

(2009) 06 PAT CK 0021

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 7767 of 2008

Dr. Vikas Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 24-06-2009

Acts Referred:

Patna University Act, 1961 — Section 25, 26, 27, 29, 39
Patna University Act, 1976 — Section 75

Citation : (2009) 06 PAT CK 0021

Hon'ble Judges : Mridula Mishra, J

Bench : Single Bench

Advocate : Chandra Shekhar, A.K. Upadhyay and L.B. Singh, for the Appellant; D. Choudhary, A.C. to S.C. III, Ajay Kumar Sinha and S. Iqbal Ahmad, P.K. Shahi, General Advocate for Respondent No. 6 Pushkar Narain Shahi, Ritesh Kumar No. 1 and Sanjeet Kr. Singh, for the Respondent

Final Decision : Dismissed

Judgement

Mridula Mishra, J.—Heard the parties.

2. Petitioner had initially filed this application for a direction to the respondent Patna University not to publish result of M.D. (General Medicine) 2005-2008 and to conduct fresh examination of clinical/viva voce and practical by constituting a team of externals, who are experts in the field of medicine. Further, prayer was to set up enquiry into the manipulation made by respondent No. 6 in the matter of examination and result in M.D. (General Medicine) 2005-2008 and to take suitable action against respondent No. 6 for abusing the high office.

3. During the pendency of the writ application, petitioner has filed a number of interlocutory applications vide I.A. Nos. 6064, 6223 and 6224 of 2008 and also I.A. No. 7300 of 2008. I.A. No. 6064 of 2008 was filed with a prayer to call for entire records connected with M.D. (General Medicine) 2005-2008 examination and evaluation and for a direction not to destroy answer books of candidates of theory paper of the concerned examination. This application was disposed off

presuming that during the pendency of the writ application the University will not destroy the connected records till the final disposal of the main case. I.A. No. 6223 of 2008 was filed for a direction to respondent University to disassociate respondent No. 6 from conducting the examination. This interlocutory application was disposed off as for similar direction representation of the petitioner was pending before the Vice Chancellor. I.A. No. 6224 of 2008 was for a direction to the Post Graduate Institute of Medical Education and Research, Chandigarh, to entertain petitioner's application for entrance test for admission in session 2009 as on account of failure in M.D. (General Medicine) 2005-2008 the petitioner was not supposed to be eligible for appearing in entrance test. This application was also disposed off treating it as premature, with an observation that petitioner may apply for appearing in the entrance test at an appropriate time in M.D. Course mentioning about the pendency of the present writ application and the Post Graduate Institute of Medical Education and Research, Chandigarh, will have liberty to consider the same. I.A. No. 7300 of 2008 was filed by the petitioner for a direction to the Registrar, Post Graduate Institute of Medical Education and Research, Chandigarh, to allow him to appear in entrance test. By filing this interlocutory application, petitioner brought this fact in the notice of the Court that after his failure in M.D. (General Medicine) 2005-2008 (which is under challenge), the petitioner appeared in the next M.D. examination held by Patna University and has been declared successful. The petitioner wanted to apply for D.M. Course in Cardiology at the P.G.I.M.E.R., Chandigarh, and the prayer was for a direction to the Registrar of the institute concerned to allow him to appear in the entrance examination. Publication of result and admission in the course being subject to final judgment passed in the writ application. This interlocutory application was allowed, the Registrar, Post Graduate Institute of Medical Education and Research, Chandigarh, was added as respondent No. 7.

4. Petitioner, in the present writ application, has alleged malice in law as well as malice in fact. Malice in law and malice in fact has been alleged against respondent No. 6, who is the Head of the Department of Medicine, Patna Medical College & Hospital. Allegation has also been made against Patna University that M.D. (General Medicine) 2005-2008 examination has been conducted in violation of Patna University Act and Rules as well as the Medical Council of India Regulation 2000.

