

CASE NO.:

Appeal (civil) 3295 of 2001

Appeal (civil) 3296-3297 of 2001

Transfer Petition (civil) 437 of 1999

PETITIONER:

THE DENTAL COUNCIL OF INDIA

Vs.

RESPONDENT:

SUBHARTI K.K.B. CHARITABLE TRUST & ANR.

DATE OF JUDGMENT: 25/04/2001

BENCH:

M.B. Shah & S.N. Variava

JUDGMENT:

L...I...T.....T.....T.....T.....T.....T.....T...J
Shah, J.

Leave granted.

Dental Council of India has challenged the order dated 15.9.1997 passed by the High Court of Allahabad [R.R.K. Trivedi and M. Katju, JJ] in Civil Misc. Writ Petition No.25780 of 1997. The writ petition was filed by the respondent-Subharti K.K.B. Charitable Trust ("Trust" for short) who had established a Dental College at Meerut and applied to the Central Government for permission to commence teaching for academic year 1996- 97. It was alleged that respondent-Trust was meeting the qualifying criteria stipulated in the guidelines issued by the Dental Council of India ("DCI" for short) regarding establishment of new Dental College having strength of 100 students. Inspection Committee of the Dental College of India gave report in favour of the establishment of college. However, the second Inspection Team while acknowledging that the Dental College has satisfied the qualifying criteria, recommended for starting with the batch of 60 students only and on that basis the Central Government granted permission to the respondent for starting college with 60 students only. Hence, respondent- Trust filed writ petition in the High Court for a mandamus directing the Central Government and the DCI to accord approval to the establishment of Dental College with annual batch of 100 students instead of 60 students. The Court observed that from the second report submitted by the Inspection Committee it appears that the Institution has complied with all the requirements for admitting a batch of 100 students, but strangely enough the comment given at the bottom of the second report that the existing infrastructure in terms of land building, equipment and staff etc. was adequate for 60 admissions. The High Court also held that no proper reason was assigned as to why the DCI permitted only admission of 60 students instead of 100 students when the Institution has complied with all the requirements as per the guidelines of Dental Council of India for admitting 100 students. The Court, therefore,

held that the authority has acted arbitrarily since despite the Institution's having all infrastructure and facilities for admitting 100 students as per the guidelines of Dental Council, it was allowed to admit only 60 students. Finally, the Court allowed the writ petition by its judgment and order dated 15.9.1997 and its operative part reads thus:-

"In the present case, we find that the authorities have acted arbitrarily since despite the petitioner's having all the infrastructure and facilities for admitting 100 students as per the guidelines of the Dental Council, it was allowed to admit only 60 students. This action of the respondent is clearly arbitrary and illegal...A Mandamus is issued to the respondents to accord approval to the petitioners Dental College for admitting annually a batch of 100 students instead of 60 students."

That order is challenged in this appeal.

Pending hearing in S.L.P. (C) No.22222/97, the respondent filed another writ petition No.8299/99 before the High Court. In that petition, the respondent submitted that the High Court vide order dated 15.9.1997 issued a writ of mandamus to the appellants herein to accord approval to the respondent's Dental College for admitting annually a batch of 100 students instead of 60 students, but the appellants were not allowing the students of the batches to appear into 1st year and IInd year examination in 1998-99 on account of pendency of SLP (C) No.22222/97 against the said order. The High Court by order dated 26.2.1999 directed the appellants herein to allow the students of B.D.S. course of 1st year and IInd year to appear in the examination provisionally and the Director Central Medical Education, UP Lucknow was directed to forward the names of the students in the BDS entrance test for 1998-99 forthwith. The High Court further by order dated 17.4.1999 directed the DCI to get an inspection done of the institution in question by a Commission, which consisted (1) District Judge, Meerut or any Addl. Distt. Judge nominated by him; (2) Principal, Medical College, Lucknow or any suitable person nominated by him; and (3) Dr. K.K. Malhotra (member DCI) Professor in Lucknow Dental College, Lucknow, and to submit report after inspecting the College. Against orders dated 26.2.99 and 17.4.99, DCI preferred S.L.P.(C) No.8464-65 of 1999 along with Transfer Petition (C) No. 437/99 for transfer of W.P. No. 8299/99 before this Court.

