and the transferee college have not raised any particular objection. Rejection by the first respondent clearly shows complete apathy in addressing the physical and mental health of the students.

9.My attention has been drawn to earlier orders of this Court, particularly, to an order in W.P(MD)No.10323 of 2017, **Fathima Thameema PK Vs. Secretary to Government of Tamil Nadu, Health and Family Welfare, (ME) Department**, by a learned Single Judge, dated 07.11.2017. In that case, the petitioner was affected by Lumbar Lordosis and consequently, D3 and D4 discs of the backbone were dislocated. Hence, she could not travel about 42 kilometers from her place of residence to the College.

10.The petitioner had sought for transfer of college and similar order had been passed refusing to accept such orders. The High Court had directed the Dental Council of India to approve the migration of the petitioner from one college to another college as requested.

11.My attention is also drawn to another judgment of the learned Single Judge of this Court in W.P(MD)No.16913 of 2020, **J.Drusillin Joomy Vs. Dental Council of India and others** by order, dated 04.02.2021, where the learned Single Judge had, after examining the issues raised in detail, stated that the Dental Council of India should take steps to seek amendment of the regulations and had also set aside the order refusing transfer and had remanded the matter back to the Dental Council of India for taking a fresh decision based on the materials available and keeping in mind the orders passed by this Court relating to migration. In this case, the petitioner therein was suffering from Polycystic Ovaries and abnormal uterine bleeding at irregular intervals with severe muscle cramps.



12.The learned Single Judge and I may say as always been the case in this Court, took a view understanding the reality of the situation and the medical condition of the petitioner and had directed the Dental Council of India to reconsider the decision as afresh.

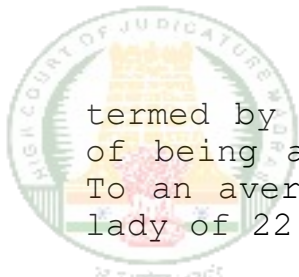
13.Mr.Haja Mohideen Gisthi, learned Counsel who appears for the first respondent, however, placed reliance on a judgment of the Division Bench of this Court in W.A.No.482 of 2020, which had been preferred by the Dental Council of India, wherein, by a judgment, dated 08.09.2020, **Dental Council of India Vs. P.S.R.Lakshmi Bhuvaneshwari Preethi and others**, a Division Bench of this Court again after examining the entire facts and after, again commenting on the nature of the rules, had again stated that there was a necessity for the Dental Council of India to revisit the BDS Regulations on migration to ensure that high standard of dental education is maintained on reasonable grounds in a wider range of situations. The order in the Writ Petition wherein, relief was granted to the petitioner was set aside and a direction was issued to the Dental Council of India to reconsider the application if a fresh representation is made for migration by the said first respondent therein, who had the benefit of an order from the learned Single Judge.

14.A perusal of the facts of this case shows that they are very narrow and there is no law whatsoever involved. It requires expansion of the heart and examination of the Rules and Regulations not just in its letter, but, more importantly, in its spirit.

15.I am confident that the Dental Council of India never had the intention that students should suffer from medical ailments during the course of study. There is also possibility that students would require parental guidance when they are studying in colleges away from their normal place of residence.

16.It is also seen that Mr.Haja Mohideen, learned Standing Counsel appearing for the Dental Council of India had placed on record, communications to show that the learned Counsel had impressed upon the Dental Council of India to amend the rules in conformity with the views expressed made by the Courts particularly, the learned Single Judges of this Court and also by the Division Bench of this Court. The learned Counsel is to be appreciated for undertaking the responsibility thrust on him as the learned Standing Counsel for the Dental Council of India, in guiding them to appreciate the necessity to revisit the rules.

17.The Courts have cried out for change in the rules, to address the mental and physical health issues which any student aged between 19 and 24 would face during the course of their life particularly, when they are pushed to a position to stay away from their parents or their guardians. In the instant case the ailment of the petitioner had been stated. She suffers from what has been



termed by doctors, and I have no reason to question her assertion, of being afflicted with Micro adenoma Tumour in Pituitary Gland. To an average person, it is quite frightening to know that a young lady of 22 years can even suffer from such diseases.

18. In view of these facts, taking into consideration the orders passed, I would, without any hesitation set aside the impugned order, dated 29.07.2021, passed by the first respondent. I would, at the same time, call upon the petitioner to file a fresh representation together with all documents and also with the No Objection Certificates of transferor college and the transferee college and forward the same to the first respondent on or before 30.11.2021 and I am confident that the first respondent appropriately guided by Mr. Haja Mohideen Gisthi, learned Standing Counsel would rise to the occasion and examine the grievances of the petitioner, a student of dental college in its spirit and not just in its letter and pass appropriate orders.

19. I also have no doubt that the learned Standing Counsel for the first respondent would advise the first respondent to address the issues raised by the petitioner and pass appropriate orders in their proper prospective as a parens patriae and I hope that they would pass appropriate orders on or before 15.12.2021.

20. With these observations, the Writ Petition is disposed of. No costs. Consequently, the connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

lr/sn

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1. The Dental Council of India,
Represented by its Secretary,
Aiwan-E-Galib Marg, Kotla Road,
New Delhi - 110 002.



2.The Tamil Nadu Dr.MGR Medical University,
Represented by its Registrar,
69, Anna Salai,
Chennai - 600 032.

3.The Principal,
Mookambika Institute of Dental Sciences,
Padanilam, Kulasekaram,
Kanniyakumari.

4.The Principal,
CSI College of Dental Sciences
and Research Centre,
East Veli Street, Madurai.

+1 CC to M/s.S.RAMSUNDARVIJAYRAJ, Advocate (SR-34246[F] dated
12/11/2021)

+1 CC to M/s.S.RAMESH, Advocate (SR-34335[F] dated 12/11/2021)

+1 CC to M/s.ISAAC CHAMBERS, Advocate(SR-34359[F] dated
12/11/2021)

W.P (MD) NO.15000 of 2021

and

W.M.P (MD) No.11940 of 2021

11.11.2021

MGJ(30.11.2021) 6P 8C