
(2016) 03 AHC CK 0158
In the Allahabad High Court
Case No : Writ-C No. 7071 of 2016

Aswani Kumar

APPELLANT

Vs

Chhatrapati Sahuji Maharaj University and Others

RESPONDENT

Date of Decision : 18-03-2016

Acts Referred:

Indian Medical Council Act, 1956 — Section 19-A, Section 2(1), Section 33

Citation : (2016) 4 ADJ 181 : (2016) 3 ALLJ 357 : (2016) 3 AllWC 2219

Hon'ble Judges : Manoj Kumar Gupta, J.

Bench : Single Bench

Advocate : Gyanendra Kumar Srivastav and Satish Kumar Singh, for the Appellant; Avanish Mishra and Neeraj Tiwari, for the Respondent

Final Decision : Dismissed

Judgement

Manoj Kumar Gupta, J.—1. The petitioner is a student of M.B.B.S. in U.P. Rural Institute of Medical Science and Research, Saifai, Etawah (second respondent), which is a Government run medical college. It is affiliated to Chhatrapati Sahuji Maharaj University, Kanpur (first respondent)1. The M.B.B.S. course is divided into three Professionals. The first and second Professionals are each of 18 months duration. A candidate is declared passed in the Professional exam only if he has obtained 50% of marks in each subject at the University examination. The petitioner could not obtain the requisite marks in Pathology and Pharmacology in the Second Professional Examination and was therefore declared failed. In order to clear these papers, he appeared in the supplementary examination held in the month of August-September, 2015. He succeeded in clearing Pathology but in Pharmacology he obtained 60 marks out of 125, which is 2.5 marks less than 50%. The University, therefore, declared him failed. The case of the petitioner is that under Regulation 13 (10) of the Graduate Medical Education Regulations, 19972 framed by Medical Council of India under Section 33 of the Indian Medical Council Act, 1956, he was entitled to award of upto five marks as grace mark. The University had wrongly denied grace mark to him and

had also wrongly declared him failed. Regulation 13 (10) reads as under:--

"(10) The grace marks up to a maximum of five marks may be awarded at the discretion of the University to a student who has failed only in one subject but has passed in all other subjects"

2. The petitioner has accordingly prayed for issuance of a writ of mandamus quashing the order dated 11.1.2016, whereby the Deputy Registrar (Medical), Chhatrapati Sahuji Maharaj University, Kanpur informed him that there is no provision in the University for award of grace marks in the supplementary examination. He has also prayed for a writ of mandamus commanding the respondents to award grace marks to him and declare him passed in the second Professional examination so as to entitle him to appear in the final Professional Part I examination.

3. Learned counsel for the petitioner submitted that the Regulations framed by Medical Council of India³ are binding on the University. It cannot make an imaginary distinction between the main examination and the supplementary examination in denying the benefit of grace marks to a candidate. It is pointed out that in the past, the University had given benefit of grace marks to one Akant Pandey in the supplementary examination in declaring him passed and thus, the action of the University vis-?-vis the petitioner is arbitrary and discriminatory.

4. On the other hand, learned counsel appearing on behalf of the University submitted that the MCI Regulations permit award of grace marks in only one subject and that too in the main examination and not in the supplementary examination. He further submitted that the MCI Regulation does not mandate award of five marks but leaves it to the discretion of the University to exercise such power. It is urged that the University, as a matter of policy, is not awarding grace marks in the supplementary examination. It is pointed out that in this regard, a decision had also been taken by the Course Committee on 31.7.2015. It is further submitted that it had been the consistent policy of the University not to award grace marks in supplementary examination, nor it had been done in the past. As regards the case of a candidate cited by the petitioner in the writ petition, it is stated that the University is examining as to under what circumstances grace marks had been awarded to him in the supplementary examination.

5. Learned counsel for the MCI supported the contention of the University. He also urged that albeit the Regulations are binding on the University, the actual award of grace marks has been left to the discretion of a particular University and it is open to the University to frame its own policy in this regard. In other words, it is urged that it is not imperative on the University to award grace marks of five in each and every case, and in this regard, the University is free to frame its own guidelines.

