

(2011) 11 P&H CK 0214

High Court Of Punjab And Haryana At Chandigarh

Case No: LPA No. 69 of 2011 (O and M)

Neena Sehrawat

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision: Nov. 11, 2011

Acts Referred:

- Constitution of India, 1950 - Article 226

Hon'ble Judges: Ranjan Gogoi, C.J; Surya Kant, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Surya Kant, J.

This Letters Patent Appeal is directed against the order dated 14.12.2010 passed by a learned Single Judge of this Court dismissing CWP No.10799 of 2009 wherein the appellant (writ petitioner) sought a Writ of Mandamus for directing Shri Govind Tricentenary Dental College, Hospital and Research Institute, Budhera, Gurgaon respondent No.6 (in short, "SGT College") to allow her to appear in 4th year BDS examination and so that the BDS Degree course be completed.

2. Since there has been multifarious litigation between the parties and the writ petition giving rise to this appeal discloses facts selectively, we have also called for and perused the records of CWP No.7187 of 2007, CWP No.17040 of 2007 to understand the true genesis of the controversy.

3. It transpires that Baba Mast Nath Dental College at Asthal Bohar, Rohtak (in short "the BMN College") was set up in the year 1997 on the basis of "provisional" approval granted by the Dental Council of India (in short, "the DCI") for the said year and the provisional affiliation granted by the Maharishi Dayanand University, Rohtak (in short, "the MDU"). Similar "provisional" approval and affiliation was granted to the said College for the year 1998 also by the DCI and the MDU, respectively. Thereafter, no provisional or regular approval or affiliation was ever granted to the

said College by the DCI and the MDU.

4. In the "Information Brochure" published by the Government of Haryana for admissions to MBBS/BDS Courses in the year 1999, the BMN College (respondent No.7) was also included though with a Note that "the admissions..... will be made on provisional basis subject to the approval of the Dental Council of India.....".

5. The appellant and 27 more students, notwithstanding the above-mentioned "Note", claimed to have got admission in the BMN College in July, 1999. As per the categoric stand taken by the MDU in its reply/affidavit filed in CWP No.7187 of 2007, the appellant was not admitted on the basis of her merit position in the Common Entrance Test (CET) rather she got admission against the "Management quota" seat.

6. The DCI did not grant its approval to the BMN College as it failed to remove the deficiencies pointed out by the Inspecting Team nor did it meet the minimum infrastructural standards laid down for establishing a Dental College. The DCI thereafter vide its letter dated 13.09.1999 (Annexure A-4) to the Vice Chancellor of MDU unequivocally directed that ".....since the Dental Council of India has not recommended to Central Govt. to renew its permission for the Batch/2nd Year BDS Course at the said college for want of information on the deficient of teaching staff and the Central Govt. have not renewed its permission for the 2nd batch/2nd year BDS Course to the said institution. I am directed to request you to stop the further admissions at the said college till the Central Govt. renews its permission for 2nd Batch/2nd year BDS Course.

(Emphasis applied)

7. The Government of India, Ministry of Health and Family Welfare (Department of Health), had also while granting permission for a period of one year to the BMN College for 2nd Year BDS Course, categorically stipulated that "this permission is granted for period of one year and will be renewed on yearly basis after verification of the achievements of the annual targets and revalidation of the performance Bank Guarantee given by you for Rs.120 lakhs."

8. The BMN College felt aggrieved against refusal of the approval and filed a suit in the Civil Court at Rohtak and got an ad interim order in its favour. The MDU challenged that order and its appeal was allowed by the First Appellate Court, Rohtak. However, the order of the First Appellate Court did not last long and its operation was stayed by the High Court in a revision petition preferred by the BMN College. The BMN College then started filing contempt petitions and/or miscellaneous applications and got interim orders directing them to hold examinations/supplementary examinations for its students as well as declaration of their results.

9. The above-stated ad interim order though was meant specifically for those students only who were admitted in the BMN College in the years 1997 and 1998 on

the strength of the "provisional" approval and affiliation granted by DCI/MDU, yet it appears that the students admitted in the year 1999-2000 also took its advantage and kept on appearing in the examinations provisionally.

