

(1994) 10 BOM CK 0059

In the Bombay High Court

Case No : Writ Petition No. 1531 of 1994

Nikhil Arvind Bavdekar

APPELLANT

Vs

Shivaji University and Another

RESPONDENT

Date of Decision : 21-10-1994

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (1995) 2 BomCR 686

Hon'ble Judges : Vishnu Sahai, J;D.R. Dhanuka, J

Bench : Division Bench

Advocate : C.J. Sawant, R. Pai and S.R. Sorulkar, for the Appellant; R.G. Ketkar, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

D.R. Dhanuka, J.—Sometime in the month of June, 1990 the petitioner was admitted to the First Year M.B.B.S. Degree Course in D.Y. Patil Medical College, Kolhapur. The petitioner was due to appear for the Ist Year M.B.B.S. Examination in the month of October 1991. The petitioner did not appear at the said examination. The petitioner did not appear for the Ist M.B.B.S. Examination held in the month of April 1992 as well as in the Examination for the said course held in the month of October 1992. Sometime in the month of April 1993, the petitioner appeared in the examination for the Ist Year M.B.B.S. Course. The petitioner failed at the said examination. The petitioner had four chances to appear at the said examination during a period of three years. The petitioner did not avail of three chances. The petitioner availed of the fourth chance and failed as indicated above. The petitioner could not clear Ist M.B.B.S. examination during a period of three years inspite of four opportunities being available to the petitioner to appear at the examination as aforesaid.

2. By letter dated 30th July, 1993, the Registrar of Shivaji University, Kolhapur refused to grant permission to the petitioner to appear for the Ist year M.B.B.S. Examination to be held thereafter in view of the petitioner having not appeared

at the examination held in the month of October 1991, April 1992 and October 1992 and in view of the petitioner having appeared and failed at the examination held in April 1993. The Registrar addressed the above referred letter to the petitioner in view of the provisions of law contained in Ordinance No. 7 of the relevant ordinances framed by Shivaji University.

3. Ordinance No. VII framed by respondent No. 1 University was amended by the prescribed authority with effect from 5th November, 1988. The said amended ordinance reads as under :-

"O.M.B.B.S.7: Failure to pass the examination will not debar candidates from appearing at any subsequent examinations on the submission of a new application, the payment of a fresh fee and the production of certificates showing that they have, during the interval between the declaration of their failure and subsequent reappearance at the examination pursued a further course of study in the subjects of the examination to the satisfaction of the Head of a Medical College recognised by the University, provided, however, that candidate who fail to pass this examination on four occasions within three years from the date of admission in the medical college will not be eligible to appear thereafter".

4. Prior to the said amended ordinance coming into force, Ordinance No. 7 read as under:-

"O.M.B.B.S. 7 : Failure to pass the examination will not debar candidates from appearing at any subsequent examination on the submission of a new application, the payment of a fresh fee and the production of certificates showing that they have during the interval between the declaration of their failure and subsequent reappearance at the examination, pursued a further course of study in the subjects of the examination to the satisfaction of the Head of Medical College recognised by the University provided, however, that candidates who fail to pass this examination on four occasions will not be eligible to reappear thereafter.

Failure under the above clause means actual appearance for the whole or any part of the examination and failing to attain the standard of passing and not merely the inclusion of the name in the list of candidates submitted by the Principal as due to appear for the examination."

5. By this petition filed under Article 226 of Constitution of India, the petitioner has impugned validity of amended Ordinance No. 7 issued by respondent No. 1 University as unconstitutional and violative of Article 14 of Constitution of India and also the decision conveyed by the Registrar of respondent No. 1 to the petitioner refusing to grant permission to the petitioner to appear at Ist year M.B.B.S. Examination to be held after April, 1993.

6. The unamended ordinance provided that the candidates who failed to pass Ist year M.B.B.S. Examination on four occasions will not be eligible to reappear thereafter. The unamended Ordinance did not prescribe time limit of three years

for the purpose aforesaid. The said unamended ordinance provided that the, expression "failure to pass the said examination" used in the said ordinance would mean actual appearance by the student for the whole or any part of the examination and failure to attend the standard of passing and not merely inclusion of the student in the list of the candidates submitted by the principal due to appear for the examination. The said ordinance has undergone a substantial and radical change with effect from 5th November, 1988. The amended ordinance is applicable to the facts of this case. The amended ordinance provides that the candidates who fails to pass the Ist M.B.B.S. Examination on four occasions within three years from the date of admission in the medical college will not be eligible to appear thereafter. The legislative history of the said ordinance is of some relevance for its interpretation. The said amended ordinance does not provides that failure to pass the said examination would mean actual appearance for the examination and failing to attend the requisite standard as used to be provided by unamended ordinance. The amended ordinance prescribes the time limit of three years from the date of admission of the student in the medical college. This was not the provision under the unamended ordinance. The underlying object behind the amended ordinance is salutary. It is all a matter of policy decision within the legitimate discretion of ordinance making authority of the University. There is no scope for judicial review in respect of wisdom of the academic bodies in charge of affairs of the university concerned.

