
(2014) 07 MAD CK 0169
In the Madras High Court
Case No : Writ Petition No. 35254 of 2013

P. John Paul

APPELLANT

Vs

Tamil Nadu Dr. M.G.R. Medical University

RESPONDENT

Date of Decision : 21-07-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 7 MLJ 472

Hon'ble Judges : B. Rajendran, J

Bench : Single Bench

Judgement

B. Rajendran, J.—By consent, all these Writ Petitions are taken up together and disposed of by this common order. The petitioners viz., Dr. P. John Paul, Dr. N. Ponnaiyan and Dr. P. Muthuraman, after having completed the Post Graduate degree in General Surgery, have joined Medical - Super Speciality Course (M.Ch). The basic criteria for joining the Medical - Super Speciality Course is that the person should have completed the M.D./M.S. degree, or equivalent recognised qualification in the required subject. According to the petitioners, in the meeting of the Board of Studies in Medical-Super Speciality Course convened on 19.04.2012, it was resolved that even though the candidates failed in any one theory paper, they have to appear for all the theory papers till they pass. The grievance of petitioners is that even though they have passed in certain subjects, but failed in one subject alone, they were declared as "fail" and they were asked to pay the examination fees for all the subjects and were insisted upon to redo all the subjects. The petitioners further grievance is that there is a discrimination shown to one set of students inasmuch as the P.G. Course candidates were permitted to write the examination which they have failed alone, whereas the candidates of Medical-Super Speciality Course alone were insisted upon to write all theory papers including the passed subjects in the event of the candidates failed even in one subject. The petitioners are also aggrieved against the resolution passed in the 44th Standing Academic Board meeting conducted on 15.06.2012 under the Chairmanship of the Vice-Chancellor, wherein, in Agenda

No. 44(1) a resolution was passed resolving to approve the fixation of moderation marks for all Under Graduate and Post Graduate Courses in Medical, Dental, Ayush and Allied Health Sciences and it was also resolved that no moderation of marks will be given to Medical - Super Speciality Course. Hence, W.P. No. 29315 of 2013 has been filed by Dr. N. Ponnaiyan to quash Agenda No. 44(1) passed by the 2nd respondent in the meeting held on 15.06.2012 insofar as it does not permit the moderation of marks to the Medical - Super Speciality Course and also for a direction, to direct the 1st respondent to declare the petitioners as "pass" in the 2nd year Super Speciality Course, i.e., M.Ch. Master Chirurgiae (Neuro Surgery) Course by awarding moderation of upto five marks to the petitioner, who has failed only in one theory paper but passed in all the other papers as in the case of Post Graduate Medical Courses and Dental, Ayush and Allied Health Sciences Degree Courses.

2. Aggrieved by the fixation of 50% as minimum marks in all subjects without fixing 50% marks in the aggregate, alleging that it is discriminatory and arbitrary, W.P. Nos. 29313 and 29317 of 2013 have been filed to direct respondents 1 and 2 to fix 40% as the minimum marks for the 2nd year Post Graduate Medical - Super Speciality Course as in the case of 3rd year Medical - Super Speciality Course for being declared as "pass" in the examination.

3. W.P. Nos. 29314 and 29316 of 2013 are filed by Dr. P. John Paul and Dr. N. Ponnaiyan respectively to forbear respondents 1 and 2 from insisting on 50% marks in each of the individual subjects in the examination for Medical - Super Speciality Course for being declared as "pass".

4. All the petitioners herein on seeing the Exam Application Form through Online came to know that they had been directed to pay fees for writing the ensuing examination for all the three subjects, which include the subjects that they have passed. According to the petitioners, the Medical - Super Speciality Course Regulations do not stipulate the rewriting of all papers by the candidates including the passed subjects in the event of the candidates failed in one subject. Therefore, seeking to set aside the Exam Application Form issued by the 2nd respondent, the petitioners have filed W.P. Nos. 35254 of 2013, 347 of 2014 and 2673 of 2014.

5. W.P. Nos. 35255 of 2013 and 348 of 2014 are filed for a direction to the first respondent to declare them as "pass" based on the 50% marks awarded by the valuer.

