

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of decision: 13.01.2010

+ WP (C) No.13080 of 2009 & CM No.14068 of 2009

DR. TANMAY SRIVASTAVA & ORS. ...PETITIONERS
Through: Mr. R.K. Saini, Advocate.

Versus

DENTAL COUNCIL OF INDIA & ANR. ...RESPONDENTS
Through: Mr. Gaurav Sharma,
Mr. J.P. Karunakaran &
Mr. J.S. Kapur, Advocates
for R-1/DCI.

Mr. Ritesh Kumar, Advocate
for R-2/UOI.

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MS. JUSTICE VEENA BIRBAL

1. Whether the Reporters of local papers
may be allowed to see the judgment? No
2. To be referred to Reporter or not? No
3. Whether the judgment should be
reported in the Digest? No

SANJAY KISHAN KAUL, J. (Oral)

1. The petitioners numbering 30 are citizens of India who obtained BDS Degree from the Universal College of Medical Sciences, Bhairahwa, Nepal affiliated to Tribhuwan University of Nepal, Kathmandu, Nepal. The petitioners had taken admission in and around the year 2002 and undisputedly when they took admission the BDS Degree

awarded by the University was not recognized by respondent No.1, Dental Council of India (for short 'DCI') and the position remained the same even after they had obtained the Degree.

2. The petitioners filed a WP (C) No.8659/2008 before this Court seeking directions for recognition of the BDS Course of the aforesaid University for purposes of practicing under The Dentists Act, 1948 (hereinafter referred to as the said Act) by process of issuance of a notification in the Official Gazette to include the University in Part III of the Schedule to the said Act. It may be noticed that the aspect of recognition was pending with the Central Government and respondent No.1 had been requesting the Central Government for permission to inspect the Institution.
3. In the said petition the petitioners themselves filed an interlocutory application *inter alia* praying that respondent No.1 be directed to frame regulations for a screening test so that the persons who qualify the said test can thereafter be put on the Register of Practicing Dentists. The aspect of making regulation in this behalf was also being examined by the respondents and The Dental Council of India Screening Test Regulations, 2009 (hereinafter referred to as the said Regulations) were notified by publication in the Gazette on 13.8.2009. The writ petition filed by the petitioners was accordingly disposed of by the High Court on 21.10.2009 with the direction to hold the screening test by January, 2010.
4. The petitioner plead that in the first week of November 2009 they came across Information Bulletin on the website of respondent No.1 for the Screening Test for Indian nationals with foreign Dental

Qualifications, March 2010. The petitioners are aggrieved by the three aspects of the said Regulations which have been accordingly incorporated in the Information Bulletin:

- i. The provision of an examination fee of Rs.50,000.00 for the BDS Course as per Regulation 8 (b) and of Rs.35,000.00 & Rs.25,000.00 for the second and third attempts respectively for the said Course.
 - ii. The provision of a viva-voce test as part of Regulation 11 of the said Regulations stipulating the examination pattern of screening test and in the alternative the provision of minimum pass marks of 50 per cent for the viva-voce.
 - iii. The stipulation in Regulation 12 of the said Regulations that a maximum of three chances would be allowed to appear and pass the test.
5. Learned counsel for the petitioners in his elaborate submissions running over more than an hour and a half repeatedly sought to emphasize the same aspects. It is pleaded that the amount of Rs.50,000.00 prescribed as the screening test fee is exorbitant and in respect of MBBS Course governed by the Medical Council of India Act the screening test fee is only Rs.3,000.00 without any provision for viva-voce or limiting the number of chances to appear in the screening test. The screening test was to be held on 12.1.2010 and the prescribed authority in terms of Clause 2 (1) (e) of the said Regulations for holding the screening test is the Rajiv Gandhi University of Health Sciences, Bangalore as appointed by the DCI. It is, thus, submitted that the fee should have been determined by the

Prescribed Authority especially as the purpose of conducting the screening test as specified in Regulation 3 of the said Regulations is primarily to determine the eligibility of a candidate for his or her registration with any State Dental Council. Learned counsel emphasizes that in terms of Section 10 (4) (b) of the said Act the dental qualification granted by an Authority or Institution outside India had to be included in Part III of the Schedule to be recognized as the dental qualification for the purposes of the said Act and only a citizen of India was entitled for a registration. It is thereafter that in terms of Section 31 of the said Act, Register of Dentists is maintained by the State Council. Learned counsel also drew the attention of this Court to Section 20 (2) (h) of the said Act to contend that the power to make Regulations was conferred under Section 20 (1) of the said Act while under sub-section (2) (h) of Section 20 of the said Act the standards of examinations and other requirements to be satisfied to secure for qualifications for recognition under the said Act were provided.

