

(2012) 01 DEL CK 0590

In the Delhi High Court

Case No : Writ Petition (C) 583 of 2012

Dr. Priti Ranjan Sinha and Another

APPELLANT

Vs

National Board of Exam. and Another

RESPONDENT

Date of Decision : 30-01-2012

Acts Referred:

Indian Medical Council (Post Graduate Medical Education) Regulations, 2000 — Regulation 11

Citation : (2012) 01 DEL CK 0590

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : O.P. Gaggar, for the Appellant; Rakesh Gosain and Mr. Ravinder Aggarwal, for the Respondent

Judgement

Hima Kohli, J.—The present petition has been filed by two petitioners, who are qualified M.B.B.S. doctors and have prayed for the following reliefs :-

(i) direct the respondent to desist from giving discriminatory treatment to practicals vis-?-vis theory examination and to direct that the practicals are also entitled to similar grace marks as the theory and;

(ii) direct the respondent to disclose the criterion adopted by respondent No.1 in assessment in the practical tests and to direct them to make available the assessment of the respondent;

(iii) issue writ or directions in the nature of mandamus directing respondent No.1 to appoint competent examiners/evaluators of impeccable caliber from the institutes who have been conducting the similar courses with unqualified recognition like "permitted" only;

(iv) issue any appropriate writ or direction declaring the petitioner successful in the examination held by the National Board of Examination for the year October, 2011 on the basis of marks obtained in the theory and practical examination; and

(v) issue any appropriate writ or direction commanding respondent No.1, namely, the National Board of Examination to disclose the marks obtained by the petitioner in both theory, thesis and practical examinations for the academic year 2010-11.

2. Learned counsel for the petitioners states that both the petitioners enrolled themselves with the respondent No.1/Board for DNB and appeared for the theory examination of DNB conducted by respondent No.1/National Board of Examinations in June 2010. The said examination comprises of four theory papers of 100 marks each. On 23.08.2010, the result of the said theory examination was declared and the petitioners were declared successful. As a result, the petitioners qualified to appear for the practical examination. But both of them were declared unsuccessful in the two attempts made by them to clear the practical examination. On 10.10.2011, the petitioners had appeared in their third and final attempt for the practical examination. On 2.11.2011, when the result of the practical examination was declared, the petitioner no.1 found that he had scored 145 marks whereas the petitioner no.2 had scored 144 marks out of a total of 300 marks. As the pass marks for the practical examination was 150, both the petitioners were declared as having failed in the practical examination.

3. Learned counsel for the petitioners submits that on 9.11.2011, the petitioners had filed applications under the Right to Information Act seeking information from respondent No.1/NBE pertaining to the break-up of marks obtained by them in different segments of the practical examination; provision of grace marks, if any, in practical exams; photocopies of the answer sheets attempted by them; the final result with the list of all pass and fail candidates; and the remarks given by each examiner for the practical examination. However, the application submitted by the petitioners was returned by the postal authority under some objection. Thereafter on 23rd November, 2011, the petitioners submitted fresh applications to respondent no.1/NBE for furnishing information under the RTI Act, to which replies were given on 19-20th December, 2011. It is stated that the replies given by respondent no. 1/NBE were extremely vague and unsatisfactory, and goes to establish a clear intent of concealment and arbitrariness on their part, which has occasioned the present petition.

4. Dissatisfied by the reply given by respondent No.1/NBE, the petitioners are not only seeking detailed replies to their queries as raised by them under the RTI Act, it is also their contention that respondent no.1/NBE has not made any provision for grant of grace marks in the practicals of DNB examination for the year 2011 whereas, such a concession has been granted by it in respect of the theory examinations. It is further stated that one of the examiners appointed by respondent no.1 for the practical examination was selected from an institution, which did not qualify under Regulation 11 of the Medical Council of India Postgraduate Medical Education Regulations, 2000, as he was not from a recognized Medical College but was from North Bengal Medical College,

Darjeeling, which is a Medical College permitted u/s 10A of the MCI Act

5. Learned counsel for respondent no.1/NBE appearing on advance notice opposes the present petition and states that the petitioners cannot claim a grant of grace marks in the practical examination for the reason that NBE does not have any such policy for the grant of grace marks to any candidate in the practical examination and even in the case of theory examinations, recently in the year 2011, a provision was made for the grant of a total of 8 grace marks, in all the four theory examinations. He submits that in view of there not being any policy adopted by the respondent no.1/NBE prescribing grant of grace marks for the practical examination, the question of grant of grace marks to the petitioners does not arise. He further states that having once cleared the theory examination, each candidate is permitted a total of three attempts to clear the practical examination and in the present case, both the petitioners have exhausted all the three attempts. He argues that merely because they have not managed to clear the practical examination is not a ground for them to claim entitlement to grace marks.