6. I have considered the rival submissions of learned counsel for the parties and perused the record.

7. The Medical Council of India constituted under the Indian Medical Council Act, 1956 is enjoined with the duty to prescribe the minimum standards of medical education. Section 19-A empowers the Council to prescribe the minimum standards of medical education required for granting recognised medical qualifications (other than post graduate medical qualifications) by Universities or medical institutions in India. Section 2(1) defines "University" to mean any University in India established by law and having a medical faculty. The second respondent is thus a "University" within the meaning of the Act. The MCI Regulations prescribing minimum standards of medical education in relation to graduate medical education is thus binding on it. This is also admitted to the University. The own case of the University is that it has been following the MCI Regulations in relation to award of five grace marks. However, the issues for consideration before this Court are (a) whether the MCI Regulation restricts award of grace marks to the main examination or its benefit could also be extended to the supplementary examination and (b) whether the University is competent to frame its own policy in relation to award of grace marks and whether the decision of the University not to award grace marks in supplementary examination, is contrary to the MCI guidelines.

8. Instead of dealing with these issues ad seriatim, this Court proceeds to deal with the second issue first. Assuming that the award of grace marks as per MCI Regulations is permissible both in the main and the supplementary examination, could the University, in such circumstances, frame its own policy restricting award of grace marks only in the supplementary examination?

9. The award of grace marks is in the nature of a concession and the underlying object behind is to prevent losing of the year by a candidate. It may be linked to academic performance in other subjects, as where a provision may be made for award of grace marks where the student has fared well in other subjects or it may be linked to some extra curricular activity like sports etc. in which case, grace marks is awarded recognising the fact that the student had devoted considerable time in extra curricular activity, in which he had excelled and thereby, slightly affecting his academic performance. In Board of School Education Haryana v. Arun Rathi and others , AIR 1994 SC 2336, the Supreme Court quoted with approval the following passage from a Full Bench judgment of Punjab and Haryana High Court in Anita Devi v. State of Haryana , AIR 1993 Punjab & Haryana 322:--/p> "The academic standards laid down by the appropriate authorities postulate the minimum marks that a candidate has to secure before he becomes eligible for the award of the diploma. The award of grace marks is a concession. It results in diluting academic standards. A rule for the award of grace marks has to be construed strictly so as to ensure that the minimum standards are not allowed to be diluted beyond the limit specifically laid down by the appropriate authority. It is only in a case where the language of the statute is absolutely clear that the claim for the award of grace marks can be sustained. Normally, the Court shall be slow to extend the concession of grace marks and grant a benefit where none is intended to be given by the appropriate

authority."

10. In a more recent judgment in *M.S. Board of Secondary and Higher Secondary Education v. Amit* , 2002 (6) SCC 153, the Supreme Court followed the law laid down in the case of *Arun Rathi* (supra) and then held as under:--

"15. Before parting with the judgment we may observe that the grant of grace marks being a matter of concession and which tends to dilute academic standards, Regulations dealing with grant of grace marks should not be generously and liberally construed. We have noticed that several concessions are given to candidates by way of grace marks. A candidate may qualify under different Clauses of the Regulations for the grant of grace marks. It is doubtful if a candidate can claim grace marks under more than one Clause even if he may be eligible for the concession under several Clauses. It has been contended before us with considerable force that a candidate may be granted grace marks under only one of the Clauses under the relevant Regulation, and that in no case shall he be entitled to the award of grace marks under more than one Clause even if under the Regulation he may be eligible for grant of grace marks under more than one Clause. It is quite possible that a candidate may have taken part in games at the State level and may have also participated in the Republic Day Parade and in the President's Rally, which are covered by sub-clauses (d) (e) and (f) of Clause (2) under Note 1. If the benefit under all the three clauses is extended to a failing candidate, it would really reduce the examination conducted by the Board to a mockery."

