

(2010) 07 KL CK 0192

In the High Court Of Kerala

Case No : Writ Petition (C) No's. 29760 of 2008 and 4057 of 2010

Justeena Joseph

APPELLANT

Vs

Mahatma Gandhi University

RESPONDENT

Date of Decision : 01-07-2010

Acts Referred:

Indian Medical Council Regulations, 1997 — Regulation 12(2), 12(3)

Citation : (2010) 4 ILR (Ker) 314 : (2010) 3 KLT 916

Hon'ble Judges : K.T. Sankaran, J

Bench : Single Bench

Advocate : Kurian George Kannanthanam, Tony George Kannanthanam and Raynold Fernandez, for the Appellant; Alexander Thomas and T.A. Shaji, for the Respondent

Final Decision : Allowed

Judgement

K.T. Sankaran, J.—The question which arises for consideration in these Writ Petitions is whether a candidate appearing for M.B.B.S. examination should secure the required 35% marks in internal assessments in all the subjects to enable him to appear for the examinations; or whether he can appear for the examinations in the subjects in which he has secured the required minimum 33% marks in the internal assessments.

2. The petitioners in W.P.(C) No. 29760 of 2008 are M.B.B.S. students in Malankara Orthodox Syrian Church Medical College, Kolenchery. In the First Year Examination, they secured the required minimum 35% marks in internal assessment in some out of the three subjects but not in all. Applications were forwarded by the Principal for registering the students for first year M.B.B.S. examination. The University returned the applications of the petitioners on the ground that they did not secure 35% marks in internal assessment in all the three papers and on the ground that they applied for registration for the first time for the first year M.B.B.S. examination.

3. The petitioner in W.P.(C) No. 4057 of 2010 had passed the first year M.B.B.S. examination. He applied for the second professional examination, but his application was not forwarded by the Principal to the University for registration on the ground that the petitioner did not secure 35% marks in internal assessment in all the papers. According to the petitioner, he has secured 35% marks in internal assessment in Pathology and Forensic Medicine, but he did not get the required 35% minimum marks in Pharmacology and Microbiology. According to the petitioner, he is entitled to appear for the examinations in the subjects for which he secured 35% minimum marks in the internal assessment.

4. Interim orders were passed in the Writ Petitions enabling the petitioners to appear for the examinations. In W.P.(C) No. 29760 of 2008, results were directed to be published while in W.P.(C) No. 4057 of 2010, in the interim order it was provided that the appearance of the petitioner for the examination will be at the risk of the petitioner and the results would be withheld.

5. The relevant regulation under the "Regulations Scheme and Syllabus for M.B.B.S." issued by the Mahatma Gandhi University reads as follows:

The student must secure at least 35% marks of the total marks fixed for internal assessment in a particular subject in order to be eligible to appear in final university examination of that subject.

It is stated that the Regulation issued by the MCI is also similarly worded.

6. According to the petitioners, the Regulation is clear and unambiguous. A candidate who secures the required minimum 35% marks in the internal assessment would be entitled to appear in the final university examination for that particular subject. No other interpretation is possible in respect of the Regulation quoted above. The stand taken by the Medical Council of India, according to the counsel, is that it is not necessary that a candidate appearing for the examination should secure 35% marks in the internal assessment in all the subjects, to enable him to appear for any of the examinations. According to the M.G. University, the candidate must secure 35% marks in the internal assessment in all the subjects and unless and until he gets the same, he would not be permitted to appear for the examination in any subject. It is also submitted by the Standing Counsel for the M.G. University that hitherto no such candidate was allowed to appear for the examination by the University and this is for the first time such a contention is put forward by some students. It is also submitted that there is no precedent of having granted part registration to M.B.B.S. examination in the University in favour of any student on first appearance.

7. Sri. T.A. Shaji, learned Standing Counsel appearing for the University, submitted that the Regulation is intended to achieve high level of learning for the candidates. Therefore, it cannot be assumed that a candidate who has not secured the minimum required marks in one subject could be allowed to appear for the other subjects in which he has secured the minimum required marks.

