

WPMS No. 2090 of 2019

Hon'ble Manoj K. Tiwari, J.

Mr. Rohit Dhyani, Advocate for the petitioner.

Mr. Anurag Bisaria, Standing Counsel and Ms. Sangeeta Bhardwaj, Brief Holder for the State of Uttarakhand.

Mr. Rakesh Thapliyal, Assistant Solicitor General for Union of India.

Heard learned counsel for the parties through video conferencing.

This writ petition has been filed by the Association of Plastic Surgeons of India. Petitioner is aggrieved by the admission notice dated 09.06.2019 published by Director, All India Institute of Medical Sciences, Rishikesh. By the said notice, Dental Surgeons with BDS Degree or MDS Degree have also been declared as eligible for admission to M.Ch. in Cranio-Maxillofacial Surgery.

Learned counsel for the petitioner submits that only Plastic Surgeons with MBBS Degree and Masters Degree alone are suitable for admission to the said course and Dental Surgeons are not well equipped for Cranio-Maxillofacial Surgery, which requires high degree of skill.

By means of this writ petition, petitioner has sought following reliefs:-

- i)** Issue a writ, order or direction in the nature of mandamus declaring the inclusion of Dental Graduate (BDS) and Dental Postgraduates (MDS) candidates for admission in the M.Ch. Course as per the admission notice announced by the AIIMS Rishikesh on 09-06-2019 (contained as Annexure no. 1 to this writ petition) for M.Ch. Entrance Examination (July Batch, 2019) being conducted by respondent no. 2 as the said Course is violative of Dentist Act, 1948 and Indian Medical Council Act, 1956

respectively, further holding that the candidates possessing the Dental Graduate (BDS) and Dental Postgraduates (MDS) Degrees as ineligible for the M.Ch. Course.

ii) Issue a writ in the nature of certiorari quashing the setting aside the Revised MDS Course Regulations, 2007 (published by the Dental Council of India (DCI) and notified in the Gazette on 21-11-2007, Annexure no. 3) [as the same are unscientific and against the existing statutes in law and M.Ch. is the highest super-specialty degree in surgery recognized by the MCI as per the IMC Act, 1956 and the Dental Council of India in recognizing the self same degree has illegally encroached over the domain of the Medical Council of India] and as such are ultra vires the Constitution of India as well as the Central Act i.e. Indian Medical Council.

iii) Issue a writ in the nature of certiorari quashing the setting aside the proposed Regulations and the entire proposal for the New Course of M.D.Ch. in Maxillofacial Surgery proposed by Dental Council of India as mentioned in their letter No. DE-190-2014/4445 dated 24-7-2014 (Annexure no. 13) by DCI to the Secretary, Ministry of Health and Family Welfare regarding Draft Regulations for a new Specialty course in Maxillo – facial Surgery called M.D.Ch. to the extent of inclusion of Graduates in Dentistry and those candidates possessing Diploma in Maxillo Facial Surgery.

iv) Issue a writ, order or direction in the nature of mandamus directing the respondents to remove all other topics that are beyond the scope of Oral Surgery as Defined under the Dentist Act Section 2(d) from the M.D.S. Course Regulations & Syllabus that existed even before 2007.

v) Issue a writ, in the nature of mandamus directing the Ministry of Health & Family Welfare i.e. respondent no. 4 (by virtue of the powers vested in them through Entry 66 of 7th schedule (Article 266) of the Constitution of India i.e. “Co-ordination and determination of standards in institutes for higher education or research and

scientific and technical institutions”) in restricting the admission in M.Ch. course only for MBBS and MS candidates.

vi) Issue a writ, in the nature of mandamus directing the respondents to provide for punishment/penalty to any Dentist who performs procedures outside the Oral cavity, (as defined by Section 2(d) Dentist Act), and to provide the same as an offence at par with Criminal Negligence, as same may result into harm of health of public at large.

It is settled position in law that while exercising power of judicial review, this Court does not enter into the domain reserved for subject experts. Which qualification would be suitable for admission, in a particular medical course, can only be decided by the subject experts?

In such view of the matter, this Court is not inclined to entertain this writ petition. Having regard to the facts and circumstances of the case, writ petition is disposed of with liberty to the petitioner to make representation to the Director, All India Institute of Medical Science, Rishikesh within two weeks from today. If such representation is made within stipulated time, the Director, AIIMS, Rishikesh shall look into the matter and pass speaking order, in accordance with law, within four weeks from the date of production of such representation along with certified copy of this order.

(Manoj K. Tiwari, J.)

13.08.2020

Aswal