
(1999) 01 KAR CK 0017
In the Karnataka High Court
Case No : Writ Petition No. 35743 of 1998

Dhanraj

APPELLANT

Vs

Gulbarga University, Gulbarga and Another

RESPONDENT

Date of Decision : 18-01-1999

Acts Referred:

Ayurvedacharya (Bachelor of Ayurvedic Medicine and Surgery) Degree Course — Rule 12 (1)
Central Council of Indian Medicine (Minimum Standards of Education in Indian Medicine) Regulations, 1986 — Regulation 8.1 (5)
Indian Medicine Central Council Act, 1970 — Section 22, 36, 39

Citation : (1999) ILR (Kar) 3880 : (1999) 5 KarLJ 297

Hon'ble Judges : G.C. Bharuka, J

Bench : Single Bench

Advocate : Sri Ramesh S. Biradar, for the Appellant; Sri. N.B. Bhat, for the Respondent

Judgement

1. The petitioner is a student of Bachelor of Ayurvedic Medicine and Surgery Course (in short, the "BAMS" Course) prosecuting his studies in the 2nd respondent-N.K. Jabshetty Ayurvedic Medical College, Bidar. The petitioner was admitted to the BAMS Course during the academic year 1993-94, the examinations whereof are conducted by the respondent-Gulbarga University (in short, the "University").

2. The present writ petition has been filed by the petitioner questioning the validity of the letter dated 9-7-1997 (Annexure-C) issued by the Registrar of the respondent University and the consequential communication made by the college authorities, restraining the petitioner from continuing the "BAMS" Course on the ground that despite 4 attempts he has failed to clear all the subjects of the first phase of "BAMS" Course.

3. The "BAMS" Course is governed by the Regulations for the Ayurvedacharya (Bachelor of Ayurvedic Medicine and Surgery) Degree Course (in short, the "University Regulations") framed by the respondent-University u/s 39 of the

Karnataka State Universities Act, 1976 as also those framed by the Central Council of Indian Medicine (in short, the "Central Council") u/s 36 of the Indian Medicine Central Council Act, 1970 (in short, the "Central Act"). The regulations framed by the Central Council under the Central Act are called "Central Council of Indian Medicine (Minimum Standards of Education in Indian Medicine) Regulations, 1986 (in short, the "Central Regulations"). The University Regulations and Central Regulations provide for permissible attempts on the part of the students of BAMS course for completing the first professional examination after which the failed candidates will lose their right to continue with the studies.

4. Regulation 12(1) of the University Regulations reads as under:-

12. Ordinance:

(1) First professional examination will be held at the end of 18 months and the subjects are mentioned in the Annexure. The subsequent first professional examination will be held every six months and failed candidates shall ordinarily be allowed 4 chance for passing first professional.

However, a student failed in four subjects of first professional examination may be allowed to keep term in second professional course.

5. Clause (v) of Regulation 8.1 of the Central Regulations reads as under:-

8.1. First professional examination.--(To be held at the end of one and half years)

(i) xxx xxxx xxx xxx.

(v) Candidates who fail to pass the first professional examination in three opportunities shall not be allowed to continue their studies. However, in case of personal illness of a serious nature of a candidate and in unavoidable conditions/ circumstances, the Vice-Chancellor of the University may permit one more opportunity for passing the first professional course.

6. As it appears from the pleadings of the petitioner himself, despite six attempts, he has failed to pass in the subject of "Shareerkriya", which is one of the subjects prescribed for Phase 1 of the 1st Professional Examination of BAMS Course. Nonetheless, his plea is that the words "ordinarily be allowed" used in the University Regulations should be read as "ordinarily the student should be allowed to take 4 chances to pass the first professional examination" and therefore the same cannot be taken as mandatory. It is on this plea he submits that he is entitled to avail any number of attempts for passing the first professional examination of the BAMS Course.

7. In my opinion, the pleas so raised is wholly untenable and has got to be rejected. The provisions of the Central Act are *pari materia* with those of the Indian Medical Council Act, 1956.

8. The Supreme Court in the case of Medical Council of India v State of Karnataka and Others, has held in para 25 of the judgment that:-

"The Indian Medical Council Act is relatable to Entry 66 of List I (Union List). It prevails over any State enactment to the extent the State enactment is repugnant to the provision of the Act even though the State Acts may be relatable to Entry 25 or 26 of List III (Concurrent List). Regulations framed u/s 33 of the Medical Council Act with the previous sanctions of the Central Government are statutory. These regulations are framed to carry out the purposes mentioned in Section 33. If a regulation falls within the purposes referred u/s 33 of the Medical Council Act, it will have mandatory force. Regulations have been framed with reference to clauses (fa), (fb) and (fc) (which have been introduced by the Amendment Act of 1993, w.e.f. August 27, 1992) and clauses (j), (k) and (1) of Section 33".

