

(2017) 11 DEL CK 0567

In the Delhi High Court

Case No : Letter Patent Appeal No. 706 Of 2017

Guru Gobind Singh Indraprastha

APPELLANT

Vs

Alok Bansal & Ors

RESPONDENT

Date of Decision : 09-11-2017

Acts Referred:

Citation : (2017) 11 DEL CK 0567

Hon'ble Judges : S. Ravindra Bhat, J;Sanjeev Sachdeva, J

Bench : Division Bench

Advocate : Mukul Talwar, Anita Sahani, Akhil Sibal, Shivendra Singh, Javedur Rahman, Jahnvi Mitra, Aditi Phatahk, T. Sighdev, Priak Thansangi, Tarun Verma, Vikram Jetly

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J

CAVEAT No.953/2017

Since learned counsel for the respondent No.1/caveator enters appearance, the caveat stands discharged. CM No.39908/2017 (exemption)

Exemption is allowed subject to all just exceptions.

LPA 706/2017 & CM No.39907/2017 (for interim orders)

1. Guru Gobind Singh Indraprastha University (hereinafter referred to as 'the University') has filed the appeal aggrieved by the judgment of a

learned Single Judge partly allowing the respondents/writ petitions (hereinafter referred to as 'candidates').

2. The candidates had appeared in the final MD examination in June 2017. The grievance was that the practical examination conducted by the

University was violative of the Regulation 14 read with Appendix II of the Post

Graduate Medical Education Regulations, 2000. In short, the regulation required that out of 4 examiners, at least 50% i.e. 2 had to be external and these external examiners were to be from recognized universities outside the State.

3. In this instance, instead of 2 external examiners, one of the two external examiners was from outside the University but within the State, contrary to the Regulation. The candidates' specific grievance was that the result was incommensurate with that declared by the University for the Theory Papers. Apparently, 50% of the candidates from the concerned institution i.e. Safdarjung Hospital were declared to have been unsuccessful/failed in the practical examination. According to the scheme of examination, the maximum marks that can be given out of 800 marks are evenly distributed between the theory papers and practical papers; the maximum marks required in both the papers are 50% each. According to the material made available to the learned Single Judge, only 50% of the candidates could qualify in the practical examination, on the other hand, in the theory papers most candidates appeared to have fared better; 18 of 20 of them were declared passed.

4. Mr. Mukul Talwar, learned senior counsel for the University urges that the interpretation adopted by the learned Single Judge, i.e, that the Regulation 14, places a binding obligation to ensure that, at all times, at least 50% of the external examiners, for any given test/exam are to be from outside the State, is contrary to the text of the provisions. He highlighted that the concerned Regulation is not mandatory and emphasised upon the expression 'ordinarily'.

5. It was argued secondly that the learned Single Judge fell into error, declaring that the examination in part, so far as the practical papers are concerned, had to be done all over again in terms of the Regulations even while directing that for the purpose of a theory paper an answer sheet already submitted by the aforesaid six petitioner be re-evaluated by the same set of examiners. It was submitted that this upholding of the part of the examination even while declaring the other part void, is not supported by the Regulation 14.

6. Mr. Akhil Sibal, the learned senior counsel for the respondent/candidates, on the other hand, urges that this Court resist from interfering with the

impugned order and submitted that the course adopted by it was based upon an interpretation given by several High Courts in their judgments.

Learned senior counsel for the respondents/candidates points out that the judgments were, in fact, relied upon by the learned Single Judge.

7. In the present case, the Regulation " as amended with effect from 20.10.2008, reads as follow:-

14. EXAMINATIONS

The examinations shall be organised on the basis of grading or making system to evaluate and certify candidates level of knowledge, skill

and competence at the end of the training and obtaining a minimum of 50% marks in theory as well as practical separately shall be

mandatory for passing the whole examination. The examination for M.S., M.D, M.Ch shall be held at the end of 3 academic years (six

academic terms) and for diploma at the end of 2 academic years (four academic terms). The academic terms shall mean six months training

period.

The above clause 14 is substituted in terms of Gazette Notification published on 20.10.2008 and the same is as under:-

"The examinations shall be organised on the basis of Grading or Marking system to evaluate and to certify candidate's

level of knowledge, skill and competence at the end of the training. Obtaining a minimum of 50% marks in 'Theory as well as

Practical' separately shall be mandatory for passing examination as a whole. The examination for M.D./ MS, D.M., M.Ch shall be

held at the end of 3rd academic year and for Diploma at the end of 2nd academic year. An academic term shall mean six month's training

period.