10. Meanwhile, the DCI passed another order dated 10.10.2000 debarring the BMN College from admitting students to the third batch of BDS Course and the aggrieved College approached this Court by way of CWP No.13955 of 2001. A Division Bench of this Court allowed that writ petition vide order dated May 24, 2003 with the following directions:-

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1. Those students who appeared in the final BDS professional examination under the interim orders of this Court and have cleared the same after undergoing the capsule course of six months will be allowed to join internship in the college forthwith. It may be mentioned that the capsule course was suggested by the Principal, Govt. Dental College, Rohtak when he was present in the Court on April 5, 2002 and the same was accepted by this Court in its order dated April 5, 2002 against which SLP filed in the Supreme Court was dismissed.

2. Some of the students appeared in the supplementary examination and are waiting to take the practical examination. Such students will be allowed to take the practical examination and their result will be declared by the University accordingly. The needful be done within two weeks.

3. The degrees obtained by the students referred to in clause 1 and 2 above will be recognized by the DCI.

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11. The above-reproduced directions did not survive for long as the DCI challenged the Division Bench judgement in SLP (Civil) NO.11042-11050 of 2003 wherein the Hon"ble Supreme Court directed the parties to maintain status quo.

12. It is relevant to mention here that the students admitted in the years 1997-1998 completed their course and finally attained the BDS Degree in the year 2003. Thereafter, the BMN College was formally closed down. The appellant admittedly did not appear in the 3rd year BDS annual examination till the closure of the College in the year 2003 as she appeared in the said examination in August, 2006 only.

13. The Hon"ble Supreme Court meanwhile issued several interim directions from time to time in the pending SLP including constitution of an Inspection Committee vide order dated 30.01.2004 for inspection of the infrastructure available in the BMN College. The college still could not meet the prescribed standards.

14. As regards the 1997-1998 batch of students who were admitted on the basis of "provisional" recognition/approval, the Hon"ble Supreme Court passed the order dated 30.01.2004 to the effect that "the students who have completed four years" BDS course from the college and have passed the University examination shall be allowed to complete their internship from a recognized college. The University shall make allotment of recognized colleges to such students and on allotment, those colleges shall permit the students to complete their internship subject to the regulations but without raising any objection that the students have not passed their examination from a recognized dental college. Such students shall approach the University within a period of one week from today and the University shall complete the work of allotting them to various recognized colleges within a period of one week from the date they approach the University. The internship permitted, as stated above, shall be subject to the final orders that may be passed in these Special Leave Petitions and mere completion of internship cannot be claimed in equity by the students

(Emphasis applied)

15. Similarly, the 1997 - 1998 batch students were permitted to take up the supplementary examinations also with the consent of the University and the DCI and an order to this effect was passed by the Supreme Court on 23.07.2004.

16. In so far as 28 students who claimed to have got admission in the year 1999 in the absence of any "provisional" affiliation or approval are concerned, it appears that except the appellant and one (Surabhi Rathee), rest of them abandoned the BMN College and got admissions somewhere else.

17. The appellant and Surabhi Rathee, however, untiringly persisted on their acceptance as "BDS students" and managed to appear and qualify upto 3rd year of BDS Course, apparently under the threat of contempt of the ad interim order passed in favour of the College by this Court in exercise of its revisional jurisdiction.

18. The closure of the BMN College also did not dishearten the appellant who meanwhile started pursuing her case for "transfer" or "migration" to a recognized Dental College. Her efforts yielded some results when the Government of Haryana wrote a letter dated 13.02.2008 (Annexure P1) to MDU to consider her adjustment in SGT College or any other College with an intimation to the State Government.

19. A newly established University known as Pt. BD Sharma University of Health Sciences at Rohtak (in short, "the PBDU") in purported compliance of the State Government's letter dated 13.02.2008, passed an order on 27.06.2008 (Annexure P2) allowing the appellant "to be adjusted in SGT Dental College, Budhera Distt. Gurgaon in the fourth year with immediate effect as she has already passed the First year, second year, third year BDS Examination". The said order was followed by a reminder dated 14.07.2008 (Annexure P3) asking the Principal of the SGT College (respondent No.6) to "comply with the Govt. orders immediately....."

