IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF JULY 2017

PRESENT

THE HON'BLE MR. JUSTICE H.G.RAMESH

AND

THE HON'BLE MR. JUSTICE JOHN MICHAEL CUNHA

R

WRIT PETITION NO.63512 OF 2016 (EDN-MED-ADM)

BETWEEN:

SONU THOMAS
S/O THOMAS GEORGE
AGED ABOUT 22 YEARS
R/AT:NO.27/1782/B
BETHSIDHA APARTMENTS
KASTURBANAGAR, KOCHI
KERALA STATE ...PETITIONER

(BY SRI K RAMA BHAT, ADVOCATE)

AND:

1. RAJIV GANDHI UNIVERSITY
OF HEALTH SCIENCES, KARNATAKA
4TH "T" BLOCK, JAYANAGAR
BANGALORE-56004
REPRESENTED BY ITS REGISTRAR

2. A J INSTITUTE OF DENTAL SCIENCES
N.H.17, KUNTIKANA
MANGALORE-575004
BY ITS PRINCIPAL ...RESPONDENTS

(BY SRI S G PANDIT, ADVOCATE FOR R1;
SRI Y.RAJENDRA PRASAD SHETTY, ADVOCATE FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE

LETTER/DIRECTION DATED 03.07.2015 IN NO.RGUHS/AC2-ADM/BDS/2014-15/D042 ISSUED BY R-1 AS PER ANNEXURE-S AND FURTHER DIRECT R-1 TO APPROVE THE ADMISSION OF THE PETITIONER FOR THE BDS COURSE IN R-2 COLLEGE.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDER ON 09.06.2017, COMING ON FOR PRONOUNCEMENT OF ORDER, THIS DAY, **JOHN MICHAEL CUNHA J.**, MADE THE FOLLOWING:

O R D E R

1. This writ petition is directed against the communication dated 03.07.2015 bearing No.RGUHS/ AC2-ADM/BDS/2014-15/D042 at Annexure-S issued by respondent No.1–Rajiv Gandhi University of Health Sciences, Karnataka ('the University'), and for a direction to the University to approve the admission of the petitioner for BDS Course in respondent no.2-A.J.Institute of Dental Sciences, Mangalore ('the College'). The impugned communication at Annexure-S issued by the University reads as follows:

"RGUHS/AC2-ADM/BDS/2014-15/D042

Ref: Date: 03.07.2015

To
The Principal,
A.J. Institute of Dental Sciences,
N.H-17, Kuntikana,
Mangalore-575004.

Sub: Non-Approval of UG Admission
of students of 2013-14 batch.

Adverting to the above, I write to inform you that after verifying the documents submitted by you, the data of the following students were not uploaded online in to the RGUHS website within the calendar of event.

1. Sonu Thomas,

You are here by informed to discharge the students from the college immediately and the action taken report in this regard may be submitted to this University at the earliest.

Yours faithfully,
Sd/-
(Dr.S.Sacchidanand)
REGISTRAR"

2. We have heard the learned counsel appearing for the parties and perused the record. The contention of the learned counsel for the petitioner is that the petitioner was permitted to appear for the first year BDS examination held in June 2014 under registration No.13D7898. The petitioner paid the examination fees and was also issued with the hall ticket/admission card by the University. In addition to the initial admission fee of ₹2,53,000/-, the College directed the petitioner to pay a sum of ₹2,53,000/- for attending the classes. It is further contended that, once again the College required the petitioner to pay a sum of ₹2,73,000/- towards the College fees for the year 2015-2016. The petitioner

arranged the demand draft dated 21.11.2015. The first year BDS examination for the year 2015-2016 was scheduled to be held in the month of December 2015. The petitioner paid the examination fee in a sum of ₹3,200/-. The application of the petitioner was forwarded by the College to the University. But the petitioner did not receive the hall ticket or admission card for December 2015 examination. On enquiry with the College, the petitioner was told that there were some technical faults. However, he was permitted to appear for December 2015 examination, but his result was not announced. After repeated enquiries with the College, petitioner submitted a representation and having failed to elicit proper responses thereto, he issued a legal notice dated 02.06.2016 threatening legal action and further sent a reminder to the University on 13.06.2016.

3. It is further stated that under the aforesaid circumstances, the petitioner approached this Court in W.P.Nos.34167-34168/2016 for a writ of mandamus to direct the University and the College to receive the

examination fee and to permit him to attend the first year BDS examination which was scheduled from 21.06.2016 to 25.06.2016. A learned Single Judge of this Court directed the respondents to permit the petitioner to write the first year BDS examination by accepting the fees subject to the result of the writ petitions and the University was directed not to announce the result of the petitioner without the leave of the Court. It is stated that the said writ petitions were withdrawn with liberty to pursue this petition.

