2022 INSC 419

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2912 OF 2022
[Arising out of Special Leave Petition (Civil) No.26855 of 2018]

DENTAL COUNCIL OF INDIA ...APPELLANT(S)

VERSUS

BIYANI SHIKSHAN SAMITI & ANR. ...RESPONDENT(S)

JUDGMENT

B.R. GAVAI, J.

1. Leave granted.

2. The present appeal challenges the judgment and order of the Division Bench of the High Court of Judicature for Rajasthan, Bench at Jaipur, dated 24th April, 2018, passed in D.B. Civil Writ Petition No. 3260 of 2017, thereby allowing the writ petition filed on behalf of the respondent No.1-Biyani

Shikshan Samiti (hereinafter referred to as "the respondent No.1") and striking down the Notification dated 21st May, 2012 (hereinafter referred to as "the impugned Notification"), vide which the appellant-Dental Council of India (hereinafter referred to as "the Council"), had substituted Regulation 6(2)(h) of the Dental Council of India (Establishment of New Dental Colleges, Opening of New or Higher Course of Studies or Training and Increase of Admission Capacity in Dental Colleges) Regulations, 2006 (hereinafter referred to as "the Regulations"), on the ground of the same being inconsistent with the provisions of the Dentists Act, 1948 (hereinafter referred to as "the said Act") and also being violative of Articles 14 and 19(1)(g) of the Constitution of India.

3. The facts in the present case are not in dispute.

4. The respondent No. 1 had submitted an application to the Government of India for grant of permission for establishment of dental college from academic year 2012-2013 on 24th

September, 2011. This was after the Letter of Intent was issued by the State Government on 23rd September, 2011. The respondent No. 2 – Union of India, through Secretary, Ministry of Health and Family Welfare (Dental Education Section) [hereinafter referred to as "the respondent No.2"), noticed certain deficiencies in the proposal of the respondent No.1 and vide its letter dated 7th October, 2011, required the respondent No.1 to cure the said deficiencies.

5. After exchange of certain communications, on 6th January, 2012, the respondent No.2, returned the application of the respondent No.1 along with demand draft of Rs.6 lakh, on the ground that deficiencies pointed out were not cured prior to 31st December, 2011, i.e., the last date for curing the deficiencies.

6. In the meantime, the Government of Rajasthan issued Essentiality Certificate to the respondent No.1 on 11th January, 2012. However, on 17th February, 2012, the respondent No.2 declined to reconsider the application/request of the

respondent No.1, on the grounds stated in its earlier letter, dated 6th January, 2012. As such, the request of the respondent No.1 for reconsideration of its proposal came to be rejected by the respondent No.2, vide its communication dated 17th February, 2012.

7. In the meantime, vide the impugned Notification, existing Regulation 6(2)(h) of the Regulations was substituted by amended Regulation 6(2)(h) on 21st May, 2012. Respondent No.1 again submitted its fresh application on 28th September, 2012 for academic year 2013-2014. The same was returned by the respondent No.2 vide its order dated 31st December, 2012, on the ground that the proposal/application was not in compliance with the amended Regulation 6(2)(h) of the Regulations. On 23rd January, 2013, the respondent No.1 thereafter wrote a letter to the respondent No.2, stating therein that since Essentiality Certificate was issued to it on 11th January, 2012, the impugned Notification was not applicable to

it and requested for reconsideration of its application under the unamended Regulation 6(2)(h) of the Regulations. The respondent No.2 rejected the application of the respondent No.1 vide its order dated 5th March, 2013.

