

ITEM NO.2

COURT NO.3

SECTION X

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
WRIT PETITION (CIVIL) NO(s). 172 OF 2010

SOHAM MAYANKKUMAR VYAS & ORS.

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(With appln(s) for stay and office report)

WITH W.P(C) NO. 202 of 2010

(With appln.(s) for ex-parte stay and office report)

(FOR FINAL DISPOSAL)

Date: 28/09/2010
today.

These Petitions were called on for hearing

CORAM :

HON'BLE MR. JUSTICE R.V. RAVEENDRAN
HON'BLE MR. JUSTICE H.L. GOKHALE

For Petitioner(s)

Mr. Harish N.Salve,Sr.Adv.
Mr. Mitul Shelat,Adv.
Mr. Sanjay R. Hegde,Adv.
Mr. Ramesh K.Mishra,Adv.
Mr. Anil Kumar Mishra,Adv.

Mr. Shekhar Naphade,Sr.Adv.
Mr. Huzefa Ahmadi,Adv.
Mr. Mitul Shelat,Adv.
Ms. Sakshi Banga,Adv.
Ms. Garima Kapoor,Adv.
Mr. Ejaz Maqbool,Adv.

For Respondent(s)

Mr. P.P. Malhotra,ASG
Mr. R.K. Rathore,Adv.
Mr. Rohitash S.Nagar,Adv.
Mr. S.S. Rawat,Adv.
For Mr. D.S. Mahra,Adv.

Ms. Madhurima Mridul,Adv.
Mr. Kunal Bahri,Adv.
Ms. Anil Katiyar,Adv.

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Mr. Vikas Mehta,Adv.

Mr. Meet Malhotra,Sr.Adv.
Mr. Nar Hari Singh,Adv.

UPON hearing counsel the Court made the following
O R D E R

Counter of first respondent-Union of India
filed in court.

Writ Petitions are allowed in part in terms of the signed reportable order.

(O.P. Sharma)
Court Master

(Veena Khera)
Court Master

(Signed reportable order is placed on the file)

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Reportable

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 172 OF 2010

SOHAM MAYANKKUMAR VYAS & ORS.

Petitioners

VERSUS

UNION OF INDIA & ORS.

Respondents

WITH

W.P(C) NO. 202 of 2010

MAURAS COLLEGE OF DENTISTRY,
HOSPITAL & ORAL RESEARCH INSTITUTE & ANR.

Petitioners

VERSUS

UNION OF INDIA & ORS.

Respondents

O R D E R

R.V. RAVEENDRAN J.

Counter of first respondent-Union of India filed in court. Heard.

2. The petitioners in W.P. [C] No.172 of 2010 are the students admitted in the year 2006-07 to BDS course conducted by the "Mauras College of Dentistry, Hospital and Oral Research Institute" situated at Mauritius (for short "Mauras College"). The said Mauras College is the

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first petitioner and one of its students admitted to BDS

course in 2005-06 is the second petitioner in

W.P.(C)No.202/2010. Mauras College is affiliated to

Bhavnagar University, Gujarat (for short 'the University').

3. The brief facts leading to these writ petitions are as under:

3.1) Mauras College sought affiliation with Bhavnagar University. The Government of Gujarat and the Dental Council of India had initially some reservation about a college situated in a foreign country seeking affiliation with the Bhavnagar University in India. Subsequently, however, the Government of Gujarat granted a 'No Objection Certificate' on 18.2.2003 for setting up the Mauras College affiliated to the said University, subject to prior permission from Dental Council of India and Ministry of External Affairs. The Ministry of External Affairs, Government of India, granted the necessary clearance for setting up the college on 28.8.2003.

3.2) The representatives of the Dental Council of India and the Bhavnagar University visited the Mauras College at Mauritius and satisfied themselves that the College met with the infrastructural and other requirements prescribed

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by Dental Council of India for grant of permission to establish the Dental College and for grant of affiliation. The Dental Council of India recommended to the Government of India, that Mauras College be approved. On the recommendation of the Academic Council and Executive Council of the University, the Government of Gujarat granted affiliation of Mauras College to the Bhavnagar University for the academic year 2004-05 and renewed the affiliation for 2004-05 and 2005-06.

3.3) The Mauras College follows the syllabus and the

method of teaching prescribed by the Bhavnagar University consistent with the guidelines and regulations of Dental Council of India. The examinations for the BDS course of Mauras College are conducted in Mauritius, by the examiners from the Bhavnagar University deputed from India, exactly at the same time as examinations held in respect of the other Dental College/s in India affiliated to the University.

