
(2008) 01 MP CK 0075

In the Madhya Pradesh High Court

Muniraj Patel and Others, Ankur K. Jain and Another and Ku.
Anisha Khan and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 22-01-2008

Acts Referred:

Citation : AIR 2008 MP 241 : (2008) ILR (MP) 1377 : (2008) 1 MPHT 529

Hon'ble Judges : S.C. Sharma, J;Dipak Misra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Dipak Misra, J.—Regard being had to the similitude of the controversy involved in this batch of writ petitions they were heard analogously together and disposed of by this singular order. For the sake of convenience the facts in Writ Petition No. 687/2008 are exposted herein.

2. The petitioners, eight in number, are the students of second professional course prosecuting their studies in MGM, Medical College under Devi Ahiliyabai Vishwavidyalaya, Indore. They joined the College in MBBS course in 2005 and appeared in the first professional examination in the month of August, 2006. Result of the said examination was declared on 19-9-06 in which the petitioners were declared as failed. They were directed to appear in the supplementary examination. The supplementary examination was held in February, 2007 and the results were declared on 22-3-2007 in which the petitioners qualified.

3. It is averred in the petition that the petitioners cleared the examination of MBBS first professional course on 22-3-2007 since there was supplementary examination in one paper all the students started attending classes along with the second batch. As they had attended the classes they have not lost any class nor any period of study prescribed by the Medical Council of India. It is urged that though the petitioners have completed their course and classes within the time along with other students belonging to the main batch, yet they are being

treated in the detained category and not allowed to undertake the examination of MBBS second professional course which is to be held in February, 2008. The last date of filling up the forms has been fixed on 15-1-2008. It is contended that if the petitioners are not allowed to appear in the examination scheduled to be held in February, 2008 they would unnecessarily lose one full academic session. It is contended that if the Regulations of Medical Council of India are read and appreciated in proper perspective the petitioners would be treated to have been merged in the main batch of the MBBS second professional course and hence, they are entitled to appear in the examination. It is also highlighted that they had attended the classes immediately and they stand on different footing than those who had not passed the supplementary examination. Reliance has been placed on regulations framed by the Medical Council of India in the year 1997 which provide every student is required to undergo a period of certified study extending over 4\\academic years divided into nine semester of six months each from the date of commencement of study for the subjects comprising the medical curriculum followed by one year compulsory internship. Special emphasis has been placed on Clause 7 of the Regulations to pyramid the stand that a candidate who passes in the supplementary examination held within six months can join the main batch and his case is distinguishable from that of failed students who have not cleared the supplementary examination. It is also highlighted that the respondents have committed illegalities in not allowing the petitioners to take up the main examination by relying on 2000 Regulations, which have not yet come into force. It is contended that a representation has been made to the Medical Council of India but there has been no response. It is asseverated that they have attended the classes in a regular manner and not lost any single day of study/classes. It is putforth that because of the attitude reflected by the respondents the petitioners are losing one year as they are not being treated at par with the students of main batch. In this factual backdrop prayer has been made to issue a writ of mandamus to command the respondents to merge the petitioners with the main batch of MBBS second professional course and allow them to appear in the examination with the said batch by filling up the forms.

4. When the writ petition was listed on 18-1-2008 before this Court notices were issued and response was called for from the State Government, Medical Council of India and the concerned College and the Universities. At that stage a prayer was made to grant of interim relief by permitting the petitioners to fill up the forms to appear in the examination. In view of this it was thought apposite to hear the matter finally.

5. Learned Counsel for the parties fairly agreed that the University has no role in the matter and, in fact, it is the regulations framed by the Medical Council of India, which requires to be interpreted. As a pure question of law emerged the learned Counsel for the parties agreed to argue the matter without filling any counter affidavits.

6. We have heard Mr. Aditya Sanghi, learned Counsel for the petitioners, Mrs. Indira Nair, learned Senior Counsel along with Ms. Jasmeet Chana for the Medical Council of India and Mr. P.N. Dubey, learned Dy. Advocate General for the State.

7. The seminal question that emerges for consideration is whether the Regulations framed by the Medical Council of India permit such computation of the period. Under the heading "Training Period and Time Distribution" the regulation prescribes that every student shall undergo a period of certified study extending over four and half academic years divided into 9 semesters, Le., six months each from the date of commencement of his study for the subjects comprising the medical curriculum to the date of completion of examination and followed by one year compulsory rotating internship. Each semester has to consist of approximately 120 teaching days. The period of four and half years is divided into three phases. Phase I consists of two semesters, Phase II consists of three semesters and Phase III as the regulation prescribes the continuation of study of clinical subjects for seven semesters after passing Phase I. The Sub-regulation (3) which is relatable to Training Period and Time Distribution stipulates that the first two semesters approximately 240 teaching days shall be occupied in the Phase I pre-clinical subjects and introduction to a broader understanding of the perspectives of medical education leading to delivery of health care. The said clause clearly stipulates that no student shall be permitted to join Phase II para-clinical/clinical group of subjects until he has passed in all the Phase I pre-clinical subjects for which he will be permitted not more than four chances (actual examination) provided four chances are completed in three years from the date of enrollment. Clause 4 stipulates that after passing pre-clinical subjects, one and half year (three semesters) shall be devoted to para-clinical subjects. Clause 7 of the same which is relevant for the present purpose reads as under:

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.