8. The respondent No.1 challenged the order passed by the respondent No.2 rejecting the request for reconsideration of its application before the learned single judge of the High Court of Judicature for Rajasthan, Bench at Jaipur, by way of S.B. Civil Writ Petition No.15090 of 2016. The respondent No.1 further sought a direction to reconsider the application submitted by it on 24th September, 2011 for establishment of a new dental college for academic session 2017-2018. The learned single judge of the High Court, vide judgment and order dated 3rd November, 2016, finding no merit in the writ petition, dismissed the same. The respondent No.1 thereafter filed a writ petition before the Division Bench being D.B. Civil Writ Petition No. 3260 of 2017, challenging the impugned Notification

amending Regulation 6(2)(h) of the Regulations. The respondent No.1 also sought a prayer for direction to the respondent No.2, for reconsidering its application, dated 28th September, 2012, for establishment of a new Dental College for academic session 2018-2019 and for subsequent academic sessions. By the impugned judgment and order dated 24th April, 2018, the Division Bench of the High Court allowed the said writ petition by striking down the impugned Notification and directed the respondent No. 2 to reconsider the case of the respondent No.1 in the light of the observations made in the impugned judgment and order. Being aggrieved thereby, the present appeal has been preferred by the Council.

9. We have heard Shri Gaurav Sharma, learned counsel appearing on behalf of the Council, Ms. Aishwarya Bhati, learned Additional Solicitor General ("ASG" for short) appearing on behalf of the respondent No.2 and Ms. Shobha Gupta, learned counsel appearing on behalf of the respondent No.1.

10. Shri Gaurav Sharma, learned counsel, would submit that the Division Bench of the High Court has grossly erred in allowing the writ petition. He submits that the Council is an expert statutory body duly constituted under the said Act. He submits that the said Act empowers the Council to make Regulations for various aspects concerned with Dental Education, including prescribing requirement of minimum standards. He submits that the Council, after examining various aspects, had found it necessary to amend Regulation 6(2)(h) of the Regulations. He submits that this was done for providing better teaching facilities to the students and for improving the standards of education. He submits that the Division Bench has grossly erred in holding that it was beyond the powers of the Council to make delegated legislation. He submits that, in any case, the finding of the High Court that the impugned Notification was violative of Articles 14 and 19(1)(g) of the Constitution of India, is totally erroneous.

11. Ms. Aishwarya Bhati, learned ASG also supports the submission made on behalf of the Council. Relying on the judgment of this Court in the case of ***Dental Council of India vs. Subharti K.K.B. Charitable Trust and Another***[1], she submits that the High Court ought not to have interfered with the impugned Notification, since the Regulations were made by the expert body in accordance with the provisions of the said Act.

12. Ms. Shobha Gupta, learned counsel appearing on behalf of the respondent No.1, on the contrary, would submit that the High Court has rightly quashed the impugned Notification. She submits that the impugned Notification has no nexus with the object sought to be achieved. She submits that there is a huge shortage of Dentists in the country and therefore, the object of the legislation should be to encourage establishment of more Dental Colleges rather than providing a requirement which will

1 (2001) 5 SCC 486

restrict the number of new Dental Colleges. On facts, she submits that there is no medical college within the vicinity of 100 kms. from the place at which the respondent No.1 proposes to start a new Dental College. She submits that the impugned Notification, therefore, violates the fundamental rights of the students to take dental education as well as the fundamental right of the respondent No.1 to establish an educational institution under Article 19(1)(g) of the Constitution of India.

13. For considering the rival submissions, it will be appropriate to refer to certain provisions of the said Act. Section 3 of the said Act requires the Central Government to constitute a Council consisting of members named therein. Section 10 of the said Act deals with recognition of dental qualifications. Section 10A of the said Act deals with permission for establishment of new dental college, new courses of study, etc. Sub-section (1) of Section 10A of the said Act puts restriction on the establishment of an authority or

institution for a course of study or training which would enable a student of such course or training to qualify himself for the grant of recognized dental qualification; it also imposes a restriction on opening a new or higher course of study or training, or increase the admission capacity in any course of study or training, including a post-graduate course of study or training. It is provided that no person can establish an authority or institution for dental education and that no authority or institution can open a new or higher course of study or training, including a post-graduate course of study or training, or increase its admission capacity without the prior permission of the Central Government. Sub-sections (2) to (4) of Section 10A of the said Act deal with the procedure to be followed for making an application for permission to start a new or higher course of study or training or increase of intake capacity in any course of study or training. Sub-section (5) of Section 10A of the said Act is a deeming provision, which

provides that if the Central Government fails to pass an order on the scheme/application submitted by the applicant within a period of one year from the date of submitting the scheme/application, such scheme/application shall be deemed to have been approved by the Central Government in the form in which it was submitted. It also provides that the permission of the Central Government required under sub-section (1) shall also be deemed to have been granted. Sub-section (6) of Section 10A of the said Act provides for extension of the period provided in sub-section (5) by entitling an applicant for the extension of the period for furnishing the particulars called for by the Council or by the Central Government.