20. Since the SGT College did not admit the appellant despite these directives, the University vide its memo dated 24.07.2008 (Annexure P4) warned respondent No.6-SGT College against its deliberate non-compliance of the Government orders and impressed upon the College to do the needful without any further delay under intimation to the University.

21. The appellant also approached the Ministry of Health and Family Welfare (Dental Education Section), Government of India (GOI) who vide its memo dated 11.12.2008 (Annexure P5) advised the Registrar, MDU to allow the appellant to appear in the 4th year BDS Course Examination, 2008 commencing w.e.f. 15.12.2008 as no time was left to take up the matter with the DCI. The Ministry advised the DCI also vide another letter of even date to take necessary action and to allow the appellant "to complete her BDS Course including Internship under intimation to the Ministry".

22. The SGT College and of course, the DCI, refused to succumb under the pressure mounted by the Haryana Government, the MDU, PBDU and GOI to admit the appellant in the 4th year Degree Course, leaving no other option for her but to approach this Court in CWP No.10799 of 2009 seeking a direction to the SGT College to allow her to sit in the 4th year BDS Course examination and complete the BDS Course.

23. A learned Single Judge of this Court vide an interim order dated 28.07.2009 directed the SGT College to accept the examination form of the appellant and forward the same to the PBDU to enable her to sit in the 4th year BDS examination provisionally, however, it was directed that the result of the examination would not be declared.

24. The DCI meanwhile filed its reply-affidavit dated 3rd September, 2009, inter alia, maintaining that the appellant has concealed the material facts including that the similarly placed students (admitted to BMN College during the period when there was no provisional recognition or approval) had filed an IA in SLP (C) No.11042-11050 of 2003 (Annexure R3/A) for clarification of the interim order dated July 23, 2004 (permitting the students of 1st & 2nd year batch to take supplementary examinations) but the Hon'ble Supreme Court did not permit those students of the 3rd batch to take the examination nor any other order was passed in their favour. It was averred that the appellant had earlier filed CWP No.7187 of 2007 seeking similar relief but the same was dismissed as withdrawn without any liberty to file a fresh petition. The appellant thereafter filed another writ petition bearing CWP No.17040 of 2007 which was also dismissed by a Division Bench of this Court on 22nd November, 2007 (Annexure R3/2). The reply-affidavit further explained that no order "transferring" the appellant to SGT College (respondent No.6) was ever passed by the competent authority nor the DCI accorded its approval for such transfer which can only take place from one "recognized college" to other "recognized college" and the BMN College (respondent No.7) was never a recognized college at the time when the appellant got the alleged admission in that college. The DCI also clarified

that for the Session in which the petitioner got admission in BMN College (respondent No.7) no approval was ever granted and her initial admission being de hors any legal sanction, her subsequent request for migration could never be accepted. The reply explained that the Division Bench decision dated 24.05.2003 of this Court passed in CWP No.13955 of 2001 in favour of the BMN College stood set aside by the Hon"ble Supreme Court when it was found by the Inspection Committee that the said College lagged in infrastructure and did not meet even the basic requirements prescribed for recognition of a Dental College.

25. Keeping the stand taken by the DCI in view that the learned Single Judge vide his order dated December 15, 2009 rejected the appellant's application seeking declaration of result of 4th year BDS examination "provisionally" or to grant her permission to appear in the supplementary examination, if so required.

26. The appellant moved yet another application for "declaration" of her result in which the factum of rejection of the earlier application was concealed. Consequently, the second application too met with the same fate on 01.04.2010.

27. The subject-writ petition was thereafter heard on merits and dismissed by the learned Single Judge vide the impugned order dated December 14, 2010 holding the appellant guilty of concealment of material facts especially regarding dismissal of her previous writ petitions as well as the fact that neither did she ever get admission in a "recognized college" nor was her claim protected under one or the other interim orders passed by the Hon"ble Supreme Court in favour of the BDS students of the 1st & 2nd batch of BMN College (respondent No.7) in the SLP preferred by the DCI.

28. The aggrieved writ-petitioner has now come up in Appeal which has been argued at length by her father who appeared in person. Learned counsel for the DCI and PBDU (respondents No.4) have also been heard and the records perused.

