

R
D

**IN THE HIGH COURT OF KARNATAKA
AT BANGALORE**

Dated this the 29th day of June, 2006

BEFORE:

THE HON'BLE MR JUSTICE D V SHYLENDRA KUMAR

Writ Petition No 8324 of 2006 [EDN-AD]

C/w.

Writ Petition No 6675/2006 [EDN-RES]

In W.P. No.8324/2006:

Between:

DR SURAJ S SHETTY
S/O S S SHETTY
AGED ABOUT 26 YRS
R/O NO 110, "SANKIRTHAN"
POLICE OFFICIALS HOUSING SOCIETY
SARDAR WALLABHABAI ROAD
MYSORE 10 ... PETITIONER

(By Sri. H Kantharaja, Adv.)

And:

- 1 RAJIV GANDHI UNIVERSITY OF
HEALTH SCIENCES
4TH T^H BLOCK, JAYANAGAR
BANGALORE 41
REP BY ITS REGISTRAR
- 2 SREE DHARMASTHALA MANJUNATHESHWARA
COLLEGE OF DENTAL SCIENCES AND
HOSPITAL, DHAVALANAGAR, SATTUR
DHARWAR 580 009
BY ITS PRINCIPAL

- 3 COMED K
RAMANASHREE CHAMBERS
NO.37, I FLOOR
LADY CURZON ROAD
BANGALORE
REP BY ITS SECRETARY
DR KUMAR
- 4 STATE OF KARNATAKA
REP. BY ITS SECRETARY,
MEDICAL EDUCATION,
DEPT. OF HEALTH & FAMILY WELFARE
M S BUILDINGS,
BANGALORE ... RESPONDENTS

[By Sri. N K Ramesh, Adv., for R1;
Sri. M R Naik, Adv., for R2 & R3;
Sri. B Manohar, AGA for R4]

In W.P. No. 6675/2006:

Between:

DR SHREYA HEGDE
D/O VINAY KUMAR HEGDE
AGED 26 YEARS
'SHREYA', VIJAYANAGAR
MOODBIDRI - 574 227
DHAKSHINA KANNADA DISTRICT ... PETITIONER

(By Sri. H Kantharaja, Adv.)

And:

- 1 RAJIV GANDHI UNIVERSITY OF
HEALTH SCIENCES
4TH T^H BLOCK, JAYANAGAR
BANGALORE 41
REP BY ITS REGISTRAR
- 2 A B SHETTY MEMORIAL INSTITUTE
OF DENTAL SCIENCES,
THE MEDICAL SCIENCES COMPLEX
AT DERALAKATTE, MANGALORE
REP. BY ITS PRINCIPAL

3 COMED K
RAMANASHREE CHAMBERS
NO 37, I FLOOR
LADY CURZON ROAD
BANGALORE
REP BY ITS SECRETARY
DR KUMAR ... RESPONDENTS

This writ petition is filed under Articles 226 and 227 of the Constitution of India, praying to quash clause 7(1) of the Notification dtd. 22-12-2005 issued by R1 - Rajiv Gandhi University of Health Sciences, Karnataka, insisting on 50% eligibility in COMED-K Entrance Test which is produced and marked as Annexure-D and etc.,.

These petitions coming on for Orders, this day, the court made the following:-

ORDER

Writ petitioners are students who have completed their Bachelor of Dental Sciences Degree and who are aspiring for admission to post graduate dental sciences degree etc.,.

2. Petitioner in Writ petition No.6675/2006 had prayed for admission at the respondent No.2 - A B Shetty Memorial Institute of Dental Sciences, Mangalore and petitioner in WP No.8324/2006 had sought for admission at the respondent No.2 - Sree Dharmasthala Manjunatheshwara College of Dental Sciences & Hospital, Dharwad. For such purpose, the petitioners had also written a common entrance test conducted



by the respondent No.3 - COMED-K Association and had obtained certain ranks. What is common with regard to both the petitioners is that the petitioners had sought for admission against the seats reserved for persons belonging to 'tulu' minority community and the colleges where they were seeking for admission having provided such reservation, being institutions established and administered by such minority community.

3. It appears that while the seats are in fact available at the respective colleges against the quota reserved for such community, what has come in the way of the petitioners for getting admitted is the percentage of marks that they obtained in the common entrance test examination conducted by the respondent No.3 and to the misfortune of the petitioners, their marks so obtained therein falling below 50%. An ordinance that had been issued by the respondent No.1 - University in the context of regularising admissions to post graduate courses in medical and dental sciences having been prescribed that such students should obtain minimum of 50% marks in the common entrance test and the petitioners not having obtained



such 50% marks, colleges it appears though otherwise are inclined to admit the petitioners have indicated that the respondent-University comes in the way of the colleges making admission and therefore they are not in a position to admit students and assuming that they should admit, the University may also not approve such admission and that will be to the detriment of the students and in such circumstances, the petitioners have approached this court as they found the respondents ordinance a stumbling block in their way and are seeking for the following reliefs:

- *(i) Issue a writ of certiorari quashing Clause 7(1) of the Notification bearing No.UA/MISC/32/2005-06, dt.22-12-2005 issued by the 1st respondent Rajiv Gandhi University of Health Sciences, Karnataka insisting on 50% eligibility in COMED-K Entrance Test which is produced herewith and marked as Annexure-D.*
- (ii) Issue a writ of mandamus or such other writ or direction directing the respondents to admit the petitioner for Post-Graduate course in the 2nd respondent college and permit the petitioner to complete the course.*
- (iii) Issue any such other writ, order or direction as this Hon'ble Court deems fit in the facts and circumstances of the case in the interest of justice and equity. **