9. In view of the law laid down by the Supreme Court as noticed above, now it is beyond any controversy that in between the University Regulations and the Central Regulations, the latter has to prevail.

10. In the Central Regulations, it is imperatively provided that the candidates who fail to pass the first professional examination in three opportunities, should not be allowed to continue with their studies. Anyhow, as a matter of exception based on hardships, one more chance can be granted by the Vice-Chancellor on being satisfied that the candidate was faced with severe illness of serious nature or that he was faced with unavoidable circumstances and conditions. Nonetheless, under no circumstance, the student can be permitted to continue his studies if he has failed to pass the examination in 4 attempts as in the present case.

11. The Central Act has been enacted by the Parliament inter alia, to provide for maintenance of minimum standards in Indian Medicine.

12. Section 22 of the Central Act empowers the Central Council to prescribe minimum standards of education in Indian Medicines by framing regulations. This section reads as under:-

22. Minimum standards of education in Indian Medicine.-

(1) The Central Council may prescribe the minimum standards of education in Indian medicine, required for granting recognised medical qualifications by Universities, Boards or medical institutions in India.

(2) Copies of the draft regulations and of all subsequent amendments thereof shall be furnished by the Central Council to all State Governments and the Central Council shall before submitting the regulations or any amendment thereof, as the case may be, to the Central Government for sanction, take into consideration the comments of any State Government received within three months from the furnishing of the copies as aforesaid.

(3) Each of the Committees referred to in clauses (a), (b) and (c) of sub-section (1) of Section 9 shall, from time to time, report to the Central Council on the efficacy of the regulations and may recommend to the Central Council such

amendments thereof as it may think fit.

13. It is pursuant to the aforesaid powers, that the Central Regulations have been framed and one of the measures envisaged therein for maintaining minimum standards is to restrict the students to continue with their studies if they failed to pass the First Professional Examination of the "BAMS" Course despite availing given number of attempts.

14. The validity for providing the provision for given number of attempts to pass the examination has been considered by the Supreme Court in the case of University of Mysore and Others v Gopala Gowda, wherein the Apex Court has held that.-

"Admission to a course or branch of study depending upon possession of the minimum qualifications prescribed does not divest the Academic Council of its control over the academic career of the student, for the Council has for maintaining standards the power to prescribe schemes of examinations, and also to prescribe conditions on which students shall be admitted to the examinations. Power to prescribe conditions on which a student may be admitted to the examinations, in our opinion, necessarily implies the power to refuse to admit a student in certain contingencies, for the power to admit to an examination implies the power to weed out students who have on the application of a reasonable test proved themselves to be unfit to continue the course or prosecute training in that course. If on account of general inaptitude for being trained in a course or on account of supervening disability to prosecute a course of study, a student admitted to that course is bound by the Academic Council to be unfit to prosecute his training, it would, in our judgment, be within the power of the Academic Council, in exercise of its authority to control and maintain standards, and also of its authority to prescribe conditions on which students may be admitted to examinations, to direct that the student shall discontinue training in that course. And failure by a student to qualify for promotion or degree in four examinations, is certainly a reasonable test of such inaptitude or supervening disability. If after securing admission to an institution imparting training for professional courses, a student may be held entitled to continue indefinitely to attend the institution without adequate application and to continue to offer himself for successive examinations, a lowering of academic standards would inevitably result. Power to maintain standards in the course of studies, in our judgment, confers authority not merely to prescribe minimum qualifications for admission, courses of study, and minimum attendance at an institution which may qualify the student for admission to the examination, but also authority to refuse to grant a degree, diploma certificate or other academic distinction to students who fail to satisfy the examiners at the final examination, and to direct that a student who is proved not to have the ability or the aptitude to complete the course within a reasonable time to discontinue the course. There is no warrant for restricting the expression "maintenance of the standards" only to matters such as minimum attendance, length of the course and prescription of

minimum academic attainments".

15. For the aforesaid reasons, in my opinion, there does not appear to be any infirmity in the impugned communication at Annexure-C and D. Anyhow, it is clarified that the University authorities must scrupulously and uniformly apply the provisions of the Central Regulations without any favour or bias.

16. With the said observations, the writ petition is dismissed.

17. Let the Registry of this Court send a copy of this order to each of the Registrars of all the Universities in the State for compliance.