29. In our considered view, the following questions do arise for consideration in this appeal :-

i. Whether the appellant-writ petitioner was validly admitted in the BDS Course by BMN College (respondent No.7) in the year 1999?

ii. Whether the 1st, 2nd & 3rd year BDS Course examination passed by the appellant entitles her, as a matter of right, to appear in the 4th year examination and complete the BDS Degree Course?

iii. Whether the Government of Haryana or respondents No.4 & 5-Universities were competent to transfer/migrate the appellant from BMN College (respondent No.7) to SGT College?

30. Before responding to the queries formulated above, we may reiterate that the averments made in the writ petition or the documents placed on record hide more

than what they reveal. The writ petition is conspicuously silent on as to how and who permitted the appellant to appear in the 1st, 2nd & 3rd year BDS Course examinations even in the absence of a "provisional" recognition or approval to the BMN College. The Court orders, if any, permitting the appellant or other students admitted by the college in the year 1999 to pursue their BDS Course, are also not available on record. Apparently, the appellant has been unduly helped by the State Government, MDU, PBDU and GOI by passing one or the other favourable orders which clearly indicate as to how the State apparatus was too keen in completion of the appellant's BDS Degree albeit contrary to the directives of the statutory regulatory body (DCI). The favouritism shown to the appellant has unfortunately given rise to "illegitimate expectations" and unfructified equitable considerations.

1. Validity of appellant's admission in BDS Course

31. There can indeed be no quarrel that the BMN College (respondent No.7) got "provisional" affiliation and approval firstly for the year 1997 and thereafter for the year 1998 only leaving no scope to draw any misplaced inference for continuation of that provisional "recognition" until withdrawn. The express stipulation contained in the "Information Brochure" published by the Government of Haryana for admission to MBBS/BDS Courses in the year 1999 to the effect that admissions in the BMN College (respondent No.7) shall be made on "provisional" basis subject to approval of the DCI also fortifies this conclusion.

32. The solitary contention on behalf of the appellant that she got admission in July 1999 whereas the DCI stopped "further" admissions in BMN College (respondent No.7) on 13.09.1999 only and that the subsequent ban being prospective was inapplicable in her case, is wholly misconceived and misplaced. The contention though appears to be attractive, however, is hollow in substance. The "provisional" permission accorded by the DCI in the year 1998 stood exhausted once the admissions for the said year were over. No provisional permission or approval was subsisting in July 1999 when the appellant got admission in BMN College. The fact that the BMN College was still included by the State Government in its "Information Brochure" also does not improve the appellant's case as the inclusion was conditional and the candidates opting for admission to the said College were to do so at their own risk and peril.

33. The admissions made by BMN College in July, 1999 or subsequent thereto, were, thus, per se illegal conferring no rights whatsoever on the admitted students. We, therefore, unhesitatingly hold that the admission of appellant in the BMN College (respondent NO.7) in July 1999 was totally illegal and it did not clothe her with any right to pursue the BDS Course.

2. Appellant's entitlement to appear in 4th year BDS Examination

34. We find from the summoned records that after the status quo was directed to be maintained by the Hon"ble Supreme Court in the SLP filed by the DCI, no admissions

were made in the BMN College (respondent No.7) and the students who were admitted in the years 1997 and 1998 were also adjusted/transferred to other recognized colleges. It appears that the appellant was never imparted any professional education by a regular faculty in the institution which was found lacking in the basic infrastructure needed to establish a Dental College. It is for the University to explain as to how the appellant was still allowed to appear in the 1st, 2nd & 3rd year BDS Course examinations. Nevertheless, the passing of these examinations through the process of backdoor entry was a crude attempt to by-pass the authority of the DCI, constituted under the Central Act to regulate and maintain the standards of Medical Education throughout the country.