6. As regards reliefs no.(i) & (iv) sought by the petitioners for directions to the respondents to grant grace marks in the practical examinations, as granted in the theory examinations and for declaring them successful in the examination held by respondent no.1/NBE for the year 2011 on the basis of the marks obtained by them in theory and practical examination, it is relevant to note that the eligibility criteria stipulated for a candidate to be declared as successful in the examination has been clearly laid down in the Information Bulletin of Examinations circulated by respondent no.1/NBE for December 2011. It is an undisputed fact that neither of the petitioners have cleared their practical examination in terms of the conditions stipulated in the said Bulletin. In view of failure on their part to meet the eligibility criteria as laid down in the Bulletin, i.e., to clear the practical examinations, the question of declaring the petitioners as successful solely on the basis of their clearing the theory examination does not arise. Nor can the petitioners claim entitlement to grace marks in the practical examinations simply because 8 grace marks have been granted in the theory examinations. It is settled law that courts do not interfere in matters relating to fixation of eligibility criteria by academic bodies for the reason that the decisions taken by such bodies are largely in the nature of policy decisions for the purpose of ensuring better talent and academic excellence. Providing standards for clearing examinations by laying down eligibility criteria is in consonance with the said object of promoting excellence in academics. A Division Bench of this court in the case of Siddhartha Kaul & Ors. Vs. Guru Gobind Singh Indraprastha University reported as opined that a university/academic body is always entitled to set a higher benchmark and students cannot be permitted to decide the academic policy or seek change thereof to enable them to overcome their deficiencies. In the present case, to give such a relief to the petitioners to better their career prospect would only lead to dilution of educational standards and adversely affect the standards and quality of medical degree courses.

7. The reliefs no. (ii) and (v) sought by the petitioners are almost identical. The petitioners have sought directions to the respondent no.1/NBE to disclose the marks obtained by them in theory, thesis and practical examination for the academic year 2010-2011. Learned counsel for respondent No.1/NBE has responded by stating that for the purpose of considering the said relief, Clause (C) of Instruction No. 4.4 of the aforesaid Bulletin may be examined. Instruction No.4.2 deals with declaration of DNB Final Results and Clause (C) of Instruction No. 4.2 states that the details of marks obtained/grading in final theory/practical examinations will be provided to unsuccessful candidates and that the procedure for obtaining question-wise marks can be seen at the NBE Website.

8. Learned counsel for the petitioners states that both the petitioners have already accessed the website of respondent no.1/NBE but, the result which was displayed therein did not furnish the necessary details. In this regard, he draws the attention of this Court to Annexure P-2 enclosed with the writ petition which is silent on the aspect of the marks obtained/grading of the petitioners in the final theory/practical examination.

9. Learned counsel for the respondent no.1/NBE states that he has informed the learned counsel for the petitioners that the necessary information with regard to the marks obtained by the petitioners in theory, thesis and practical examinations shall be duly communicated by NBE directly to the petitioners and the same shall be made available to them as soon as they apply to respondent no.1/NBE in terms of the requisite format, as has already been communicated to them in the reply dated 19-20/12/2011 submitted by the NBE under the RTI Act.

10. Now, the only remaining issue is the grievance of the petitioners that the respondent no. 1/NBE had not appointed a competent examiner/evaluator from an institute that is recognized by the Medical Council of India as specified under the Regulations framed by MCI. It is the submission of learned counsel for respondent no. 1/NBE that NBE is not guided by the Regulations laid down by the MCI and relied upon by the petitioners as it has a wider base for selecting examiners/evaluators for conducting each examination and the procedure followed by NBE is not necessarily the same as laid down by the MCI. He further submits that if the petitioners had a grievance with regard to the eligibility of the one of the four examiners, they should have raised this issue immediately after the practical examination, which was held on 10.10.2011.

11. There is force in the aforesaid submission made by learned counsel for the respondent. It is clear that the present petition is a sheer after thought and only an attempt on the part of the petitioners to overcome the bar of three attempts granted by NBE to each candidate to clear the practical examination, as per the Information Bulletin for DNB Final Examination - 2011, which both of them have exhausted last year. It is apparent that they have raised this issue only now because they have been declared as having failed in their final attempt in the practical examinations held on 10.10.2011. With regard to prayer no.(iii) in the writ petition, in view of the decision of the Supreme Court in the case of State of

Maharashtra Vs. Vikas Sahebrao Roundale and others, and the decision of the Single Judge of this Court entitled Pranshu S. Raghuvansh vs. Indraprastha Institute of Information Technology reported as , it is settled law that in matters relating to framing of policies by academic bodies, the courts should normally stay their hands unless and until the decision taken therein is so patently arbitrary, malafide or unreasonable, that it requires interference. The case in hand is not one in which the Court proposes to issue any directions to the respondent No.1 to appoint competent examiners/evaluators to test the skills of candidates participating in the examinations, as the petitioners have miserably failed to establish that the respondent No.1/NBE is obliged to follow the norms as laid down by MCI for appointment of examiners/evaluators.

12. The present petition is therefore disposed of in limine while granting liberty to the petitioners to fill up and submit their applications as per the format laid down by respondent no.1/NBE for obtaining the details of the marks scored by them in the practical and theory examinations. As and when the petitioners submit their applications, the same shall be processed by the respondent no.1/NBE as per law and the information sought shall be furnished to them.