

J. K. K. Nataraja Dental College and Hospital Vs Union of India (UOI) and Dental Council of India

Court: Madras High Court

Date of Decision: Aug. 16, 2011

Acts Referred: Dentists Act, 1948 – Section 10A(4)

Hon'ble Judges: N. Paul Vasanthakumar, J

Bench: Single Bench

Advocate: R. Muthukumaraswamy and A. Jenasenar, for the Appellant; K. Mohanamurali and S. Yashwant, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

N. Paul Vasanthakumar, J.

By consent of both sides the writ petition is taken up for final disposal.

2. The prayer in the writ petition is to quash the order of the second Respondent dated 15.6.2011 as well as the order of the first Respondent

dated 6.7.2011 and direct the Respondents to grant renewal of approval for 100students in BDS course to the Petitioner Dental College for the

academic year 2011-2012 and for future years.

3. The brief facts necessary for disposal of this writ petition are as follows:

(a) The Petitioner Dental College is a linguistic minority institution, established in the year 1987 with an annual intake of 40 students, after getting

approval from the Government of India in terms of the Dentists Act, 1948, and after being recommended by the Dental Council of India. It is also

affiliated to Dr. M. G. R. Medical University, Chennai. Post Graduate courses in Dentistry is also being offered after the approval granted by the

Central Government .

(b) The Petitioner, having provided sufficient infrastructural facilities, applied for the increase of intake in September, 2006 from 40 to 60 after

obtaining essentiality certificate from the State Government. However, the increase of intake was not ordered. Consequently Petitioner filed W.P.

No. 29508 of 2007 and this Court by order dated 17.8.2007 directed the Respondents to consider the case of the Petitioner in the light of the

compliance report submitted. Thereafter by order dated 4.10.2007 the first Respondent approved the increase of intake from 40 to 60. Again,

pursuant to the application made by the Petitioner, after making inspection, by order dated 17.9.2008 the said intake was increased to 100 from

the academic year 2008-2009 after being satisfied with the infrastructural and instructional facilities.

(c) Petitioner states that during April, 2009, the officials of the second Respondent inspected the Petitioner institution and submitted a report

alleging certain deficiencies. The Petitioner replied that the deficiencies pointed out regarding faculty is not correct and thereafter further inspection

was made on 29.6.2009 for continuance of approval for the year 2009-2010. However, increase of intake from 40 to 60 was not renewed for the

academic year 2009-2010. Similarly, first Respondent conveyed its decision not to renew approval for the second year BDS course from 60 to

100 and for the third year BDS course from 40 to 60 and it was ordered that No. fresh admission should be made in BDS course for the

academic year 2009-2010 unless the approval is renewed by the Central Government

(d) On 31.7.2009 petitioner submitted a detailed representation and No. action having been taken the Petitioner filed W.P.(Civil) No. 330 of

2009 before the Honourable Supreme Court as similarly cases were also filed by similar placed colleges from other states. The said writ petition

was subsequently withdrawn with liberty to approach the Central Government and such permission was granted. The Petitioner also filed I.A. No.

3 of 2009 seeking permission to approach this Court challenging the order of the first Respondent and such permission was also granted.

(e) The order passed by the first Respondent dated 23.7.2009 was challenged before this Court in W.P. No. 21965 of 2009 and pursuant to the

interim direction inspection team was sent and a report was submitted. Personal hearing was also provided. However, the first Respondent passed

an order on 11.3.2010 stating that time schedule for granting permission has expired on 31.7.2009.

(f) The said order was challenged in W.P. No. 5430 of 2010 and the said writ petition was heard on 29.4.2010 and an order was passed to

reduce 30 seats per annum during the academic years 2010-2011 and 2011-2012 within the sanctioned strength as the management admitted

students more than the approved intake during 2009-2010. Thus, 60 seats were adjusted, i.e., 30 each in two years.

(g) For the academic year 2010-2011 inspection was conducted and first Respondent passed an order on 23.6.2010 granting approval for the

renewal of 4th year BDS course for increase of seats from 40 to 60 and approval for third year course restoring seats from 60 to 100.

(h) For renewal of approval for the year 2011-2012 inspection was conducted and again the increase of intake was not granted in the order dated

6.7.2011 stating that for the 4th year, renewal for restoration of seats from 60 to 100 is not possible and for increase of seats from 40 to 60 is also

not permissible for the year 2011-2012 and as such Petitioner college is permitted to admit only 40 students. The said order dated 6.7.2011, which

was passed by the first Respondent based on the decision of the second Respondent dated 15.6.2011 is challenged in this writ petition with

consequential prayer.

(i) The grievance of the Petitioner is that three reasons are stated by the second Respondent in the impugned order, such as (1) there is deficiency

of one Reader in the Department of Public Health Dentistry since Dr. H. S. Madhukar, Reader of Public Health Dentistry is not accepted as he

does not have the requisite qualification and he has Master in Public Health from University of Sydney; (2) Dr. Kaizad G. Kermani, Reader in the

Department of Periodonics is not accepted since he was absent on the day of inspection; and (3) Proof of residence of other teaching faculty are

not accepted as their local landline bill (telephone) was shown but the usage charges was found Nil, which fact establishes that they are not staying

there.