14. It will be apposite to reproduce sub-section (7) of Section 10A of the said Act, since the same fell for consideration before the Division Bench of the High Court while allowing the writ petition. It reads thus:

"**10A. Permission for establishment of new dental college, new courses of study, etc**.—(1) .....

(2).....

xxx

(7) The Council, while making its recommendations under clause (*b*) of sub-section (3) and the Central Government, while passing an order either approving or disapproving the scheme under sub-section (4), shall have due regard to the following factors, namely:—

(*a*) whether the proposed authority or institution for grant of recognised dental qualification or the existing authority or institution seeking to open a new or higher course of study or training, would be in a position to offer the minimum standards of dental education in conformity with the requirements referred to in Section 16-A and the regulations made under sub-section (1) of Section 20;

(*b*) whether the person seeking to establish an authority or institution or the existing authority or institution seeking to open a new or higher course of study or training or to increase

its admission capacity has adequate resources;

(*c*) whether necessary facilities in respect of staff, equipment, accommodation, training and other facilities to ensure proper functioning of the authority or institution or conducting the new course of study or training or accommodating the increased admission capacity have been provided or would be provided within the time-limit specified in the scheme;

(*d*) whether adequate hospital facilities, having regard to the number of students likely to attend such authority or institution or course of study or training or as a result of the increased admission capacity have been provided or would be provided within the time-limit specified in the scheme;

(*e*) whether any arrangement has been made or programme drawn to impart proper training to students likely to attend such authority or institution or course of study or training by persons having the recognised dental qualifications;

(*f*) the requirement of manpower in the field of practice of dentistry; and

(*g*) any other factors as may be prescribed."

15. It could thus be seen that the Council, while making its recommendations and the Central Government, while passing an order, are required to take into consideration various factors as are enumerated in clauses (a) to (g) of sub-section (7) of Section 10A of the said Act.

16. Section 20 of the said Act empowers the Council, with the approval of the Central Government, to make Regulations. It will be apposite to refer to the relevant part of Section 20 of the said Act, which reads thus:

"**20. Power to make regulations.-**(1) The Council may, with the approval of the Central Government, by notification in the Official Gazette, make regulations not inconsistent with the provisions of this Act to carry out the purposes of this Chapter.

(2) In particular and without prejudice to the generality of the foregoing power such regulations may-

(a) .....

(b) .....

xxx xxx xxx

(fb) prescribe any other factors under clause (g) of sub-section (7) of section 10A"

17. It could thus be seen from the conjoint reading of clause (g) of sub-section (7) of Section 10A and clause (fb) of sub-section (2) of Section 20 of the said Act that the Council is also empowered to take into consideration any other factors as may be prescribed and also entitled to make Regulations for prescribing any other factor under clause (g) of sub-section (7) of Section 10A.

18. It will also be relevant to refer to the provision of Regulation 6(2)(h) as it existed prior to the impugned Notification and the amended provision after the impugned Notification was given effect to. They read thus:

"**Regulation 6(2)(h) prior to impugned Notification dated 21st May, 2012**

6. Eligibility and qualifying criteria.-

(1) .....

(2) The organizations under sub-regulation (1) shall qualify to apply for permission to establish a dental college if the following conditions are fulfilled:-

(a) .....

