

(2019) 07 RAJ CK 0016
In the Rajasthan High Court

Case No : Special Appeal Writ No. 993 Of 2019 In Civil Writ Petition No. 9439 Of 2019

Ayush Tiwari And Ors

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 02-07-2019

Acts Referred:

Medical Council Of India Regulations, 2000 — Regulation 7(7)

Citation : (2019) 07 RAJ CK 0016

Hon'ble Judges : Mohammad Rafiq, J; Narendra Singh Dhaddha, J

Bench : Division Bench

Advocate : Swadeep Singh Hora, M.A. Khan

Final Decision : Dismissed

Judgement

Mohammad Rafiq, J

For the reasons stated in the application, the documents annexed with the application are taken on record.

The application no.49420/19 is disposed of.

This appeal is directed against the judgement of the learned Single Judge dated 4.6.2019 by which the writ petition filed by four writ petitioners has

been dismissed. The appellantspetitioners in the aforesaid writ petition had prayed for issuance of writ of mandamus directing the respondents to

declare them eligible to participate in Part-II professional MBBS course supplementary examination, which was scheduled to take place in the month

of June, 2019. It may be noted that the examination is to now begin from 4.7.2019. The learned Single Judge relying on Regulation 7(7) of the MCI

Regulations and the University Ordinance has dismissed the writ petition.

Shri Swadeep Singh Hora, learned counsel for the appellants has submitted that the appellants-writ petitioners took admission in MBBS course and

Part II Examination of MBBS, which took place in August, 2017. The result thereof was declared in October, 2017. However, the university withheld

result of 28 students including the appellants. Their result was withheld owing to some gap of communication between the university, college and the

Medical Council of India. The appellants were therefore not at fault. In the meanwhile, supplementary examination of Part-I was held in November,

2017. However, the result of those 28 candidates was declared belatedly on 26.12.2017 in which 20 students out of 28 were declared pass. 8 students

applied for revaluation, out of which 2 were declared pass in February, 2018. Some of the appellants filed writ petition before this Court being S.B.

Civil Writ Petition No.5539/2018, Mohammad Hashir & Anr. vs. State & Ors. and S.B. Civil Writ Petition No.9695/2018, Amardeep Sharma & Ors.

vs. State & Ors. The learned Single Judge of this Court has allowed the writ petitions by judgement dated 25.4.2018 and 9.5.2019, holding that since

the petitioners were not at fault, therefore, they have a legal right as per Ordinance 267 of the University to write two examination in a year. Since

they had lost their chance to write the supplementary examination due to the fault on the part of university, which declared their result belatedly, the

university was directed to conduct special supplementary examination of MBBS Part Ist for petitioners. The aforesaid judgements were challenged

before the division bench in D.B. Special Appeal (Writ) Nos. 703/18, RUHS vs. Amardeep Sharma & Ors. and D.B. Special Appeal (Writ)

No.719/2018, RUHS vs. Mohammad Hashir & Ors. which upheld the aforesaid judgements by dismissing the appeal dated 1.6.2018.

It is argued that the special supplementary examination of five students was conducted pursuant to order of this Court in June, 2018. One student

Umesh Kumar Nunia did not file writ petition and therefore his/her examination was not held. He however appeared in regular Part-I Main MBBS

Examination in July, 2018. He has filed the writ petition before the Principal Seat at Jodhpur being S.B. Writ petition No.8354/2019, Umesh Kumar

Nunia vs. MCI & Ors., wherein the learned Single Judge of this Court by interim order dated 20.6.2019 permitted him to provisionally participate in

the supplementary examination commencing from 4.7.2019, however, directed that his result shall be kept in sealed cover.