7. The learned Counsel for the petitioner has submitted that the amended ordinance should be interpreted to mean and apply only where the student fails to pass the examination on four occasions within three years from the date of holding of first examination at which the student could appear. Having regard to the plain language of the amended ordinance, it is not possible to accept this submission. The period of three years is to be counted from the date of admission of the student to the medical course. The framers of the ordinance have clearly provided that the student who takes admission in the medical college shall have to clear Ist M.B.B.S. Examination within three years from the date of admission in the medical college. During the period of three years from the date of admission in the medical college, four examinations are held at which the student has chance to appear. The first of such examination is held within 18 months of the date of admission of the student in the Ist year M.B.B.S. Course. Each subsequent examination is held within 6 months thereafter. It is, therefore, clearly the intention of the framers of the Ordinance that the student must clear his Ist year M.B.B.S. Examination in one or other of the four examinations at which he can appear during the period of three years.

8. The learned Counsel for the petitioner has submitted that the amended ordinance should be interpreted to mean that the said ordinance is applicable only to the cases where the student has actually appeared in four examinations and actually failed to pass at four of the examinations. Having regard to the comparative study of the unamended ordinance and the amended ordinance and

the obvious clear intention of the framers of the ordinance herein, it is not possible to accept this submission also. The amended ordinance deliberately omits the last para of unamended ordinance therefrom. The learned Counsel for the petitioner has relied upon the ratio of the judgment of the Hon"ble Supreme Court in the case of Abhijit Vs. Dean, Government Medical College, Aurangabad and Another, in support of his submission as aforesaid. In this case the appellant student was seeking admission to the Post-Graduate Course. The relevant rule for interpretation of the Apex Court provided for deduction of five per cent marks if the student had passed the third M.B.B.S. Examination in second attempt. In the context and setting of the said rule and the terminology used therein, the Apex Court held that five per cent of the marks obtained by the appellant in the IIIrd M.B.B.S. Examination could not be deducted in that case in view of the fact that the appellant was not even due to appear at one of the concerned examinations in view of his hospitalisation during the final term of IIIrd M.B.B.S. Examination. In our opinion, the ratio of the said judgment is not applicable to this case. The terminology of unamended Ordinance No. 7 as well as amended Ordinance No. 7 is altogether different. A case is an authority for what it decides and the ratio thereof cannot be extended to altogether different situation by analogy. It was so held by Lord Halsbury in *Quinn v. Leathem*, reported in 1901 A.C. 495.

9. The learned Counsel for the petitioner then submitted that the impugned ordinance is unreasonable and is violative of Article 14 of Constitution of India on the ground that the said amended ordinance is applicable only to the students who desire to appear for Ist year M.B.B.S. Examination and the same is not made applicable to the students seeking to appear for IInd M.B.B.S. and IIIrd M.B.B.S. Examination.

10. The learned Counsel for the petitioner submits that there is no difference between the students who are candidates for the Ist M.B.B.S. Examination on the one hand and the students who are candidates for appearing at IInd M.B.B.S. Examination or IIIrd M.B.B.S. Examination. It is not possible to strike down the impugned ordinance on the ground that the same is violative of Article 14 of the Constitution of India. In our opinion, the impugned ordinance is not violative of Article 14 of the Constitution of India. The prescribed authority may introduce such restrictions progressively or by stages. The case of students who fail to clear the Ist M.B.B.S. Examination during the course of three years inspite of four chances available to them stands by itself. Perhaps two views are possible in relation to the framing and implementation of underlying policy and objective which impelled the ordinance making authority to frame the said ordinance. There is no scope for judicial intervention in these matters. The presumption of constitutionality assists the respondents. The view taken by the ordinance making authority of the university cannot be described as arbitrary or irrational or discriminatory. We are conscious of the fact that a similar provision contained in the ordinance framed by the University of Bombay at one stage has been done away with. This is however, a matter of policy. Each University has right and

power to determine its own policy within the scope of its powers. The impugned ordinance is within the framework of the powers of the statutory authority and is not shown to be unconstitutional. If the Shivaji University has taken the view which appears to some of the students to be little rigid to the students who are unable to clear the Ist M.B.B.S. Examination even during three years of their admission to the course inspite of four opportunities provided to them to clear the examination, it is not possible for this Court to strike down the ordinance as unconstitutional. The learned Counsel for the petitioner has submitted that sometimes the students may not be able to appear at the examination because of certain circumstances beyond his control like sickness. The learned Counsel submitted that in a particular situation the student concerned may not be able to appear at the examination because of the sickness. In our opinion the University authorities must have taken that factor into consideration while providing for four chances to the student concerned to appear at the examination during the course of three years. If, inspite of four chances being available to the student concerned for appearing at the examination, is unable to clear the Ist M.B.B.S. Examination the student concerned cannot insist on any further chance being made available as a matter of legal right.

11. The learned Counsel for the petitioner has invited attention of the Court to the averments made in para 7 of the petition. The learned Counsel for the petitioner submits that the respondent No. 1 University has never enforced Ordinance No. VII in the past as strictly as now sought to be done. The learned Counsel submits that the respondent No. 1 has permitted certain students to take more than four chances notwithstanding amended Ordinance No. VII being in force. The learned Counsel for the petitioner submits that the petitioner cannot be singled out by respondent No. 1. If the respondent No. 1 has allowed some other students to appear at the examination in breach of Ordinance VII, the respondent No. 1 is certainly at fault. Even if the respondent No. 1 is at fault in permitting few of the other students to appear at the Ist M.B.S.S. Examination in breach of the said ordinance, it is not possible for this Court to issue a writ of mandamus so as to contravene the ordinance having force of law. There is no right to equality in this sense as propounded by the learned Counsel for the petitioner.

12. In the result, the petition fails. The petition is dismissed. Rule is discharged. No order as to costs.

13. Issue of certified copy is expedited.