(b) .....

xxx

(h) the applicant owns and manages a General Hospital of not less than 100 beds as per Annexure I with necessary infrastructure facilities including teaching pre-clinical, para-clinical and allied medical sciences in the campus of the proposed dental college,

or

the proposed dental college is located in the proximity of a Government Medical College or a Medical College recognised by the Medical Council of India and an undertaking of the said Medical College to the effect that it would facilitate training to the students of the proposed dental college in the subjects of Medicine,

Surgery and Allied Medical Sciences has been obtained,

or

where no Medical College is available in the proximity of the proposed dental college, the proposed dental college gets itself tied up at least for 5 years with a Government General Hospital having a provision of at least 100 beds and located within a radius of 10 K.M. of the proposed dental college and the tie-up is extendable till it has its own 100 bedded hospital in the same premises. In such cases, the applicant shall produce evidence that necessary infrastructure facilities including teaching pre-clinical, para-clinical and allied medical sciences are owned by the proposed dental college itself;

Regulation 6(2)(h) after the impugned Notification dated 21st May, 2012

6. Eligibility and qualifying criteria.-

(1) .....

(2) The organizations under sub-regulation (1) shall qualify to apply for permission to establish a dental college if the following conditions are fulfilled:-

(a) .....

(b) .....

xxx

(h) the applicant shall attach its proposed dental college with a Government/Private Medical College approved/recognised by the Medical Council of India which is located at the distance of 10 kms. by road from the proposed dental college and produce evidence of the said Medical College to the effect that it would facilitate training to the students of the proposed dental college as per syllabus/course curriculum prescribed in respective undergraduate and post graduate dental course regulations as amended from time to time:-

Provided that not more than one dental college shall be attached with the medical college."

19. It could thus be seen that the change that has been brought by the impugned Notification is that, though under the unamended Regulation 6(2)(h), an applicant was entitled to apply if he/she/it owned and managed a General Hospital of not less than 100 beds; by the impugned Notification, it has been made mandatory that the applicant has to attach its

proposed Dental College with the Government/Private Medical College, approved/recognized by the Medical Council of India, which is located at a distance of 10 kilometers by road from the proposed Dental College. The distance of 10 kilometers has now been increased to 30 kilometers, vide amendment dated 5th July, 2017.

20. The Division Bench of the High Court vide the impugned judgment and order dated 24th April, 2018, has allowed the writ petition and quashed the impugned Notification on three grounds, viz.,

(i) that it is violative of Article 19(1)(g) of the Constitution of India;

(ii) that it is beyond the scope of the powers of the Council to make delegated legislation as provided under sub-section (7) of Section 10A of the said Act; and

(iii) that it is violative of Article 14 of the Constitution of India, inasmuch as the Dental Colleges established

prior to impugned Notification would be permitted to run without attachment with Medical Colleges, whereas, the Dental Colleges established after the impugned Notification will be compelled to have such an attachment with the Medical Colleges.

21. We find that the learned judges of the Division Bench have erred on all counts.

22. It will be relevant to refer to the following observations of this Court in the case of ***Indian Express Newspapers (Bombay) Private Ltd. and others vs. Union of India and others***[2].

> "**75.** A piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent Legislature. Subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition it may also be questioned on the ground that it does not conform to the statute under which it

2 (1985) 1 SCC 641

> is made. It may further be questioned on the ground that it is contrary to some other statute. That is because subordinate legislation must yield to plenary legislation. It may also be questioned on the ground that it is unreasonable, unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary."

23. It could thus be seen that this Court has held that the subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition, it may also be questioned on the ground that it does not conform to the statute under which it is made. It may further be questioned on the ground that it is contrary to some other statute. Though it may also be questioned on the ground of unreasonableness, such unreasonableness should not be in the sense of not being reasonable, but should be in the sense that it is manifestly arbitrary.

24. It has further been held by this Court in the said case that for challenging the subordinate legislation on the ground of

arbitrariness, it can only be done when it is found that it is not in conformity with the statute or that it offends Article 14 of the Constitution. It has further been held that it cannot be done merely on the ground that it is not reasonable or that it has not taken into account relevant circumstances which the Court considers relevant.

