

(2014) 08 AHC CK 0093

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 42676 of 2014

Gaurav Pratap Singh

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 27-08-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Indian Medical Council Act, 1956 — Section 33

Citation : (2014) 9 ADJ 540 : (2015) 1 ESC 72 : (2014) 4 UPLBEC 3067

Hon'ble Judges : Dr. Dhananjaya Yeshwant Chandrachud, C.J.; Dilip Gupta, J

Bench : Division Bench

Advocate : Ashok Khare and Siddharth Khare, Advocate for the Appellant; Vivek Varma, Advocate for the Respondent

Judgement

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1. The petitioners appeared for the medical entrance examination and were admitted for the MBBS Degree Course at S.N. Medical College, Agra. The petitioners duly completed the first and the second semester course for the First Professional Examination. The First Professional examination was held in the months of October and November 2013. When the results were declared on 20 February 2014, each of the petitioners was declared to have failed in at least one paper. A supplementary examination was held between 29 May and 28 June 2014. The results were declared on 23 July 2014 and it is stated that all the petitioners have duly passed the examination. The reason why the petitioners have moved this Court under Article 226 of the Constitution is that the academic authorities are treating them as constituting a batch separate from the main batch of the Second Professional Course which, according to the petitioners, Would affect their eligibility to appear in the Second Professional Examination scheduled to be held in the months of May and June 2015. Accordingly, in these proceedings, the following reliefs are sought:

"(a) a writ, order, or direction of a suitable nature commanding the respondents

to treat the petitioners as students of the main batch of Second Professional Course in MBBS at S.N. Medical College, Agra, on the basis of their success in the supplementary examination of First Professional Course in terms of Regulation 7(7) of "Regulations on Graduate Medical Education 1997" (Annexure 3);

(b) a writ, order or direction of a suitable nature commanding the respondents not to treat the petitioners as belonging to a batch other than the main batch of Second Professional Course in MBBS course at S.N. Medical College, Agra."

2. Before we summarize the submissions which have been urged by the learned Senior Counsel appearing for the petitioners and the learned Standing Counsel, it would be necessary for the Court to refer to the relevant provisions of the Regulations which have been framed on Graduate Medical Education by the Medical Council of India under Section 33 of the Indian Medical Council Act, 1956. These Regulations, which are called the Regulations on Graduate Medical Education, 1997 inter alia contain certain provisions which are relevant to the controversy. Regulation 7(1) provides as follows:

"7. Training Period and Time Distribution

(1) Every student shall undergo a period of certified study extending over 4 1/2 academic years divided into 9 semesters (i.e. of 6 months each) from the date of commencement of his study for the subjects comprising the medical curriculum to the date of completion of the examination and followed by one year compulsory rotating internship. Each semester will consist of approximately 120 teaching days of 8 hours each college working time, including one hour at lunch."

3. The period of 4 1/2 years for the MBBS Degree Course is divided into Phase-I which consists of two semesters and Phase-II which consists of three semesters. Regulation 7(7), prior to its amendment on 19 April 2010, provided as follows:

"(7). Supplementary examination may be conducted within 6 months so that the students who pass can join the main batch and the failed students will have to appear in the subsequent year."

4. On 19 April 2010, Regulation 7(7) was amended by the Regulations on Graduate Medical Education (Amendment), 2010. The amended Regulation 7(7) provides as follows:

"7(7). The supplementary examination for 1st Professional MBBS examination may be conducted within 6 months so that the students who pass can join the main batch and the failed students will have to appear in the subsequent year provided that the students who pass the supplementary examination shall be allowed to appear in the second professional MBBS examination only after he/she completes the full course of study of three semesters (i.e. 18 months) for the second professional MBBS examination irrespective of the examination of the main batch."

5. Now it is in this background that the submissions of learned Senior Counsel for

the petitioners would have to be noticed. On behalf of the petitioners, it has been submitted that: (i) under Regulation 7(7) it is contemplated that the supplementary examination for the First Professional MBBS Examination should be conducted within six months so that students who pass the examination can join the main batch; (ii) Regulation 7(1) provides that each semester will consist of approximately 120 teaching days of 8 hours each and Regulation 7(5) stipulates that didactic lectures should not exceed one third of the time schedule; (iii) if these Regulations are read together, the intent appears to be that the result of a supplementary examination should be declared upon the examination being conducted within six months so that students who had failed earlier but had passed the supplementary examination can join the main batch without the loss of a year; (iv) the petitioners should, in the circumstances, be allowed to pursue their studies for the Second Professional Examination together with the other students who had passed the First Professional Examination in the first attempt and be permitted to appear at the said examination with their batch so as to obviate a loss of time.

6. As we construe the Regulations, it must at the outset be understood that the purpose and object of Regulation 7 is to ensure that a student undergoes a specified period of certified study which would truly equip the student in becoming a qualified medical professional. It is in that perspective that the Regulations prescribe the total duration of study; its division into semesters; the duration of each semester and the contents of the course of studies during a semester. Regulation 7(1) prescribes that every student must undergo a period of certified study which extends over 4 1/2 academic years which are divided into 9 semesters, each of 6 months. Consequently, the clear requirement is that each semester should be over a period of six months. Regulation 7(1) then provides an approximation of 120 days of teaching, each of eight hours, within a semester. The use of the expression "approximately" is suggestive of the fact that the requirement of 120 teaching days is subject to a minor variation but, so that the main purpose of the provision is not ignored. Regulation 7(7), as amended, provides an additional facility of a supplementary examination for students who have appeared at the First Professional MBBS examination. But for such a facility, a student having once failed would not be entitled to appear or claim the benefit of a supplementary examination and would have to appear in the normal course in the examination held in the subsequent year for the First Professional MBBS students. However, the said Regulation grants a facility of allowing students of the First Professional MBBS Examination a chance to appear in the supplementary examination, and it has been stipulated that a supplementary examination should be conducted within six months in order to give a chance to the students to pass the examination and to join the main batch. However, the proviso to Regulation 7(7) clearly indicates that this is subject to the overriding requirement that a student who passes the supplementary examination would be allowed to appear in the Second Professional MBBS Examination only after completing the full course of study of