4. Clause 7 of the Ordinances governing conduct of Entrance Test for admission to post graduate degree and diploma [medical and dental] courses in Private Un-aided Medical and Dental Colleges [Minority & Non-Minority] and Medical and Dental Colleges of Deemed Universities, 2005 reads as under:

***7. Merit List**

- 1] *The Committee shall prepare merit list(s) on the basis of marks obtained in the Entrance Test. The minimum percentage of marks for eligibility for admission to PG Medical/ Dental Degree and Diploma courses shall be 50% marks in the Entrance Test for General candidates and 40% marks in the Entrance Test for candidates belonging to Scheduled Castes and Scheduled Tribes.*
- 2] *The inclusion of a name in the merit list shall not entitle the candidate for admission unless he satisfies all conditions specified by the University for such admission.*
- 3] *No candidate shall be eligible for admission to any postgraduate degree or diploma course solely on the ground that his name is included in the merit list. Unless the candidate satisfies the conditions and rules of admission for the courses, whether made before or after the publication of these Ordinances if any, made by the MCI/DCI to the courses concerned, he shall not be eligible for admission."*




5. Petitioners are urging legal ground that an ordinance of this nature fixing an additional eligibility criteria of obtaining minimum of 50 marks in the common entrance test examination over and above what had been fixed by the Dental Council of India Regulations for Admission to post graduate dental courses is in the teeth of the regulation framed by the Dental Council the Professional Body meant to prescribe standards for dental education; that such provisions of the respondents are inconsistent with the qualification as had been prescribed by the Dental Council and should be declared as of no consequence, invalid and consequential directions to admit the students and for such purpose, the present writ petition.

6. Submission of Sri. Kantharaja, learned counsel for the petitioners is that the function of prescribing standards, prescribing qualification, eligibility criteria etc., for admission to MDS course is that all the professional body, namely, the Dental Council and the Dental Council having framed regulations providing for such prescriptions and in terms of the relevant regulation of the Dental Council, the qualification prescribed seeking eligibility for candidates admission to MDS



course being a 'pass' in the basic degree passing out from the institution recognised by the Council and the petitioners having such qualification and having successfully completed the basic BDS degree and being eligible in terms of the regulation for Dental Council for admission, they cannot be denied admission for post graduate course, particularly, for candidates belonging to 'tulu' minority community when a seat in MDS course is available when the college where the seat is available being ready to admit the petitioners who are willing to get themselves admitted.

7. Learned Counsel in this regard submits that it is not open to the respondent No.1 - University to prescribe qualification or eligibility even through an ordinance which is at variance with that prescribed by the Dental Council; that such inconsistent qualification prescribed by the respondent No.1 - University which adversely affects the rights of the petitioners for the purpose of admission be declared as not authorised and valid in law and at any rate the ordinance should be quashed.



8. Learned Counsel submits that having regard to the object of the ordinance under the Notification issued by the University, being to evaluate inter se merit of the candidates seeking admission in the post graduate dental courses, it is not for the university to prescribe further minimum qualification which is bad in law and in support of his submission places reliance on the decision of the Supreme Court in the case of '**DR. PREETI SRIVASTAVA AND ANOTHER vs. STATE OF MADHYA PRADESH AND OTHERS**' reported in **AIR 1999 SC 2894**. Attention is drawn to Paragraph-52 of this Judgment wherein submission of counsel appearing for the Medical Council has been extracted and Sri. Kantharaja, learned counsel for the petitioners submits that the power to prescribe qualification being with that of the Dental Council under the Dentists Act read with relevant rules and regulations, it was not open to the University to have prescribed additional qualifications and therefore was not within the competence of the University and should be declared as void.

9. Sri. N K Ramesh, learned counsel appearing for the University, on the other hand, countering the submission made



by the learned counsel for the petitioners submits by pointing out that even in terms of decision of the Supreme Court while the qualification which is in conflict with each other, which has the effect of lowering the standard cannot be prescribed by a State legislature, the Supreme Court itself has taken the view that the State has the freedom to prescribe a higher qualification which can have the effect of enhancing the standard and such a step being consistent with the object of the prescription of minimum standards under the Dentists Act and Regulations, the legislation by the State was allowed to stand and for such submission draws support from the decision of the Supreme Court in the case of '**STATE OF TAMIL NADU AND ANOTHER vs. S V BRATHEEP [MINOR] AND OTHERS**' reported in **AIR 2004 SC 1861**.

10. In fact, the Supreme Court had an occasion to examine its earlier decision in **DR. PREETHI SREEVASTAVA'S** case in this later decision and observed that the view taken in Dr. Preethi Sreevastava's case was that the State can always fix a further qualification or additional qualification to what has been prescribed by the professional body and that proposition



is indisputable. If so, prescribing minimum qualification of 50% in the common entrance test by the University in terms of the ordinance as a condition precedent for admission to MDS course in the colleges affiliated to the university in terms of the ordinance being over and above what is already indicated to be the eligibility criteria by the Dental Council, it cannot be held to be in conflict with the DCI regulation and therefore cannot be declared as either repugnant to the Central legislation or illegal otherwise also.

11. I do not find any occasion to interfere in a matter of this nature. In this view of the matter, these petitions are dismissed. Interim order granted earlier is dissolved.

12. It is open to the respective colleges and the Association to proceed in accordance with law so far as admissions are concerned.

13. Sri. Kantharaja, learned counsel for the petitioner permitted to correct the initials of the name of the petitioner in WP No.8324/2006.

Sd/-
Judge

An/-