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STATE OF U.P. AND ANR.

v.

PRAVEEN KUMAR SHARMA AND ORS.

SEPTEMBER 9, 1994

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[M.N. VENKATACHALIAH, CJ., AND S. MOHAN, J.]

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U.P. Universities Act, 1973-S. 28 (5)—Dentist Act, 1948—Dentist Amendment Ordinance 1993—Section 10 (A)—Rules contained in the Ordinance promulgated on 13.4.93—Rejection of Transfer applications—Directed to be considered in the light of the statutory provision read with the Notification dated 13.4.93.

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The Respondents were students of B.D.S. Course pursuing their study outside the State of U.P. They filed writ petitions in the High Court seeking transfer to the Dental College at Lucknow. The Single Judge by his order dt. 13.93 allowed these writ petitions and directed the transfer of the respondents and for considering the applications for transfer which were pending at that time.

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Though his application for fourth year of B.D.S. was not pending, yet one of the respondents applied for transfer for the fourth year of the study. Therefore his request for transfer to fourth year B.D.S. at Lucknow was rejected by the State Government.

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Aggrieved by the same, he filed writ petition and an interim order was passed by the High Court permitting him to pursue his study in Lucknow. The State preferred a writ appeal against the order of Single Judge. Meanwhile writ petitions were dismissed. Against this order appeals were filed by the students and the Division Bench directed that the student who was permitted to pursue his studies at Lucknow could continue as a *bonafide* student. As far as other students were concerned, it was held that they will be given admission after their cases were considered by the State Government. Against this order S.L.P. has been filed by the State. The other appeal is against order of Single Judge directing the State to admit the appellant to the Third year course of BDS at Lucknow.

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The State contended that the judgment of Single Judge was a judgment *in rem* and writ petitions were not filed in representative capacity;

that there was no right to seek transfer from one Medical College to another. The finding of High Court that the Rules promulgated on 13.4.93 were prospective in nature was also challenged. The Respondents contended that the order of the High Court directing consideration of the claims for transfer, that order having become final, the transfer ought to have been considered, and that right cannot be defeated.

Disposing of the Appeals, this Court

HELD : 1.1 It is totally unnecessary to go into the question whether the Notification dated 13.4.93 is retrospective in its operation. Regulations made in this regard have effect more so in the absence of any Regulation made by the Dental Council. The State Government has the power under Section 28 (5) of the U.P. Universities Act to regulate admission in medical institutions by issue of orders. The judgment dated 13.9.93 directed consideration of applications for transfer in not only the cases of writ petitioners before the Court but also other pending applications. Undoubtedly, this was not a judgment *in rem*. The writ petitions were not filed in any representative capacity. There were also orders by the High Court directing consideration of applications for transfer in the light of the statutory provisions, especially Section 10(A) which came to be introduced in the Dentist Act, 1948 under Dentist Amendment Ordinance 1993. That section imposes a complete embargo that no institution could increase its capacity in any course of study and training except with the previous permission of the Central Government. [352-E-G]

1.2 The representation of candidates seeking transfer came to be rejected on 15.4.93. By that time, the Notification dated 13.4.93 had come into force. Another representation came to be decided on 3.5.93. By then the Dentist (Amendment) Ordinance, 1993 had come into force introducing Section 10(A). Therefore, the application for transfer will have to be considered in the light of the Statutory provisions read with the Notification dt. 13.4.93. [352-H, 353-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6078 of 1994.

From the Judgment and Order dated 13.4.94 of the Allahabad High Court in W.P. No. 780(M/S)/94.

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With

Civil Appeal Nos. 6079-80 of 1994.

From the Judgment and Order dated 10.1.94 of the Allahabad High Court in S.A. No. 22/93, 27 and 30 of 1993.

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Gaurav Banerjee and R.B. Sharma for the Appellants.

Sushil Kumar and R.P. Wadhvani for the Respondents.

The Judgment of the Court was delivered by

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MOHAN, J. Leave granted.

The first appellant is the State Uttar Pradesh. It issued an Order No. 2683/Section-14/Five-4/84 dated 13.4.1993 in exercise of the power under Sub-section (5) of Section 28 of the U.P. Universities Act, 1973 (hereinafter referred to as 'the Act'). By this order, the Government laid down the policy and procedure to be followed in cases of migration or transfer of students studying in Bachelor of Dental Surgery Course (B.D.S. in short) to and from Dental Faculty of the King George Medical College, Lucknow. The same is as follows :—

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"(1) Migration or transfer shall be allowed only within three months of passing the first professional examination.