Learned counsel therefore submitted that the learned Single Judge has erred in law in not allowing the petitioners to appear in the supplementary examination of the MBBS Part-II and therefore appropriate direction to that effect be issued to the respondent university. Learned counsel argued that even if Regulation 7(7) of the MCI Regulations and Ordinance 268(b) of the University Ordinance provides completion of study of 18 months of Phase-I (Pre Clinical) subjects, in the peculiar facts of the case, when the petitioners cannot be put to fault, this Court ought to exercise its extraordinary jurisdiction to do the complete justice to the petitioners. Learned counsel in support of his arguments relied on the judgement of the Supreme Court in Ibrahim Bachu Bafan vs. State of Gujarat & Ors.-(1985) 2 SCC 24.

Shri M.A. Khan, learned counsel for the respondent university has opposed the appeal and submitted that the learned Single Judge was perfectly justified in dismissing the writ petition because clause 7.7 of the MCI Regulations clearly provided that the supplementary examination for Part-I Professional MBBS examination may be conducted within six months so that the student, who pass, can join main batch and the failed students will appear in the subsequent year provided that the student, who pass the supplementary examination shall be allowed to appear in the second professional MBBS examination only after he/she complete the full course of study of three semesters (i.e. 18 months) for the second professional examination irrespective of the examination of main batch. This is also reiterated in Ordinance 268(b), which is also couched in the similar language.

Learned counsel has cited the judgement passed by this Court in Rakesh Gurjar & 10 Ors. vs. State of Rajasthan & Ors.-(2013) 4 WLC (Raj.) 30,2 wherein this Court while interpreting Ordinance 268(b) of University Ordinance has held that compliance of the mandatory provisions contained therein for the students to complete studies of 18 months for the second professional examination was mandatory. He argued that whatever may have been the reason for the delay of the result of the appellants, that cannot furnish a reason for the university to violate the mandatory provisions of Ordinance 268(b) and Clause 7.7 of the MCI Regulations.

We have given our anxious consideration to the rival submissions and perused the material on record.

The learned Single Judge in dismissing the writ petition of the appellants has relied on Regulation 7.7 of the MCI Regulations, which reads as under:

“The supplementary examination for 1st Professional MBBS examination may be conducted within 6 months so that the student who pass can join

main batch and the failed students will appear in the subsequent year provided that the student who pass the supplementary examination shall be

allowed to appear in the second professional MBBS examination only after he/she complete the full course of study of three semesters (i.e. 18

months) for the second professional examination irrespective of the examination of main batch.”

Ordinance 268(b) also makes it mandatory for the students to complete regular course of studies at least for 18 months including period of

examination. This Court in Rakesh Gurjar, supra observed the argument of discrimination sought to be built on the basis of interim order and has held

in para 24 as under:

“24. Coming now to the argument of discrimination, in the first place, it must be observed that while a final judgment can be cited and relied as a

precedent but an interim order cannot be. Besides, such interim orders do not confer any right nor do they create any equity in favour of those

petitioners, a fact mentioned in that order itself, which has been relied. As regards the students permitted in past to appear for such examinations

without completing requisite study period of 18 months, no specific instance has been cited and no foundation laid for alleged ground of discrimination

but even assuming that respondents in the past have infringed Ordinance 268(b) and for that matter, instructions of the Medical Council of India in

permitting the students to appear in the Second Year M.B.B.S. Examination even before completion of requisite 18 months of study, this cannot be

accepted a valid plea to sustain the argument of discrimination. A wrong cannot be allowed to be perpetuated and two wrongs cannot make one right.

Equality is a positive concept, therefore, it cannot be enforced in negativity. For an illegal favour, voluntarily or involuntarily, conferred on a student,

another student cannot be allowed to contend that similar favour in breach of mandatory provision should also be granted to him.”

If what the appellants are contending is accepted and they are permitted to appear in the supplementary examination, of MBBS Part-II, they would

have by now completed only 13 months as against required 18 months for full course of study, which would violate both clause 7.7 of MCI

Regulations and Ordinance 268(b) aforesaid.

In view of above, we do not find any infirmity in the impugned order passed by the learned Single Judge and any merit in the present appeal.

The appeal is accordingly dismissed.