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W.P.No.24082 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.07.2023

Pronounced on : 28.07.2023

CORAM : JUSTICE N.SESHASAYEE

W.P.No.24082 of 2021

M/s.Rajas Dental College & Hospital
Rep by its Chairman
Kavalkinaru Junction
Tirunelveli District - 627 015

... Petitioner

Vs.

- 1.Union of India
Rep. by its Secretary
Health & Family Welfare
Nirman Bhavan,
New Delhi 110 011
- 2.Dental Council of India
Rep by its Secretary,
Aiwan-E-Ghalib Marg
Kotla Road, New Delhi - 110 002
- 3.Tamil Nadu Dr.M.G.R. Medical University
Rep by its Registrar,
69, Anna Salai
Guindy, Chennai - 600 032



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4.Selection Committee
Rep by its Secretary
Directorate of Medical Education
No.162, EVR Periyar Salai
Kilpauk, Chennai - 600 010

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for a Writ of Certiorarified Mandamus calling for records in File No.V.12025/8/2020-DE(Pt.II) on the file of the 1st respondent dated 02.08.2021 and the consequential order of the 2nd respondent in No.DE-15(47)-ACADEMIC-MDS-2021/2761 dated 28.10.2021 and the notification No.005/SCSII(I)/2021 dated 02.11.2021 of the 4th respondent, quash the same and consequently direct the 4th respondent to include the petitioner institution in the Post Graduate and Under Graduate counselling to be conducted for the academic year 2021-2022.

For Petitioner : Mr.K.Elango

For Respondents : Mr.K.Srinivasamurthy for R1
Mr.Haja Mohideen Gisthi
for R2 & R3
Ms.M.Sneha for R4

ORDER

The petitioner is a Dental College and Hospital (it is not known since when a non-corporate entity has become a juristic person in law) and is represented



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by its Chairman. This institution was founded in 1987, and is affiliated to the third respondent university. It is governed by the Dentists Act, 1948. When the college was started, it was governed by the BDS Course Regulation, 1983. While so, the second respondent/Dental Council of India, came out with a notification dated 01.09.1993 for regulating the establishment of dental colleges. In terms of Regulation 9 of 1993 Regulation, an applicant seeking approval for establishing a dental college should give an undertaking to the effect that the medical college would facilitate training the students of a proposed dental college in medicine, surgery and allied medical sciences. Where however, no such medical college is available in the proximity of the proposed dental college, then such dental college should have a tie up with any hospital with a minimum of at least 100 beds, and located within 10 Km radius of the proposed dental college. So far as the petitioner is concerned, since there is no medical college proximate to its dental college, it had a tie up with the Government Hospital, Boothapandi, which according to the petitioner, falls within complies with paragraph 2 of the Regulation 9 of the 1993 Regulation.

2. While so, sometime in 2003, the petitioner college chose to offer post



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graduation courses, and at least two PG courses were approved for it. As things stood thus, the 1993 Regulations were replaced by a Regulation dated 12.01.2006. Regulation 6(2)(h) of 2006 Regulations provided for the distance - criterion between a dental college and a medical college, or hospital with a minimum of 100 beds. This clause underwent a further amendment on 12.05.2012.

3. According to the petitioner, the amended clause 6(2)(h) is relevant. Both under Regulation 9 of the 1993 Regulations and Regulation 6(h) of 2006 regulation as it was originally made, the dental college must be within a radius of 10 kms from any medical college hospital or any government hospital with at least 100 beds, whereas under Regulation 6(h) as amended on 22.05.2012, the '10 kms radius' was replaced with '10 kms by road'. The petitioner claims that he faces difficulty exactly in shifting distance criterion from 10 km radius to 10 km by road between the dental college and the hospital with 100 beds.

4. The circumstances in which the petitioner encountered the aforesaid difficulty as regards the distance factor as stated above arose when it applied



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for new post graduation courses and also for increasing the number of seats for the post graduation courses. Necessary application for the same was made in 2017. This was not approved as yet, since the first respondent relied on the amended regulation 6(2)(h). According to the first respondent, the petitioner's college is at a distance of 16 km. from the nearest Government Hospital and not 10 kms as stipulated.

5. It is in this setting, the petitioner-college had applied to allow admission for the post-graduation course for the academic session 2021-22. The first respondent, vide its proceedings dated 02.08.2021 refused to accord its approval, but only after recording its disapproval to the recommendation of the second respondent, the Dental Council of India. This had happened about the time when counselling for the post-graduation course was underway. Acting on the decision of the first respondent, followed by the third respondent, the fourth respondent vide its notification dated 02.11.2021 informed the candidates about the decision of the third respondent not to allow the petitioner to admit the candidates for MDS course, extended the date for choice-locking by the candidates (This notification could have been far more direct, but the effect is the same).