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(2) During any one year a maximum, of five percent students of the intake capacity of the Dental Faculty of the King George's Medical College, Lucknow may be allowed to migrate or transfer to and from an authority or institution subject to a maximum of five students in such year:

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Provided that no seat shall be created in the Dental Faculty of the King George's Medical College, Lucknow as a result of migration or transfer.

(3) Migration or transfer under paragraph (2) shall be allowed in the following order:

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(a) Students selected through All India entrance examinations for admission to under-graduate medical/dental course conducted

by Central Board of Secondary Education and studying in any authority or institution outside the State of Uttar Pradesh. A

(b) Student selected through competitive examination and studying in any university or institution outside the State of Uttar Pradesh. B

(c) B.D.S. students other than those specified in sub-paragraphs (a) and (b) studying in any authority or institution outside the State of Uttar Pradesh.

(4) Application for migration or transfer shall be made in writing addressed to the Director, Medical Education and training, Uttar Pradesh, Lucknow through the principal of the concerned authority or Institution. C

(5) Subject to the policy and guidelines laid down in paragraphs (1), (2) and (b), the Director, Medical Education and Training, Uttar Pradesh, Lucknow shall decide the applications for migration or transfer strictly on merit to be determined on the basis of marks obtained in the first professional examination. The decision of the director, shall be final and binding. D

Explanation - In this order the expression "or Institution" means an authority or Institution in India, the dental qualifications granted by which are included in Part I of the Schedule to the Dentists Act, 1948. E

By Order, F

Atul Chaturvedi,
Secretary, Medical Education."

The respondents are students of B.D.S. Course pursuing their study outside the State of U.P. Praveen Kumar Sharma is a student of Budha Institute of Dental Science and Hospital, Gandhi Nagar, Kauberbagh, Patna. That College is recognised by the Dental Council of India. The other respondents Manoj Kumar Srivastava, Ajay Gupta, Rachana Batra, Satvinder Singh Kalra and Rajat Mehrotra are students of Budha Institute of Dental Science and Hospital, Patna which is also a recognised college. Vijay Pandey is a student of Ramarao Adik Educational Societies, Dental H

- A Narul, New Bombay. Sharat Chandra Pandey is a student of College of Dental Surgery Manipal. Sharat Chandra Pandey applied for transfer from the Dental college Manipal to Dental Faculty of King George Medical College, Lucknow, in the third year course of the B.D.S. on November 12, 1993. That transfer was not order. As a result, Sharad Chandra Pandey
- B continued his study at Manipal, completed his third year and went to the fourth year of study.

The other respondents barring Sharad Chandra Pandey filed six writ petitions in the High Court at Lucknow Bench seeking transfer to the Dental College at Lucknow. The learned Single Judge by his order dated

C 1.3.1993 allowed those writ petitions directed the transfer of the petitioners as also those whose application for transfer which were pending at that time, they were directed to be considered for transfer to the Dental Faculty of King George Medical College, Lucknow.

- D Sharad Chandra Pandey though his application for fourth year class of B.D.S. was not pending, yet applied for transfer to the fourth year of study. In April, 1993, the results of third year B.D.S. at Lucknow was declared. The next sessions for the fourth year B.D.S. commenced in May, 1993. Therefore, the request of Sharad Chandra Pandey for transfer to fourth year B.D.S. at Lucknow was rejected by the State Government.
- E Aggrieved by the same, he filed W.P. 970 (M/S.) 93. It was contended by reason of judgment of the High Court dated 1.3.1993, the claims of the students for transfer were bound to be considered and failure to do so was bad. An interim order was passed in W.P. 970/93 permitting Sharad Chandra Pandey for pursuing his study in Lucknow.

- F In the meanwhile, the State preferred a writ appeal against the order dated 1.3.1993. The writ petition filed by Sharad Chandra Pandey and other students praying for consideration of claims for transfer in the light of judgment dated 1.3.1993 was dismissed by a learned Single Judge on 5.10.93. Against this order, appeals were preferred by Sharad Chandra
- G Pandey and other students. By an order dated 10.1.1994, it was directed that Sharad Chandra Pandey should continue his study as *bonafide* student. As far as other students were concerned, it was held that they will be given admission after their cases were considered by the State Government. This was in Special Appeal No. 22/93, 27/93 and 30/93. Against this order dated
- H 10.1.1994, present S.L.P. (C) No...../94 (CC No. 25475) has been filed.

