
(1999) 08 RAJ CK 0025

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2780, 2800 and 2801 of 1999

Dr. Anil Chaudhary and Others etc.

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 07-08-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Rajasthan University Act, 1946 — Section 4

Citation : AIR 2000 Raj 114 : (2000) 2 RLW 1090 : (2000) 1 WLC 321

Hon'ble Judges : Arun Madan, J

Bench : Single Bench

Advocate : A.K. Sharma, Ajay Rastogi and R.K. Mathur, for the Appellant;

Final Decision : Allowed

Judgement

Arun Madan, J.—Since the questions of law which have arisen for consideration by this Court and the relief sought for in these three writ petitions are identical and similar arising out of the same set of facts and circumstances, hence they have been heard jointly and are being finally decided by this common order.

2. Admitted facts in brief are that all the petitioners in these writ petitions after having qualified in their MDBS examination and undergone one year's internship, had qualified in Pre-PG Entrance Examination 1996 and they were allotted their respective placement in the merit list. Thereupon the petitioners were admitted in their respective specialities of MD/ MS courses and some of them were later on allowed change by reshuffling in their specialities.

3. The case of the petitioners is, as would be evident from the writ petitions & its annexures, which show their speciality, the date of joining, completing the period of training and shortage in completion of total 36 months on the date of filing their writ petitions, the petitioners have completed more than 80% of the total period of training and have covered entire aspect of study involved in PG course of their respective specialities. The respondent University circulated programme

of M.D./M.S. examination notifying 11/5/1999 as the date of commencement of the examination, but the same was subsequently postponed to 29/05/99.

4. Undisputedly, one of the petitioners apprehending exclusion from the examination for MD/MS course scheduled to 29/5/ 1999, submitted representation to the respondents including the University. The respondent Secretary to the Government Medical & Health Department vide his order dated 6/4/1999 (annexed to the writ petition) conveyed the decision of the State Government to allow all those students to take MD/MS examination who have completed more than 80% of total period of training subject to the condition that irrespective of taking of examination they would complete three years of training and then only would be entitled to PG degree / diploma.

5. The petitioners have therefore preferred these writ petitions praying therein that after declaring them eligible, the respondents be directed to allow the petitioners to take MD/MS examination scheduled to be held from 11/5/1999 or in case of its postponement, any other date be fixed by the respondent University.

6. The respondent University has filed reply to the writ petition. The service of notice on the unserved respondents is dispensed with as the main relief sought is for issuing the direction against the respondent University to declare the result.

7. I have heard the learned counsel for the parties and examined their rival contentions and the legal position on the subject.

8. The learned counsel for the petitioners contended that the Medical Council of India requires minimum of 80% of attendance of total period of training making a person eligible to take M.D./ M.S. examination and impliedly a person like the petitioners having undergone 80% of total training become eligible to take M.D. / M.S. examination, inasmuch as the concerned Principal of the Medical College is also entitled to extend benefit of relaxation and more so in the light of the decision of this Court in Civil Writ Petition No. 2602/97 decided on 29/8/1997 (Dr. Arun Kumar Agrawal and others v. University of Rajasthan & others). The case of the petitioners is that Ordinance 278-E of the University of Rajasthan postulates only period of training for MD/ MS viz. three years as a PG student, and the period of training is to be completed for grant of the degree and it implies that only for the purpose of grant of the degree a PG student of MD/ MS is required to undergo three years training though he can appear in the examination prior to completion of such training period, inasmuch as Ordinance 278-E does not postulate three years training period as condition precedent for appearing in the examination for MD/MS, and in fact is a requisite and ultimate condition precedent to determining eligibility of a student before awarding the degree for that PG course in question and, therefore, should not be construed as a condition precedent for appearing in the examination in question, because had there been such an intent and object, then there was nothing examination conducted by the University for seeking exemption from providing three years training period as a condition precedent for appearing in MD/MS examination.