6. Mrs. Nalini Chidambaram, learned Senior Counsel appearing for the petitioners, would contend that the petitioners herein are the medical students, who belong to the Medical-Super Speciality Course. She further submits that the main grievance of the petitioners is that for the examination held in August, 2013, when the candidates failed even in one subject, they were asked to write all theory papers including the passed subjects. She further submits that in the absence of any statutory Regulations, directing the candidates to write all theory

papers including the passed subjects, the impugned Application Form through Online directing the petitioners to pay fees for all the three subjects, which include the subjects that they have passed, are violative of principles of natural justice. She further brings to the notice of this Court that in the 43rd meeting of the Standing Academic Board held on 19.12.2011, while considering the representations of P.G. Dental candidates, a recommendation is issued to the effect that the candidates failed in one or more theory papers should appear for the failed theory papers alone till they pass. She further contends that when the University is adopting the said policy in respect of the P.G. Course students, the same principle ought to have adopted in respect of the other medical courses also. She would further contend that the University cannot adopt discriminatory treatment by extending a lenient policy to one set of candidates and denying the benefit to other set of candidates. She further adds that all these Writ Petitions are filed mainly on the ground that the petitioners herein are being discriminated and there are no Regulations which stipulate the rewriting of all theory papers including the passed subjects, in the event of the candidates failed in one subject. She further points out that the second respondent, in the absence of any statutory Regulations, has no authority to direct the petitioners to redo the examination in respect of the passed subjects also and therefore, the Exam Application Form issued by the 2nd respondent is liable to be set aside.

7. The respondents have filed a detailed counter. Mr. Sanjay Ramasamy, learned counsel appearing for Dr. M.G.R. Medical University in all the above Writ Petitions pointed out to the Resolutions passed by the Standing Academic Board and contends that there is a distinction between the two Resolutions viz., candidates doing P.G. Medical Course were permitted to redo the examination in respect of failed subject alone, whereas, in respect of Medical-Super Speciality Course, a specific mandatory clause has been incorporated to the effect that even though the candidates failed in one theory paper, they will have to write all the theory papers. He would further point out that the first respondent has conducted a meeting of the 44th Standing Academic Board on 15.06.2012 under the Chairmanship of the Vice-Chancellor and in Agenda No. 44(1) a resolution was passed resolving to approve the fixation of moderation marks for all Under Graduate and Post Graduate Courses in Medical, Dental, Ayush and Allied Health Sciences, whereas, it was resolved that no moderation of marks will be given to Medical - Super Speciality Course and this Regulation came into effect from August, 2012. Referring to the above, he submits that the petitioners are doing Medical - Super Speciality Course, who after completion of the said Course will be dealing with the lives of so many people and therefore, the University expects high standard from the candidates, which cannot be found fault with. He points out that the University is an Expert body, which alone can prescribe the norms and specifications for the candidates to declare them as "pass" and those Regulations and policy decision cannot be questioned in a Court of law and this Court in normal circumstances will not interfere in the technical aspects of prescribing qualifications for the candidates to declare them as "pass". In this

connection, he relies on the decision of the Supreme Court reported in Visveswaraya Technological University and Another Vs. Krishnendu Halder and Others, .

8. Mr. V.P. Raman, learned counsel appearing for the Medical Council of India would submit that the prescribed norms and procedure followed by the University are fair, reasonable and correct and warrants no interference at the hands of this Court.

9. Heard both sides. I have considered the above submissions and perused the materials placed on record.

10. The short point for consideration in the above Writ Petitions is, as to whether the candidates doing Medical - Super Speciality Course, when failed in one subject, prescribing a condition to write all the theory papers, is correct or not.

11. At the outset, I would like to refer to the contention raised by the learned Senior Counsel appearing for the petitioners. She would contend that even if the candidates are declared "fail" in one subject, they should have been permitted to redo the particular examination that they have failed, but, they were asked to rewrite all the theory papers. Her further contention is that in the meeting held on 16.11.2011 in Agenda No. 43(14) in respect of Medical - Super Speciality Degree Course, it was resolved that if the candidate fails in one theory paper he/she has to appear for all the theory papers and this system came into effect from August, 2012 Examination onwards. It is also pointed out that in the meeting held on 17.11.2011 in Agenda No. 43(15) in respect of P.G. Medical/Dental/Ayush/AHS Degree/Diploma Courses, it was resolved that if the candidate fails in any one theory paper he/she has to appear for all the theory papers. Referring to the above, the learned Senior Counsel would point out that certain candidates, whose names were given in the additional counter affidavit by the petitioners, were earlier permitted to write the examination which the candidates have failed alone, therefore, there is a discrimination shown to one set of students. The learned Senior Counsel appearing for the petitioners would point out that the Regulations are very stringent, as one valuer has awarded 50 marks, whereas the other valuer has awarded 48 marks and by taking average of the same, the 2nd respondent has awarded 49 marks and the candidate was declared as "fail" and hence, W.P. No. 35255 of 2013 was filed.

