

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 31-01-2017

CORAM

THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO
AND
THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.A.Nos.263 & 264 of 2015 and
M.P. No 1 and 2 of 2015

W.A.No.263/2015 :

The Pondicherry University,
represented by its Registrar,
Dr.B.R.Ambedkar Administrative Building,
R.Venkatraman Nagar,
Pondicherry-605 014. ...Appellant/1stRespondent in both Appeals

-vs-

1. A.Rizwana Begum

2. The Dean,
Mahatma Gandhi Postgraduate Institute of
Dental Sciences,
Government of Pondicherry Institution,
Pondicherry - 605 006. ... Respondents/Petitioner/2nd
Respondent in W.A.No.263/2015

1. R.Raseena

2. The Dean,
Mahatma Gandhi Postgraduate Institute of
Dental Sciences,
Government of Pondicherry Institution,
Pondicherry - 605 006. ... Respondents/Petitioner/2nd
Respondent in W.A.No.264/2015

W.A.No.263 of 2015 is filed under Clause 15 of the
Letters Patent against the order, dated 26.06.2014, passed in
W.P.No.18369 of 2013, on the file of this Court.

W.A.No.264 of 2015 is filed under Clause 15 of the
Letters Patent against the order, dated 26.06.2014, passed in
W.P.No.18370 of 2013, on the file of this Court.

COMMON PRAYER IN W.P. NOS 18369 & 18370 OF 2013

Writ Petitions has been filed Under article 226 of the
Constitution of India, praying for the insurance of Writ of
Mandamus, to direct the respondents to permit the petitioners to

continue their studies in B.D.S. course conduct by the Second Respondent.

For appellant in both W.As. : Mrs.A.V.Bharathi
For respondent 1 in both W.As.: Mr.V.Lakshminarayanan,
for Mr.V.Raghavachari.
For respondent 2 in both W.As.: Mrs.D.Reena Iswariya,
Addl.Govt.Pleader (Pondicherry)

JUDGMENT

(Judgment of the Court was delivered by Nooty.Ramamohana Rao,J.)

These Writ Appeals have been preferred by Pondicherry University, the second respondent in the Writ Petitions, aggrieved by the order rendered on 26.06.2014 by our learned Brother, Justice S.Vaidyanathan. First respondents in both these appeals are the students concerned, whose Writ Petitions have been allowed by the learned single Judge.

2. The relevant facts are these :

Writ petitioner students have secured admission in BDS Course under 'Non-Resident Indian/NRI Sponsored/Foreign Students category'. Five seats were allocated for admission to this category. The students were provisionally granted admission on 07.08.2012 in the second respondent institute. There is no dispute on the factual count that both the writ petitioner students have secured less than 50% of marks in the qualifying examination. When the first year end examinations were approaching, the writ petitioners were denied the right to appear for the examinations by the appellant University, on the ground that their admission to the BDS Course is irregular. In that context, the Writ Petitions came to be instituted.

3. Heard Smt.A.V.Bharathi, learned counsel for the appellant; Sri V.Lakshminarayanan, appearing for Sri V.Raghavachari, learned counsel for the first respondent writ petitioners; and Mrs.D.Reena Iswariya, learned Additional Government Pleader (Pondicherry), on behalf of the second respondent institute.

4. Learned counsel for the appellants would urge before us that the Regulations of the Dental Council have prescribed the norms for admission to BDS Course and, contrary to such norms, the first respondent writ petitioners have been granted admission to the first year of BDS Course and, therefore, very rightly, the appellant University has declined permission to the writ petitioners to appear for the year end examinations. Learned counsel for the appellants has drawn our attention

specifically to the Dental Council of India Revised BDS Course Regulations, 2007, which have been framed in exercise of the power conferred by Section 20 of the Dentists Act, 1948, with the previous sanction of the Central Government. Regulation I deals with Admission to the Dental College and eligibility criteria. Regulation II deals with Selection of Students. Regulation II.5 laid down the Procedure for selection to BDS Course and it reads as under :

"5. Procedure for selection to BDS course shall be as follows :

(i) In case of admission on the basis of qualifying examination under Clause (i) based on merit, candidate for admission to BDS course must have passed in the subjects of Physics, Chemistry, Biology and English, individually, and must have obtained a minimum of 50% of marks taken together in Physics, Chemistry and Biology at the qualifying examination. In respect of candidates belonging to Scheduled Castes, Scheduled Tribes or Other Backward Classes, the marks obtained in Physics, Chemistry and Biology, taken together in qualifying examination, be 40%, instead of 50% as above, and must have qualifying marks in English....."

5. Qualifying examination is spelt out in Regulation II.1, by making it clear that in States having only one Dental College and one University Board/Examining Body, conducting the qualifying examination, the marks obtained at such qualifying examination may be taken into consideration. It is the specific case that in the Union Territory of Pondicherry, there is only one Dental College and only one Board, which conducts the Board examinations for 10+2 course. Therefore, the marks obtained at the qualifying examination will determine the admission process for the BDS course.