3. Competency for appellant's transfer/migration

35. Adverting to the last question, namely, legitimacy of the "transfer" or "migration" of the appellant from BMN College to the SGT College, it may be noticed at the outset that no provision of law empowering the State Government to advise or command the University "for adjustment" of the appellant in the SGT College has been brought to our notice. Secondly, how PBDU felt it mandatory to implement the Government order has not been revealed by it except accusing the SGT College (respondent No.6), in its reply/affidavit, for disobeying its directives. The autonomy enjoyed upon by a University in the matter of academic affairs does not call for any interference from the State executive or any other agency. The PBDU, for the reasons best known to it, issued one directive after the other to the SGT College to implement the Government letter dated 13.02.2008. Pertinently, the DCI was kept completely in dark while transferring the appellant to the SGT College (respondent No.6) and no communication was sent to it what to talk of taking its prior permission though mandatorily required under sub-clause (1) of Clause - IV (Migration) of the Regulations for the Degree of Bachelor of Dental Surgery, 2007. In the absence of such prior permission, the SGT College (respondent No.6) rightly refused to admit the appellant in the 4th year BDS Course.

36. The appellant thus neither got admission in BDS Course on merit in a recognized college nor did she complete the 1st, 2nd & 3rd year BDS Course after studying in a college loaded with basic infrastructure. Similarly, the appellant's admission or the subsequent academic pursuits were never recognized by the DCI. Her abortive attempt to gate-crash into a recognized college in the final year was also lawfully stalled by the SGT College and the DCI. The resultant effect, though extremely harsh, is that the appellant can inure no benefit out of this entire exercise in futility. The learned Single Judge, therefore, rightly declined to issue the desired mandamus for the declaration of the appellant's 4th year BDS Examination result in which she managed to appear provisionally under the interim directions obtained by concealing the material facts.

37. In all fairness to the father of the appellant, he also made passionate attempts to arouse equitable considerations in her favour highlighting that the appellant was 19

years" old when she got admission in the BDS Course (year 1999) and even after crossing the age of 29 years she is awaiting to complete the said degree course.

38. True it is that the jurisdiction of the High Court under Article 226 is equitable and discretionary and ought to be exercised to reach injustice wherever it is found. It is perfectly open for the High Court, exercising this flexible power, to pass such order as public interest dictates and equality projects. The writ Court, being a court of equity, may go a step further both to give and withhold relief in furtherance of the public interest. It is well known that a prerogative remedy is not available as a matter of course and the conduct of the party who is invoking the jurisdiction needs to be kept in view. If full facts are not disclosed or the relevant material is suppressed or otherwise the court is misled, the petition can be turned down without adjudicating the matter on merits.

39. In [Arunima Baruah Vs. Union of India \(UOI\) and Others](#), , the Hon"ble Supreme Court held that a person invoking the discretionary jurisdiction of the Court cannot be allowed to approach it with a pair of dirty hands and even if the dirt is removed and the hands become clean, still it is for the court to consider whether he should be granted the relief or not.

40. In *Madhuri Patel v. Additional Commissioner, Tribal Development*, (1994) 6 SCC 244, it was held that a party who seeks equity must come with clean hands. He who comes to the Court with false claim, cannot plead equity nor the Court would be justified to exercise equity jurisdiction in his favour. When the party obtained a benefit by playing fraud, the benefit can be withdrawn at any time.

41. It is equally well-settled that the High Court while exercising its power under Article 226 cannot grant the relief de hors or contrary to the prescribed rules. Hardship of candidate does not entitle him to get relief on compassion in violation of the rules. No relief thus can be granted on the ground of sympathy as the relief always flows from a legal right, as held in [State of M.P. and Others Vs. Sanjay Kumar Pathak and Others](#), .

42. In a catena of decisions it stands settled that an equitable Court is under duty to balance the competing interest, prevent fraud and promote interest of justice, public interest and honesty. Where a party's claim is not founded upon valid grounds, it cannot claim equity and the one who claims equity must come before the Court with clean hands as equities have to be properly worked out between competing claims. A Court of equity, when exercising its equitable jurisdiction, must act so as to prevent perpetration of a legal fraud and promote good faith and equity. An order in equity is one which is equitable to all the parties concerned.

43. Keeping these well known parameters in view, we have considered the appellant's last submission also with extreme sympathy and compassion but are unable to invoke the equity jurisdiction to rescue her. We respectfully concur with the learned Single Judge that the appellant is guilty of concealing material facts and

information which have direct bearing on the fate of the present proceedings.