(j) Based on the said order of the second Respondent the first Respondent passed an order on 6.7.2011 and decided not to grant its approval for

the increase of seats from 40 to 60 and also permission is not granted for 4th year renewal for restoration of seats from 60 to 100 for the academic

year 2011-2012. The Petitioner was directed not to admit students in BDS course for increase of seats from 40 to 60 and restoration of seats

from 60 to 100 for the academic year 2011-2012.

4. The Respondents have filed a counter affidavit and contended that the decision taken by the second Respondent which was accepted by the

first Respondent stating the said three deficiencies are found during the inspection and therefore the order passed is sustainable.

5. It is the contention of the Petitioner in the reply affidavit filed on 2.8.2011 that even if qualification possessed by Dr. H. S. Madhukar is not

acceptable, another person viz., Dr. Roopa G.S. was appointed as Reader in Community Dentistry on 11.7.2011, who has passed BDS and

MDS degrees from Rajiv Gandhi University of Health Science, Bangalore, which is a recognised Post Graduate Degree under the Dentists

Act, 1948. Insofar as the non-availability of Dr. Kaizad G. Kermani at the time of inspection, he was absent due to his illness and he is a local

resident, which can be ascertained even from the telephone bills. Proof of residence was also furnished insofar as the other faculty members are

concerned. To prove their residence, the Petitioner produced materials in the form of Gas Connection, water tax receipts, etc. It is also stated that

the usage of landline telephone is minimal now-a-days which is a well-known fact to all concerned. Stating the above details it is prayed that the

Respondents may be directed to verify the facts stated above and pass appropriate orders reviewing the approval for the year 2011-2012 with an

intake of 100 students.

6. For the reply affidavit dated 2.8.2011 an additional counter affidavit was filed by the second Respondent on 8.8.2011 stating that the

appointment of Dr. Roopa. G. S., a substitute to Dr. H. S. Madhukar is not in compliance with the statutory requirement of the norms fixed by the

Dental Council of India. As per the norms, before appointing a teaching faculty, NOC from the Dental Council of India is mandatory for movement

from one college to another and NOC will be issued by the Council only after fulfilling all the rules and Regulations/policy decision framed by the

Government of India as well as Dental Council of India.

7. In answer to the said contention the learned Senior Counsel appearing for the Petitioner College submitted that already application seeking

NOC was submitted before the Dental Council of India and the same may be directed to be considered and the order impugned in this writ

petition may be reconsidered in the light of the materials now made available, which are on the file of the second Respondent.

8. Heard the learned Counsel for the first Respondent as well as second Respondent.

9. As per the impugned orders, the affidavit filed as well as the additional/reply affidavits filed, it is established that the three deficiencies pointed

out appears to be rectified and therefore the Respondents can be directed to reconsider the orders already passed. The learned Senior Counsel

also submitted that before passing the impugned order, the first Respondent has not followed the statutory provision viz., Section 10A(4) of the

Dentists Act, 1948, which mandates giving opportunity of hearing to the institution and the same was not followed.

10. Similar case in respect of increase of intake of seats in M.B.B.S. Course was considered by the Delhi High Court in L.P.A. No. 544 of 2011

and on the basis of the submissions made by the learned Counsel in that case, the Division Bench of the Delhi High Court by order

dated 21.5.2011 gave directions to re-inspect and pass fresh orders. The said order was challenged by the Medical Council of India before the

Supreme Court in SLP No. 16233 of 2011 and the Honourable Supreme Court by order dated 17.6.2011 held thus,

(b) The Council shall be at liberty to consider the application in accordance with the Rules, Regulations and the parameters provided for grant of

approval of such colleges. If as per the wisdom of the Council, conditions are not satisfied it will be at liberty to decline the approval.

(c) We extend the period by two weeks for considering and granting/refusing the approval to the Medical College. The Council will be at liberty to

inspect the College through Experts as contemplated under the Rules.

11. I had an occasion to consider similar issue in W.P. No. 16947 of 2011 and by order dated 9.8.2011 considering the statutory provisions as

well as the claim made by the Petitioner therein and as the requirement for renewal of approval was complied with, the impugned order in that writ

petition was set aside and the matter was remitted to the Respondents to reconsider the issue and pass fresh orders within a period of three weeks.

12. The last date for completing the admission for B.D.S course for the academic year 2011-2012 being 30.9.2011, there is sufficient time to

reconsider the issue by the Respondents. Hence I am of the view that the impugned order, which was passed in violation of Section 10A(4)

Proviso of the Dentists Act, 1948, cannot be sustained. Accordingly the impugned order is set aside. The matter is remitted to the second

Respondent to consider the compliance of deficiencies as claimed by the Petitioner, including the grant of NOC for appointment of a faculty

member and to pass fresh orders before the end of August, 2011. It is made clear that before the approval of increase of intake is granted by the

first Respondent no admission beyond the permitted seats shall be made.

The writ petition is disposed of accordingly. No costs. Connected miscellaneous petitions are closed.