5. The petitioner has claimed to have a most outstanding academic record throughout his career. It has been stated that right from his school days till passing his M.B.B.S. course, the petitioner has passed all examination with high marks. He joined Patna Medical College & Hospital for his M.B.B.S. Course on the basis of B.C.E.C.E. 1998 Examination. His place in the merit list was at serial No. 19. In the M.B.B.S. examination he was awarded several gold medals for being best student of his batch, highest marks in the final M.B.B.S. examination and highest marks in paediatrics, surgery and medicine. He was selected for M.D. (General Medicine) on the basis of competition and got admitted in the course in Patna Medical College & Hospital for the session 2005-2008. The petitioner and

one Harsh Vardhan were enrolled in the unit of Dr. Vijay Prakash for M.D. on 16.04.2005. Subsequently, on 27.04.2005, third student Dr. Prakash joined the unit. As per the curriculum of M.D. (General Medicine) petitioner took research work under the supervision of respondent No. 6 on the subject "Estimation of Microalbuminuria in Young Diabetic Patients and its correlation of Clinical Profile of Patients and Glycaemic Control". Petitioner completed his research and prepared his thesis. He presented the thesis with seal and signature of Dr. Vijay Prakash as his supervisor on 13.10.2007. On submission of his thesis it was to be forwarded by the supervisor/guide, but, the petitioner was directed by respondent No. 6 to remove page No. 2 and 5 from his thesis containing the foreword and acknowledgement drawn in the name of respondent No. 6. At this juncture the petitioner was informed that his guide has been changed and the foreword and acknowledgement is to be replaced by inserting the foreword to Dr. Vibhu Priyadarshi. The petitioner did not have any knowledge regarding change of supervisor as he continued to work under respondent No. 6 all through his research period. This is the instance which petitioner correlates to malafide alleged against respondent No. 6. Petitioner's case is that after his enrolment in the M.D. Course, respondent No. 6 approached his parents to negotiate marriage of his daughter with the petitioner, but, the negotiation could not materialize. In May 2006 petitioner got married as per the desire of his parents and non-acceptance of proposal of marriage by petitioner's parents prejudiced respondent No. 6 subsequent to petitioner's marriage. Respondent No. 6 being Professor and Head of the Department of Medicine, started acting prejudicial to the interest of petitioner. Out of vengeance, he changed petitioner's supervisor in a most illegal and arbitrary manner though synopsis of his thesis was signed by respondent No. 6. Legally change of guide can be done only with the approval of the Members of Post Graduate Research Council. Agenda of Post Graduate Research Council meeting, dated 25.03.2006, was circulated among the Members of the Council and the meeting was scheduled to be held on 29.03.2006. There was no agenda regarding change of guide with respect to the petitioner. In the meeting, dated 29.03.2006, agenda relating to change of guide of petitioner or any one was not discussed and no resolution was taken in this regard. Only thesis of candidates were approved. Resolution of the meeting indicates respondent No. 6 as guide of petitioner. Subsequently, without any approval of the Post Graduate Research Council a letter, dated 25.05.2006, was sent by the Assistant Registrar, Patna University, to the Dean, Faculty of Medicine, Patna University, whereby list of candidates whose thesis were approved in the meeting of P.G.R.C., dated 29.03.2006, was communicated. In this letter name of petitioner's guide was changed without any prior approval of P.G.R.C. Counsel for the petitioner has submitted that whenever there is change of guide a specific resolution is taken, in this regard, by the Post Graduate Research Council. In support of his contention that in the meeting, dated 29.03.2006, no resolution was taken regarding change of guide. Annexure 14 has been annexed which is the proceeding of the meeting of Post Graduate Research Council, dated 29.03.2006. Counsel for the petitioner has submitted

that Annexure 14 shows that no such resolution was taken in the meeting. The petitioner has also annexed Annexures 15 and 16 in support of this contention that for change of guide specific resolution is required to be taken in the meeting of Post Graduate Research Council. Annexures 15 and 16 are proceedings of P.G.R.C. meeting held on earlier occasions wherein specific resolution had been taken for change of guide of candidates. Petitioner has also submitted that in case any resolution regarding change of guide would have been taken in the meeting, dated 29.03.2006, information would have been sent to petitioner and respondent No. 6 and in that case respondent No. 6 would not have signed the foreword and acknowledgement of petitioner's thesis on 13.10.2007. All these show the manipulation done by respondent No. 6 in connivance of others to vindicate his malice against the petitioner.

6. Respondent No. 6 and the University both have filed counter affidavits. Respondent No. 6, in his counter affidavit, has admitted that initially petitioner had submitted synopsis of his proposed M.D. (General Medicine) Thesis under his guidance and inadvertently he had put his signature in it's foreword. A change of guide was necessary in terms of the requirements and guidelines of Medical Council of India as in one academic session, one Professor/Associate Professor can not have more than two graduate students registered in his unit. Since, in the unit of respondent No. 6 there were three graduate students, as such, one of them was transferred to another unit. Incidentally petitioner was selected by P.G.R.C. for such change of unit. This was the reason that even though proposal for acceptance of M.D. Thesis of the petitioner was placed before the Post Graduate Research Council (Medicine) showing respondent No. 6 to be the supervisor of petitioner in the meeting, dated 29.03.2006, but, subsequently, it was resolved to change the supervisor of the petitioner. In place of respondent No. 6, Dr. Bibhu Priyadarshi was designated as the supervisor in respect of the petitioner. Annexure A/6 has been annexed in support of this contention.