According to the counsel, if M.B.B.S. students are permitted to appear for different papers compartmentally for the first regular appearance, it would tempt the students to take the course in a lighter mood, which would lower the quality of medical education.

8. In the counter affidavit filed by MCI, it is stated thus:

20. The contention raised by the Petitioners that the University is taking stand that unless the student secures 35% marks in Internal Assessment for all subjects, he will not be eligible for any of the exam at all. It is respectfully submitted that each candidate in the M.B.B.S. Course, as per the statutory regulations of the Council, has to secure the minimum prescribed marks in the internal assessment for becoming eligible to appear in the Final University examination of that subject. It is further submitted that as per Clause 12(2)(v) of the MCI Regulations, 1997, for becoming eligible to undertake the university examination, the Petitioners are required to secure minimum of 35% of marks in the Internal Assessment. Thereafter, the result shall be computed by undertaking the process as prescribed in Regulation 12(3) wherein for passing the examination, each candidate must obtained 50% in aggregate with a minimum of 50% in Theory including orals and minimum of 50% in Practicals/Clinicals.

21. It is respectfully submitted that passing of the subjects in the MBBS examinations, is to be determined in accordance with the provisions of Regulations 12(2) and 12(3) etc. of 1997 Regulations of the MCI. The stand taken on behalf of the University, in the most humble submissions on behalf of MCI is not in conformity with the statutory regulations. The permission to the Petitioners to appear in the Examination by the Respondent University, is required to be computed in accordance statutory mechanism incorporated in MCI Regulations mentioned and explained hereinabove.

22. It is respectfully submitted that as per the scheme prescribed by the 1997 Regulations, only two passing heads namely Theory and Practical/Clinical have been identified. The condition to secure minimum of 35% marks in the internal assessment is for determining the eligibility of a candidate to undertake the university examination and is not separate heads for computation of the result in accordance with Clause 12(2) read with 12(3) of the 1997 Regulations of MCI.

23. It is respectfully submitted that where the scheme of distribution of marks prescribed in accordance with law, is self explanatory, any attempt to stretch or alter the meaning of the rules thereunder, either by interpretation or otherwise is not permissible and should be avoided. Consistency, in making and processing of examination results is not only desirable, it is the sine qua non for the maintenance of University of standards of assessment. Once a clear and precise scheme has been prescribed for the same, it should not deviate from and any attempt to do so needs to be checked in its very inception.

9. On a plain reading of the Regulations, there cannot be any doubt that a candidate need not secure the minimum required marks in internal assessment

in all the subjects to enable him to appear for even the subjects in which he had secured the required minimum marks. The relevant Regulation contains two parts. The first part of the Regulation insists that the student must secure 35% marks in internal assessment in a particular subject. The second part further provides that the same is the eligibility for a candidate to appear for the final University examination in respect of that subject. If the intention was that the candidate should secure the minimum marks in all the subjects to enable him to appear for the examination even in one subject, there was no difficulty at all to make it clear. On the other hand, the Regulation makes it so clear that the thrust is on the particular subject and not the whole examination of a particular year. There is no logic in assuming that the standard of medical education would fall or rise depending on the basis of the marks secured in internal assessment by a candidate by piecemeal in each subject or in all the subjects at the same time. Had it been the intention of MCI that a candidate should not be allowed to appear compartmentally for the examination, there was no difficulty for making a provision for the same. Not only that the Regulation does not prohibit a candidate from appearing for a particular subject or different subjects, but there is no provision in the Regulation providing that a candidate appearing for the examination should be eligible to appear for the examination in all the subjects. No such stipulation is made by the MCI as well. If the MCI and the University were particular that a candidate who did not secure the required minimum marks in internal assessment even in one subject should not be allowed to appear for the final examination for the first time, they should have provided so in clear terms in the Regulations.

10. On a consideration of all the materials on record, I have no hesitation to hold that the petitioners were entitled to appear for the examinations in the particular subjects in which they secured the required minimum 35% marks in internal assessment. Therefore, their results are liable to be declared, if they had appeared for the examinations pursuant to the interim orders passed by this Court.

The Writ Petitions (Civil) are allowed as above.