11. Keeping the aforesaid principles in mind, it is clearly discernible from a plain reading of the Regulations that it only prescribes the maximum extent to which a University can be permitted to dilute the academic standard of the course. It could only be in one paper and upto an extent of five marks only. Any relaxation beyond it is not permissible. The provision does not impose any obligation on the University to award grace marks, but leaves it to its discretion. In today's age of competition, it is always open to a particular University to strive towards achievement of higher standards of education. It is competent to frame its own guidelines in regard to award of grace marks, so that the academic standard is not diluted beyond the limit which in its opinion will not militate against its goal of maintaining higher standard. Any exercise taken in this regard, could never be in derogation of the provisions of the MCI Act. A Constitution Bench of the Supreme Court in *Preeti Srivastava v. State of M.P.* , (1999) 7 SCC 120 while dealing with the provision of the MCI Act and List III Entry 25 and List I Entry 66 held that the State is competent to lay down guidelines for admission to post graduate medical courses in addition to those prescribed by MCI. This would be consistent with promoting higher standards of education and such a provision would not be contrary to any provision of the Act. On the other hand, any lowering of norms beyond the limits permitted by the Act would impinge upon the Regulations framed by the MCI. It has been held thus:--

"On course, there can be rules for admission which are consistent with or do not

affect adversely the standards of education prescribed by the Union in exercise of powers under List I Entry 66. For example, the State may, for admission to the postgraduate medical courses, lay down qualifications in addition to those prescribed under List I Entry 66. This would be consistent with promoting higher standards for admission to the higher educational courses. But any lowering of the norms laid down can and does have an adverse effect on the standards of education in the institutes of higher education."

(emphasis supplied)

12. The Kerala High Court was confronted with an identical issue in the case of *Induja K. v. Kerala University of Health Sciences* while interpreting the regulations framed by the Kerala University of Health Sciences in relation to M.B.B.S. course. The MCI Regulation 13 (10) providing for award of five grace marks to a student, who has failed only in one subject, was binding on the University. However, the University had framed its own regulations which restricted award of grace marks in theory papers only. A Division Bench of the Kerala High Court, after examining the issue, upheld the regulation framed by the University in this regard, as it was found that the University has been conferred with sufficient discretionary powers under the MCI regulations to frame its own policy. It is held that even if the University in its discretion would have decided not to award any grace mark at all, even that could not be held to be contrary to the MCI regulations. It has been observed as under:--

"6. The short question to be considered in this writ petition is whether the University was justified in restricting the award of grace marks to theory paper alone and whether they were bound to award grace marks for theory and practical also in the light of MCI Regulations. The MCI Regulations clearly indicate that grace marks can be granted upto a maximum of five marks at the discretion of the University. It is not a mandate that all Universities should award grace marks. The discretion is left to the University to decide whether grace marks should be awarded or not. The University, while making the Regulations, thought it fit to grant grace marks only for theory paper. When such a modification has been made by the University taking into consideration their discretionary powers, it cannot be stated as arbitrary or unreasonable. That apart, even from Annexure III relied upon by the appellants, the view of MCI is clear that grace marks could be awarded either in theory or in practical examination at the discretion of the University. Therefore, the discretion is left open to the University in the matter relating to award of grace marks and the only restriction is that the maximum grace marks shall be five and that too only in one subject and on condition that the student has passed all other subjects. If the University exercises its discretion not to award any grace marks also, it cannot be termed as arbitrary or unreasonable. Under such circumstances, the argument regarding unconstitutionality and arbitrariness is not justifiable."

(emphasis supplied)

13. The specific stand of the University in the counter affidavit is that it has not been awarding grace marks in the supplementary examination. The Course Committee of the University, which is an expert body, in its meeting held on 27.7.2015 issued a clarification at point No. 5, which was notified on 31.7.2015 by way of office memorandum providing as under:--

14. Award of grace marks is restricted to either written or practical examination and would in no case be granted in the supplementary examination. It is well settled that the Courts does not ordinarily interfere with the decision of the expert body in matters relating to academic qualifications and standards of education unless it is shown to be per se illegal or arbitrary. A perusal of Chapter XXVII B of the Ordinances framed by the University, which governs the M.B.B.S. course, reflects that a candidate, who has failed in the second Professional examination, is given an opportunity to appear in a supplementary examination held 4 to 6 months after the declaration of the result of the second Professional examination so as to provide him with an opportunity to clear the papers in which he has failed. Regulations 14, 15 and 16 of Chapter XXVII B are as under:--

"14. A candidate who fails to pass at the Second Professional Examination in one or more subjects shall be eligible to re-appear at the supplementary examination in the subject (s) in which he has failed, provided he puts in attendance at the revision classes held in the intervening period as per ordinance 11(c) above.