25. The judgment of this Court in the case of ***Indian Express Newspapers (Bombay) Private Ltd.*** (supra) has been followed by a three-judge Bench of this Court in the case of ***Khoday Distilleries Ltd. and others vs. State of Karnataka and others***[3]. It will be apposite to refer to the following observations of this Court in the said case:

> "**13.** It is next submitted before us that the amended Rules are arbitrary, unreasonable and cause undue hardship and, therefore, violate Article 14 of the Constitution. Although the protection of Article 19(1)(*g*) may not be available to the appellants, the rules must, undoubtedly, satisfy the test of Article 14,

3 (1996) 10 SCC 304

which is a guarantee against arbitrary action. However, one must bear in mind that what is being challenged here under Article 14 is not executive action but delegated legislation. The tests of arbitrary action which apply to executive actions do not necessarily apply to delegated legislation. In order that delegated legislation can be struck down, such legislation must be manifestly arbitrary; a law which could not be reasonably expected to emanate from an authority delegated with the law-making power. In the case of *Indian Express Newspapers (Bombay) (P) Ltd.* v. *Union of India* [(1985) 1 SCC 641 : 1985 SCC (Tax) 121 : (1985) 2 SCR 287] (SCR at p. 243) this Court said that a piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent legislature. A subordinate legislation may be questioned under Article 14 on the ground that it is unreasonable; "unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary". Drawing a comparison between the law in England and in India, the Court further observed that in England the Judges would say, "Parliament never intended the authority to make such Rules; they are unreasonable and ultra vires". In India, arbitrariness is not a separate

> ground since it will come within the embargo of Article 14 of the Constitution. But subordinate legislation must be so arbitrary that it could not be said to be in conformity with the statute or that it offends Article 14 of the Constitution."

26. In the case of ***State of T.N. and another vs. P. Krishnamurthy and others***[4] after considering the law laid down by this Court earlier in the cases of ***Indian Express Newspapers (Bombay) Private Ltd.*** (supra), ***Supreme Court Employees' Welfare Association. vs. Union of India and another***[5], ***Shri Sitaram Sugar Company Limited and another vs. Union of India and others***[6], ***St. Johns Teachers Training Institute vs. Regional Director, National Council for Teacher Education and another***[7], ***Rameshchandra Kachardas Porwal and others vs. State of Maharashtra***

4 (2006) 4 SCC 517
5 (1989) 4 SCC 187
6 (1990) 3 SCC 223
7 (2003) 3 SCC 321

and others [8], ***Union of India and another vs. Cynamide India Ltd. and another***[9] and ***State of Haryana vs. Ram Kishan and others***[10], this Court has laid down certain grounds, on which the subordinate legislation can be challenged, which are as under:

> *"**Whether the rule is valid in its entirety?***
>
> **15.** There is a presumption in favour of constitutionality or validity of a subordinate legislation and the burden is upon him who attacks it to show that it is invalid. It is also well recognised that a subordinate legislation can be challenged under any of the following grounds:
>
> (*a*) Lack of legislative competence to make the subordinate legislation.
>
> (*b*) Violation of fundamental rights guaranteed under the Constitution of India.
>
> (*c*) Violation of any provision of the Constitution of India.
>
> (*d*) Failure to conform to the statute under which it is made or exceeding the limits of authority conferred by the enabling Act.

8 (1981) 2 SCC 722
9 (1987) 2 SCC 720
10 (1988) 3 SCC 416

(*e*) Repugnancy to the laws of the land, that is, any enactment.

(*f*) Manifest arbitrariness/ unreasonableness (to an extent where the court might well say that the legislature never intended to give authority to make such rules)."

27. In the light of these guiding principles, we will have to examine the correctness of the findings of the learned judges of the Division Bench in the impugned judgment and order.