6. We may note at this stage itself that sub-section (2) of Section 20 of the said Act begins with 'in particular and without prejudice to the generality of the foregoing power such regulations may'. Regulations can, thus, be made not inconsistent with the said Act under the provisions of sub-section (1) of Section 20 of the said Act and the specific areas without affecting the generality of such power has been specified in sub-section (2) of Section 20 of the said Act and Clause (h) of sub-section (2) of Section 20 of the said Act deals with prescribing the standards of examinations and other requirements to

be satisfied for qualifications which would entitle to recognition. The plea sought to be advanced is that there is no provision to levy the fee.

7. We find no such absence of power to prescribe the fee. The prescription of the fee is not inconsistent with the said Act. The fee is provided for in the said Regulations which have been made in pursuance to the powers conferred under Section 20 of the said Act. Powers are extremely wide and some of the powers have been enumerated in sub-section (2) of Section 20 of the said Act which include prescribing the standards of examination “and other requirements to be satisfied” to secure for qualifications for recognition under the said Act.
8. As far as the plea about the amount being exorbitant is concerned, in the counter affidavit filed by respondent No.1, it has been explained that respondent No.1 Council does not receive any grant from the Central Government for purposes of conducting the screening test. Thus, expenses are involved in respect of the following:
 - i. Salaries etc. of additional man power to be created at DCI.
 - ii. Purchase of equipment i.e. computer, printer, photocopier, stationery, etc.
 - iii. Fee to be remitted to Rajiv Gandhi University of Health Sciences, Karnataka for conducting the screening test.
 - iv. Expenditure to be incurred on exchange of correspondence with identified institutions in which the candidates have to undergo Compulsory Clinical Training.
 - v. Scrutiny of applications by members of PG & UG Committee including TA & DA.
 - vi. Expenditure on hiring examination halls and invigilators.

vii. Litigations and other miscellaneous expenses.”

9. It is pointed out that the fee structure has, thus, to be quite different from the one of National Board of Examination while conducting the screening test as per the MCI Screening Test Regulations, 2002, which is an organization under the control of the Central Government and is in receipt of financial aid from the Central Government. Not only that the said Regulations provided for Compulsory Clinical Training as per Regulation 11 which reads as under:

“11. Examination Pattern of Screening Test: The Screening Test shall include the following papers and each paper shall carry the number of marks as shown against each:-

I. MDS Course

| Paper | Subject | Duration | Maximum Marks |
|--------------|-------------------------------|-----------------|----------------------|
| Paper-I | Applied Basic Sciences | 2 Hour | 100 |
| Paper-II | Concerned Clinical Speciality | 2 Hour | 150 |
| Paper-III | Viva-voce | ½ Hour | 50 |

II. PG Diploma Course

| Paper | Subject | Duration | Maximum Marks |
|--------------|----------------------------------|-----------------|----------------------|
| Paper-I | Basic Medical and Dental Science | 2 Hour | 100 |
| Paper-II | Concerned Clinical Speciality | 2 Hour | 150 |
| Paper-III | Viva-voce | ½ Hour | 50 |

Compulsory Clinical Training

The candidate who qualifies the Screening Test for recognition of his MDS Degree/PG Diploma shall, before issue of the necessary passing certificate to him/her, have to undergo a compulsory clinical competence training for a period of 12 weeks under the guidance of a specialist in the concerned speciality at a dental institution specified by the Dental Council of India for the purpose.