44. One Surabhi Rathee and the appellant filed CWP No.7187 of 2007 seeking a mandamus for their transfer to a recognized Dental College to enable them to complete their BDS course. Upon notice, MDU Rohtak filed its reply/affidavit opposing the appellant and her co-petitioners' claim and reiterating that both of them got admission in the session 1999-2000 for which there was no approval of the DCI. It was also explained that the appellant and her co-petitioner got admission in the above-stated BDS Course not on the basis of their merit in the CET but "against the management minority quota seats at their own.....". The writ petition was subsequently dismissed as infructuous on the statement made by counsel for the petitioner/appellant.

45. Thereafter, the fathers of the appellant and Surabhi Rathee filed CWP No.17040 of 2007 and sought a mandamus to command the DCI, MDU and SGT College etc. "to confirm shifting/transferring the daughters of the petitioners in SGT college, Gurgaon.....to enable them to complete their BDS 4th year Course (including their internship) and permanent registration....." They also sought quashing of the letter dated 11.10.2007 passed by the DCI withdrawing the shifting of their daughters to SGT College. The other direction prayed for was to direct the DCI and the University to issue the 3rd year mark-sheet of BDS Course results "of daughters of the petitioners, namely, Ms. Surabhi Rathee and Ms. Neena Sherawat". The said writ petition was dismissed by a Division Bench of this Court vide order dated November 20, 2007 holding that :-

It is pointed out that since the matter against the judgement of this Court was pending before the Hon"ble Supreme Court, the Hon"ble Supreme Court had granted permission only to the students admitted in 1997-98 and 1998-99 and application filed by the petitioners was dismissed as withdrawn, it will not be appropriate to entertain this petition in this Court. As regards the letter by the University, it is stated that the letter was provisional subject to the permission of the DCI, which was never granted. The litigation with the University stood on different footing. The DCI was not a party to the suit, wherein decree dated 8.3.2006, Annexure P2 was passed. The college was lying closed since the year 2004 and there was no immediate cause of action against the DCI. The University had withdrawn the provisional letter of migrating the petitioners to another college.

Having regard to the fact that the matter was pending in the Hon"ble Supreme Court and the petitioners had moved an application before the Hon"ble Supreme Court, which was dismissed as withdrawn and the fact that the Dental Council had not given the recognition, any direction interim or final will clearly be in conflict with proceedings pending with the Hon"ble Supreme Court. Learned counsel for the DCI has made a statement in this Court that an order of status quo has been passed by the Hon"ble Supreme Court which will stand disturbed by granting any order in favour of the petitioners.

46. The above-mentioned judgements have attained finality and have direct bearing on the fate of this case. In our considered opinion, the appellant ought to have disclosed these material facts.

47. That apart, the following factors are sufficient enough to dissuade us from invoking the equity jurisdiction:-

(i) the appellant did not get admission in the BDS Course on the basis of her merit position in the Common Entrance Test. She secured admission against a seat of the management quota, either on payment of Capitation Fee or through some other extraneous pressures;

(ii) she got admission in the BMN College knowing fully well that it was "unrecognised" and unapproved;

(iii) there was no promise in the "Information Brochure" to shift or transfer the students to any other recognized college;

(iv) the appellant passed her 3rd year BDS Course in 2006 and much before that the BMN College stood closed in the year 2003;

(v) there was no specific interim order passed by any Court in favour of the appellant to sustain her admission or pursue the Course and/or appear in the examination. In any case, interim orders are always subject to the final order of the court;

(vi) the appellant joined hands with the Management of the BMN College to defeat the regulations framed by the DCI;

(vii) the dismissal of CWP No.17040 of 2007 jointly filed by the fathers of the appellant and that of Surabhi Rathee completely sealed the fate of the appellant. The said order has attained finality;

(viii) the subsequent writ petition giving rise to this appeal was thus not at all maintainable, rather was barred by the principle akin to res judicata;

(ix) the appellant is guilty of suppressing material facts and information including dismissal of the previous writ petition(s);

(x) The appellant is equally guilty of misleading this Court through selective information while obtaining the interim order for allowing her to appear in the 4th year examination;

48. For the reasons afore-stated, we do not find any ground to interfere with the impugned order dated December 14, 2010 passed by the learned Single Judge and dismiss this appeal, however, without any order as to costs.