3.4) The State of Gujarat issued a show cause notice dated 7.1.2006 to the University as to why the affiliation granted to the Mauras College should not be cancelled. The Mauras College filed a Writ Petition [W.P.(Civil) No.57 of 2006] in this court, praying for a direction that its
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affiliation to the Bhavnagar University shall not be cancelled by the State of Gujarat. During the hearing of the said writ petition by this court, the Union of India and Bhavnagar University confirmed that the statutory inspections of Mauras College at Mauritius had already been conducted and the College was found to be running with requisite infrastructure and facilities, and therefore the recognition and affiliation could be granted. In view of it, this Court allowed the writ petition by order dated 13.7.2009 and directed that the Mauras College shall be taken as affiliated to Bhavnagar University. In pursuance of it the State of Gujarat and the University proceeded on the basis that the Mauras College was affiliated to the University.

4. The Dentists Act, 1948 ('Act' for short) was enacted with the object of regulating the profession of dentistry and for that purpose to constitute the Dental Councils. The Act vests in the Central Government, the power to recognize dental qualifications. The Act also

requires prior permission of the Central Government for establishing any new dental college. Section 2(j) defines 'recognized dental qualification' as any of the qualifications included in the Schedule to the Act.

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4.1) Section 10 of the Act deals with recognition of dental qualifications. Sub-Section (1) provides that the dental qualifications granted by any authority or institution in India, which are included in Part I of the Schedule shall be recognised dental qualifications for the purpose of the Dentists Act. Sub-section (2) of Section 10 of the Act relates to amendment of Part I of the Schedule and it is extracted below:

"(2) Any authority or institution in India which grants a dental qualification not included in Part I of the Schedule may apply to the Central Government to have such qualification recognised and included in that Part, and the Central Government, after consulting the Council, and after such inquiry, if any, as it may think fit for the purpose, may, by notification in the Official Gazette, amend Part I of the Schedule so as to include such qualification therein, and any such notification may also direct that an entry shall be made in Part I of Schedule against such dental qualification declaring that it shall be a recognised dental qualification only when granted after a specified date".

4.2) Sub-Section (3) of Section 10 of the Act provides that the dental qualifications, granted by any authority or institution outside India, which are included in Part II of the Schedule shall be recognised dental qualifications only for the purposes of the registration of citizens of India when the register is first prepared under Dentists Act. Sub-section (4) of section 10 provides that the dental qualifications granted by any authority or

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institution outside India, which are included in Part III of the Schedule shall be recognised dental qualifications for the purposes of the Dentists Act, but no person

possessing any such qualification, shall be entitled for registration unless he is a citizen of India. Sub-section (5) of Section 10 authorizes the Dental Council to enter into schemes of reciprocity for recognition of dental qualifications awarded by authorities/institutions in other countries and declaration thereof by the Central Government as recognized dental qualifications.

4.3) Section 10A deals with permission for establishment of new dental college, new courses of study etc. Section 10B relates to non-recognition of dental qualifications in certain cases and Sub-Section (1) thereof is extracted below:

"10B(1) Where any authority or institution is established for grant of recognized dental qualification except with the previous permission of the Central Government in accordance with the provisions of section 10A, no dental qualification granted to any student of such authority or institution shall be a recognized dental qualification for the purposes of this Act."

4.4) Section 31 of the Act requires the State Government to prepare a Register of dentists for the State. Sub-section (3) of Section 31 provides that the Register of

Dentists shall be maintained in two parts A and B, persons

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possessing recognized dental qualifications being registered in Part A and persons not possessing such qualifications being registered in Part B.

4.5) Section 33 of the Act prescribes a 'recognized dental qualification' as the qualification for entering a person's name entered in the Register when it was first prepared. Section 34 of the Act prescribes the qualification for subsequent registration. Section 34(1) of the Act relevant for our purpose is extracted below:

"34. Qualification for subsequent registration.
(1) After the date appointed under sub-section
(2) of section 32 a person shall, on payment of

the prescribed fee, be entitled to have his name entered on the register of dentists, if he resides or carries on the profession of dentistry in the State and if he-