III. BDS Course

| Paper | Subject | Duration | Maximum Marks |
|--------------|------------------------|-----------------|----------------------|
| Paper-I | Basic Medical Sciences | 2 Hour | 100 |
| Paper-II | Dental Science | 2 Hour | 150 |
| Paper-III | Viva-voce | ½ Hour | 50 |

Note: - (1) Syllabus for the Screening Examination shall be as per the Council's BDS, PG Diploma and MDS Courses Regulations as amended from time to time.

(2) To qualify the Screening Test the minimum pass marks shall be 50% in each paper. The minimum qualifying marks shall apply to all categories of candidates without any exception.

(3) The language of the test shall be English.

(4) The person who obtains such minimum qualifying marks in the written Test shall be called for Viva-voce."

10. It has also been emphasized that the number of candidates appearing for the examination under the said Regulations is much smaller than under the MCI Regulations and thus the cost per candidate is much more.
11. The aforesaid, thus, gives a clear picture of the various expenses to be incurred and the fee has been determined keeping in mind the expenses for holding the examination.
12. We are unable to accept the contention of the learned counsel for the petitioners that it is only the prescribed authority which can fix the fee. The prescribed authority under Regulation 2 (1) (e) being the dental institution or any other examining body authorized by the DCI with prior approval of the Central Government to conduct screening test. The prescribed authority is, thus, appointed by the DCI and the power of DCI to prescribe the fee is in no manner taken away.
13. The second grievance is in respect of the provision for viva-voce examination. The requirement is of a minimum of 50 per cent marks in each of the two written test papers of 100 & 150 marks each and any person meeting this eligibility condition would have to appear in the viva-voce where also 50 per cent marks would have to be

obtained. It has been explained by the counsel for respondent No.1 by reference to the counter affidavit that the Dental Qualifications are often obtained from foreign dental institutes in the native language of the concerned foreign country after going through a primary language course in the language of that country. It has, thus, been found necessary that such candidates be examined by way of viva-voce so as to ensure that they understand various concepts/parameters of dental education as imparted in India since their knowledge and skills have to be implemented to treat dental patients in India. The ability of a candidate to objectively diagnose and treat dental patients in India is also determined in this viva-voce to ensure that there is no communication gap with the patient in this process.

14. We also find that out of the total marks of 300, only 50 marks are reserved for viva-voce. It is not a large percentage. We find no infirmity in either prescribing a viva-voce for the reasons set out hereinabove or the requirement of a minimum benchmark of 50 per cent in each of the test papers as also the viva-voce.
15. The last challenge is to the number of attempts that a candidate can take for qualifying the test which has been prescribed as three attempts. We cannot lose sight of the fact that in most education curriculums there is a maximum period prescribed for completing a course or maximum number of attempts permissible. The same is the position with qualifying examinations. The screening test is in the form of a qualifying examination to ensure that the candidate obtaining a Degree from a foreign country is, at least, at par with those who have qualified within the country.

16. An important aspect explained in the counter affidavit is that the students of BDS in Indian dental institutions are liable to have their examinations cancelled if they fail three times in BDS Course and thus on a para materia basis the maximum number of chances available for taking the screening test have been prescribed.
17. In the end we must note that the petitioners herein are candidates who have preferred a foreign dental institution over a domestic one, have paid higher fees and incurred expenses. Yet when it comes to paying the examination fee, objections are being raised. The candidates in India pursuing a BDS Course have a maximum limit of three opportunities to clear the examination but the petitioners do not want to go through the same rigours of clearing the screening test even in three attempts which they can take at their leisure. The objective of bringing the test was to ensure proper quality and competence of doctors who would be unleashed on the patients in India requiring treatment. The objective is to ensure quality doctors in the country. The screening test is not merely a qualifying test but a selection test to ensure due competence of the doctors. The petitioners instead of appearing in the examination and showing their ability and competence to be at par with doctors in India are more busy in making these fruitless challenges to the Regulations. These are petitioners who had taken admission in colleges with their eyes open since the Institutes were not recognized at the relevant stage of time when they took the admission or even when they qualified from these Institutes.

18. We find the petition misconceived and without any merit or substance.
19. The petition and the application are dismissed with costs quantified at Rs.7,500.00 per petitioner to be paid to respondent No.1.

SANJAY KISHAN KAUL, J.

JANUARY 13, 2010
b'nesh

VEENA BIRBAL, J.