7. The University, in it's cryptic counter affidavit, has not replied several paragraphs where the petitioner has alleged regarding malafide in changing the guide of the petitioner in violation of Patna University Act and Rules. However, on perusal of different Annexures specially the agenda, dated 25.03.2006, of Post Graduate Research Council and the proceedings of the meeting, dated 29.03.2006 of the Post Graduate Research Council, it is apparent that though agenda regarding change of guide was there, but, no resolution regarding change of guide was taken. However, vide Annexure B/6, dated 25.05.2006, the Dean, Faculty of Medicine, Patna University, was informed by the Assistant Registrar, Patna University, regarding the approval of the synopsis of the thesis of candidates in the meeting, dated 29.03.2006, by the Post Graduate Research Council. In this letter name of petitioner's guide is changed and in place of respondent No. 6, Dr. Bibhu Priyadarshi's name has been substituted. How and when it happened, it has not been replied either by the University or respondent No. 6. However, there is nothing to show that such change was brought at the instance of respondent No. 6 due to his malice against the petitioner.

8. The petitioner has also alleged that he faired extremely well in viva voce examination/oral examination. In the process of long examination on the patient by respondent No. 6 he replied all questions consistent with the reasoning of medical science, but, despite his outstanding merit the result has been manipulated and the marks, based on manipulation, were sent to Examination Controller for publication of result.

9. On perusal of the pleadings, it transpires that in the M.D. (General Medicine) total marks allotted is 600, which is distributed in theory, clinical and viva voce examination. Each candidate has to appear in four theory papers total 200 marks, each of 50 marks. They are also required to appear at clinical examination of 300 marks and viva voce examination of 100 marks. A candidate is required to pass independently both in theory and clinical/viva voce examination securing 50 per cent marks in each. The petitioner has annexed Annexure "C", that is, the result sheet, which shows that out of 200 marks in theory papers he got 103 marks. Theory papers are examined by external examiners, as such, internal examiner has no role in allotment of the marks. There is no allegation that respondent No. 6 has done any thing in evaluation of theory papers. So far the clinical or viva voce examination is concerned, as per Patna University Act and Rules it is conducted by two external and two internal examiners. In M.D. (General Medicine) 2005-2008 two external examiners were Dr. P. Kar, Professor of Medicine, Maulana Azad Medical College, New Delhi, and Dr. A.K. Vaish, Professor of Medicine, King George Medical College, Lucknow. The external examiners are appointed by the Dean, Faculty of Medicine, from panel of names and it is approve by the Vice Chancellor. So far as two internal examiners are concerned, Head of the Department of Medicine is one of the internal examiners and the second internal examiner is appointed on rotational basis considering seniority. Dr. M.P. Singh, Professor of Medicine, Patna Medical College & Hospital, was other internal examiner. For clinical examination total marks are 300 which is distributed 150 marks for a long case and 150 marks for two short cases, for each case 75 marks. For the long case Dr. A.K. Vaish and respondent No. 6 were examiners and for short cases Dr. P. Kar and Dr. M.P. Singh were examining the candidates. Viva voce examination is conducted by four examiners, two external and two internal for which 100 marks are allotted, one candidate is examined at four tables by each examiners, who have to award marks within 25 marks, as 100 marks is distributed among the four examiners each one with 25 marks. Petitioner's case is that he obtained 55 marks in viva voce out of 100 marks, but, he failed in clinical examination as he could get only 46.3 per cent marks, out of 50 per cent pass marks. Allegation is that less marks was allotted to him by respondent No. 6 and Dr. A.K. Vaish in the clinical examination of one long case at the instance of respondent No. 6. Dr. A.K. Vaish and respondent No. 6 were the examiners for long case. It has been alleged by the petitioner that respondent No. 6 is connected with the examination of both the Medical Colleges, from where the externals were selected, as such, he was in a position to influence the externals for allotting less marks to the petitioner in

the clinical examination. Out of 300 marks allotted for clinical examination and viva voce petitioner managed to get only 139 marks and failed.