(i) holds a recognised dental qualification, or

(ii) does not hold such a qualification but, being a [citizen of India], has been engaged in practice as a dentist as his principal means of livelihood for a period of not less than two years before the date appointed under sub-section (2) of section 32 and has passed, within a period of [ten years after the said date], an examination recognised for this purpose by the Central Government:

Provided that no person other than a citizen of India shall be entitled to registration by virtue of a qualification:

(a) specified in Part I of the Schedule unless by the law and practice of the State or country

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to which such person belongs persons of Indian origin holding dental qualifications registrable in that State or country are permitted to enter and practice the profession of dentistry in such State or country, or

(b) recognised in pursuance of a scheme of reciprocity, under sub-section (5) of section 10:

Provided further that a person registered in Part B of the register shall be entitled to be registered in Part A thereof, if within a period of ten years after the date of his registration in Part B he passes an examination recognised for the purpose by the Central Government."

5. The government of India issued a notification (S.O.No.73/2004 Gazetted on 8.1.2004) in exercise of its power under Section 10(1) and (2) of the Act and added the following as Sl.No.62 in Part I of the Schedule to the Act:

Authority or Institution	Recognised dental qualification	Abbreviation for registration
62. Bhavnagar University, Bhavnagar,	1. Manubhai Patel Dental College & Hospital, Vadodara, Gujarat (i) Bachelor of Dental Surgery (when granted on or after 3.7.2004)	BDS, (Bhavnagar)

The Government of India by another notification dated 6.3.2009 (Gazetted on 21.3.2009) issued in exercise of its power under Section 10(4)(b) of the Act added the following as Sl.No.96 in Part III of the Schedule to the

Act:

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Authority or Institution	Recognised dental qualification	Abbreviation for registration
96. Bhavnagar University, Bhavnagar, Gujarat	Mauras College of Dentistry, Mauritius (i) Bachelor of Dental Surgery (If granted to Indian students of the first and second batches, i.e., the Indian students who were admitted during the academic sessions 2003-04 and 2004-05 respectively only).	BDS, Bhavnagarar University, Bhavnagar

6. The Dental Council of India framed the "Dental Council of India Screening Test Regulations 2009" ('Regulations' for short) in exercise of power conferred by section 20 read with section 10(4)/(5) of the Act, providing for conduct of a screening test to determine the eligibility of candidates for registration with any State Dental Council or any other purpose. The said Regulations are applicable only to those Indian citizens possessing a primary dental qualification/PG Diploma/Post Graduate Dental qualification, awarded by any dental institution outside India, who are desirous of getting registration with any State Dental Council or of any other purpose as specified by the Dental Council of India from time to time; and on or after the date of publication of the said Regulations in the official gazette, they shall have to qualify in a screening test conducted by the prescribed authority for that purpose, as per the provisions of section 10(4) or 10(5) of the Act, as the case may be. The

first proviso to Regulation (4) provide that all Indian

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Students who have passed and possessed a dental qualification/degree, which has not been recognized or who

have taken admission abroad on or before the date of publication of the Regulations, shall also be eligible to appear in the screening test.

7. The Government of India (Ministry of Health & Family Welfare, Dental Education Section) required the students of Mauras College who had secured BDS degrees from Bhavnagar University to appear for the screening test as per the DCI Screening Test Regulations, 2009, for recognition of their degrees in India (vide letter dated 16.2.2010 and other similar letters addressed to the students of Mauras College).

8. The petitioners in these two writ petitions have sought (i) quashing the notification dated 6.3.2009 adding Entry No.96 in Part III of the Schedule to the Act; (ii) a declaration that the communications of the Government of India requiring the students of the Mauras College to appear in the screening test is illegal and contrary to Article 14 of the Constitution of India and that the DCI Screening Test Regulations, 2009 are inapplicable to students who have been conferred BDS degree by Bhavnagar University; (iii) a declaration that the BDS degree

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granted by the Bhavnagar University to the students of Mauras College, Mauritius shall not be considered as a degree granted by a foreign University but shall be considered as a BDS Degree granted by Bhavnagar University in India; and (iv) a declaration that there is no difference between students who were admitted in 2003-04 and 2004-05, and those who were admitted thereafter with a mandamus to Government of India to recognize the degree granted by Bhavnagar University to the students of Mauras College during 2005-06 and thereafter, for the purposes of

the Act.

9. The respondents have resisted the petitions by contending that the dental qualifications possessed by the Indian students of Mauras College, Mauritius are 'foreign dental qualifications obtained by citizens of India' and they are therefore required to undergo a screening test as provided by the DCI Screening Test Regulations, 2009.

