

NOT REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.18766 OF 2017
(Arising out of SLP(C) No.26289 of 2017)

DENTAL COUNCIL OF INDIA ...Appellant(s)
:Versus:
ANHAD RAJ SINGH AND ANR. ...Respondent(s)

J U D G M E N T

A.M. Khanwilkar, J.

1. The respondent No.1 filed a writ petition in the High Court of Delhi at New Delhi, being Writ Petition (Civil) No.3515 of 2017, challenging the decision of the Dental Council of India (the appellant herein) rejecting the request for migration from M.N.D.A.V. Dental College and Hospital, Solan to Baba Jaswant Singh Dental College, Ludhiana, on medical grounds. The said decision vide Annexure P-12 to the writ petition was communicated to the appellant, which reads thus:

“SUB:-Request for Migration from MNDA Dental College, Solan to Baba Jaswant Singh Dental

College, Ludhiana in 2nd year BDS Course on Medical ground-Mr.Anhad Raj Singh-

Sir,

I am directed to refer to your letter dated 10.2.2017 alongwith the other documents thereby requested DCI for your migration on medical ground/ill health and to say that the Executive Committee of the Dental Council of India in its meeting held on 09.03.2017 considered your letter referred to above and after some discussion and deliberation, decided as under:-

The Executive Committee has examined the matter strictly in consonance with the statutory provision of migration, prescribed in the Revised BDS Course Regulation, 2007, according to which migration is allowed only on two grounds i.e. (i) Death of supporting guardian & (ii) Disturbed conditions as declared by Govt. in the Dental College area, but in the present case, the migration has been sought for only on medical ground which is not permissible under the Regulation.

Moreover, the Hon'ble High Court of Madhya Pradesh at Jabalpur-in the W.P.No.7836/2016, in the matter of Sh.Anand Rai Vs. Medical Council of India & Ors. has, inter-alia, directed DCI to strictly compliance to Regulation of migration without deviation therefrom, the request of applicant for migration from MNDA Dental College, Solan to Baba Jaswant Singh Dental College, Ludhiana in 2nd year BDS course may not be acceded to.

With the above, the decision of the Executive Committee of the DCI is communicated to you for your information and ready reference.

Yours faithfully,
(Dr.Sabyasachi Saha)
Secretary
Dental Council of India."

2. The learned Single Judge after adverting to the aforementioned communication, opined that the decision of the Dental Council of India was unexceptionable. Accordingly, the writ petition was dismissed by the learned Single Judge vide judgment and order dated 25.4.2017. The respondent No.1 filed Letters Patent Appeal, bearing LPA No.336/2017 against the said decision. Additionally, the respondent No.1 filed interlocutory application, bearing C.M. No.2190/2017 to allow the appellant to join second year BDS Course at Baba Jaswant Singh Dental College, Ludhiana. The Division Bench while issuing notice on the Letters Patent Appeal vide impugned judgment dated 31.05.2017, granted interim direction permitting respondent No.1 to join the second year BDS Course in the Dental College situated at Ludhiana, i.e. Baba Jaswant Singh Dental College, Ludhiana and for appearing in the supplementary examination, which would be subject to the outcome of the appeal.
3. This interim order passed by the Division Bench of the High Court is the subject matter of this appeal. This Court while issuing notice on 9.10.2017, in the appeal, stayed the

operation of the impugned order. Pursuant to the notice, the respondent No.1 has appeared and would submit that the direction issued by the Division Bench is just and proper. It being a discretionary order, the Court should be loath to interfere with the same. The respondent No.1 has placed reliance on the medical record which is indicative of the fact that he is suffering from Asthama. According to respondent No.1, the appellant had no objection for migration of other students similarly placed, from one University to another. In the present case, no objection has been issued by the Institution at Solan where the respondent No.1 has been admitted and is pursuing the BDS Course as also by the Institution at Ludhiana. No prejudice will be caused to the appellant. Further, the Division Bench was satisfied that irreparable loss will be caused to respondent No.1.