This Court passed various interim orders. On 23rd July 1999, after hearing learned counsel for the parties, this Court passed the following order: -

"Learned counsel for the petitioner is permitted to file an additional affidavit alongwith the inspection report of the Dental Council. The High Court has appointed another Committee to inspect the college headed by the learned District Judge. We direct the Committee headed by the learned District Judge to send its report within two weeks. If the inspection by the learned District Judge has not already taken place, the learned District Judge will give notice to both parties, complete the inspection as directed by the High Court and send the report of inspection within two weeks. Copies of the report to be given to both sides.

Issue notice on the transfer petition. Learned counsel for the petitioner is permitted to serve notice on the

respective learned standing counsel for the respondent in this court additionally."

On 3.5.2000, this Court passed the following order: "For the first year batch 1998-99, the respondent had an order of the High Court for admission of students. There was neither any order of the Court nor of any other authority for permission to conduct its own examination for admission for 1999-2000. But the respondent conducted an entrance examination for the two batches for 1998-1999 and 1999-2000.

Prima facie, we are not inclined to pass any orders in favour of the respondent college, so far these two batches are concerned. The respondent college is direct to suspend classes for these two batches of 1998-1999 and 1999-2000, until further orders.

The next question is with regard to the first year batches 1996-97 and 1997-98, who have now completed two years and also the course for 3rd year and are awaiting the 3rd year examination.

So far as admission for 1996-1997 batch is concerned, permission was granted by the Dental Council of India, for 60 students and for the remaining 40 students, the High Court of Allahabad appears to have granted an order in favour of the respondent institution.

So far as the first year batch for 1997-1998 is concerned there was no order of the Court for admission of students. But the respondent relies only upon an order in respect of 1998-1999, and by implication assumed that, for 1997-1998, it must be treated that there is an order for admission, and proceeded to admit 100 students for 1997-1998.

It is contended that the students who have been admitted for first year batch 1997-1998 were from a list given by the Director General, Medical Education, UP, as per the statement made by the respondents before us. The Director General of Medical Education, UP will verify and confirm to this Court whether the second year batch of students admitted by the respondents institution for the year 1997-1998 was from the list furnished by the said Director General, on the basis of merit at entrance examination. In case, it is found that the 1997-1998 batch of first year students have been admitted from a list given by the Director General as above mentioned, then we could consider the question whether they should be permitted to take the third year examination. As stated earlier, the two batches for 1996-97 and 1997-98 have completed the first year and second year courses. Question will be if they should be permitted to take their examination in November-December, 2000.

So far as the examination of May, 2000 in the third year is concerned, we are not inclined to grant permission to these students of the first year batch of 1996-1997 and 1997-1998, but question of their taking the examination of May, 2000, will be decided at the next date of hearing after verifying if the 1997-98 first year batch was from merit list. By that time, we will be having the fresh inspection report also.

So far as fresh inspection is concerned, there have been several inspection officers appointed by the Dental Council of India earlier. There have also been certain inspections done under the orders of the Court by the District Judge and another Committee which is supposed to have accompanied the District Judge. Now, we would like to have a fresh inspection report and a final one. It will be necessary to inspect once for all, to ascertain whether all the necessary conditions for grant of permission for conducting the course for the first, second, third and fourth year are satisfied and whether all the necessary infrastructure is available with the colleges in respect of the courses for the four years, including faculty and other staff. We, therefore, direct a fresh inspection by a Committee as specified lower down in this order.

The inspection will be made in respect of the new premises which has been constructed by the institution, which is situated at Meerut Municipality. The inspection team will also inspect the hospital, which is supposed to be attached to these institutions.

It is made clear that the Dental Council will give their final report once for all in respect of all the infrastructure for the conducting the Course for the four years exhaustively without keeping back any item to be pointed out later.

The Inspection team will be nominated by the Dental Council of India. But the Chairman of this Committee will be the Head of the Department of Dental Sciences, Post Graduate Institute of Medical Sciences, Chandigarh. The Inspection will be conducted within a period of three weeks from today in the presence of the Principal or other representatives of the institution who will cooperate with the inspection. The report will be submitted to this Court within six weeks from today. Copies of the report will also be given to the Dental Council of India. Counsel for the Council will make copies and give them to the respondents.