15. A candidate who fails at the supplementary Second Professional Examination in one or more subjects shall be eligible to re-appear in a subsequent examination in those subjects only. Such a candidate shall be required to attend lectures, demonstrations, seminars and practicals and but in the percentage of attendance as required in ordinance 14 on the basis of instruction given during the session.

16. A candidate who is not allowed to appear at the Second Professional Examination on account of shortage of attendance or does not appear for valid reason, shall be eligible to appear at the supplementary examination provided he attends such number of lectures, demonstrations and practical classes by which he was short at the time of his not appearing in the Second Professional Examination."

15. It is amply clear from a plain reading of these regulations that instead of detaining a candidate in the same Professional, he is permitted to clear the papers in which he had failed or in which he could not appear on account of shortage of attendance or does not appear for valid reason by appearing in the supplementary examination. The provision for appearing in the supplementary examination is itself in the nature of a concession to a student so that his year is not wasted. The object of award of grace marks is also the same. It seems that the University in its wisdom does not deem it appropriate to award grace marks to a candidate who has failed in the supplementary examination, as he has

already been given a concession to clear the papers in which he had failed by appearing in the supplementary examination, without being detained in the same Professional. Such decision of the University has thus rational basis to support it. It is neither arbitrary nor contrary to Regulation 13 (10).

16. Learned counsel for the petitioner has placed reliance on a decision of the Supreme Court in *State of Punjab v. Bandheep Singh and others*, (2016) 1 SCC 724. In the said case, the Supreme Court has reiterated the well established principle laid down in the case of *Mohinder Singh Gill v. Chief Election Commissioner*, (1978) 1 SCC 405 that administrative order must be judged by reasons stated in the decision and subsequent explanations cannot be accepted to sustain such decision. In the instant case, the policy decision of the University not to award grace marks in the supplementary examination is in question. In judging its validity, the rational behind it can always be determined keeping in mind the Academic Ordinances framed by the University. The decision cited, would be of no help to the petitioner in the facts of the instant case.

17. In relation to a solitary instance in the case of *Akant Pandey* cited by the petitioner in the writ petition, the specific stand of the University is that as a matter of policy, it is not granting grace marks in the supplementary examination. In relation to *Akant Pandey*, the University has stated in the counter affidavit that it is inquiring into the matter to find out the circumstances under which grace marks, if any, were given to him. In the opinion of the Court, the aforesaid solitary instance cited by the petitioner in relation to which the University has taken a specific stand that it is investigating into the matter, cannot be made basis for directing the University to deviate from its policy and to start awarding grace marks even in the supplementary examination. Where attempt is being made to achieve higher standards in the sphere of education, this Court would be loath in interfering with such effort on part of the University.

18. In the rejoinder affidavit, the petitioner has cited certain instances where other Universities have been awarding grace marks even in the supplementary examination. However, that cannot be made a basis for directing the respondent University to award grace marks to the petitioner. The U.P. State Universities Act, 1973 grants ample freedom to every State University to frame its own Ordinances and to lay down its own standard of education. As long as the policy framed by the respondent University is not contrary to the MCI regulation, it is legal and binding and the University cannot be compelled to follow the practice prevalent in other Universities.

19. In view of what has been stated above, this Court does not consider it necessary to go into the other issue and leaves the same open for being considered in an appropriate case.

20. In consequence and as a result of discussion made above, the writ petition lacks merit and is dismissed.

21. No order as to costs.

1 University
2 Regulations
3 MCI