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W.P.Nos.39268 of 2003
& 4742 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.39268 of 2003 & 4742 of 2011

The Pondicherry Dentists Association
Rep. by its Treasurer Dr.Manohar
No.111, Lal Bahadur Sastri Street
Pondicherry.

..

Petitioner in
W.P.No.39268 of 2003

The Pondicherry Dentists Association
Rep. by its President Dr.Krishnan Unni
No.111, Lal Bahadur Sastri Street
Pondicherry.

..

Petitioner in
W.P.No.4742 of 2011

VS

1. The Government of India
Rep. by its Secretary
Department of Health
Ministry of Health, New Delhi.

2. The Government of Pondicherry
Rep. by its Secretary (Health)
Pondicherry.

3. The Registrar
Dentists Registration Tribunal
Under Secretary (Health)
Government of Pondicherry
Pondicherry.

..

Respondents in
W.P.No.39268 of 2003

1. The Government of Pondicherry
Rep. by its Secretary (Health)
Pondicherry.



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2. The State Dental Council
Rep. by its Registrar
Union Territory of Pondicherry
Puducherry – 605 006.

Respondents in
W.P.No.4742 of 2011

Prayer in W.P.No.39268 of 2003: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to reference No.11610/H5/2003/Vol-1, Government of Pondicherry, Chief Secretary (Health) dated 14.10.2003 from the file of the third respondent and quash the same and further direct the respondents to issue registration certificate to the petitioner Association as per the amended register before the constitution of dental council;

Prayer in W.P.No.4742 of 2011: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for records from the first respondent relation to Go.M.s.No.61 dated 04.08.2010, Chief Secretariate (Health), Government of Puducherry published in the Gazette of Puducherry dated 24.08.2010 and records relating to Ref.No:001/SDC/Gen/2010-2011/14 dated 09.12.2010 from the file of the second respondent and quash the same and direct the respondents to renew the certificate of the members of the petitioner.

For Petitioners in
both W.Ps

:

Mr.S.Kasirajan

For Respondents in
W.P.No.39268 of 2003

:

Mr.J.Madanagopal Rao
Senior Panel Counsel
for R1

No appearance
for R2 and R3



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For Respondents in
W.P.No.4742 of 2011

:

No appearance
for R1 and R2

COMMON ORDER

The proceedings issued by the Government of Pondicherry in proceedings dated 14.10.2003, asking the members of the petitioner Association to submit particulars and documents for issuing Dentist registration certificate under the Dentist Act, 1948 is under challenge in these writ petitions.

2. The petitioner states that the members of the petitioner Association are Dentists, registered under the Tribunal constituted by the Government of Puducherry under Part B and their names were also published in the Gazette of Pondicherry Part I Extra Ordinary dated 22.06.1982. The members are practising as Dentists in various places. As per Section 21 of the Dentist Act, it is obligatory for the second respondent to constitute the Dental Council, which was constituted and the practitioners shall register their names in the Dental Council by furnishing the details and relevant documents.

3. The members of the petitioner Association submitted their



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respective applications for registering their names in the Dental Council, constituted pursuant to the provisions of the Dentist Act, 1948. The Government of Pondicherry asked the members of the petitioner Association to submit the relevant particulars and documents. In spite of furnishing the particulars, the petitioner Association has chosen to file these writ petitions, mainly on the ground that the documents sought for by the Dental Council is unnecessary and the members of the petitioner Association are practising as Dentists for several years pursuant to the entries made in the Tribunal. The members of the petitioner Association are experienced Dentists and therefore, seeking further particulars becomes unnecessary.

4. The learned counsel for the petitioner relied on the orders passed by this Court in W.P.No.36530 of 2003 dated 05.04.2022 wherein, this Court directed the petitioners therein to approach the State Dental Council for redressing their remedies. Mere direction in this regard would do no service to the cause of justice. The litigant will be back again to the Court by way of another writ petition seeking the Court has not decided the issues on merits.



