
(1995) 12 SHI CK 0004
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 1502 of 1995

Dr. Meena Sharma

APPELLANT

Vs

H.P. University and Others

RESPONDENT

Date of Decision : 27-12-1995

Acts Referred:

Indian Medical Council Act, 1956 — Section 23, 3, 33

Citation : (1995) 4 ILR HP 2794

Hon'ble Judges : S.N. Phukan, C.J.; R.L. Khurana, J

Bench : Division Bench

Advocate : K.D. Sood, in CWP Nos. 1502 and 1754 of 1995 and Rajiv Sharma, in CWP No. 1502 of 1995, for the Appellant; D.C. Jishtu, for Respondent No. 1, Inder Singh A.G. for Respondent Nos. 2 and 3 in CWP Nos. 1502 and 1754 of 1995 and Abhilasha Kumari, Additional Central Govt. Standing Counsel, in CWP No. 1502 of 1995 and for Respondent No. 4 in CWP No. 1754 of 1995, for the Respondent

Final Decision : Allowed

Judgement

R.L. Khurana, J.—By this common judgment, we propose to dispose of the abovementioned two writ petitions being Civil Writ Petition No 1502/95 Dr. Meena Sharma v. H P University and Ors. and Civil Writ Petition No 1754/95 Dr. Meenakshi Thakur v. H.P. University and Ors., since common question is involved.

2 The two petitioners have done their M B B S from the Himachal Pradesh Medical College, Shimla, in the years 1981 and 1991, respectively Both of them joined M D Gyane course in the session 1992-95 They appeared in M D Gynaegology & Obstetrics examination held in August/September, 1995 at Kamla Nehru Hospital, Shimla While the examination for four theory papers was held on 19th and 20th August, 1995, the oral and practical examination was conducted on 2nd September, 1995 The case of the petitioners is that though the regulations framed by the Medical Council of India provide that there shall be minimum number of four examiners, out of which atleast two (50%) shall be

external examiners, who shall be invited from another recognised Universities and from outside the State, for the purpose of oral, clinical and practical test but only three examiners were appointed and out of whom only one was external examiner for the test held on 2nd September 1995 Therefore, the oral, clinical and practical test held on 2nd September, 1995 having been held in contravention of the regulation of the Medical Council of India, stood vitiated The result of petitioner Dr Meena Sharma has not been declared under the orders of this Court, while the petitioner De Meenakshi Thakur has been declared "failed" The petitioners have further averred that they had represented against the illegal holding of the examination and declaration of the result by the Respondents through representation dated 23rd September, 1995 The petitioners have, therefore, prayed for the issuance of an appropriate writ, order or direction for quashing and declaring the oral and practical examination in Gynecology and Obstetrics held on 2nd September, 1995 as null and void and for directing the Respondents to hold fresh oral and practical examination in respect of the petitioners, in accordance with the regulations of the Medical Council of India.

3 Respondents No 2 to 4 have filed their reply-affidavit No reply has been filed by Respondents- No 1 and 5 Respondents No 2 to 4 have admitted that the two petitioners took the examination, which was conducted in the month of August/September, 1995 It was admitted that the oral, clinical and practical examination was conducted by a team of three examiners, out of which only one was external examiner While admitting that the regulations of the Medical Council of India are mandatory in nature, it is averred that such regulations could only be complied with subject to smooth sailing of the examination system without being adversely affected by outside elements, such as natural calamities totally disrupting the normal way of leading life Conducting the examination is a sacrosanct duty of the teacher but if the reasons are beyond the control, it had to be made good going with the circumstances available in hand It is further averred that there were exceptional considerations for holding examinations and had to be got conducted with one external examiner, rather than postponing such examination for indefinite period because there were no fair and bright chances of the unpleasant's weather, which had blocked the telecommunication and other normal way of travelling The external examiners nominated for the purpose, namely, Dr Ashi Sarin of Medical College, Patiala, Dr (Miss) Subodh Das of Safdarjung Hospital, Delhi and Dr (Mrs.)Tripat Palkaur of Lady Harding Medical College, New Delhi had informed and expressed their inability to conduct the oral, clinical and practical examination to be held on 2nd September, 1995 Though, Dr Lakhbir Daliwal of PGI, Chandigarh had shown her willingness to conduct the oral, clinical ad practical examination to be held on the aforesaid date, but unfortunately on 31st August, 1995, she developed prolapsed disc and information was received from her regarding her inability to act as external examiner No other faculty from PGI, Chandigarh, was available to accept the assignment to previous commitment Efforts were made to contact Medical College, Patiala but due to failure of telecommunication system, no alternative

arrangement could be made even from the said Medical College Besides, due to untimely assassination of the Hon"ble Chief Minister of Punjab Sardar Beant Singh on 31st August, 1995 at about 5 15 P M , no Medical College teacher could come from Patiala In order to meet such unforeseen considerations, it was thought right and appropriate to get ,the clinical, oral and practical examination conducted on 2nd September, 1995, with one external examiner, instead of postponing such examination, without availing opportunity of only external examiner, who had come to Shimla inspite of natural calamity, since there were bleak chances of the improvement in the situation It has also been averred that conducting of the oral, clinical and practical examination with one external examiner has not caused any disbalance for the petitioners, inasmuch as, the other similarly situated candidates had never raised their voices or pointed out these lapses as violation of the rules.