28. One of the grounds on which the impugned Notification has been struck down is that it is beyond the scope of powers of the Council under Section 10A(7)(d) of the said Act. The Division Bench of the High Court has relied on clause (d) of sub-section (7) of Section 10A of the said Act to come to a conclusion that clause (d) refers to adequate hospital facilities, having regard to the number of students likely to attend the institution. It has held that a requirement of hospital was already fulfilled in the pre-amended Regulation 6(2)(h) of the Regulations. It has further held that clause (d) does not refer to

Medical College. It was therefore held that the impugned Notification requiring the Dental Colleges to be attached with the Government/Private Medical College was beyond the scope of sub-section (7) of Section 10A of the said Act and, therefore, inconsistent with the said Act.

29. We find that the Division Bench has failed to take into consideration clause (g) of sub-section (7) of Section 10A of the said Act. It is to be noted that whereas clauses (a) to (f) of sub-section (7) of Section 10A of the said Act deal with various factors, clause (g) thereof, which can be said to be a residual clause, enables the Council to take into consideration also any other factor as may be prescribed.

30. We further find that the Division Bench of the High Court has also failed to take into consideration clause (fb) of sub-section (2) of Section 20 of the said Act. A conjoint reading of these provisions would reveal that the Council is also empowered to take into consideration any other factor as may

be prescribed and also to make a Regulation with regard to any other factor under clause (g) of sub-section (7) of Section 10A of the said Act. It could thus be seen that it is within the competence of the Council to make Regulations prescribing any other conditions, which are otherwise not found in clauses (a) to (f) of sub-section (7) of Section 10A of the said Act. Challenge to the same would be permissible only on the ground of manifest arbitrariness. It is also equally settled that the presumption is always with regard to the validity of a provision. The burden is on the party who challenges the validity of such provision. We find that the respondent No.1 has failed to discharge the burden to show that the impugned Notification suffers from manifest arbitrariness.

31. Secondly, the Division Bench of the High Court found the impugned Notification dated 21st May, 2012 to be violative of Article 14 of the Constitution, on the ground that the Dental Colleges established prior to impugned Notification would not

be required to be attached with the Medical Colleges, whereas, the Dental Colleges, established after the impugned Notification, will be compelled to be attached to such Medical Colleges. We are of the considered view that the Colleges established prior to the impugned Notification and the Colleges established/to be established after the impugned Notification would form two separate classes. The differential treatment for different classes would not be hit by Article 14 of the Constitution of India. The only requirement would be, as to whether such a classification has a nexus with the object sought to be achieved by the Act. For the reasons given hereinafter, we find that the factors taken into consideration by the Council, while amending Regulation 6(2)(h) of the Regulations are relevant factors. The factors have a nexus with the object sought to be achieved. It has been submitted on behalf of the Council that the existing recognized Medical College already has a facility to impart education to about 500-

700 students. Such Medical Colleges have a full-fledged teaching faculty. Such a faculty would enable providing a proper education to the students of the Dental colleges on various aspects of pre-clinical, para-clinical and allied medicine, etc. The Council has also taken into consideration the fact that the General Hospitals having bed-capacity of 100 beds or more do not have experts on full-time basis. They usually engage the services of consultant doctors, who visit the Hospital for a very limited period. The Council has also taken into consideration the fact that the private hospitals do not have adequate clinical facilities and/or clinical material and therefore, it is unlikely that they will be able to impart education and training to students. It has been submitted on behalf of the Council that the amended Regulation 6(2)(h) of the Regulations was brought into effect so that it would facilitate training to the students of the proposed Dental Colleges as per the syllabus/course curriculum prescribed. It, therefore,

cannot be said that the Council has taken into consideration the factors, which are not relevant or germane for the purpose to be achieved. The object to be achieved is to provide adequate teaching and training facilities to the students. If in the wisdom of the expert body, this can be done by attaching a Dental College to the already existing Medical College, it cannot be faulted with.

32. The reason given for not permitting more than one Dental College to be attached to the existing recognized Medical College is that if one Dental College is permitted to be attached to a recognized Medical College, which is already having 500-750 students in different semesters of their 5-year MBBS course, the additional students of the Dental College may very well be absorbed in the facilities that are already available in the recognized Medical College. However, if more than one Dental College is permitted to be attached, it will lead to overcrowding of students in the Medical College.