6. According to the learned counsel for the appellants, unless the candidates have obtained a minimum of 50% marks taken together in Physics, Chemistry and Biology at the qualifying examination, they cannot seek admission to the BDS course at all, and, in the instant case, the writ petitioner students have secured 49.5% and 49.3% marks respectively and hence they are not entitled to be granted admission. According to her, the second respondent/institute, having committed an error in granting admission to the students, the students are not entitled to be permitted by the University to appear for the year end examinations.

7. Per contra, Sri V.Lakshminarayanan, learned counsel for the first respondent writ petitioners, would submit that the

writ petitioner in W.P.No.18369 of 2013, by name, Ms.C.Rizwana Begum, is a candidate, belonging to OBC community, while the writ petitioner in W.P.No.18370 of 2013, by name, Ms.S.Raseena, is native of Lakshadweep Islands, belonging to Scheduled Tribe community, and for such candidates, the Dental Council itself has relaxed the norm by specifying that they should have obtained marks in Physics, Chemistry and Biology taken together at the qualifying examination to be 40% as against 50% by the other candidates, and, hence, the presumption of the appellant University that the respondent writ petitioners lack the minimum eligibility to secure admission in BDS course is factually incorrect. Mr.Lakshminarayanan would also urge before us that the brochure for admission to BDS course issued by Mahatma Gandhi Postgraduate Institute of Dental Sciences, second respondent herein, has clearly brought out that out of the intake capacity of 40 seats permitted for BDS course, 29 seats are set apart for those in domicile in Pondicherry; in All India quota, 6 seats are set apart; and 5 seats have been allocated to the category of Non-Resident Indian/NRI Sponsored candidates/Foreign Students. According to the learned counsel, the second respondent institute is affiliated to Pondicherry University, a Central University. Dealing with the admission procedure, it has been faithfully brought out that admission to 5 seats under NRI quota are made, based upon the marks obtained by the students at the Higher Secondary Certificate examinations in Biology/Botany, Zoology, Physics and Chemistry, including practicals. In all other categories, they should have secured a minimum of 50% of marks in aggregate in subjects of Physics, Chemistry and Biology, whereas, in respect of candidates belonging to SC, ST and OBC, the aggregate mark has been pegged at 40%. It is, therefore, urged that the prospectus released by the institute concerned is in conformity and in accordance with the Regulations framed by the Dental Council of India, which has not been properly construed by the appellant University.

8. There is no dispute on the count that it is the Dental Council of India, which is the competent authority to frame regulations for regulating the admission process to both Undergraduate and Postgraduate Dental courses. DCI has, accordingly, framed the regulations, known as Revised BDS Course Regulations, 2007. Regulation II thereof deals with Selection of Students. It has provided for a minimum standard, by prescribing that the students, who seek admission, must necessarily pass the qualifying examination (+2), by securing in aggregate a minimum of 50% marks in Physics, Chemistry and Biology/Botany and Zoology. Insofar as the candidates belonging to SC, St and OBCs, such candidates are only required to secure an aggregate pass mark of 40% in the aforesaid subjects, at the qualifying examination. There is also no further quarrel that there can be relaxed standards of admission in favour of the candidates, belonging to SC,ST and OBC, when compared to the

standards prescribed for other/open category students. In that view of the matter, all we need to examine is, whether the 5 seats set apart for NRI quota are liable to be treated as a horizontal reservation or should it be construed as a vertical reservation. This issue has been much debated and it has now been decreed by the Supreme Court in a catena of cases, commencing from Indra Sawhney v. Union of India, AIR 1993 SC 477. The 5 seats, set apart for NRI category, have only to be construed as horizontal reservation. In other words, the candidates, sponsored/selected for admission against these 5 seats, under NRI category, will have to be adjusted against the seats, which are meant for specified classes, such, SC, ST, OBC or OC category. They are not to be treated as a vertical reservation, as it is. When they are to be treated as horizontal reservation, they become part and parcel of the categories, such as open competition, SC, ST or OBC, as the case may be. When the two respondent writ petitioners before us belong to OBC and ST respectively, it becomes clear to us that they have to be counted within the overall reservation provided for OBC and ST, out of the total intake capacity of 40 seats. When so construed, the respective strength of seats set apart for SC, ST or OBC will not overflow and eat into open category seats, left out to be filled in purely on merit ranking basis.

9. Since there is no dispute whatsoever that the two respondent writ petitioners do belong to OBC and ST category, all we need to appreciate is, that for securing admission, they are required to pass the qualifying examination (10+2), by securing a minimum aggregate marks of 40% in Physics, Chemistry and Biology/Botany and Zoology, which they have secured. Since the respondent writ petitioners have admittedly secured an aggregate percentage of 49.5% and 49.3% respectively, we can only hold that they have otherwise secured the necessary qualifying marks, as prescribed by the Regulations in Regulation II.5. Therefore, their admission, as construed by the appellant University as improper, is not a well founded argument.

