

(1996) 08 KAR CK 0080
In the Karnataka High Court
Case No : WP. 13952 of 1996

Neeraj Kaul

APPELLANT

Vs

Kuvempu University and Others

RESPONDENT

Date of Decision : 13-08-1996

Acts Referred:

Indian Medical Council Act, 1956 — Section 33
Karnataka State Universities Rules, 1976 — Rule 2

Citation : (1996) ILR (Kar) 3130 : (1996) 7 KarLJ 84

Hon'ble Judges : G.C. Bharuka, J

Bench : Single Bench

Advocate : Neeraj Kaul, Party in Person, for the Appellant; V.C. Brahmarayappa, for R-1, for the Respondent

Judgement

G.C. Bharuka, J.—Petitioner had appeared in the final MBBS examination in the month of February 1996. Statement of marks dated 3.4.1996 obtained by the petitioner pertaining to the said examination which has been placed at Annexure-A shows that out of three subjects, namely Medicine, Surgery and Obstetrics & Gynaecology (for short "O & G"), petitioner was declared failed in the first subject, namely Medicine.

2. The marks obtained by the petitioner is to the following effect:

Subject

Written

Oral

Internal Assessment

Total

Remarks Result

Max/Min Marks

Marks Obtd.

Max. Marks

Marks Obtd.

Max. Marks

Marks Obtd.

Max/Min Marks

Marks Obtd.

Medicine

Theory

Paper-I

80

82

60

33

40

28

260/130

143

Paper-II

80

Clinical

80

32

20

14

100/50

46

Total

360

189

Fail
Surgery
Theory
gery
Paper-I
80
64
102
60
33
40
24
260/130
159
Paper-II
80
Clinical
80
44
20
15
100/50
59
Total
360
218
Pass
0 & G Theory
80
32

46
30
21
20
12
130/65
79
Clinical
40
24
10
06
50/25
30
Total
180
109
Pass
Total of Part-II
900
516

3. From the above table of marks, it is clear that the subject "Medicine" consisted of two parts, namely Theory and Clinical having separate pass marks. Theory paper carries 260 marks out of which minimum 130 marks was required for being declared pass. Similarly, Clinical paper carries 100 maximum marks having 50 as Pass marks. Thus the subject medicine was of total 360 marks, but for passing in the said subject the candidate has to separately pass in both the parts of the subject.

4. In the present case, since the petitioner could secure only 46 against 50 in Clinical, he was declared failed.

5. Under the aforesaid circumstances, father of the petitioner wrote a letter dated 20th April 1996 to the Vice - Chancellor of the Kuvempu University requesting him to award five grace marks in the said subject keeping in view the

recommendations of the Medical Council of India (M.C.I, for short). But it was communicated on behalf of the Vice-Chancellor under reply dated 3.5.1996 (Annexure-E) that since the said recommendations of the M.C.I., has not been adopted by the Kuvempu University, no benefit can be granted on that basis. Father of the petitioner then filed a representation before the Chancellor but the same also proved to be futile as is evident from the reply dated 7.5.1996 sent by the Deputy Secretary to Governor of Karnataka, Bangalore (Annexure-G). Relevant portion of the said communication reads thus:

"Universities of Karnataka do not have common regulations regarding award of grace marks. Each University follows its own regulations framed in this regard as contemplated in the Karnataka State Universities Act.

J.M.M. Medical College where your son is studying is affiliated to Kuvempu University and as per the existing regulations of that University (copy enclosed) Neeraj is eligible to get 3 grace marks which will take his total to 49%. The minimum marks to be scored to pass the examination is 50%. The guidelines issued by the Medical Council of India is recommendatory in nature and these recommendations cannot be implemented until they are incorporated in the regulations by the respective Universities. The Governor who is also the Chancellor of the Universities cannot issue any instructions to the Vice-Chancellor contrary to these regulations.

I have discussed all these issues with Neeraj when he had visited Raj Bhavan recently and he appeared to have been convinced regarding the provisions."