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6. Turning to the impugned proceedings of the first respondent, dated 02.08.2021, extracting relevant passages from it would be contextually necessary:

" the issue of distance between college and its attached hospital was first pointed out during the periodic inspection of the college by the Council's Inspectors on May 29-30-2017. It seems that accepting the reply of the College, no action to discontinue the course was taken by the Council. Surprisingly, thereafter Inspectors conducted repeated inspections for renewal of permission, but the issue of distance was not brought out and DCI recommended renewal of permission from time to time

3. It is a recorded fact that the College did not meet the requirements of having attached 100 bedded hospital. However, at the time of subsequent renewals in the period 2018 to 2020, this fact was ignored both by the Inspectors and the DCI. Moreover, in the explanation submitted by DCI for not raising the objection of distance for the period 2018-2020, it has been informed that the Inspectors did not point out the deficiency. It is not clear as to why the Inspections team who conducted the inspection during the period 2018-2020 did not specifically check the status of previous observations. It is also not clear as to why the Inspection reports submitted by such Inspectors was accepted by the DCI when the fact that the College did not meet the said requirement were in the knowledge of DCI.



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4. However, on perusal of the Notification dated 28th June 2017, it is notice that the relaxation of distance upto 30 Kms is subject to the condition that the applicant owns and manages a General Hospital of not less than 100 beds with necessary infrastructure facilities. The said condition seems to be mandatory condition required for grant of the relaxation of the distance norms. "

7. This is the setting. The petitioner now claims that inasmuch as the Regulation (2) of the 2006 regulation exempts all dental colleges from the purview of the new regulation and has specifically made provision that they be governed by the 1993 regulation, the petitioner's dental college would fall outside the purview of regulation 6(2)(h) of the 2006 regulation currently in force.

8. Be that as it may, the petitioner had admitted students to four additional PG courses for which it sought approval. The first batch of students joined the course in the academic year 2017 - 2018. Since these courses were not approved, as a one time measure, the second respondent recommended for approval to the first respondent. But the first respondent came out with few uncomfortable questions to the petitioner. Its principal question is



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(a) how could the petitioner commence new courses and admit students

without the approval of the first respondent;

(b) inasmuch the nearest Government hospital to the petitioner-college

with 100 beds is at 16 km from the petitioner's college, how approval

could be granted, since it does not conform to Regulation 6(2)(h)

criterion on distance.

9. The learned counsel for the petitioner pointedly brought this court to Regulation 2 of 2006 Notification, more particularly, the proviso thereof. He would then argue that when the college was established in 1987 the nearest Government Hospital was within 10 Km radius. However when the two way National Highways was converted into four-lane express highways with road meridian, the alignment of the road changed, as a consequence of which the distance between the main road and the petitioner's college increased by another 6 Kms by road, and when the 10 Km radius criterion was replaced by 10 Kms by road, it changed the entire scenario. So far as the distance factor is concerned, since the increase in distance by 6 kms has happened due to factors not within the control of the petitioner, the petitioner's interest in running the college will not be vitiated by 2006 Regulation.



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10. Arguing for the first respondent, Mr.K.Srinivasamurthy, learned standing counsel made the following submissions:

- Proviso to Regulation 2 of 2006 Notification has called out an exception only for dental college providing the undergraduate level course and not PG courses. Even though this regulation operates prospectively whether a college intend to introduce new post graduation course or to increase the number of seats, then it would be governed by 2006 regulations in terms of Regulation 2(b) and (c).
- Shifting his focus to the admission of students in 2017, the learned counsel submitted that till date the petitioner is not admitting students in every academic year when at least four of the courses were not approved and there is no approval for increasing the number of seats either.

11. The second respondent has filed its counter *inter alia* stating that the prayer of the petitioner is neither maintainable nor sustainable in law and the writ petition deserves to be dismissed.



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12. The contention on either side is carefully weighed. Whether the issue involved in this case is all about the distance-factor from the college to the Government Hospital, Boothapandi? Before proceeding to discuss this issue, it is now relevant to extract couple of more passages from the impugned proceedings of the the first respondent. They read:

4. It has been further noted that the Executive Committee of DCI has recommended admissions for next batch for MOS Course in the select specialities with the condition that the college has to construct its own 100 bedded General Hospital and make it fully functional within the college campus as per DCI's norms within a period of one year. However, on perusal of the Notification dated 28th June 2017, it is notice that the relaxation of distance upto 30 Kms is subject to the condition that the applicant owns and manages a General Hospital of not less than 100 beds with necessary infrastructure facilities. The said condition seems to be mandatory condition required for grant of the relaxation of the distance norms. Thus the recommendations of Executive Committee of DCI does not appear to be in line with the new proviso in Para 2 of DCI's Notification dated July 5, 2017 and thus does not merit consideration."

13. What gets instantly noticeable is that the second respondent when it made the recommendations, it knew that the petitioner-college did not comply with the distance-requirement as stipulated in the 2016 Notification, but it appeared to have acted on a 2017 Notification, which appears to provide for



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an exemption from the distance-criterion where the applicant itself owns and manages a general hospital with at least 100 beds. The petitioner has screened the 2017 Notification entirely for the scheme of things that it now presented before this court, and appears to to angling for an approval for admission to post-graduation course, based on not-very-responsible-recommendation of the second respondent, when the latter knew that the college neither can satisfy the distance-criterion between the dental college and the General Hospital at Bhoothapandi, nor has a 100 bedded general hospital facility when it made its recommendation. The first respondent very rightfully has taken exception to the manner in which the second respondent has made its recommendation for approval to the petitioner for admission to the MDS course for the academic year 2021-2022. Now having failed to secure an approval from the first respondent, the petitioner falls back on the 2006 Notification, and presents a case on the construction of Clause 2 of the said notification.