4. After service of notice, the University filed detailed statement of objections to this petition denying the various allegations made in the petition. The specific contention taken in para-4 of the statement of objections reads as follows:

> "4. This Respondent submits that till June 2014, neither the name of the Petitioner nor details nor documents with regard to Petitioner's admission was furnished to the University by the College. There was no whisper regarding admission of Petitioner by the 2nd respondent College. For the first time by letter dated 10/6/2014, which was received by the University on 11/6/2014, the name of Petitioner appeared stating that the Petitioner has been admitted and cancelled the admission of Somenig Majare. Copy of the letter dated 10/6/2014 of 2nd Respondent College is produced herewith and marked as ANNEXURE-R6. Therefore, it is clear that the Petitioner is admitted to BDS course,

> much after the last date of admission. Therefore, the Petitioner is not entitled for approval of her admission. This Respondent University has correctly issued the letter dated 3/7/2015 to discharge the petitioner. Copy of the letter dated 3/7/2015 is produced herewith and marked as ANNEXURE-R7."

5. It is the submission of the learned counsel for the petitioner that the petitioner was admitted to the first year BDS Course pursuant to the admission notification issued by the University. In addition to the sum of ₹10,00,000/- collected from the petitioner at the time of admission, the petitioner has paid, in all, a sum of ₹7,79,000/- towards college fee. The University has issued Eligibility Certificate approving the admission of the petitioner to the first year BDS Course. He was also permitted to take the examination and therefore, issuance of the impugned communication is wholly illegal. Learned Counsel further submitted that, if for any reason, there is any fault on the part of the College in forwarding the necessary information to the University, the petitioner cannot be penalized and the career of the petitioner cannot be jeopardized by the high handed and illegal acts of the respondents.

6. Learned counsel for the University has reiterated the contentions urged in the statement of objections and would submit that till June 2014, neither the name of the petitioner nor any documents with regard to the petitioner's admission were furnished by the College to the University. For the first time, by letter dated 10.06.2014, which was received by the University on 11.06.2014, the name of the petitioner was disclosed and it was stated that the petitioner was admitted against the admission given to one Somaning Najare as per Annexure-R6. As the petitioner was admitted to BDS Course after the last date for admission, the petitioner is not entitled for approval of his admission. With regard to the allegations that the petitioner was permitted to appear for the first year BDS examination, it is submitted that the said permission was granted as the petitioner's admission was under consideration.

7. What emerges from the assertions and counter assertions made by the parties is that, the name of the petitioner was not uploaded on the University's website

within the date and time stipulated in the admission time schedule notified by the University. The notification dated 03.07.2013 (Annexure-R1) issued by the University prescribing admission time schedule for the academic year 2013-2014 is extracted below:

"Ref:UA/UG-CE/BDS/12/2013-2014. Date: 03/07/2013

NOTIFICATION

Ref: 1. MCI Letter No:23(1)/2003-MED/26637 dated: 28.01.2005
2. SLP No.14919/2000-(2002)7/SCC/258 dated: 11.09.2002 of Hon'ble Supreme Court of India, in the case of MCI VS Madhu Singh and others
3. Judgment on civil appeal no.4318 & 4319/2012 of Hon'ble Supreme Court of India, in the case of Priya Gupta Vs state of Chhatishgadh and others.

Calendar of events for admission to BDS Course for academic year **2013-14** is hereby notified as below

Sl. No.	**Admission schedule**	**Target Date/Week**
1	Last date of joining allotted college after first round of counselling (as per the directions of Hon'ble Supreme Court of India)	31.07.2013
2	Last date for admission	31.07.2013
3	Commencement of academic session	01.08.2013
4	Last date of joining allotted college after second round of counselling (as per the directions of Hon'ble Supreme Court of India)	31.08.2013
5	Last date upto which student can be admitted against vacancies arising due to any reason.	30.09.2013 5:30 PM
6	Online uploading of admission statement on RGUHS website www.rguhs.ac.in along with the students photos.	Upto 30.09.2013 Before 5:30 PM
7	Submission of list of candidates admitted, by email to rguhsregistrar@gmail.com & rguhsadmissions@gmail.com	On 30.09.2013 By 5:30 PM
8	Submission of online entered and printed admission statement of candidates along with	07.10.2013 Before 5:30 PM

	originals and Xerox copies of the required documents, including eligibility certificates be **submitted in person** to the Registrar	
9	Tentative last date for sending approved list to the institutions	31st December 2013
10	Tentative date of First Year Examination	June 2014

Note: 1) If above dates fall on a holiday, the subsequent working day will be taken as the last date.
2) List of students admitted must be submitted through E-Mail to a)registrarrguhs@gmail.com & b) rguhsadmissions @gmail.com within 1700 hours of last date of admission.
3) Hard copy of the list of students admitted must be submitted to the Registrar RGUHS in person in duplicate on the next working day of the last date of admission and an acknowledgement be obtained from this office.
4) Online Uploading of admission statement can be done till the last date of admission.
5) The same calendar of events with appropriate changes in the year shall be maintained for subsequent years. Changes in date and month, if any, will be notified separately.