6. Faced with the said situation, petitioner has now come up before this Court seeking following reliefs:

"(a) To declare the Petitioner successful in MBBS examination held in February-1996;

(b) To quash Annexure-E dated 3.5.1996 and Annexure-G dated 7.5.1996;

(c) To quash the regulations framed by the University which are not in conformity with Medical Council of India recommendation;

(d) To direct respondent Nos. 3 and 4 to follow the guidelines of the Medical Council of India; and

(e) to direct the respondents to allow the petitioner to pursue his compulsory internship along with 1996 batch which has already started."

7. The rules relating to award of grace marks by the Kuvempu University have been placed at Annexure-H. These rules needed to be quoted in extension. These are -

"Grace marks may be awarded within limits for the purpose of helping a candidate to make up for limited deficiency in a unit or more and pass the examination in such units or subjects, subject to the following conditions:

1. The grace marks permissible for this purpose shall be one per cent of the aggregate marks (Maximum) of all the papers in the part or group or whole examination of a year/Semester for which a candidate has actually appeared subject to a minimum . of three marks and maximum of ten marks.

2. The maximum grace marks for a unit which will be taken as a group or subject or a division thereof (external or internal assessment, as the case may be), whichever has a separate minimum for pass, shall not exceed 3% of the maximum of that unit.

3. grace marks awarded for making up deficiency in a unit or more shall, wherever possible, be transferred from marks obtained in other subjects/papers, without affecting the results to the disadvantage of the candidate."

8. Now, let me examine how the above rules operate on the marks obtained by the petitioner. For the purpose of Rule-1, one has to take into account the aggregate marks of all subjects in which petitioner had appeared at the examination. The aggregate marks are 900 (Medicine 360 + Surgery 360 + O & G 180). Therefore, as per this rule petitioner will be entitled to 9 grace marks, which is less than the maximum permissible grace marks i.e. 10.

9. Regarding Rule 2, petitioner, who appeared in person, wants an interpretation in a manner befitting to the relief claimed by him. According to him, marks of 3% envisaged under the Rule should be taken as 3 per cent of the aggregate, namely 360, of the subject "Medicine" and not the maximum marks of 100 allocated to a unit of the subject i.e. Clinical. According to him, if his submission to the extent mentioned above is accepted, he becomes entitled to a grace marks of 9, whereas for passing in the "Clinical" he needs only 4 marks.

10. On the other hand, Mr. Brahmarayappa appearing for the respondent University submits that the maximum of 3 per cent has to be calculated with reference to Clinical part of the subject only, because under Rule-1, the maximum grace marks has to be computed with reference to a unit which means "a group or subject or a division thereof whichever has a separate minimum for pass." Therefore, according to him, for the purpose of Rule-2 the Clinical part of the subject Medicine is an independent unit for applying the restrictive provision contained in Rule-2.

11. On going through the Rules and examining them in their proper perspective for which it has been framed, I am in agreement with the Learned Counsel for the University that for the purpose of (Rule 2 the maximum of 3 per cent has to be arrived with reference to the part or division of the subject having its separate pass mark. which has been understood as a "unit" under Rule 2. That being the position, petitioner cannot be awarded more than 3 grace marks; and in that event also petitioner remains failed.

12. So far as the alternative plea made on behalf of the petitioner of granting 5 grace marks as per the recommendation of the MCI is concerned, in my opinion,

the Chancellor of the University was correct in coming to the conclusion that the recommendation in question does not statutorily bind the University since the same is not mandatory regulations in terms of Section 33 of the Medical Council Act, 1956.

13. I may notice here that the contesting parties have not placed before me any statutory regulations framed by the MC! providing for grace marking. For the reasons aforesaid the law laid down by the Supreme Court in. the case of State of Madhya Pradesh and Another Vs. Kumari Nivedita Jain and Others, , cannot be of any avail to the petitioner.

14. Therefore in my opinion, petitioner is not entitled to any of the reliefs sought for by him. Anyhow, the respondent College and the University are directed to accept the application of the petitioner for appearing at the ensuing examination, if he is otherwise eligible for the same.