10. On the contentions raised by the writ petitioners (Mauras College and its students), following two questions arise for our consideration:

(i) Whether the notification dated 6.3.2009 issued under Section 10(4)(b) of the Act entering the Maruas W.P.(C)172/2010 WITH W.P.(C)202/2010

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College, Mauritius and its BDS degree, at Sl.No.96 in the III Schedule to the Act is valid?

(ii) Whether the BDS graduates from Mauras College affiliated to Bhavnagar University, Gujarat have to take the screening test under the DCI Screening Regulations, 2009, for recognition of their BDS degrees in India?

Re : Question (i)

11. Though Mauras College is situated outside India, the BDS students of the Mauras College who successfully complete the course of study and pass the examination conducted by the Bhavnagar University possess the dental qualifications awarded by an authority in India (namely Bhavnagar University). They do not possess any dental qualification awarded by an authority or institution outside India. The notification dated 6.3.2009 which places Mauras College in Part III of the Schedule to the

Act proceeds on the basis that BDS degrees granted by Bhavnagar University to the students who have undergone the course of study at Mauras College, Mauritius, are dental qualifications granted by an institution/authority outside India, even though the degree (dental qualification) is granted by a University in India. The

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notification further restricts the recognition only to the BDS degrees of the batch of Indian students admitted to academic sessions 2003-04 and 2004-05 in Mauras College but not the degrees granted during subsequent batches.

12. Section 10(4) of the Act will apply only if the dental qualification is granted by an authority or institution outside India, and as a consequence, such qualification will have to be listed under Part III of the Schedule to the Act. The respondents do not dispute the fact that the BDS examinations for the students of Mauras College are held by Bhavnagar University and the degrees are also granted by Bhavnagar University and not by any authority or institution outside India. So long as the Mauras College is affiliated to Bhavnagar University and the said University is the examining body and is the authority which grants the BDS degree dental qualification to the students of Mauras College, Section 10(4) and Part-III of the Schedule to the Act will not apply. As Bhavnagar University is not an authority outside India, the dental qualifications granted by it cannot be included in Part III of the Schedule to the Act even if the college/institution affiliated to the said University is outside India. Therefore the notification dated 6.3.2009

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is illegal being contrary to and violative of section

10(1) and (4) of the Act and liable to be struck down.

Re : Question (ii)

13. A 'recognized dental qualification' could be either

(i) a dental qualification granted on completion of a

course of study in an institution (University or deemed

University) whose dental qualification is recognized by

the Central Government; or (ii) a dental qualification

granted by an authority (whose dental qualifications are

recognized by the Central Government) to those who undergo

a course of study in an affiliated dental

college/institution, which was established with the

previous permission of the Central Government. Thus where

the dental qualification is granted by an authority (that

is, a University in India) to which several dental

colleges are affiliated, the term "recognized dental

qualification" refers to the dental qualification granted

by a University (whose dental qualifications are

recognized by the Central Government) by undergoing a

course of study in an affiliated college or institution

established with the prior permission of the Central

Government.

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14. Recognized dental qualifications granted by

authorities or institutions in India are enumerated in

Part I of the Schedule to the Act; the recognized dental

qualifications granted by authorities or institutions

outside India (only for the purpose of registration of

Indian citizens when the Register is first prepared under

the Act) are enumerated in Part II of the Schedule to the

Act; and the recognised dental qualifications granted by

any authorities or institutions outside India only when

granted to citizens of India, are enumerated in Part III

of the Schedule. Having regard to the provision of sub-sections (1) and (4) of Section 10 of the Act, if a dental college is situated outside India but the authority which grants the dental qualification in regard to students of that College is in India, recognition of the dental qualifications will be governed by Section 10(1) and will have to be enumerated in Part I of the Schedule. For this purpose, the dental qualifications granted by the Authority should be recognized by the Central Government and the Institution/College where the course of study is conducted should have the prior permission of the Central Government for offering such course of study. Such recognition and permission, when granted to the University and College respectively results in the University (Authority) and the affiliated College (institutions)

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being included in Part-I of the Schedule to the Act.

15. If the dental qualification is not being granted by any authority or institution in India, then the dental qualification will not be recognized under section 10(1) or (2) of the Act and consequently will not be included under Part-I of the Schedule to the Act. If the dental qualification is granted by an authority or institution outside India is recognized under section 10(4) and is included in Part-III of the Schedule, a citizen of India possessing such qualification shall be entitled to registration under the Dentists Act.