We may, however, say that we do not approve the order passed by the High Court, particularly, the orders passed on 26th February, 1999 and 17th April, 1999 granting various approvals and the mandamus which was granted to the Dental Council of India to grant approval.

In this connection, the judgment of this Court in Medical Council of India v. Stae of Himachal Pradesh, (Civil Appeal No.5046/1998), decided on 16.2.2000, is relevant. The following passages in that judgment deals with a similar situation.

"We find force in the submission of the learned Additional Solicitor General. Since the refusal was based on deficiencies for running a Medical College, it would have been appropriate for the High Court to have remitted the matter to the Medical Council of India or the Union of India for re-considerations even if it was of the opinion that the order of the Medical Council of India deserved to be set aside, rather than to have issued a writ of mandamus directing grant of permission.

List these matters as part-heard in the third week of July, 2000 for further orders that may be passed in this behalf."

Thereafter, on 2.11.2000, the Court passed the following order:

"Pursuant to the directions issued by this Court by order dated 1.5.2000 the medical team headed by the Head of the Department of Post Graduate Institute of Medical Sciences, Chandigarh had filed its report and pointed out various deficiencies existing in the Dental College set up by the respondents.

Learned Solicitor General has taken us through the report and the deficiencies mentioned therein.

Learned senior counsel appearing for the institution has made an effort to say that there is a valid explanation with regard to the deficiencies pointed out by the Dental Council of India. But we make it clear that we are not inclined to accept any explanation in regard to the deficiencies pointed out by the inspection team. It will be for the team to certify to this court that every deficiency has been rectified.

Learned senior counsel appearing for the respondents states that all defects have been removed and that fresh inspection can now be made. We, therefore, direct the Dental Council of India to request the same team, as far as possible, to make an inspection at an early date after issuing notice to the institution and conduct a fresh inspection and submit its report within four weeks from today."

At the outset, we would reiterate that under Section 10-A of the Dentists Act, 1948, it is the function of the Central Government to accord approval for establishing the Dental College and the High Court ought not to have passed the order straightway according to the approval despite the Inspection Report submitted by the DCI and the order refusing to grant such permission passed by the Central Government. In such cases, if the High Court finds that the order passed by the Central Government is de hors the statutory provisions or arbitrary for some reasons, the course open to it was to remit the matter to the DCI for re-inspection of the establishment and for reconsideration by the Central Government rather than to issue a writ of mandamus as quoted above. [Re. (1) Medical Council of India v. State of Himachal Pradesh (2000) 5 SCC 63 : (2) Union of India v. Era Educational Trust and Another (2000) 5 SCC 57]

Further in exercise of the powers conferred by Section 10A read with Section 20 of the Dentists Act, 1948, the Dental Council of India, with the previous approval of the Central Government, had framed regulations for grant of permission to set up new dental college, by notification dated 1.9.1993 published in the Gazette of India, which inter alia provide as under:-

"The Central Government on the recommendations of the Dental Council of India, may issue a letter of intent to set up a new Dental College with such conditions or modification in the original proposal as may be considered necessary. The formal permission will be granted after the above conditions and modifications are accepted and the

performance bank guarantees for the required sums are furnished by the applicant.

The formal permission will include a time-bound programme for the establishment of the Dental College. This permission will include a clear-cut definition of preliminary requirements to be met in respect of buildings, infrastructural facilities, dental and allied equipment, faculty and staff etc. before admitting the first batch of students. The permission will also define annual targets to be achieved by the applicant to commensurate with the in-take of students during the following years.

The above permission to establish a new Dental College and admit students will be granted for a period of one year and will be renewed on yearly basis subject to verification of the achievement of annual targets and revalidation of the performance bank guarantees. This process of renewal of permission will continue till such time the establishment of the Dental College and expansion of the hospital facilities is completed and a formal recognition will be granted after four years of the Dental College by the Dental Council of India. Unless the College fulfils the requirements for various stages of development to the satisfaction of the Dental Council of India further admissions are liable to be stopped."