three semesters of 18 months, irrespective of the examination of the main batch. Regulation 7(7), therefore, leaves no manner of doubt that a facility is granted to students for appearing in the supplementary examination and an effort should be made to ensure the holding of the supplementary examination within six months" so as to allow the students to join the main batch upon passing the examination. The use of the word "may" is indicative of the position that the holding of a supplementary examination within six months" is a desired goal so that students who pass it can join the main batch. But, this is subject to the overriding condition that such students must complete a full course of study of three semesters spread over eighteen months" irrespective of the examination of the main batch. The student must complete the academic requirements before entering upon the second professional examination.

7. In view of the clear stipulation contained in Regulation 7(7), it would not be open to the Court to issue a mandamus, the effect of which would be to dilute the prescription contained in Regulation 7(7) that before a student can be allowed to appear in the Second Professional Examination, a full course of study spread over three semesters of eighteen months" duration must be completed. This requirement cannot be diluted by taking recourse to the provisions of Regulation 7(1) in so far as they provide that each semester will consist approximately of 120 teaching days of 8 hours each, thereby reducing the number of months for the completion of the semester from six months to four months. That would be impermissible.

8. Moreover, the reference in Regulation 7(1) is to 120 teaching days. Obviously, neither the academic authorities nor the teaching faculty can be compelled to teach students without availing of the normal holidays and days of break. Be that as it may, we are of the view that under Article 226 of the Constitution, the High Court should not adopt any interpretation which would dilute the observance of standards for professional education. Moreover, in the present case, the plain and literal meaning of the Regulation is clear and is not ambiguous so as to call for any interpretational exercise.

9. A judgment of a Division Bench of this Court can be referred to at this stage, though we are conscious that in 1986 when this decision was rendered, the Regulations of 1997 were not in force. However, we consider it appropriate to refer to the decision to indicate the approach of the Court in a similar case and since the principles which have been laid down therein can be adopted in the situation which has arisen in the present case. In *Vinod Kumar and others v. Principal G.S.V.M. Medical College, Kanpur*, 1986 UPLBEC 540, a group of students failed in the First Professional MBBS Examination and appeared in the supplementary examination held six months later in which they were successful. The students approached the High Court with a case that they may also be permitted to appear in the examination alongwith their batch-mates who had passed the First Professional Examination in the first attempt. A writ of mandamus was sought to the Principal of the Medical College to accede to the

request. The petition was contested on the ground that under the recommendations of the Medical Council of India the duration of the MBBS Course is of 4 1/2 years, which is divided into three professional examinations to be conducted at an interval of 1 1/2 years and after passing the first professional examination a student has to undergo three years' training in paraclinical and clinical subjects.

10. The Division Bench, while declining to accede to the prayer before the Court by the students, held as follows:

"5. We find it difficult to accept the argument advanced on behalf of the petitioners. The statutory provisions have to be interpreted according to the normal and well known rules of interpretation of statutes. To accept the argument of the petitioners' learned counsel is to altogether over look and eliminate from consideration, the provisions relating to the duration of studies intervening the first professional examination and the second professional examination. This is obviously neither possible nor proper for this Court to do. The subject-matter of controversy relates to the field of Medical Education and the two conditions, though inter related in a way, are surely distinct and separate. Both the conditions have been laid down as statutory conditions in the form of statutes of the University on the basis of the recommendations of the Medical Council of India which as the statutory body entrusted with the task of regulation and maintenance of requisite standards of Medical Education. Courses of studies in a Medical College are conducted in a regulated systematic manner laying down the number of the classes to be taken daily weekly subjectwise involving various teachers, teaching hours, holidays including periodical vacations etc. This has relevance to the relationship with the requirements and regulation of work load connected also with the maintenance of the efficiency and convenience of the teachers and other connected staff. To compel the Medical College Authorities to arrange the special classes would entail obvious practical difficulties besides involving non-compliance of the statutory provision.

6. Learned counsel for the petitioners has failed to satisfy us as to the existence of any legal rights involved in favour of the petitioners; in fact this is not a case where invasion of any legal rights of the petitioners or breach of any statutory requirements is involved: what is sought in the other hand is that Principal of Medical College may be directed to act against the statutory requirements which he as important academic and administrative functionary is expected and required to enforce and carry out. No mandamus can be issued to direct the Principal to act against the law which he is bound to obey and carry out. If the petitioners cannot appear at the second professional examination alongwith their original batchmates it is because of something accountable to them because they failed in some of the subjects at the first professional examination and as a result could not attend the classes alongwith their batchmates from the very beginning of the course of studies for the second professional examination."

11. We are in respectful agreement with the judgment of the Division Bench. The

judgment of the Division Bench has also been followed in a judgment of a learned Single Judge of this Court by one of us (Hon''ble Dilip Gupta, J.) in Arvind Gautam and 13 others v. State of U.P. and others, Writ C 20422 of 2009 decided on 1 September, 2009. For these reasons, we are unable to grant the reliefs sought in these proceedings. If the petitioners have duly passed the First Professional Examination, they would necessarily have to abide by the discipline of the Regulations in so far as the completion of the requirements for appearing at the Second Professional Examination are concerned and even thereafter.

The petition is, accordingly, dismissed.