Respondent Parveen Kumar Sharma filed a separate writ petition No. 780(M/S) of 1994 in the High Court. By order dated 13.4.1994, learned Single Judge of High Court directed the appellant to admit the respondent Parveen Kumar Sharma to the third year course of Bachelor of Dental Surgery in the faculty of Dental Sciences, King George's Medical College, Lucknow within a period of two days from the date of service of a certified copy of the said judgment. It was further directed that he shall pay Rs. 1000 to the respondent. S.L.P. (C) No. 9239/94 has been filed against the order dated 13.4.1994.

It is submitted on behalf of the State that :

(i) the High Court erred in considering as though the judgment dated 13.3.1993 passed by the learned Single Judge was a judgment *in rem*. The writ petitions were not filed in representative capacity.

(ii) There is no right to seek transfer from one Medical College to another. Merely because Sharad Chandra Pandey and other students applied for transfer, they were not entitled to transfer to B.D.S. Course. There was no equity in favour of the students because admittedly they failed to secure admission in B.D.S. Course at Lucknow through the competition.

(iii) The finding of the High Court that the Rules promulgated 13.4.1993 were prospective in nature and did not govern the case of Sharad Chandra Pandey and others is wrong, Though Judgments of this Court were cited to hold against this proposition, they were not properly considered by the High Court. The High Court failed to note that the Regulations made by the Medical Council of India were not made after consulting the State Government and as such they were not enforceable.

(iv) In the case of Sharad Chandra Pandey, the grant of interim order was not warranted. It ran counter to the ruling of this Court.

The learned counsel for the respondent would urged that the State has been consistently and continuously disobeying the orders of the High Court. In spite of the clear direction to consider the cases of transfer on merits. Some technical objections or other were raised so as deny the just claims of the respondents. Once, there is an order of the High Court on 13.3.1993 directing consideration of the claims for transfer, that order having

- A become final, the transfers ought to have been considered. That order vested the respondents with right; that right cannot be defeated; thus no exception could be taken to the impugned judgment.

- B On a careful consideration of the above arguments and impugned judgment, we are clearly of the view that it is totally unnecessary to go into the question whether the Notification dated 13.4.1993 is retrospective in its operation. Section 28(5) of the Act reads as follows :

- C "Notwithstanding contained in any other provision of this Act, admission to medical and engineering college and to course of instruction for degrees in education or Ayurvedic and Unani System of Medicine (including the number of students to be admitted), shall be regulated by such order (which if necessary may be with retrospective effect, but not effective prior to January 1, 1979) as the State Government may be notification, make in that behalf:

- D Provided that no order regulating admission under this subsection shall be inconsistent with the rights of minorities in the matter of establishing and administering educational institutions of their choice."

- E Therefore, any regulation made in this regard could have effect more so in the absence of any Regulation made by the Dental Council. The State Government has the power under Section 28(5) of the Act to regulate admission in medical institutions by issue of orders. The Judgment dated 1.3.1993 directed consideration of applications for transfer in not only the cases of writ petitioners before the Court but also other pending applications. Undoubtedly, this was not a judgment *in rem*. The writ petitions were not filed in any representative capacity. There were also orders by the High Court directing consideration of applications for transfer in the light of the statutory provisions. The statutory provision which is relevant at this stage is Section 10(A) which came to be introduced in the Dentist Act, 1948 under Dentist Amendment Ordinance 1993. That Section imposes a complete embargo that no institution could increase its capacity in any course of study and training except with the previous permission of the Central Government. The representation of candidate seeking transfer came to be rejected on 15.4.1993. By that time, the Notification dated 13.4.1993 had come into force. Another representation came to be decided on 3.5.1993.
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By then the Dentist (Amendment) Ordinance, 1993 had come into force introducing Section 10-A, noted above. Therefore, the applications for transfer will have to be considered in the light of this statutory provision read with the Notification dated 13.4.1993. In this view, we are unable to uphold that judgment of the Division Bench. A

. Accordingly, a direction be issued that the cases of respondents for transfer shall be considered in the light of the Notification dated 13.4.1993 on or before 30.9.1994 by passing reasoned orders. The Civil Appeal is ordered in the above terms. However, there shall be no order as to costs. B

G.N.

Appeals disposed of.