Further while upholding the validity of these Regulations, in Medical Council of India v. State of Karnataka and others [(1998) 6 SCC 131, at 154] this Court has observed that these regulations are framed to carry out the purposes of the Medical Council Act and for various purposes mentioned in Section 33. If a regulation falls within the purposes referred under Section 33 of the Medical Council Act, it will have mandatory force. Similarly in the State of Punjab & Ors. v. Renuka Singla and others [(1994) 1 SCC 175], Court held thus: -

"It cannot be disputed that technical education, including medical education, requires infrastructure to cope with the requirement of giving proper education to the students, who are admitted. Taking into consideration the infrastructure, equipment, staff, the limit of the number of admissions is fixed either by the Medical Council of India or Dental Council of India. The High Court cannot disturb that balance between the capacity of the institution and number of admissions, on "compassionate ground." (emphasis added)

Hence, it is to be reiterated that law as it stands, Court's jurisdiction to interfere with the discretion exercised by such expert's body is limited even though right to education is concomitant to the fundamental rights enshrined in Part III of the Constitution. It is equally true that unless there are proper educational facilities in the society, it would be difficult to meet with the requirements of younger generation who have keen desire to acquire knowledge and education to compete in the global market. It is required to be accepted that for establishing educational institutions, government machinery or funds are neither sufficient nor adequate and the necessity of the private institutions cannot be denied. However, since ages our culture and civilization have recognized that education is one of the pious obligation of the Society to be

discharged by the 'learned' and/or the State. It is for us to preserve that rich heritage of our culture of transcending the education continuously unpolluted. In the recent past, a notion has developed that it is a religious and charitable object to establish and administer educational institution. This Court in *Unni Krishnan v. State of A.P.* [(1993) 1 SCC 645 at 751 (para 197)] observed as under:- "Education has never been commerce in this country. Making it one is opposed to the ethos, tradition and sensibilities of this nation. The argument to the contrary has an unholy ring to it. Imparting of education has never been treated as a trade or business in this country since time immemorial. It has been treated as a religious duty. It has been treated as a charitable activity. But never as trade or business."

At present, there is tremendous change in social values and environment. Some persons consider nothing wrong in commercialising education. Still however, private institutions cannot be permitted to have educational 'shops' in the country. Therefore, there are statutory prohibitions for establishing and administering educational institution without prior permission or approval by the concerned authority. On occasions, the concerned authorities, for various reasons, fail to discharge their function in accordance with the statutory provisions, rules and regulations. In some cases, because of the zeal to establish such educational institution by persons having means to do so, approach the authorities, but because of red-tapism or for extraneous reasons, such permissions are not granted or are delayed. As against this, it has been pointed out that instead of charitable institutions, persons having means, considering the demands of the market rush for establishing technical educational institutions including medical college or dental college as a commercial venture with sole object of earning profits and/or for some other purpose. Such institutions fail to observe the norms prescribed under the Act or the Regulations and exploit the situation because of ever increasing demand for such institutions. In such cases, permission is refused by the authorities without there being any bias or extraneous considerations. It is, therefore, submitted that Courts normally should not interfere with a decision taken by the expert body such as Medical Council or Dental Council by straightway issuing mandamus directing the authority to grant approval or permission to establish such institution. Where the authority has refused approval, the institution may not be well equipped to impart education and may not have qualified teachers, staff or other infrastructure necessary for running the institution. If permission is straightway granted by the Court, society, education and ultimately the students suffer.

Mr. Harish N. Salve, learned Solicitor General appearing for the appellant further contended that the MCI and DCI being the expert bodies having powers to supervise the qualifications or eligibility standards for admission and invigilation to prevent substandard entrance qualification in these courses, judicial review of the decision of these expert bodies is not excluded, but the courts would be slow to interfere in the decision of such expert bodies. For this, he placed reliance on the decision of this Court in *Krishna Priya Ganguly and Others v. University of Lucknow and Others* [(1984) 1 SCC 307] wherein Court observed:

"... whenever a writ petition is filed provisional admission should not be given as a matter of course on the petition being admitted unless the court is fully satisfied that the petitioner has a cast-iron case which is bound to succeed or the error is so gross or apparent that no other conclusion is possible."