(1) EXAMINERS

(a) All the Post Graduate Examiners shall be recognised Post Graduate Teachers holding recognised Post Graduate qualifications in the

subject concerned.

(b) For all Post Graduate 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 other recognized universities from outside the State. Two sets of internal examiners may be appointed

one for M.D./M.S. and one for diploma.

(c) Under exceptional circumstances, examinations may be held with (three) examiners provided two of them are external and Medical

Council of India is intimated the Jurisdiction of such action prior to publication of result for approval. Under no circumstances, result shall

be published in such cases without the approval of Medical Council of India.

(d) In the event of there being more than one centre in one city, the external examiners at all the centres in that city shall be the same. Where

there is more than one centre of examination, the University shall appoint a Supervisor to coordinate the examination on its behalf.

The above clause 14.1(d) is deleted in terms of Gazette Notification published on 20.10.2008.

(e) The examining authorities may follow the guidelines regarding appointment of examiners given in Appendix-I.â??

8. The relevant part of the Regulation, which stood substituted with amendment to Appendix II, with effect from 20.10.2008, i.e. the amended Clause

3 of the Post Graduate Examination Guidelines on appointment of Post Graduate Examiners (Appendix II of the Regulation) reads as follows:-

â??There shall be at least four examiners in each subject at an examination out of which at least 50% (Fifty percent) shall be external

examiners. The external examiner who fulfils the condition laid down in clause -1 above shall ordinarily be invited from another recognised

university, from outside the State, provided that in exceptional circumstances examination may be held with 3 (three) examiners if two of

them are external and Medical Council of India is initiated which the justification of such examination and the result shall be published in

such a case with the approval of Medical council of India.â??

9. Facially, there appears to be some merit in the submission of the University that the conscious inclusion of the term â??ordinarilyâ? relieves the

rigger of an invariable condition that at least two examiners are to be from outside the State. What was urged by the University was that, having

regard to the terms of the Regulations, once the Court concludes that the examination is not in conformity with the Regulation â?" which it did, at the

present instance, by holding that, in the absence of 50% of the examiners from outside the State vitiate a part of the process i.e. the practical test, it

could not have segregated the results merely at the asking of the candidates.

10. During the course of hearing, what emerged was that the paper setting for the theory part of the examination, might well have involved other

examiners. There was no clarity as to the identity of the paper setter " On the one hand, it could be the internal examiners, equally, there could also

have been external examiners.

11. In these circumstances, the learned Single Judge, even while concluding that the breach of the Rules, to the extent that they mandate an

unalterable condition with respect to the evaluation by two external examiners outside the State, yet maintained that part of it need not have been

disturbed having regard to overall result.

12. The Court is of the opinion that the question as to whether consent was given on behalf of the University or the MCI need not further be gone

into.

13. In the peculiar circumstances of the case, specially, having regard to the nature of the practical result (as many as 50% of the candidates, having

declared unsuccessful in that part of the examination), this Court is not inclined to interfere. Whilst, logically, it is unsatisfactory to declare a part of the

examination as unlawful upholding the other part of the examination, yet, the Court cannot be oblivious to the entire circumstances of the case.

14. The Single Judge had directed as follows:-

31. Accordingly, this Court in its discretion directs respondent no. 1 along with respondent no.3 to conduct a fresh examination in the

practical/clinical and oral course for the aforementioned six petitioners. For the theory paper already answered by the petitioners, re-evaluation

(by the same set of examiners who will conduct the practical/clinical and oral examination) will be carried out. This will answer the

objection of the respondent that the examination has to be conducted as a whole i.e. theory and the practical together (in conformity with

the clarification in terms of the minutes of the meeting dated 30.12.2016 of the MCI). The said examination of the petitioners be conducted

within an outer limit of three months from today. Necessary examiners (both external and internal) shall be appointed as per the statutory

regulations and this exercise shall be completed by the respondent university in consultation and in conformity with respondent no.3. The

result will also be announced within that period.â??

15. In the peculiar circumstances of the case, even while holding that the expression "ordinarily" in the given set of circumstances, absolved

the University, for the examination conducted, from the necessity of involving external examiners for any part of the examination process,

nevertheless, in the facts of the present case, this Court is of the opinion, that the directions given do not call for interference.

16. The appeal is therefore dismissed in the above terms.

17. In these circumstances, this question of law is kept open.