By Order
Sd/-
(Dr.D.Prem Kumar)
Registrar

To,
The Principals of All Medical Colleges affiliated to RGUHS.
Copy to:
……..”

8. Whether online uploading of the admission statement on the University’s website along with students’ photos before the date and time stipulated in the admission time schedule notified by the Rajiv Gandhi University of Health Sciences, Karnataka, is mandatory or not, has been

considered by this Court in the decision in ***Vydehi Institute of Dental Sciences and Research Centre v. State of Karnataka (ILR 2015 KAR 4086)*** which was rendered by one of us (H.G.Ramesh J.). By relying on the observations made by the Hon'ble Supreme Court in ***Priya Gupta vs. State of Chhatisgarh [(2012)7 SCC 433] and in Mridul Dhar v Union of India [(2005)2 SCC 65],*** it has been held therein that, online uploading of admission statement on the University's website along with students' photos before the date and time stipulated in the admission time schedule notified by the Rajiv Gandhi University of Health Sciences, Karnataka, is mandatory.

9. In the context of the question raised in this petition, it is relevant to refer to the following observations made by the Hon'ble Supreme Court in ***Priya Gupta v. State of Chhatisgarh [(2012)7 SCC 433]***:

> "78.4. <u>With all the humility at our command, we request the High Courts to ensure strict adherence to the prescribed time schedule, process of selection and to the rule of merit.</u> We reiterate what has been stated by this Court earlier, that except in very exceptional cases, the High Court may consider it appropriate to decline interim orders and hear the main petitions finally, subject to the convenience of the Court. We may refer to the dictum of

> this Court in Medical Council of India v. Rajiv Gandhi University of Health Sciences [(2004)6 SCC 76], SCC para 14 in this regard."
>
> (Underlining supplied)

The observations made by a three judge bench of the Supreme Court in ***Mridul Dhar v. Union of India [(2005)2 SCC 65]*** also require to be noticed:

> "32. Having regard to the professional courses, it deserves to be emphasized that all concerned including Governments, State and Central both, MCI/DCI, colleges – new or old, students, Boards, universities, examining authorities, etc. are required to strictly adhere to the time schedule wherever provided for; there should not be midstream admissions; admissions should not be in excess of sanctioned intake capacity or in excess of quota of anyone, whether State or management. The carrying forward of any unfilled seats of one academic year to next academic year is also not permissible."

The two decisions of the Supreme Court quoted above require the High Courts to ensure strict adherence to the prescribed admission time schedule, process of selection and to the rule of merit. There cannot be any departure from this settled legal position.

10. As could be seen from the University's notification dated 03.07.2013 vide Annexure-R1 prescribing time schedule for admission to BDS Course for the academic year 2013-2014, which is extracted above, online uploading of

admission statement on the University's Website with students' photos should be completed before 5.30 p.m. on 30.09.2013. Similarly, list of candidates admitted shall be sent by E-mail to the University by 5.30 p.m. on 30.09.2013. Note(3) in the notification states that hard copy of the list of students admitted must be submitted in duplicate to the Registrar of the University in person on the next working day of the last date for admission and an acknowledgement in that behalf shall be obtained from the University's office.

11. In the instant case, the document produced by the University at Annexure-R1 clearly indicates that the statement of admission of students for first year BDS Course for the academic year 2013-2014 was submitted by the College to the University only on 05.10.2013. The said letter is said to have been received by the University on 07.10.2013. Sl.No.97 of the list appended to the said letter reveals that one Somaning Najare was given the admission for the first year BDS Course for the academic year 2013-

2014, but his name has been rounded off as discontinued and in his place name of the petitioner-Sonu Thomas is entered. There is nothing on record to show that prior to 07.10.2013, admission of the petitioner was brought to the notice of the University either by way of written communication or by any other mode. The very fact that the name of Sonu Thomas has been shown as against the cancelled admission of Somaning Najare would suggest that only after his discontinuance from the course, the petitioner was given admission in the said vacancy.

12. It is not the case of the petitioner that his name was uploaded on the University's Website before the stipulated date and time i.e., before 5.30 p.m. on 30.09.2013. It is also not the case of the College that, it had submitted the name of the petitioner to the University either in person or through e-mail within the time and date specified in the notification. As online uploading of admission statement on the University's website along with students' photos before the date and time stipulated in the admission time schedule

notified by the University is mandatory, we do not find any legal infirmity in the impugned communication dated 03.07.2015 issued by the University to discharge the petitioner from the College to warrant interference by this Court. The writ petition is accordingly dismissed.

Petition dismissed.

Sd/-
JUDGE

Sd/-
JUDGE

Psg*