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5. This Court has already considered the issues elaborately with reference to the provisions of the Dentist Act in W.P.Nos.11314, 11316 & 11317 of 2011 dated 20.01.2022. The relevant portion of the orders are as under:

“6. The Act came into force all over the country on 29.03.1948. However, the Act was extended to Puducherry through the Puducherry (Laws) Regulation, 1963 with effect from the 1st day of October, 1963. Section 31 of the Act provides that the Council shall maintain the Register of Dentists known as 'Indian Dentists Register' which consists of entries in all the State Register of Dentists. The Register of Dentists shall be maintained in two parts, namely Part 'A' and Part 'B'. Part 'A' consisting of all Dentists possessing recognised dental qualification. Part 'B' contains persons not holding such qualification, but engaged in practice of Dentistry as principal means of livelihood for a period not less than five years prior to the date appointed by State Governments under Section 32 (2) of the Act. The appointed date by the Government of Puducherry for the purpose of Section 32 (2) of the Act, was 15.02.1980.

7. Section 31(1)(b) of the Act, confers right upon the persons those who do not possess dental



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qualification to enter their name in the Register of Dentists when it is first prepared subject to two conditions. The first one is that they must be the citizen of India. The second one is that such person has been engaged in practice as a Dentist as his principal means of livelihood for a period of not less than five years prior to the date appointed under Sub-Section (2) of Section 32 of the Act. The Registration Tribunal notified by the State Government under sub-section (1) of Section 32 of the Act, should prepare the First Register of Dentists. The Dentists Registration Tribunal for Puducherry was constituted under Section 32 of the Act vide G.O.Ms.No.184/DS/(H)/78, dated 13.12.1978 of the Health Electricity and Works Department, Pondicherry.

8. The Registration Tribunal notified by Government of Puducherry received various applications from those persons claims to have been engaged in practice as a Dentist as their principal means of livelihood for a period of not less than five years prior to 15.02.1980. The Registration Tribunal after being satisfied with the 218 applicants (Part-B) for registration under Section 33 of the Act, directed the entry of the names of those 218 applicants (Part-B) on the register vide G.O.Ms.No.69/Health/82,



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dated 21.05.1982 and the First Register of Dentists prepared under Section 32 of the Act. The same was published in the Gazette of Pondicherry (Extraordinary) Part-I dated 22.06.1982. In addition to the said 218 Dentists, in the year 2009, three more applicants were included in the First Register of Dentist based on the direction of Appellate Authority. Hence, totally 221 (218 + 1 + 2) Dentists were included in Part-B First Register.

9. In exercise of powers conferred under Section 21 of the Act, the Government of Puducherry constituted the State Dental Council vide G.O.Ms.No.61, dated 04.08.2010. The Dentists Registration Tribunal cease to function from the date of constitution of the State Dental Council. Hence, the Register of Dentist in Part-B maintained by the Registration Tribunal was handed over to the State Dental Council. Out of total 218 + 1 + 2 numbers of Dentists found in First Registration of Part-B, only 56 registrations were on live while handing over to State Council. Out of 56 Dentists, the name of one Dentist was not found in the list of 218 and no records are available in State Dental Council, Puducherry. Remaining numbers were left out since they failed to follow up. Subsequently, 5 Part-B Dentists (already existing in the list of 218 persons vide Gazette



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Notification G.O.Ms.No.69/Health/82, dated 21.05.1982), those who did not follow up were added in the existing State Dental Council, Puducherry Part-B Register and 10 Part-B Dentists (who had applied on or before 15.02.1980) were also included in the Part-B Register of Puducherry State Dental Council based on their appeal and direction issued by this Court as on 18.02.2020. However, as on date, renewal of registration under Part-B issued to totally 48 persons (valid upto 31.12.2021).

13. Section 31 (3) of the Act speaks about the Registration under two categories viz., Part 'A' and Part 'B'. Part 'A' is for persons possessing the requisite dental educational qualification. Part 'B' for person who do not possess any such qualification. Section 32 (1) empowers the State Government for constitution of a Registration of Tribunal. Section 32 (2) of the Act states that "the State Government shall, by the same or a like notification, appoint a date on or before which application for registration, which shall be accompanied by the prescribed fee, shall be made to the Registration Tribunal". The appointed date for the Union Territory of Puducherry under the provisions of the Act was 15.02.1980. Therefore, the case of the petitioners are to be considered with reference to the appointed date.



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Section 32 of the Act, envisages two types of registration i.e., (a) Registration of persons having required dental qualification (b) persons who do not possess dental qualification being in practice as principal means of livelihood for at least five years. Section 33 of the Act, prescribes the required qualification for entry on first preparation of Register. It prescribes two kinds of qualification viz., (a) persons holding the dental qualification; (b) persons who do not hold such qualification. Section 34 speaks about the Registration of Dentists, after the appointed date i.e., on 15.02.1980.