4. The learned counsel for the appellant, on the other hand, contends that the Division Bench has exceeded its jurisdiction in passing a mandatory order in the guise of interim relief. That has been passed without considering the objections of the appellant including that such transfer is

not permissible in terms of Revised BDS Course Regulation, 2007. He submits that the issue of migration is governed by clause IV of the Regulation which reads thus:

“IV. Migration:

- (1) Migration from one dental college to another is not a right of a student. However, migration of students from one dental college to another dental college in India may be considered by the Dental Council of India. Only in exceptional cases on extreme compassionate grounds, provided the following criteria are fulfilled. Routine migrations on other ground shall not be allowed.*
- (2) Both the colleges, i.e. one at which the student is studying at present and one to which migration is sought, are recognised by the Dental Council of India.*
- (3) The applicant candidate should have passed first professional BDS examination.*
- (4) The applicant candidate submits his application for migration, complete in all respects, to all authorities concerned within a period of one month of passing (declaration of results) the first professional Bachelor of Dental Surgery (BDS) examination.*
- (5) The applicant candidate must submit an affidavit stating that he/she will pursue 240 days of prescribed study before appearing at IInd professional Bachelor of Dental Surgery (BDS) examination at the transferee dental college, which should be duly certified by the Registrar of the concerned University in which he/she is seeking transfer. The transfer will be*

applicable only after receipt of the affidavit.

Note 1:

- (i) *Migration is permitted only in the beginning of IInd year BDS Course in recognised Institutions.*
- (ii) *All applications for migration shall be referred to Dental Council of India by the college authorities. No Institution/University shall allow migration directly without the prior approval of the Council.*
- (iii) *Council reserves the right not to entertain any application which is not under the prescribed compassionate grounds and also to take independent decisions where applicant has been allowed to migrate without referring the same to the Council.*

Note 2: Compassionate ground criteria:

- (i) *Death of supporting guardian.*
- (ii) *Disturbed conditions as declared by Government in the Dental College area."*

He has also invited our attention to the decisions of this Court which have expounded that such transfer can be only in exceptional situation and that it is not a right of the student.

See: ***Medical Council of India Vs. Sarang and Ors.***¹ and

1 (2001) 8 SCC 427

Shirish Govind Prabhudesai Vs. State of Maharashtra and Ors. ².

5. We have heard Mr. Gaurav Sharma, learned counsel appearing for the appellant and Mr. Siddharth Luthra, learned senior counsel appearing for the respondents.
6. After considering the rival submissions we are disposed to accept the argument of the appellant that the nature of interim order passed by the Division Bench of the High Court is nothing short of a mandatory order. For, direction has been given to the appellant during the pendency of the appeal and more so, without even briefly adjudicating the concerns and objections of the appellant about the impermissibility of migration. We find that the High Court has not even adverted to the aspects noted by the appellant in the communication sent to the respondent No.1 whilst rejecting the request for migration. The said communication has been reproduced in its entirety in the earlier part of this judgment. Besides, the Division Bench has also not considered the efficacy of Regulation IV of the Regulation, 2007 and the two decisions of this Court referred to earlier. It is not necessary for us to examine the merits of the

controversy required to be decided in the Letters Patent Appeal pending before the Delhi High Court. For the present, we have no hesitation in observing that the interim direction issued by the Division Bench of the High Court during the pendency of the appeal, is manifestly wrong and cannot be countenanced. We, accordingly, set aside the same.

7. Consequently, the respondent No.1 shall continue to pursue his studies in second year BDS Course at his parent college, namely, M.N.D.A.V. Dental College and Hospital, Solan, including appear in the examination subject to eligibility and fulfilling the essential requirements. The concerned authorities may permit the respondent No.1 to appear in the ensuing examination from M.N.D.A.V. Dental College and Hospital, Solan, if he fulfils all essential requirements and is eligible in that regard.
8. We clarify that the Division Bench of the High Court will consider all aspects of the matter and finally dispose of the Letters Patent Appeal No.336 of 2017 in accordance with law and without being influenced by any observation made in the impugned judgment or the present decision. We leave

all questions open to be decided by the High Court. We request the High Court to dispose of the Letters Patent Appeal finally, at an early date.

9. Accordingly the impugned judgment is set aside and this appeal is allowed in the aforementioned terms. No order as to costs.

.....CJI.
(Dipak Misra)

.....J.
(A.M. Khanwilkar)

.....J.
(D.Y. Chandrachud)

**New Delhi;
15th November, 2017.**