9. On the contrary, Shri A. K. Sharma, the learned counsel for the respondent University while controverting aforesaid contentions advanced by the learned counsel for the petitioners, has contended that three years training period is a condition precedent for appearing in the examination and for determination of eligibility of the student for MD/ MS course for appearing in that examination, inasmuch as there is no occasion for relaxation to be given to any of the petitioners in view of short of training period having been more than one month because only one month's time if falls short of the requisite period can be relaxed as a matter of relaxation under the University of Rajasthan Ordinance. Shri Sharma has placed reliance upon the decision of the Apex Court in *Maharshi Dayanand University Vs. Dr. Anto Joseph and Others*,

10. I have considered the rival contentions of the parties and the legal aspect on the subject.

11. The questions which arise for consideration before this Court are as to whether in view of Ordinance 278-E, the period of training for MD/MS is a condition precedent for appearing in the examination and whether the petitioners are eligible for appearing in the MD/MS examination scheduled on 11-5-99 and postponed to 29-5-99 in view of the fact that they have undergone 80% of training period in the light of the guidelines of the Medical Council of India.

12. Ordinance 278-E (v) of the University of Rajasthan which relates to the M.D. and M.S. examination, postulates period of training and according to which, the period of training of MD/M.S. shall be three years after registration of the candidate with the University as a post-Graduate student at an institution affiliated to the University for training in that particular subject/speciality and out of the total period of three years, a candidate shall be required to study for at least 2 and half years in the same speciality/ subject. Ordinance 278-E (VII) of the University of Rajasthan postulates as to the examination and assessment which reads as under :--

"(VII) Examination and Assessment the progress of work of the candidates shall be assessed periodically by the respective guides and report submitted to the Head of the Institution through the Head of the Department at the end of every six months. The assessment report may also be conveyed in writing to the candidates who may also be advised of his shortcomings, if any.

In case the report indicates that a candidate is incapable of continuing to do the work of the desired standard and complete It within the prescribed period, the Head of the Institution may recommend cancellation of his / her registration at any time to the University.

The examination in M.D./M.S. shall consist of:--

(A) Thesis or Dissertation, (B) Written papers & (C) Clinical, oral & practical examination, as the case may be".

13. In my considered view, the very object and import of Ordinance 278-E of the

University of Rajasthan relating to the period of training and examination for MD/MS students is that the requisite period of training for determining the eligibility of candidate for appearing in the MD/MS examination should be three years to be reckoned from their date of registration with the University and is not a condition precedent for determination of their eligibility for appearing in the examination, otherwise the Ordinance would have clearly postulated that three years period of training would in any case be a condition precedent for the MD/MS examination pursuant to the registration of the PG candidate to the University. That apart, as per the recommendations of the Medical Council of India (quoted in Civil Writ Petition No. 2780/ 1999) the prescribed minimum period of training for the award of MD/ MS degree/ diploma, from the year 1993 onwards shall be three calendar years and as per training programme prescribed by the Medical Council of India the PG candidates would be required to attend minimum of 80% of the training period. In similar circumstances, vide order dated 6-4-99 annexed to the writ petitions, the State Government has allowed all PG students to take MD/MS examination who have completed more than 80% of total period of training subject to the condition that irrespective of taking of examination they would complete three years training period and then only they would be entitled to PG degree or diploma.

14. During the course of hearing, it has been informed that all the petitioners have appeared in the examination which was scheduled to 11-5-1999 and postponed to 29-5-99. It is not in dispute that all the petitioners had completed 80% of the three years" training period before the date of the commencement of the examination i.e. before 29-5-1999 and all of them have completed the requisite third years" training period as on or about 16th/17th July, 1999, and now their result has been withheld.