12. In the above connection, first of all, I would like to refer to the original resolution, viz., Agenda No. 43(14) passed on 16.11.2011 in respect of Medical - Super Speciality Degree Course, wherein, it was resolved that if the candidate fails in one theory paper he/she has to appear for all the theory papers and this system will come into effect from August, 2012 Examination onwards. Thereafter, in the meeting held on 17.11.2011 in Agenda No. 43(15) in respect of P.G. Medical/Dental/Ayush/AHS Degree/Diploma Courses, it was resolved that if the candidate fails in any one theory paper he/she has to appear for all the theory papers. Subsequently, in the 43rd meeting of the Standing Academic Board held

on 19.12.2011, wherein, while considering the representations of P.G. Dental candidates, a recommendation has been issued to the effect that the candidates failed in one or more theory papers should appear for the failed theory papers alone till passes. Pursuant to that, another meeting in respect of Medical - Super Speciality Course was convened on 19.04.2012 and in the said meeting, it was resolved that the candidates failed in any one theory paper should appear for all the theory papers till he/she passes and the marks obtained in internal assessment and dissertation shall be carried over. Therefore, there is no dispute that insofar as Medical -Super Speciality Course is concerned, it was resolved that any candidates, who fail in one subject have to write all the theory papers till he/she passes. There is no dispute over the fact and it is accepted by all parties that the petitioners are doing Medical- Super Speciality Course. Now the only argument of the learned Senior Counsel appearing for the petitioners is that, whether other five candidates, who were earlier permitted to write the failed theory papers alone, are doing some other course or the same course i.e., Medical - Super Speciality Course, for which, the learned counsel appearing for respondents categorically asserts that other five candidates were not doing Medical - Super Speciality Course, but, they were doing regular P.G. Course and for them there is a separate Regulation, which permits the candidates to write the particular paper, which they have failed. Therefore, there is a distinction between the candidates doing Medical - Super Speciality Course and the candidates doing P.G. Course and therefore, they cannot be considered equivalent.

13. The petitioners' grievance as regards that there is discrimination shown is concerned, in my considered opinion, in as much as the P.G. Course candidates were permitted to write the examination which they have failed alone, whereas the candidates of Medical-Super Speciality Course have to write all theory papers including the passed subjects in the event of the candidates failed even in one subject, will not at all arise for consideration as the Regulation for the candidates doing Medical-Super Speciality Course is different from the Regulation for the candidates doing P.G. Course.

14. The moderation of marks is given only for the Under Graduate and Post Graduate Courses in Medical, Dental, Ayush and Allied Health Sciences and it was made clear in the resolution that no moderation of marks will be given to Medical - Super Speciality Course.

15. In this connection, it is relevant to refer to the decision of the Supreme Court reported in *Visveswaraya Technological University v. Krishnendu Haider* (supra), wherein, the Supreme Court has categorically held that the determination of standards of education, being part of the academic policy of the University, are beyond the purview of judicial review, unless it is established that such standards are arbitrary or "adversely affect" the standards of education. It is further held that the prescription of standards of education are always accepted to be an appropriate exercise of power by the bodies recognising the colleges like the

University. If in exercise of such power the prescription had been made, it cannot be said that the whole matter has been foreclosed. Following the decision *Visveswaraya Technological University v. Krishnendu Haider* (supra) and also as rightly pointed out by the learned counsel for the Dr. M.G.R. Medical University, the University is an Expert body, which alone can prescribe the norms and specifications for the candidates to declare them as "pass" and those Regulations and policy decision cannot be questioned in a Court of law and in normal circumstances this Court will not interfere in the technical aspects of prescribing qualifications and fixing the standard of students, especially, in the case of Medical - Super Speciality Course for the candidates to declare them as "pass", this Court feels that the petitioners herein, who are doing Medical -Super Speciality Course, have to be a role model to other students and they have to show their talents, ability and calibre. The respondents are expected to maintain high standards in medical education and add to the excellence in higher education. They have powers to prescribe the general conditions to be observed by Post Graduate teaching institutions, the qualification and eligibility standards for admission into medical institutions. Any lowering of the norms laid down will have an adverse effect on the standards of education in the institutes of higher education. Also, being a policy decision of the University, which is an Expert Body having their own Rules and Regulations, this Court cannot exercise the power sitting under Article 226 of the Constitution of India. Therefore, these Writ Petitions are dismissed. Consequently, connected Miscellaneous Petitions are dismissed. No costs.