8. It is worth noting here that under the said clause there is a Table which deals with Phase distribution and timing of examination. The time distribution is in three spells and each spell is of six months. A note is appended to Clause 7. The note (a) reads as under:

(a) Passing in 1st Professional is compulsory before proceeding to Phase II training.

9. Submission of Mr. Sanghi, learned Counsel for the petitioners is that if a candidate fails in the main examination and passes in the supplementary examination and joins he would be entitled to join in main branch so that the course is completed within the stipulated period of four and half years. It is the submissions that for the said purpose supplementary examination is to be conducted within six months so that the students can pass and join the main

branch. Learned Counsel further propounded that there is distinction between the candidates who pass the supplementary examination and those who fail in the supplementary examination but, the College has not permitted the students to fill up the forms for the main branch.

10. Per contra, Mrs. Indira Nair, learned Senior Counsel for Medical Council of India and Mr. P.N. Dubey, learned Dy. Advocate General would submit that the note appended to the Rules has its own sacrosanctity. It clearly lays down that passing in the Phase I course is compulsory before proceeding for Phase II Training. It is urged by Mrs. Nair that one may join the main branch for the purpose of having acquisition of knowledge in the course and not to have the mid term disturbance but he cannot be treated as a candidate who has completed six months training as if he has passed the main examination. Learned Senior Counsel submitted that the joining of main branch cannot be made equivalent to passing of courses in question. It is not in dispute that the petitioners have passed in the supplementary examination and the result were declared on 22-3-2007. The said examination relates to first Professional Course as per the Note. The Note is categorical and unambiguous. Clauses 3,7 and Note (a) have to be read in a purposive manner.

11. A Division Bench of this Court in *Gaurav Awasthi and Ors. v. State of M.P.* and Ors. W.P. No. 15447/2006 was also dealing with the Regulations on Graduate Medical Education, 1997. The Division Bench after referring to the regulations also referred to the Ordinance No. 59 of Vikram University which provides that the Second Professional Examination can be taken by the students in 18 months after commencement of study of Phase II in certain subjects. The Bench has held as under:

It is thus clear that on 1-11-2006 when the Second Professional Examination took place, the petitioners were not eligible to appear in the Second Professional Examination as per the regulation made by Medical Council of India and the ordinance made by the Vikram University.

12. Submission of Mr. Sanghi, learned Counsel for the petitioner is that the decision is distinguishable as the University had an ordinance and in the case at hand the University has no role to play. As has been indicated earlier, we are really concerned with the regulations of the Medical Council of India. The note appended to Clause 7 clearly postulates that one can attend the Phase II training after passing of First Professional Courses. The word "Training" has its own significance. A learned Single Judge of this Court in the case of *Kamlesh Kumar Bhilware and Anr. v. State of M.P. and Ors.* W.P. No. 574/2002 held as under:

8.... Regulation 7 nowhere says that the moment a student clears the supplementary examination of IInd year. It is an enabling provision and that too in relation to allowing the student to attend the classes alongwith the main batch of IInd year. Attending classes is one thing and to become eligible in appearing in the examination is altogether different thing. So long as the student does not

complete 18 months in regular studies in IInd year as provided in Regulation, whether as a student coming from supplementary stream or otherwise, he has not right to appear in the examination. Indeed, there cannot be a compromise on the requirement prescribed for eligibility criteria. After all, these regulations which have a statutory force and binding effect both on institution imparting education as also on students are meant for strict observance and cannot be allowed to be deviated. The Courts cannot interpret the statutory regulations in a way which may result in relaxation of education standard and the norms.

13. In our considered opinion, the view expressed by the learned Single Judge in Kamlesh Kumar Bhilware (*supra*), is sound and correct and we concur with the same. Similar view has been expressed by a Division Bench of High Court of Punjab and Haryana in *Amarbir Singh and Ors. v. Baba Farid University and Ors.* C.W.P. No. 17899/2004 wherein it has been observed as under:

The question to be considered is whether the petitioners should complete the curriculum of 18 months of the second professional MBBS course, after having qualified the first professional examination of the MBBS course, so as to attain eligibility to appear in the second professional MBBS examination; or the curriculum of the second professional MBBS curriculum attended by the petitioners provisionally, either on account of the admission granted to them by the institutions where they were pursuing their education or by interim orders passed by this Court, prior to having qualified the first professional examination of the MBBS course, should be clubbed with the course of studies pursued by them after they qualified the first professional MBBS examination, to compute the minimum prescribed training period of 8 months so as to attain eligibility to appear in the second professional MBBS examination.

14. Thus, the terminology "joining of main branch" cannot be given undue emphasis and if the principles of purposive construction is applied we have no hesitation in holding that the petitioners cannot be permitted to appear in the examination unless they complete 18 months regular training and pass the First MBBS course.

In view of aforesaid premises, the writ petitions, being sans merit, stand dismissed without any order as to costs.