He also referred to a three-Judge Bench decision of this Court in *State of Maharashtra v. Vikas Sahebrao Roundale and others* [(1992) 4 SCC 435] wherein it was held that the students of unrecognized and unauthorized educational institutions could not have been permitted by the High Court on a writ petition being filed to appear in examination and to be accommodated in recognized institutions. The Court observed "slackening the standard and judicial fiat to control the mode of education and examining system are detrimental to the efficient management of the education".

Similarly in *Guru Nanak Dev University v. Parminder Kr. Bansal* [(1993) 4 SCC 401], another three-Judge Bench of this Court interfered with the interim order passed by the High Court to allow students to undergo internship course even without passing the MBBS examination. It was held that "the courts should not embarrass academic authorities by themselves taking over their functions." In *A.P. Christians Medical Educational Society v. Govt. of A.P.* [(1986) 2 SCC 667] this Court observed that the Court cannot by its fiat direct the University to disobey the statute to which it owes its existence and the regulations made by the University itself as that would be destructive of the rule of law.

There cannot be any dispute that normally the court should not interfere with the functioning of the educational institutions, particularly, expert bodies like the MCI or the DCI. Still however, the question is posed that if such bodies act arbitrarily for some ulterior purpose, whether the court has the power to set right such arbitrary exercise of power by such authorities. We find the answer to this question in the affirmative. We also agree with the learned Solicitor General that educational institutions should not be permitted to be commercialized for earning money, but at the same time, the courts can do very little in this field as it is the function of the expert bodies, such as, Medical Council of India or the Dental Council of India. However, citizens would loose faith in such institutions if the allegations made in this appeal are repeatedly made with regard to the Inspection Reports and granting of approval by the Central Government. We leave this question for the Central Government to deal with appropriately as it is the function of the concerned authorities to plug the loopholes and see that in such matters nothing hanky panky happens.

In this case, learned Solicitor General Mr. Salve submitted that apart from previous inspection reports and the report of the inspection team constituted by this Court's order dated 3.5.2000 pointing out number of deficiencies in the Dental College, certain deficiencies were still found. Therefore, the recommendations of the Dental Council to the Central Government not to grant renewal of the College and limiting students strength at 60 were valid, just, proper and legal. Finally, on 12.4.2001, when the matter came up for hearing, it was brought to our

notice that still DCI has raised certain objections. As it was contended by Mr. Shanti Bhushan learned senior counsel for the respondent that the College established by the Trust was one of the best colleges in the country having all infrastructure required as per the statutory rules and guidelines, on his request, Solicitor General accompanied him to visit the College premises along with some eminent doctors including the Chairman of the DCI.

After being satisfied that the College is complying with all the stated requirements, during the course of hearing of the matter, learned counsel for the parties agreed that considering the facts and circumstances of the case and the order passed by this Court on 3.5.2001, following directions be issued: -

1. As far as the grant of requisite permission to the College is concerned, the current status of the facilities would justify grant of permissions to admit up to 100 students in the first year, and renewals for the second year, third year and the 4th year B.D.S. Course. In so far as the teaching staff is concerned, the College undertakes to ensure provision of complete teaching staff as per the regulations and to the satisfaction of the Council and the Central Government.

2. Subject to satisfaction of the prescribed conditions and conduct of the examinations, the final recognition shall be considered as per the regulations.

3. The Dental Council of India is directed to forthwith forward to the Central Government its recommendations consistent with the aforesaid.

4. The Central Government is further directed to grant appropriate permissions/renewals based on the recommendations of the Dental Council of India forthwith, in any event, not later than a period of three weeks from the date of recommendations made by the DCI.

5. The order directing suspension of classes shall stand withdrawn with respect to eligible students. For this purpose, eligible students shall be of the following two categories-

i. Those students who have appeared in any common entrance test held by any State Government (whether by itself or through any other authority) and have obtained not less than 50% of the total marks in English and Science subjects taken together at the qualifying examination or 50% of the total marks in English and Science subjects at the competitive entrance examination.

ii. Those students, other than those falling in (i) above, who have obtained not less than 50% marks in English and Science subjects taken together at the qualifying examination, the total number of such students not exceeding 15% in each batch.