33. We are, therefore, of the considered view that the amended Regulation cannot be said to be one, which is manifestly arbitrary, so as to permit the Court to interfere with it. On the contrary, we find that the amended Regulation 6(2)(h) has a direct nexus with the object to be achieved, i.e., providing adequate teaching and training facilities to the students.

34. It will be apposite to refer to the following observations of the Division Bench of the High Court in the impugned judgment:

> "We fail to understand as to how the earlier provisions, in any manner, were not sufficient for the object sought to be achieved. A careful reading of the unamended Regulation 6(2)(h) shows requirement of attachment with General Hospital owned and managed by the applicant in the campus of the proposed Dental College. It was with infrastructure facilities including teaching pre-clinical, para-clinical and allied medical sciences.
>
> If we talk about practical training, it would be more in the hospital, therefore, the unamended provision of Regulation

> 6(2)(h) provided both i.e. attachment with General Hospital or with a Medical College with required facilities of teaching."

35. In this respect, we would gainfully refer to the following observations of this Court in the case of ***Maharashtra State Board of Secondary and Higher Secondary Education and another vs. Paritosh Bhupeshkumar Sheth and others***[11]:

> "**14.** ..... whether a rule or regulation or other type of statutory instrument — is in excess of the power of subordinate legislation conferred on the delegate has to be determined with reference only to the specific provisions contained in the relevant statute conferring the power to make the rule, regulation, etc. and also the object and purpose of the Act as can be gathered from the various provisions of the enactment. It would be wholly wrong for the Court to substitute its own opinion for that of the Legislature or its delegate as to what principle or policy would best serve the objects and purposes of the Act and to sit in judgment over the wisdom and effectiveness or otherwise of the policy

11 (1984) 4 SCC 27

> laid down by the regulation-making body and declare a regulation to be ultra vires merely on the ground that, in the view of the Court, the impugned provisions will not help to serve the object and purpose of the Act. So long as the body entrusted with the task of framing the rules or regulations acts within the scope of the authority conferred on it, in the sense that the rules or regulations made by it have a rational nexus with the object and purpose of the statute, the court should not concern itself with the wisdom or efficaciousness of such rules or regulations."

36. This Court in unequivocal terms has held that it would be wholly wrong for the Court to substitute its own opinion for that of the Legislature or its delegate as to what principle or policy would best serve the objects and purposes of the Act. It has been held that it is not permissible for the Court to sit in judgment over the wisdom and effectiveness or otherwise of the policy laid down by the regulation-making body and declare a regulation to be *ultra vires* merely on the ground that, in the

view of the Court, the impugned provisions will not help to serve the object and purpose of the Act.

37. We find that the observations quoted herein above of the Division Bench of the High Court are totally contrary to the view expressed by this Court in the case of ***Maharashtra State Board of Secondary and Higher Secondary Education and another*** (supra).

38. The Division Bench of the High Court has erred in substituting its wisdom with that of the rule-making body, which is an expert body. In this respect, it will also be apposite to refer to the observations of this Court in the case of ***All India Council for Technical Education vs. Surinder Kumar Dhawan and others***[12]. After considering various judgments on the issue, this Court observed thus:

> "**16.** The courts are neither equipped nor have the academic or technical

12 (2009) 11 SCC 726

> background to substitute themselves in place of statutory professional technical bodies and take decisions in academic matters involving standards and quality of technical education. If the courts start entertaining petitions from individual institutions or students to permit courses of their choice, either for their convenience or to alleviate hardship or to provide better opportunities, or because they think that one course is equal to another, without realising the repercussions on the field of technical education in general, it will lead to chaos in education and deterioration in standards of education.
>
> **17.** The role of statutory expert bodies on education and the role of courts are well defined by a simple rule. If it is a question of educational policy or an issue involving academic matter, the courts keep their hands off."

