

**SUPREME COURT OF INDIA**

Modern Dental College & Res.Cen.

Vs.

State of Madhya Pradesh & Ors.

C.A.No.4060 of 2009

(Dalveer Bhandari and Deepak Verma,JJ.,)

23.09.2011

**ORDER**

**Dalveer Bhandari,J.,**

1. This order would dispose of I.A. Nos.51-52 of 2011 in Civil Appeal No.4060 of 2009.
2. The appellants, Modern Dental College and Research Centre and others in I.A. Nos.51-52 of 2011 have filed these applications for modification of the scheme contained in the order dated 27.5.2009. It is prayed that the appellants be permitted to fill the Non-Resident Indian (for short NRI) seats at their discretion and in case sufficient students are not available, the appellants should be at liberty to admit other students within the NRI quota as per the discretion of the management, subject to maintaining inter se merit, amongst the students admitted against the said quota as has been permitted in the past.
3. The main question which has been articulated by the learned counsel for the parties is regarding the method and procedure for filling the unfilled NRI seats in medical and dental colleges. The appellants in these appeals are private un-aided medical and dental colleges or associations of such colleges in the State of Madhya Pradesh.
4. The appellants had challenged the constitutional validity of Madhya Pradesh Niji Vyavsayik Shikshan Sanstha (Pravesh Ka Viniyaman Avam Shulk ka Nirdharan) Adhinyam, 2007 (hereinafter referred to as 'the Act'). The Writ Petitions challenging this Act are pending adjudication before the High Court of Madhya Pradesh at Jabalpur.
5. This court in the case of the appellants decided by this court and reported in *Modern Dental and Research Central and Others v. State of Madhya Pradesh and Others*<sup>1</sup> held that "Both the State Government as well as the Association of Private Medical and Dental Colleges will hold their own separate entrance examination for this purpose. As regards "the NRI seats", they will be filled as provided under the Act and the Rules in the manner they were done earlier."

6. The Court made arrangement for the academic year 2009-10. The same arrangement was continued for the next academic year 2010-2011. The Bench consisting of Hon'ble Mr. Justice *Markandey Katju and Hon'ble Mr. Justice T.S. Thakur in R.D. Gardi Medical College and Another v. State of Madhya Pradesh and Others*<sup>2</sup> observed in para 28 as under:-

"A plain reading of the above leaves no manner of doubt that unfilled NRI seats had to be transferred to the general pool to be filled up on the basis of the merit of the candidates in the State level common entrance test conducted by Madhya Pradesh Vyavasyik Pariksha Mandal or by any other agency authorized by the State Government for that purpose. The unfilled seats in the NRI quota were, therefore, to be treated as a part of the general pool and once that was done the share of the college in terms of the order passed by this Court would be 50% out of the said seats. The High Court has, in that view, rightly held that while the management was justified in filling up 5 unfilled seats in NRI quota, the remaining 5 could not have been filled up otherwise than on the basis of the entrance test referred to in Rule 8."

7. Thereafter, on 27.1.2011 the same arrangement was continued for the academic year 2011-12. The order of this Court dated 27.1.2011 reads as under:-

"The order dated 27th May, 2009 made in Civil Appeal No.4060 of 2009 etc. shall be applicable for the academic year 2011-12."

8. The said order was passed after hearing the learned counsel for the parties. No application for modification of this order was filed immediately after the said order was passed. The present applications have come up for adjudication before us at a time when the admission process is likely to be concluded within a few days only. Any interference at this stage would create insurmountable problems and difficulties for all concerned.

9. This Court has already ordered that the same arrangement shall be continued for the academic year 2011-12.

10. We have heard learned counsel for the parties at length. In our considered view, no interference is called for as far as academic year 2011-12 is concerned.

11. In the facts and circumstances of this case, we deem it appropriate to request the High Court to dispose of the Writ Petitions filed by the appellants and others challenging the aforementioned Act as expeditiously as possible so that the controversy involved in the petition is concluded by a reasoned judgment. The High Court is requested to decide the case as expeditiously as possible and, in any event, within two months from the date of the communication of this order.

12. This court has deliberately refrained from giving any observations and findings on arguments advanced by the learned counsel for the parties because Writ Petitions are pending in the High Court. We request the High Court to decide the Writ Petitions without being influenced by any observations made by this Court.

13. I.A. Nos. 51 and 52 are accordingly disposed of and I.A. Nos. 53 and 54 are permitted to be withdrawn. In the facts and circumstances of this case we direct the parties to bear their own costs.

Judgment Referred.

<sup>1</sup>(2009) 7 SCC 0751

<sup>2</sup>(2010) 10 SCC 0225