6. The respondent College is directed to give to the DCI and the B.R. Ambedkar University, Agra, within six weeks, the list of the "eligible students" admitted by it (other than those allotted by the Director General, Medical Education, State of U.P.) and the marks obtained by such

students in the common entrance test held by the State Government and the qualifying marks together with the mark sheets of the CET and the qualifying exam. The respondent college shall only permit such "eligible students" to attend classes and appear in the examinations.

7. The University is directed to permit the eligible students as mentioned above, who have attended requisite number of classes in accordance with the regulations of the DCI, to take the appropriate examinations in accordance with the rules of the University.

8. Director General, Medical Education may allot further students on the aforesaid basis in accordance with the rules, provided he is satisfied that sufficient time is available prior to examination for completing requisite number of classes as per the regulations of DCI.

Since parties have agreed to the above directions, we order accordingly. But we make it clear that this order is passed in peculiar facts and circumstances of the present case and will not be treated as a precedent.

Now, considering the aforesaid agreed order, the next question pertains to the students who are admitted by the respondent-College for the academic year 1996-97, 1997-98, 1998-99 and 1999-2000. It was submitted that as the College has granted admission to hundred students for each academic year despite the fact that DCI has granted permission to admit only 60 students, the Court may pass appropriate order so that the Institution does not take statutory regulation for granted and use the Educational Institution for commercial purpose of making money.

As against this, learned senior counsel Mr. Shanti Bhushan submitted that the Institution has given admission to 100 students on the basis of the order passed by the High Court of Allahabad and, therefore, it would not be just to hold that Institution has acted de hors the statutory regulations. He pointed out that this Court has not stayed the operation of the impugned order passed by the Allahabad High Court. It has been pointed out that respondent College functions on 'no profit no loss' basis and it would not be in the interest of society to drag the management to a situation where it may be compelled to close down the institution. In any case, it would be a great loss of public money besides jeopardising the career of students admitted. For this purpose, he referred to State of H.P. and others v. Himachal Institute of Engineering and Technology, Shimla [(1998) 8 SCC 501] and submitted that in such a situation either the seats must remain vacant and be wasted or the management must be permitted to fill those seats on a reasonable criteria adopted by the management. He submitted that an effective solution has to be found out as observed by this Court, otherwise the Institution would not be able to meet the expenses for running the professional course and would be placed on the Hobson's choice of either suffering huge losses or closing down the Institution. It is his contention that ultimately after establishment of college, for running it, the finance has to come from those students as per the Scheme envisaged in Unni Krishnan's case (Supra).

In this case, Central Government undisputedly has granted approval for establishing Dental College to the respondent-Trust. Only question was - whether students' strength should be 100 as contended by the Trust or 60 as contended by the DCI. Hence, considering the peculiar facts of this case, particularly, the order passed by the High Court of Allahabad on 5.9.1997 issuing a mandamus to accord approval to the Dental College for admitting annually a batch of 100 students instead of 60 students and the fact that this Court has not stayed the operation of the said order and also the further orders passed by the High Court on 26.2.99 and 17.4.99 in Writ Petition No.8299/99, we do not think that it would be just and proper to disturb the admissions granted by the Dental College. Some irregularities are taken care of in the afore-stated agreed order. Further, it has been pointed out that the students for the academic session 1997-98 were admitted much after January 1998 and similarly, the students for the academic session 1998-99 were admitted after June 1999. The teaching in the college has been suspended by this Court's order dated 3.5.99. As such, the students of the first academic session, upto now, have only studied for a period of 2 1/2 years, the students of the second batch have studied for 11/2 years and the students of the third batch have studied for approximately 6-months. Hence, it is ordered that these students would only be permitted to sit in the examinations as per the regulations of the Dental Council of India laying down the requirement of attendance of minimum classes for each year for the four years duration of the BDS course.

In view of the foregoing, the Civil Appeals arising out of SLP (Civil) Nos.22222 of 1997 and 8464-8465 of 1999 stand disposed of accordingly. The Transfer Petition No.437 of 1999 is also allowed; writ petition No.8299 of 1999 pending before the High Court stands transferred to this Court and is disposed of accordingly. There will be no order as to costs.