39. We are, therefore, of the considered view that it was not permissible for the Division Bench of the High Court to enter into an area of experts and hold that the unamended provisions ought to have been preferred over the amended provisions.

40. That leaves us with the finding of the Division Bench of the High Court that the amended Regulation is violative of Article 19(1)(g) of the Constitution. Reliance in this respect is placed on the Eleven-Judge Constitution Bench judgment of this Court in the case of ***T.M.A. Pai Foundation and others vs. State of Karnataka and others***[13]. In this respect, it will be relevant to refer to the following observations of the Eleven-Judge Constitution Bench of this Court in the said case:

> **"54.** The right to establish an educational institution can be regulated; but such regulatory measures must, in general, be to ensure the maintenance of proper academic standards, atmosphere and infrastructure (including qualified staff) and the prevention of maladministration by those in charge of management. The fixing of a rigid fee structure, dictating the formation and composition of a governing body, compulsory nomination of teachers and staff for appointment or nominating students for admissions would be unacceptable restrictions."

13 (2002) 8 SCC 481

41. It can thus clearly be seen that the Constitution Bench itself has held that the right to establish an educational institution can be regulated. However, such regulatory measures must, in general, be to ensure the maintenance of proper academic standards, atmosphere and infrastructure and the prevention of maladministration.

42. The impugned Notification, undoubtedly, is made in order to ensure the maintenance of proper academic standards and infrastructure and as such, the judgment of the Constitution Bench of this Court in the case of ***T.M.A. Pai Foundation and others*** (supra), rather than supporting the case of the respondent No.1, would support the case of the Council.

43. We further find that the impugned judgment of the Division Bench of the High Court is also not sustainable on the ground of judicial propriety. The respondent No.1 had already filed a writ petition being S.B. Civil Writ Petition No. 15090 of 2016, challenging the action of the Council and the respondent

No.2 in returning the application of the respondent No.1 for grant of recognition to new Dental College and for a direction to reconsider its application submitted on 24th September, 2011. The said writ petition was filed in the year 2016. The said writ petition was dismissed by the learned single judge of the High Court by the judgment and order dated 3rd November, 2016. After the said writ petition was rejected on 3rd November, 2016, the respondent No.1 filed the present writ petition being D.B. Civil Writ Petition No.3260 of 2017 before the Division Bench of the High Court on 1st March, 2017. In the said writ petition, the prayer was for challenging the validity of the impugned Notification and for a direction to reconsider the proposal of the respondent No.1. The impugned Notification could have very well been challenged in the earlier writ petition, which was filed in the year 2016 before the learned single judge of the High Court. However, having failed in that writ petition before the learned single judge, the respondent No.1 filed another writ

petition before the Division Bench of the High Court. Though one of the prayers challenges the validity of the impugned Notification, another prayer claims for reconsideration of its proposal. The said prayer has been granted by the Division Bench of the High Court by its impugned judgment and order dated 24th April, 2018. It could thus be seen that the prayer for reconsideration of the proposal submitted by the respondent No.1, which was already rejected by the learned single judge of the High Court vide order dated 3rd November, 2016 in S.B. Civil Writ Petition No.15090 of 2016, has been renewed in the fresh writ petition filed in the year 2017 and granted by the Division Bench of the High Court.

44. We, therefore, find that on the ground of judicial propriety also the Division Bench of the High Court ought not to have entertained the writ petition for a prayer, which already stood rejected. In that view of the matter, the impugned judgment

and order dated 24th April, 2018 passed by the Division Bench of the High Court is not sustainable.

45. In the result, the appeal is allowed. The impugned judgment and order dated 24th April, 2018 passed by the Division Bench of the High Court is quashed and set aside. The D.B. Civil Writ Petition No.3260 of 2017 filed by the respondent No.1 before the Division Bench of the High Court stands dismissed. No order as to costs.

46. Pending application(s), if any, shall stand disposed of.

.....J.
[L. NAGESWARA RAO]

.....J.
[B.R. GAVAI]

NEW DELHI;
APRIL 12, 2022