10. Petitioner's counsel has also stated that the marks sheet only shows aggregate marks allotted in the clinical and viva voce examination, specific marks allotted for long case, short case and marks allotted by four examiners in the viva voce have not been disclosed. Neither the examination sheet has been produced by the University to make it clear as to what marks were allotted to the petitioner under which specific head. The aggregate marks is quite vague and evasive, which strengthen this view of the petitioner that some manipulation have been made at the instance of respondent No. 6 in allotment of final marks.

11. Respondent No. 6, in his counter affidavit, has stated that allegations are incorrect and false. Externals are selected not by the Head of the Department, but, by the University and the Dean, Faculty of Medicine, from the panel. So far Dr. P. Kar and Dr. A.K. Vaish are concerned, they are teachers of high repute. It is not a fact that respondent No. 6 was the only one examiner in the examination process relating to clinical and viva voce examination. All examiners connected with clinical and viva voce examination play their role. Each examiner is in control of equal number of marks. Examiners, external and internal, have to sign on the marks sheet. In this circumstance, allegation made by the petitioner that respondent No. 6 has played decisive role in evaluation process, he influenced the externals as well as the second internal is a far fetched imagination. By making such allegation, the petitioner has not casted false aspersion against respondent No. 6 only, but, he has alleged malafide against reputed external examiners, who are senior physicians, such allegations have been made against the externals as well as the second internal even without impleading them as party, as such, the allegations is fit to be rejected. It is only an imagination of the petitioner on account of over estimation of his own caliber. In case the petitioner has done so well in the examination then at least in the theory paper the petitioner should have fetched much higher marks, but, in theory paper also he could manage only just pass marks as out of 200 he could obtain 103 marks only.

12. I find that the way entire examination is conducted it is very difficult to accept this fact that respondent No. 6 could manage entire examination process and only at his instance the externals have agreed to give less mark to the petitioner, irrespective of best performance of the petitioner. I also find that by making such allegation petitioner has not only alleged malafide against respondent No. 6, but, has also alleged malafide against other examiners who are not even impleaded as party in the present case. On this count as well as the fact, discussed above, I do not find that petitioner has been able to prove the alleged malafide against respondent No. 6.

13. "Express malice" or "malice in fact" means an actual malicious intention on the part of the person, who has done wrongful act. In other words, "malice in fact" means an act committed due to personal spite, corrupt motive or malicious

intention. For proving such malicious intention, it is necessary to furnish necessary and sufficient particulars for those allegations. In the present case, allegation against respondent No. 6 is that he acted maliciously and succeeded in getting the petitioner failed in M.D. (General Medicine) 2005-2008 examination. Reason behind this malicious intention, as alleged in the writ petition is refusal of petitioner's marriage negotiation by his parents with the daughter of respondent No. 6. Petitioner's case is that he got enrolled for his M.D. examination in the unit of respondent No. 6 on 16.04.2005. He has not mentioned in the writ petition the date on which date Dr. Vijay Prakash has met his parents for marriage negotiation of his daughter, at which place and in presence of which persons this marriage negotiation failed. Simply, he has mentioned that on 06.05.2006 petitioner got married as per his parents' desire. It is not alleged in the petition that in between 16.04.2005 and 06.05.2006, that is the period when he was doing his M.D. course in the unit of respondent No. 6, petitioner was misbehaved, discouraged or not guided properly by respondent No. 6. In fact, the statement in the writ application indicates that research and thesis work of the petitioner properly progressed and finally finished under the guidance of respondent No. 6. Petitioner completed his thesis successfully under the supervision and guidance of respondent No. 6 even thesis of petitioner was produced for final acceptance before respondent No. 6. All these circumstances do not indicate any malice in the behaviour of respondent No. 6. If there would have been any malice, in that case, thesis of the petitioner itself would not have been accepted, which is the first step for appearing in the M.D. examination. However, guide was subsequently changed and in place of respondent No. 6, Dr. Bibhu Priyadarshi was made petitioner's guide whereas other two candidates were retained in the unit of respondent No. 6. Respondent No. 6 has controverted the allegation of malice made by the petitioner. It has specifically been denied that any marriage proposal of his daughter was initiated with the petitioner. It has also been stated that the change of guide of the writ petitioner was done in accordance with the Medical Council of India Guidelines, with the approval of P.G.R.C. It has been stated that in the agenda of P.G.R.C., dated 25.03.2006, one of the agenda was change of guide to be taken in the meeting scheduled on 29.03.2006, though in the proceedings of P.G.R.C. it is not specifically mentioned, but, resolution was taken in that very meeting, dated 29.03.2006, so far change of guide is concerned.