14. With reference to the above qualification under the Act and the facts of the case placed by the petitioners, which all are to be considered whether the conditions stipulated are satisfied for registration under Section 33 (2) of the Act. The person applying should be either residing or carrying on profession of Dentistry in the State. If the applicant does not hold the recognised dental qualification, the applicant must be the citizen of India and ought to have engaged in practice in the State as a Dentist as his principal means of livelihood for minimum five years prior to the appointed date.

15. The choice of words by Legislature viz., 'in the State', assumes significance and makes it



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blatant that the consideration of application by the Tribunal is 'Territorial' centric. In other words, the applicant should be either residing or carrying on profession in that particular State before whose Registration Tribunal he files the application. The respondent had rejected the original petition and the appeal primarily on the ground that the petitioners have not filed any documents for their subjective satisfaction on the residence and nativity of the petitioners.

16. As mentioned above, the Act mandates triple conditions for registration. The petitioners had filed application stating that they have practised for 5 years along as Dentists. The above application do not allow the petitioners to clear the triple test. The respondent had specifically required the petitioners to produce Nativity Certificate, which would have established that they are citizens of India, as if the petitioners are not citizens of India, then Section 33 (2) Proviso Clause takes cares of such a situation. The petitioners should have been in practice for at least 5 years, and a mere practice is not suffice and the same should have been their principle livelihood. The petitioners in all these writ petitions have not established their citizenship and have not established that the Dentist practise for five years as their



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principal livelihood is not established by them in their application.

17. The very purpose and object of the profession is the registration. The persons should be the citizen of India holding the required qualification to protect the dental practitioners, who were continuing their practice prior to enactment of the Dentists Act. The very purpose and object is to protect the existing practitioners at the time of Enactment of the Act. The same cannot be utilised for the purpose of registration of the persons, who are otherwise not educationally qualified for the purpose of registration. Such special provisions enacted in order to protect the pre-enactment practitioners cannot be utilised for the purpose of making new registration, thereby defeating the very purpose and object of possessing dental educational qualification as per the Dental Council.

18. The Dentistry became a fast growing research appointed medical field prevailing in India. As of now, the person who do not hold a valid dental qualification are not allowed to practice as Dentists. Therefore, the purpose of registration permitted in respect of the dental qualification in the Act in order to protect the pre-enactment practitioners cannot be abused or wrongly used.



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19. In these cases, there were norms dealt notifying the appointed date by the Government of Puducherry that made these kind of practitioners to submit their applications for the purpose of registration. When the Act came into force on 29.03.1948, to establish the date for the Government of Puducherry for the purpose of Section 32 was 15.02.1980. This made these kind of unqualified persons to submit their applications for registration.

21. It is brought to the notice of this Court that it is not made clear whether they are the practising as dentists or not. If so, all suitable actions are to be initiated. The respondent is directed to communicate the copy of this order to the jurisdictional District Collector, wherein the petitioners are residing and in the event of finding out that these practitioners are practising Dentist, then appropriate actions are to be initiated against those persons.”

6. In the present case, the writ petitions have been instituted by the Association on behalf of its members. The petitioner states that the members of the Association are practising Dentistry. Registration of their names in the Dental Council is an individual grievance and therefore, the Association cannot file a writ petition representing their members. Since



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the cause of action is individual and based on the particulars and documents of the individual Dentists who are all seeking registration of their names in the Dental Council, the writ petition by the Association in respect of an individual cause is not maintainable. As far as the members are concerned, only in the event of submitting all relevant particulars along with the documents, their case are to be considered, but not otherwise.

7. Thus, the members of the petitioner Association who do not possess requisite medical qualification for practising Dentistry is not eligible to practise as Dentist and therefore, their names cannot be registered under the Dentist Act, 1948. Therefore, this Court do not find any infirmity in respect of the proceedings issued by the respondents seeking particulars and documents from the members of the petitioner Association.

8. In view of the facts and circumstances, the writ petitions are devoid of merits and accordingly, is dismissed. There will be no order as to costs.

Index : Yes/No
Neutral Citation : Yes/No

10.04.2023

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To:

1. The Secretary
The Government of India
Department of Health
Ministry of Health, New Delhi.
2. The Secretary (Health)
The Government of Pondicherry, Pondicherry.
3. The Registrar
Dentists Registration Tribunal
Under Secretary (Health)
Government of Pondicherry, Pondicherry.



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S.M. SUBRAMANIAM, J.

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