4 We have heard Shri K D Sood, learned Counsel for the petitioner, Shri D C Jishtu, learned Counsel for Respondent No 1, Shri Inder Singh, learned Advocate General for Respondents No 2 and 3 and Mr. Abhilasha Kumari, Additional Central Government Standing Counsel for Respondent No 5 and have also perused the record of the case.

5 The Medical Council of India has been constituted u/s 3 of the Indian Medical Council Act, 1956, and as such is a statutory body Section 33 of the said Act empowers the Medical Council to make regulations with the previous sanction of the Central Government generally to carry out the purposes of the Act.

Section 33 provides:

33 Power to make regulations: The Council may, with the previous sanction of the Central Government, make regulations generally to carry out the purposes of this Act, and without prejudice to the generality of this power, such regulations may provide for:

(a)....

(b)....

(c)....

(d)....

(e)....

(f)....

(g)....

(h)....

(i)....

(a) (j) the courses and period of study and of practical training to be undertaken,

the subjects of examination and the standards of proficiency therein to be obtained, in Universities or medical institutions for grant of recognised medical qualifications;

(k)....

(l) the conduct of professional examinations qualifications of examiners and the conditions of admission to such examinations;

(m)....

(b) (n) any matter for which under this Act provision may be made for regulations.

6 Annexure P-1 to the writ petition contains the recommendations of Postgraduate Medical Education duly adopted by the Medical Council of India, as its regulations framed u/s 33 of the Indian Medical Council Act, 1956 There is no dispute that such regulations have been framed with the previous sanction of the Central Government Clause VI at page-13 of Annexure P-1 deals with the examinations for M D /M S courses It provides in the following terms:

VI EXAMINATIONS

The examinations should be so organised that this shall be used as the mechanism to confirm that the candidate has acquired appropriate knowledge, skill and competence at the end of training that he can act as a Specialist and/or a medical teacher as per expectation.

1 Examiners:

a) All the Postgraduate Examiners shall be recognised Postgraduate teachers, having at least ten years postgraduate teaching experience in the subject concerned.

b) For all Postgraduate Examinations, the minimum number of Examiners shall be four, out of which at least two (50%) shall be External Examiners, who shall be invited from another recognised Universities from outside the State.

c) Under exceptional circumstances examinations may be held with 3 examiners provided two of them are external and MCI is intimated with the justification of such action prior to publication of result for approval Under no circumstance, result is to be published in such cases without the approval of MCI.

d) In the event of there being more than once Centre in one City, the external examiners at all the centres in that city should be the same Where there is more than one Centre of Examination, the University should appoint someone to coordinate the examination on its behalf.

7 Admittedly, the oral, clinical and practical examination which was conducted on 2 9 95 and in which the two petitioners had appeared, was conducted by a team of three examiners, out of which only one was an External Examiner Such oral,

clinical and practical examination, therefore, on the face of it, has been conducted by the Respondents in violation and contravention of the regulations providing that the minimum number of examiners shall be four, out of which at least two (50%) shall be External Examiner, who shall be invited from another recognised Universities from outside the State Though, the regulation permits the conduct of such examination by three Examiners, the same is to be held only under exceptional circumstances with the proviso that two out of the three examiners must be External Examiners and the Medical Council of India is duly intimated with justification for such action prior to the publication of the result for approval The regulation further provides that under no circumstance, the result is to be published without the approval of the Medical Council of India in case the examination is conducted by a team of three Examiners.