16. The dental qualification granted by the Bhavanagar University, that is, Bachelor of Dental Surgery - shown by the abbreviation "BDS (Bhavnagar)", granted on or after 3.7.2004, in regard to its affiliated College - Manubhai Patel Dental College and Hospital, Vadodara, Gujarat is a recognized dental qualification by virtue of the said

University and College being shown at Sl.No.62 in Part I of the Schedule to the Act. The dental qualification of Bachelor of Dental Surgery obtained by undergoing a course of study at Mauras College is not listed in Part I against Entry No.62 relating to Bhavnagar University. Though the recognition of the dental qualification by the Central

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Government is with reference to the University (Authority) which grants it, Part I of the Schedule makes it clear that in regard to dental qualification granted by an Indian University, the affiliated College/Institution where the course of study is undergone should have prior permission of the Central Government.

17. Though the learned counsel for Union of India had submitted during the hearing of WP(C) No.57/2006 before this Court that Mauras College was having the requisite infrastructure and recognition may be given, the final order of this Court dated 13.7.2009 contained only a direction in regard to affiliation to Bhavnagar University. There was no direction to Central Government to recognize the Mauras College or treat it as having the 'prior permission' of the Central Government. As BDS degrees granted by the Bhavnagar University is recognized only with reference to a College in Gujarat and as Mauras College has not been included in the Second Column of Entry 62 in Part I of the Schedule to the Act, Mauras College will have to take steps to get its name entered in Entry 62 of Part I, as an institution affiliated to Bhavnagar University for getting the benefit of 'recognized dental qualification.'

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18. The learned Additional Solicitor General appearing for the respondents submitted that the dental students

have to undergo a specialized technical course; and that could be done only if proper infrastructure and equipment facilities are available in the college and the hospital attached to it, and the teaching faculty are competent and qualified, so that the dental graduates coming out of the college will be well-versed in dental sciences and will be in a position to treat the citizens in a safe and appropriate manner. He pointed out that to prevent half-baked dentists treating dental patients, provisions have been made in the Dentists Act for recognizing dental qualifications and for holding screening tests for Indian citizens holding primary dental qualifications awarded by dental institutions outside India. He submitted that as the Mauras College is situated outside India in Mauritius and there is no way of Dental Council and the Central Government ensuring that they possess and continue to possess the requisite infrastructure, equipment and faculty, it is necessary that the students of such a dental college will have to undergo the screening tests. There is no doubt that the doctors and dentists who are permitted to practice in India should undergo appropriate courses of study so that they can efficiently and effectively treat the patients. But the issue before us is

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about the status of a dental qualification granted by a University in India in pursuance of a course of study undergone in an affiliated college outside India.

19. In view of the above, these writ petitions are allowed in part as follows:

(i) It is declared that the notification date 6.3.2009 issued by the Government of India, placing the BDS dental qualifications granted by the Bhavnagar

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University in regard to the students of the Maura
College of Dentistry at Mauritius, at Entry No.96 of
III of the Schedule to the Act, is illegal and violative
of sections 10(1) and (4) of the Act and is hereb
quashed.

(BDS
degree) granted by Bhavnagar University for the students
of Mauras College of Dentistry shall not be considered to
be a degree granted by a foreign authority or institution.

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governed by section 10(1) of the Act, if Mauras College,
Mauritius is added by the Central Government as an
affiliated institution under Column (2) of Entry 62 in
Part I of the Schedule to the Act. In such an event, the
holders of such degree will be entitled to all benefits
and advantages as persons holding recognized dental
qualifications under section 10(1) of the Act and need not
undergo the screening test under the DCI Screening Test
Regulations 2009.

(iv) The Central Government is directed to consider any
request that may be made by Mauras College of Dentistry,
Mauritius for inclusion of its name in Column (2) of Entry
62 of Part I of the Schedule, in accordance with law.

(v) Unless and until Mauras College is included as an

affiliated institution in Column (2) of Entry 62 in Part-I of the Schedule to the Act, the Indian students of Mauras College of Mauritius will have to undergo a screening test as per the first proviso to Regulation (4) of DCI Screening Test Regulations 2009.

.....J.
(R.V. RAVEENDRAN)

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.....J.
(H.L. GOKHALE)

NEW DELHI,
SEPTEMBER 28, 2010.