

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).25670/2012
(From the judgement and order dated 23/08/2012 in SCA No.4953/2012 of The
HIGH COURT OF GUJARAT AT AHMEDABAD)

DEEP P PATHAK & ORS.

Petitioner(s)

VERSUS

STATE OF GUJARAT & ORS.

Respondent(s)

(With prayer for interim relief and office report)

WITH

SLP(C) NO. 25699 of 2012

(With prayer for interim relief and office report)

SLP(C) NO. 25738 of 2012

(With appln.(s) for permission to file lengthy list of dates and prayer for
interim relief and office report)

SLP(C) NO. 25752 of 2012

(With prayer for interim relief and office report)

SLP(C) NO. 25754 of 2012

(With prayer for interim relief and office report)

SLP(C) NO. 26011 of 2012

(With appln.(s) for exemption from filing c/c of the impugned judgment and
with prayer for interim relief and office report)

WITH

SLP(C)No.26078 of 2012

(With appln.(s) for exemption from filing c/c of the impugned judgment and
with prayer for interim relief and office report)

Date: 05/09/2012 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE K.S. RADHAKRISHNAN

HON'BLE MR. JUSTICE DIPAK MISRA

For Petitioner(s)

Mr. Harish Salve, Sr. Adv.

Mr. Mukul Rohatgi, Sr. Adv.

Mr. Mahesh Agarwal, Adv.

Mr. Rishi Agarwal, Adv.

Mr. E.C. Agrawala, Adv.

Mr. Ankur Saigal, Adv.

Mr. Lakshmeesh, Adv.

Ms. Parul Shukla, Adv.

[in SLP(C)Nos.25699 & 25754/2012]

Mr. Vivek Tankha, Sr. Adv.

Mr. Prashant Kumar, Adv.

Mr. Sumeer Sodhi, Adv.

Mr. Vaibhav Shrivastava, Adv.

Mr. Avijit Singh, Adv.

Mr. Anurag Sharma, Adv.

[in SLP(C)No.25670/2012]

Mr. Sushil Kumar Jain, Adv.

Mr. Bharat Rao, Adv.

Mr. Puneet Jain, Adv.

[in SLP(C)No.25752/2012]

Mrs. Shally Bhasin Maheshwari, Adv.

Mr. K.V. Vishwanathan, Sr.Adv.
Mr. Dhaval C. Dave, Sr. Adv.
Mr. Mitul K. Shelat, Adv.
Mr. Nikhil Goel, Adv.
Mr. Marsook Bafaki, Adv.
[in SLP(C)No.25738/2012]

Mr. Rakesh Shukla, Adv.
Ms. Sumita Hazarika, Adv.
Mr. K. Nakhra, Adv.
[in SLP(C)No.26078/2012]

For Respondent(s) Mr. Anand Grover, Sr.Adv.

Mr. D.N. Ray, Adv.
Mr. Lokesh K. Choudhary, Adv.
Mrs. Sumita Ray, Adv.
[in SLP(C)No.25752 & 26078/2012]

Mr. Huzefa Ahmadi, Adv.
Mr. Pradhuman Gohil, Adv.
Mr. Vikash Singh, Adv.
Mr. S. Hari Haran, Adv.
Ms. Taruna Singh, Adv.
Ms. Devika Shukla, Adv.
[For Gujarat University]

Mr. Gaurav Sharma, Adv.
Ms. Surbhi Mehta, Adv.
Ms. Prathiba M. Singh, Adv.
[For Dental Council of India]

Ms. Hemantika Wahi, Adv.
Ms. Pinky Behra, Adv.

Mr. Sanjay R. Hegde, Adv.
Mr. Anand Yaganik, Adv.
Mr. Amit M. Panchal, Adv.
Mr. S. Nithin, Adv.
Mr. Anil Kumar Mishra, Adv.

Ms. Kamini Jaiswal, A.O.R.

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

Heard learned counsel on either side at length.

Counsel on either side raised various contentions on seat sharing as well as on the legality of the conduct of entrance examination for MDS course by the Self-financing Colleges. The interpretation of few provisions of the Dental Council of India Revised MDS Course Regulations, 2007 also came up for consideration especially on the role of the various universities in conducting the entrance tests. The relevant provision reads as follows:

"Selection of Postgraduate students:

(1) Students for postgraduate dental courses (MDS) shall be selected strictly on the basis of their academic merit.

(2) For determining the academic merit, the university/institution may adopt any one of the following procedures both for P.G. Diploma and MDS degree courses:

- i) On the basis of merit as determined by a competitive test conducted by the State Government or by the competent authority appointed by the State Government or by the University/group of universities in the same State; or
- ii) On the basis of merit as determined by a centralised competitive test held at the national level; or

- iii) On the basis of the individual cumulative performance at the first, second, third & final B.D.S. examinations, if such examinations have been passed from the same university; or
iv) Combination of (i) and (iii);

Provided that wherever entrance test for Postgraduate admissions is held by a State Government or a University or any other authorized examining body, the minimum percentage of marks for eligibility for admission to postgraduate Dental courses shall be 50% for general category candidates and 40% for the candidates belonging to Scheduled Castes and Scheduled Tribes.

Provided further that in non-Governmental institutions fifty percent of the total seats shall be filled by the competent authority and the remaining fifty percent, by the management of the institution on the basis of merit."

The above regulation indicates that for determining academic merit, the University/Institution may adopt any of the various procedures both for Postgraduate Diploma and MDS degree courses. It is also provided that the competitive test can be conducted by the State Government or by the competent authority appointed by the State Government or by a University/group of Universities in the same State.

We are informed that in the State of Gujarat, three Universities conduct separate entrance tests in respect of their respective affiliated colleges for admission to MDS course. The State Government is not conducting any common entrance test for filling up various seats in the MDS degree course. A consortium of four Self-financing Colleges is also conducting separate entrance test for filling up the MDS seats in their respective colleges.

A question that has come up for consideration before us is whether under the Dental Council of India Revised MDS Course Regulations, 2007, the University can conduct separate entrance test/examination in respect of their affiliated colleges for admission to the MDS degree courses, which take in private Self-financing professional colleges also.

We find some ambiguity in the provisions referred to earlier, which prima facie goes against the ratio laid down in "P.A. Inamdar and others versus State of Maharashtra and others" (reported in (2005) 6 SCC 537). We are informed that the Dental Council of India comes under the Ministry of Health & Family Welfare (Department of Health). In such circumstances, since the matter involves questions of national importance, we feel it appropriate to request learned Attorney General of India to appear and assist the Court on the next date of hearing.

List as part heard on 18.9.2012.

Interim order granted earlier is extended until further orders.

| (A.D. Sharma)

| | (Renuka Sadana)

| Court Master

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