10. Every University, which is constituted under a statute, is an independent body, entrusted with the important task of maintaining certain academic standards. The University has to maintain those standards, but, at the same time, should also strive to improve upon the same. The independence of the University in matters of academics and research is to be zealously protected. Therefore, we may not find a serious objection in the conduct of the University in objecting to the admission of the respondent writ petitioners. Though Sri Lakshminarayanan would suggest that we should draw an adverse inference against the University, nonetheless, the objection of the University that the 5 seats set apart for NRI category for the first year BDS course should be treated as an independent block and not as a horizontal reservation is not liable to be

accepted. The vertical reservations stand in the face of what has been prescribed under Article 15 (1) of the Constitution of India and they contrast themselves to that of the open category seats, which are meant to be filled in both by the reservation segment candidates as well as those who belong to unreserved segment, purely based upon their inter se merit. We, therefore, do not find any merit in these appeals and, accordingly, dismiss both the Writ Appeals.

11. We are informed that the respondent writ petitioners have since completed the four year BDS course, but, however, the appellant University has not declared their results and also not awarded them the necessary degrees. Therefore, the appellant University would immediately undertake the evaluation of the examinations taken by the respondent writ petitioners and, in case they have secured the marks necessary to pass, declare the result immediately and the necessary degree certificates/pass certificates be issued, so as to enable them to register with the registering body concerned. Let this exercise of declaring the results of the respondent writ petitioners be carried out within a maximum period of 30 days from the date of receipt of a copy of this judgment. In case the respondent writ petitioners are required to take any supplementary examinations, necessary arrangements for enabling them to appear for the said examinations should be undertaken by the appellant University.

12. Writ Appeals fail and are, accordingly, dismissed. No costs. Consequently, the connected M.P.Nos.1,1 and 2 of 2015 are closed.

s/d-

Assistant Registrar

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Sub-Assistant Registrar

To

1. The Dean,
Mahatma Gandhi Postgraduate Institute of
Dental Sciences,
Government of Pondicherry Institution,
Pondicherry - 605 006.

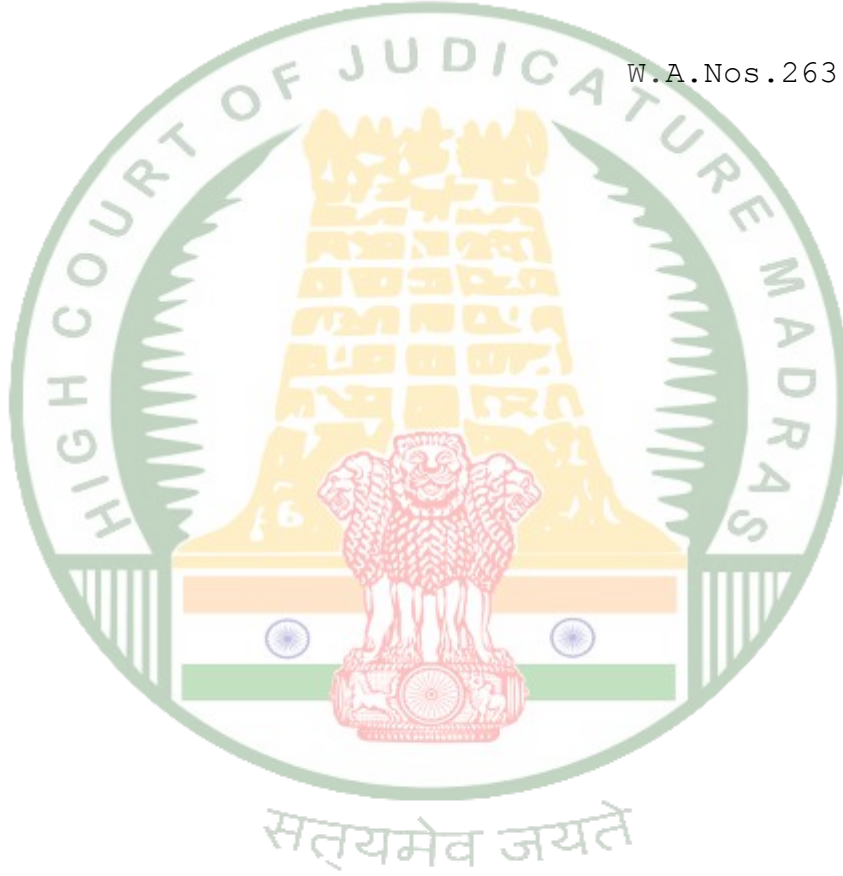
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2. The Registrar,
Pondicherry university,
B.R. Ambedkar Administrative Building,
R. Venkatraman Nagar,
Pondicherry-14.

+2 CC to Mr. V. Raghavachari, Advocate sr 5345 & 6113
+2 CC to M/s. A.V. Bharathi, Advocate sr 5870 & 5871
+2 CC to The Govt. Pleader for Pondicherry sr 5573 & 5574

W.A.Nos.263 & 264/2015

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