14. The petitioner stands are wobbling. When it possibly knew that it could not secure approval for the post-graduation course based on the distance criterion, what it appears to have persuaded the second respondent to make a



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recommendation, on the belief and promise that the petitioner would have its own 100 bedded facility to fall within the ambit of 2017 Notification. It now attempts to rake up something it had given up – its reliance on 2006 Notification. The petitioner appears to be maneuvering its strategies as if moving the pieces on a chess board.

15. Moving to the merit of the contentions, Regulation 9 of the 'Establishment of New Dental Colleges, Opening of Higher Course of Study and Increase of Admission Capacity in Dental Colleges Regulations, 1993', reads as follows:

" 9. that the applicant shall locate the proposed college in proximity of medical college and shall get an undertaking of the said medical college to the effect that the said medical college shall facilitate training to the students of the proposed dental college in the subjects of medicine, surgery and allied medical sciences.

*Where no medical college is available in the proximity of the proposed dental college, the proposed dental college shall get itself tied up with a **General Hospital which is having provision for at least 100 beds and which is located within 10 Km radius of the proposed dental college.** It shall be the duty of the applicant to produce evidence that the infrastructural facilities such as teaching, pre-clinical, para-clinical and allied medical sciences are owned by the proposed dental college itself.*



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The Notification of 1993, was replaced by the 'Dental Council of India (Establishment of New Dental Colleges, Opening of New or Higher Course of Study or Training and Increase of Admission Capacity in Dental Colleges) Regulations, vide Notification of the Dental Council of India, dated 12.01.2006. It provided a set of eligibility criteria under Regulation 6, which *inter alia* included the criterion as to the distance required between a dental college and a 100 bedded Government hospital. This Notification however, provided a rider vide Regulation 2 thereof. It reads:

2. Applicability:-

These regulations shall be applicable to the proposals relating to the following from the academic year 2006 - 2007:

- (a) establishment of a new dental college at the under-graduate level;*
- (b) introduction of a new or higher course of study or training at the post-graduate level (diploma and degree both); and*
- (c) increase of admission capacity in a dental college at the undergraduate or post-graduate level:*

Provided that the dental colleges established or permitted to increase the admission capacity at the under-graduate level before the commencement of



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these regulations will continue to be governed by the establishment of new dental colleges, opening of higher courses of study and increase of admission capacity in dental colleges Regulations, 1993.

The Proviso to Regulation 2 indicates that all dental colleges which either exist or where the admission capacity was permitted to be increased for the under graduation programme will continue to be governed by the 1993. Regulation.

16. While so, Regulation 6(2)(h) of the 2006 Regulation underwent and amendment and was substituted vide (4th Amendment) notification published on 22.5.2012 in the Gazette of India. It reads:

“6(h) the applicant shall attach its proposed dental college with a Government/Private Medical College approved/recognised by the Medical Council of India, which is located at the distance of 10 Kms by road from the proposed dental college and produce evidence of the said Medical college to the effect that it would facilitate training to the students of the proposed dental college as per syllabus/course curriculum prescribed in respective undergraduate and post graduate dental course regulations as amended from time to time:-

provided that not more than one dental college shall be



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attached with the medical college.

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A close reading of the Proviso to Regulation 2, has only enabled the operation of 1993 Notification only for UG courses and not for PG courses. How a course in dental science is to be structured and what parameters have to be prescribed for a dental college are essentially the job of an expert, and it is not for this Court to prescribe them. And the 2006 Notification is not under challenge either, and it has now held the field for 17 years. And it applies pan India.

17. How to read the 10 k.m radius as prescribed in 1993 Notification, and in Regulation Clause 6(2)(h) of 2006 Notification as amended in 2012, where the expression '*radius*' was replaced by '*by road*', again it is for the authorities to decide. What becomes evident is that the idea behind the scheme of dental education appears to provide the students with the knowledge in general medical science. Radius will have relevance only when a dental college intends to take its students to the government hospital with 100 beds by air. Has the petitioner any plans to do that?



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18. As stated earlier the Rules for the game are fixed by the experts. And every dental college is required to play the game as per the Rules framed, more so, when it do not pointedly challenge the rules. And, the job of this Court is only to see, if the action of the authority is in breach of the rules. This Court does not find that the proceedings of the first respondent are contrary to the rules or norms.

19. In the result, this writ petition stands dismissed. No costs.

28 .07.2023

Index : Yes / No
Speaking order / Non-speaking order
Asr/ds



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To:

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Health & Family Welfare
Nirman Bhavan,
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N.SESHASAYEE.J.,

ds

Pre-delivery order in
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28.07.2023