15. In *Maharshi Dayanand University Vs. Dr. Anto Joseph and Others*, the question which arose for consideration before the Apex Court was with regard to the Interpretation of the conditions prescribed by the Medical Council of India and University for the academic Session 1993, the Apex Court held that the conditions prescribed for the examination for three year MD course should not be lightly deviated from and where the Medical Council of India and the University prescribed a minimum period of three years training for eligibility for MD examination and the candidate (respondent therein) was given leave for 42 days subject to the condition that he would have to repeat the training before appearing in the final examination and the University though empowered to condone 30 days absence did not exercise that power. It was held by the Apex Court that the candidate respondent on account of 42 days" shortage in the required training period, could appear only at the next examination and not at the 1996 examination.

16. It has also been observed by the Apex Court that on the peculiar facts of the case the High Court directing the University to declare the result of a candidate who though not satisfying the prescribed requirement of minimum period of

attendance, had been admitted to the MD examination provisionally on the basis of an interim order of the High Court and the High Court further directing that the said case would not be treated as a precedent, and the record showing that the said decision was followed repeatedly by High Court and lower Court, in such circumstances, with a view to uphold the sanctity of the requirements of the Medical Council of India and the University, the Apex Court therefore, set aside the decision of the High Court with a clarification that if that case had been an Isolated one, it might not have Interfered with the impugned decision.

17. With due respect to the observations made by Apex Court in *Maharshi Dayanand University Vs. Dr. Anto Joseph and Others*, I may observe that it was a case where Dr. Anto Joseph candidate for examination was given leave for 42 days resulting in shortage of 42 days in the minimum prescribed three years" period of training for eligibility for MD examination. In the instant case, this is not the case of the University that the petitioners had not completed 80% attendance of requisite three years" period of training rather admitted case of the parties is that all the petitioners had completed the requisite three years" period of training as on 16th/17th/July, 1999. In the instant case, it is also not the case of the University that the petitioners have any shortage of requisite training period on account of any leave etc.

18. In *Dr. Arun Kumar Agrawal's* case (*supra*) this Court observed that the requirement of attaining requisite training after registration cannot be compromised which is envisaged in Ordinance 278-E of the University of Rajasthan but, the Ordinance no where specifies that the training period should have been completed prior to appearance in the examination. It has also been observed that since as per the Ordinance as also according to the order of the Supreme Court in *Dr Dinesh Kumar and Others Vs. Motilal Nehru Medical College, Allahabad and Others*, the required training for MS/MD course is three years, it can be safely be construed that the required training may be completed before the conferment of the degree of MS/MD meaning thereby before a candidate finally passes out the post graduate course, and not necessarily before appearing in the examination of the post graduate course. In that case, the petitioner was running short of 27 days before appearing in the examination and completed the training only immediately after the examination but before publication of the result and before conferment of the degree of MS. Therefore, this Court allowed the writ petition holding that the shortage of 27 days of training period for the petitioner which was completed before publication of result cannot be treated as an impediment or a disqualification for appearing the post graduate examination of MS/MD.

19. Therefore, in my considered view, the purpose of Ordinance 278-E (V) of the University of Rajasthan is achieved, if a student of MD/MS examination has completed three years"s period of training before the declaration of result of the examination and even that apart, vide Annexure 4 in the instant case, the State Government has allowed all students to take MD/MS examination who have

completed more than 89% of total period of training subject to the condition that irrespective of taking of examination they would complete three years" training period, and in this view of the matter, since admittedly the petitioners have already completed three years period of training as on 16th/ 17th July. 1999, would not be proper to deprive such candidates like the petitioners of their taking MD/MS examination wherein they appeared, which was scheduled to commence on 11-5-99 but postponed to 29-5-1999. Hence I find no impediment to hold all the petitioners in this bunch of writ petitions as eligible to take their respective MS/MD examinations wherein they have appeared in the month of May, 1999 and thereby they are entitled to get declared result of their respective examinations.

20. As a result of the above discussion, these writ petition Nos. 2800/99,2780/99 & 2801/99 are allowed. The respondent University is directed to declare the result of the petitioners for their respective MD/MS examination, 1999 which was conducted by the University on 29-5-1999 positively by 12-8-1999. No order as to costs.