14. In the counter affidavit of Patna University, it has not been contradicted.

15. From the facts, stated above, I find that in order to bring malicious intention sufficient particulars have not been brought by the petitioner. The incident which took place subsequently could have been linked to the malicious intention of respondent No. 6. Only in case the petitioner would have succeeded in proving the incident due to which malafide has been alleged, that is, failure of marriage negotiation. Since, this incident itself has not been proved, subsequent circumstance can not be connected for proving alleged malafide against respondent No. 6 by the petitioner. I do not find that petitioner has been able to

prove alleged malafide against respondent No. 6.

16. Petitioner has also alleged malice in law. It has been stated by the petitioner that examination of M.D. (General Medicine) 2005-2008 has been conducted in breach of examination rules of Patna University Act and Medical Council of India Rules. This has been done at the instance of respondent No. 6 on account of abuse of power. It is not in dispute that Patna University retains control over academic activities of Patna Medical College & Hospital as examining body. Section 25 and 26 deal with the constitution and power of academic council, which is academic body of the University. Section 27 of the Patna University Act deals with different faculties of the University including faculty of medicine. Section 29 deals with the constitution, power and function of the Examination Board which provides for appointment of the question setters and examiners from the panel of names submitted by the Examination Board. The advisory power of Examination Board is subject to Regulation. Section 39 of the Act provides for framing of Regulation subject to the provisions of the Act and Ordinances in the matters of (a) courses of studies, (b) condition of attempts and eligibility for awarding degree and diploma, (c) creation of teaching, faculty, constitution, power and functions of the examination board, (d) mode of appointment and duties of the examiners and conduct of examination. Clause (2) of Section 39 proscribes procedure for framing of Regulation and its commencement.

17. Patna University has framed Regulation for M.D. and M.S. examination in Faculty of Medicine in the year 1975 in terms of Patna University Act, 1961, and in view of Section 75 of the 1976 Act. Till date there is no other Regulation framed or adopted in terms of Section 39 of the Act. In order to maintain uniform standard of post graduation course in medical science, the Medical Council of India has also framed Post Graduate Medical Education Regulation, 2000. Clause (14) of the Medical Council of India Regulation provides for examination, examiners, principal of colleges and the modalities of the examination, such as, thesis, theory, clinical, practical and oral examination. Appendix I of the Regulation prescribes guideline of appointment of post graduate examiners. Petitioner has alleged that contrary to the existing Regulation of Patna University and Medical Council of India Regulation, 2000, the Head of the Department of the Patna Medical College & Hospital had proposed modification in the pattern of conduct of examination of post graduate courses. Even though the proposal has not been made part of Regulation of Patna University u/s 39 of the Patna University Act. The examination procedure has been changed as per the proposed modalities. This proposed modality has conferred unguided power in the hands of the Head of the Department. The Head of the Department has become whole and sole in the examination as Chairman of the Board of Examiners. He has power of nomination of internal and external. In addition he is also associated with the examination. He may be supervisor and examiner of the thesis of any candidate who is under other supervisor. In this way, as per the proposed modality, the M.D. examination has become one man

show. As per the existing Regulation of Patna University and the Post Graduate Regulation, 2000, of the Medical Council of India, there should have been three examiners for evaluation of thesis and four examiners for clinical/practical and viva voce, but, in M.D. (General Medicine) 2005-2008 examination there were only two external and two internal examiners which was in breach of Regulations. Section 29 confers powers to the Examination Board to refer names of question setters and examiners from the panel. The Vice Chancellor and the Dean of the Faculty have to appoint, on the basis of such recommendations, but, in the M.D. course of 2005-2008 entire scheme has been by passed and everything has been done by respondent No. 6, being the Head of the Department. It has also been stated by the petitioner's counsel that as per the Medical Council of India Regulation, clinical and viva voce examination of more than eight candidates can be conducted in one day, but, in breach of Regulation more than eight candidates were examined, which shows that the examination has been made a mockery. The internal examiner was appointed ignoring seniority. As per Regulation, Head of the Department can not be an examiner in the examination of those medical colleges from where externals are selected, but, respondent No. 6 is connected with examinations of those Universities from where externals were selected for conducting examination of M.D. (General Medicine) 2005-2008. Thus, the credibility of the examination is under cloud.