8 The Hon"ble apex court in State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others, while dealing with the provisions of All India Council for Technical Education Act, 1987, the constitution of the Council under the said Act and the regulations framed by the Council u/s 23 of the said Act, has held in the following terms:

...The Council has been established under the Act for coordinated and integrated development of the technical education system at all levels throughout the country and is enjoined to promote qualitative improvement of such education in relation to planned quantitative growth The Council is also required to regulate and ensure proper maintenance of norms and standards in the technical education system The Council is further to evolve suitable performance appraisal system incorporating such norms and mechanisms in enforcing their accountability It is also required to provide guidelines for admission of students and has power to withhold or discontinue grants and to de-recognise the institutions where norms and standards laid down by it and directions given by it from time to time are not followed This duty and responsibility cast on the Council implies that the norms and standards to be set should be such as would prevent a lopsided or an isolated development of technical education in the country For this purpose, the norms and standards to be prescribed for the technical education have to be such as would on the one hand ensure development of technical educational system in all parts of the country uniformly; that there will be a coordination in the technical education and the education imparted in various parts of the country and will be capable of being integrated in-one system; that there will be sufficient number of technically educated individuals and that their growth would be in a planned manner; and that all institutions in the country are in a position to properly maintain the norms and standards that may be prescribed by the Council....

9 Following the same principle as laid down by the Hon"ble apex court, it can be safely held in the present case that the regulations framed by the Medical Council of India are of mandatory nature and are binding on the Respondents in respect of the conduct of the examinations and in respect of various medical courses Be

it stated, that the Respondents in their reply have also admitted that the regulations framed by the Medical Council of India are mandatory in nature.

10 As stated above, it is the admitted case of the Respondents that oral, clinical and practical examination held on 29.9.95 was conducted by a team of three examiners, out of which only one was an External Examiner. Such a course was not open to the Respondents in view of the regulations of the Medical Council of India referred to above. Not only that there has been a contravention of the mandatory regulations in respect of the number of examiner, there is also a contravention of the relevant regulation permitting the conduct of examination by a team of three examiners. Under exceptional circumstances, when an examination is to be held by a team of three Examiners, the following two mandatory requirements are to be fulfilled, namely; (a) out of the three Examiners two must be External Examiners; and (b) the Medical Council of India has to be intimated with justification of such action prior to the publication of the result for approval.

11 Admittedly, even though, the oral, clinical and practical examination was conducted by a team of three examiners with one External examiner on 29.9.95, no intimation of such an action with justification was given to the Medical Council of India. So much so, that even the approval of the Medical Council of India was not obtained prior to the publication of the result in respect of the petitioner Dr Meenakshi Thakur. As stated above, the result in respect of petitioner Dr Meena Sharma, has not been declared under the orders of this Court. The petitioner Meenakshi Thakur has been declared as "failed" in the result declared on 13.9.95.

12 It will not be out of place to mention here that Dy. Secretary, Medical Council of India, New Delhi through a telegram addressed to the Registrar of this Court has intimated that for the purpose of holding the examination, at least 50% examiners should be External Examiners, otherwise the examination held is against the recommendations of the Medical Council of India.

13 It has been contended on behalf of the Respondents that since a combined result is to be declared in respect of the written and oral examination, the petitioners are required to reappear both for the written and oral examination and that in view of the contravention of the regulation while holding the oral, clinical and practical examination, two petitioners would be allowed to reappear in the examination as fresh candidates and they would not be treated as "re-appeared candidates." We do not find force in the contention of the learned Counsel for the Respondents. Sub Clause 4 (b) of Clause-VI of the regulations, Annexure P-1, at page 14 provides that the theory examination will be held sufficiently earlier than the clinical and practical examination, so that answer book can be assessed and evaluated before the start of the clinical, practical and oral examinations. A bare perusal of this regulation shows that the theory examination and oral/practical examinations are to be assessed and evaluated independently. Though for the purpose of declaration of the result, the consolidated marks/grading might have to be taken into consideration for

declaring a candidate as pass or fail Therefore, in the event of re-examination of the two petitioners on the ground that the oral clinical and practical examination was held in violation of the statutory regulations, there is no need for the two petitioners to reappear and take the written examination afresh The marks/grades obtained by them in such written examination held during the period 19 8 95 to 20 8 95 can be well taken into consideration alongwith the marks/grades which may be obtained by the two petitioners in the oral, clinical and practical examination to be held in accordance with the statutory regulations of the Medical Council of India, for the purpose of declaration of their results.

14 For the foregoing, we allow the present petitions and direct the Respondents to conduct a fresh oral, clinical and practical examination for two petitioners in accordance with the statutory regulations of the Medical council of India by a team of four Examiners, out of which at least two should be External Examiners, within a period of three months from today The marks/grades obtained by the two petitioners in such fresh oral, clinical and practical examinations shall be taken into consideration alongwith the marks/grades obtained by them in the written examination held on 19 8 95 to 20 8 95 for the purpose of declaration of their results We are not, however, setting aside the result of the examination in the subjects in question as no candidate has approached this Court If any candidate fails in oral, clinical and practical examination, he shall, however, be given, a chance to appear before the Board to be constituted in terms of our order.

15 No order as to costs.