18. Respondent No. 6, in his counter affidavit and supplementary counter affidavit, has denied all allegations. It has been stated that Heads of the Department of each speciality of Patna University had resolved in a meeting to adopt the modalities as prescribed by Medical Council of India for conducting post graduate examinations and the same was sent to the Vice Chancellor of Patna University by the Principal of Patna Medical College & Hospital and the Dean, Faculty of Medicine, Patna University vide letter, dated 30.11.2004. Patna University by a communication, contained in letter No. 4123-25/examination, dated 05.05.2006, intimated that at least 50 per cent of the examiners have to be external. The senior most examiner shall be the Chairman of the Board and ordinarily the supervisor shall be one of the internal examiners. This decision was in conflict with the Medical Council of India recommendations. The said communication was withdrawn when Controller of Examination realized it. The Examination Board of Patna University in its meeting held on 10.08.2004 had taken a decision to follow Medical Council of India guidelines. The M.D./M.S. Examination Regulation framed by Patna University, thus, have become redundant and had been given a go bye by Patna University itself. So far the appointment of external examination is concerned, it was done in consultation with the Patna University in anticipation of the approval of Vice Chancellor. Respondent No. 6 has denied the allegation that he is connected with post graduate examination of Maulana Azad Medical College, New Delhi. It has been stated that respondent No. 6 has never been an examiner of the said institution. The internal examiner, Dr. M.P. Singh, was unanimously chosen to act as second internal examiner in the meeting of teachers of Department of Medicine, as such,

it was not a decision of respondent No. 6.

19. The Patna University, in its counter affidavit, has stated that the University is conducting the M.D, M.S., M.Ch., Medical Diploma examination as per the provisions of existing Regulation. However, the guidelines of Medical Council of India are also mandatory and are being followed. Decision of Patna University to appoint external and internal examiners and conducting P.G. examination of Medical Colleges, following Medical Council of India Regulation, ignoring Patna University Act and Rules was challenged earlier before the High Court. In L.P.A. No. 458 of 2008 vide order, dated 27.06.2008, Hon'ble High Court has decided that there is nothing wrong if the pattern of conduction of post graduate examination approved by the University as suggested by the Medical Council of India.

20. On consideration of entire materials, I find that the allegation made by the petitioner regarding conduct of M.D. (General Medicine) 2005-2008 examination in violation of Patna University Act, Regulation and the Medical Council of India Regulation, 2000, is not correct. Appointment of external and internal examiners, as per the proposed guideline was challenged before this Court where it has been held that there is no illegality in selection of external and internal examiners, as per the Medical Council of India Guidelines, since, it is the decision of the Patna University. This has also been followed in M.D. (General Medicine) 2005-2008 examination, I do not find that examination was conducted in violation of Section 39 of the Patna University Act or Regulation as well as Medical Council of India Regulation, 2000. The allegation made by the petitioner that entire examination was one man show of respondent No. 6 has no substance. Accordingly, the malice in law, alleged by the petitioner, has also not been proved.

21. During the pendency of the writ application result of M.D. (General Medicine) 2005-2008 examination, which is under challenge in the present writ application, was published and as per apprehension of the petitioner, he failed. Thereafter, petitioner appeared in next examination conducted by the University. This examination was held under the same provisions following same guidelines. Petitioner has now been declared successful in the M.D. examination. On account of his success petitioner has not challenged the same Rules, Regulations and Procedures followed by the Department of Medicine for conducting M.D. examination. Petitioner by filing interlocutory applications has tried to bring this fact before the Court that on account of his failure in his first attempt in the M.D. examination he will suffer so far his career advancement is concerned. He will not be eligible for appearing in the entrance examination of D.M. course specially, the examination conducted by Post Graduate Institute of Medical Education and Research, Chandigarh, is concerned. On account of his failure in the M.D. course he is disqualified from appearing in the examination. The petitioner has not brought on record the prospectus of Post Graduate Institute of Medical Education and Research, Chandigarh. However, prospectus of Sanjay Gandhi Post Graduation Institute of Medical Science, Lucknow, Christian Medical College,

Vellore and AIIMS P.G/Post Doctoral Courses, New Delhi, has been brought on record. No such ineligibility conditions have been put in the prospectus these three institutions. Simply because one institution has put some condition regarding eligibility of candidate on account of failure, that will not give any cause to the petitioner for directing the respondents to declare him pass even though facts brought on record indicate that the result of M.D. (General Medicine) 2005-2008 examination do not suffer from any malice or malafide. During the pendency of the writ application petitioner has already passed his M.D. course. He has also passed Part I of M.R.C.P., in this view this writ application, itself, has become infructuous as no cause of action survives.

22. Accordingly, I do not find any merit in this application. It is dismissed.