

(2007) 01 CAL CK 0011
In the Calcutta High Court
Case No : Writ Petition No. 62 of 2004

Rajorshi De

APPELLANT

Vs

University of Calcutta and Another

RESPONDENT

Date of Decision : 17-01-2007

Acts Referred:

Calcutta University First Regulations, 1979 — Regulation 34, 34(1), 34(2)

Citation : (2007) 2 CALLT 291

Hon'ble Judges : Maharaj Sinha, J

Bench : Single Bench

Advocate : Subrata Talukdar, Amitava Das, Arunava Banerjee and Suranjit Ghosh, for the Appellant; Dipankar Dutta, Sutanu Patra and Rajib Basak, for the Respondent

Final Decision : Dismissed

Judgement

Maharaj Sinha, J.—On 26th September 2003, the Supreme Court was pleased to pass the following order on the petitioner's SLP (Special Leave to Appeal (Civil) C.C. 8263/2003). For the sake of convenience only the text of the said order is set out below:

Upon hearing counsel the Court made the following Order

Learned Counsel for the petitioner submits that in view of the fact that law permits the authorities to grant grace marks, therefore, he seeks permission to withdraw the SLP to approach the said authority. Permission prayed for is granted. The SLP is dismissed as withdrawn.

(Ganga Thakur) (Prem Prakash) PS to Registrar Court Master

2. Admittedly, the above SLP was dismissed as withdrawn only on the basis of the submission of the learned Counsel of the writ petitioner and in the absence of the respondents when the above order was made by the Supreme Court.

3. As I proceed to consider the merits of the present writ petition, I will shortly

explain the significance of the above order of the Supreme Court. It was also an admitted position that the above order of the Supreme Court according to the writ petitioner eventually led him to invoke the writ jurisdiction once again by initiation of the present writ proceeding.

4. After the above order, the petitioner on 3rd November, 2003 made a representation to the Vice-Chancellor. University of Calcutta, the second respondent herein. Since, in my opinion, the said representation or rather the text thereof has the most material bearing upon the merits of this writ petition, the said representation in its entirety is set out below:

The

Vice-Chancellor,

University of Calcutta,

College Street, Kolkata.

Re: Consideration of the case of Shri Rajorshi De (Medical Student at R.G. Kar Medical College, Kolkata) Regn. No. 30002 of 1995

Respected Sir,

I would like to bring to your attention that on 26th September, 2003 the Hon"ble Supreme Court passed an order (in W.P. No. 2590, CC No. 8263 of 2003) granting permission for me to approach the University with a prayer for grace marks.

I understand that the concerned authority duly empowered on matters connected with undergraduate studies and examinations has, in deserving, appropriate, special and exceptional circumstances, the power to add to the marks obtained by, a candidate in any subject or paper at any examination.

I also understand that representations of similar nature have been entertained by the University in the past and that relief has been granted to similarly situated candidates even to the extent of an increment of 17 marks in order to save their valuable careers. I humbly submit that over the last three and a half years, I have submitted several representations in this regard but none have received the deserved consideration by the appropriate authority.

In this regard I pray once again for consideration of my result in the 1st MBBS examination (as set out below):

I have already passed 2 out of 3 subjects (Physiology and Biochemistry)

In the remaining subject of Anatomy:

I have passed all external portions but am still short of the pass mark by only 10 marks (mark sheet of July 1997)

Therefore, my earnest prayer before the authority is for consideration of granting

the required necessary grace marks which would enable me to pass the said 1st MBBS examination.

In view of the change in the curriculum, where the old syllabus has been gradually replaced by the new syllabus, which incorporates an entirely new pattern of arrangements of subjects and content; the remaining students of the old syllabus are being accommodated by allowing them to appear for special examinations and classes which are being taken alongside the examinations and classes of the new syllabus. I also pray to be allowed to join the said batch of remaining students of the old batch as that I may continue my medical career without any further interregnum, difficulties or delay.

The said order of the Hon''ble Supreme Court dated 26.09.2003 is annexed in this regard.

Yours faithfully,

(Rajorshi De)

Annexure- P2, Page- 15 of the writ petition

2. Having received no answer from the Vice-Chancellor of the University, the petitioner on 3rd December, 2003 gave a reminder to him, inter alia, stating:

You are, therefore, kindly requested to communicate the decision of the University in this matter expeditiously. I humbly remind you that the Hon''ble Supreme Court has granted me permission to approach the University with a prayer for grace marks. The order of the Hon''ble Supreme Court is already annexed to the representation submitted on 03.11.2003.

Annexure-P3, Page- 17 of the writ petition

3. When, even the above reminder failed to obtain any decision from the Vice-Chancellor of the Calcutta University (the Vice-Chancellor in short) or even any reply from his end to the said reminder or to the said representation, the petitioner, as submitted by his learned Counsel, was compelled to initiate this writ proceeding once again against the University of Calcutta and its Vice-Chancellor seeking primarily "a writ of mandamus on the respondents to compel them to pass a reasoned and speaking order on the representation dated 3rd November, 2003 read with the reminder dated 3rd December, 2003 marked as annexures-P2 and P3 to the writ petition." A writ of certiorari and the other directions as prayed for by the writ petitioner in this writ petition need not be mentioned in detail.

4. For the purpose of appreciation of the above, it is necessary, I think, to state the past history of the above litigations in brief. By the words "above litigations", I mean the SLP and the present writ proceeding.

5. Since the past history of the present litigation is practically an admitted one, or rather not in dispute. I would set out the past events chronologically

borrowing them to an extent from the Affidavit-in Opposition used by, the respondents affirmed on 25th February, 2004.

6. On 3rd January 1996, the petitioner took admission in R.G. Kar Medical College (affiliated to the University of Calcutta) for an MBBS Course.

7. The petitioner on 19th March, 1997 took his first MBBS examination consisting of three subjects, namely, Anatomy, Physiology and Biochemistry. The petitioner was unsuccessful in all the three subjects. The petitioner, as entitled, took the supplementary examination called second chance and this time he was successful in Physiology, but was unsuccessful in Anatomy and Biochemistry.

8. Challenging the result of the said supplementary examination, the petitioner visited this Court with a writ petition for the first time, inter alia, questioning the correctness of the marks awarded in his favour and that he was entitled to a fresh chance to appear for the internal test along with the fresh chance to appear for theory, oral and practical examinations. It appears that the petitioner also challenged the validity of certain rules of MBBS examination as well.

9. As no interim order was made in favour of the petitioner, the petitioner preferred an appeal against the order of the Hon"ble single Judge dated 17th December, 1997 and on 31st December, 1997 a Division Bench of this Court was pleased to make an interim order directing the concerned respondents to "allow the writ petitioner to attend the classes without prejudice to the rights and contentions of the parties."

10. The University, however, preferred an application for vacating the said interim order dated 31st December, 1997 of the Division Bench and on 22nd January, 1998, the said application of the University was disposed of by an order of another Division Bench where the Division Bench was of the opinion that in the facts and circumstances of the case, the interim order dated 31st December, 1997 allowing the petitioner to attend classes without prejudice to the rights and contentions of the parties should never have been made and as such the said interim order was vacated and the above appeal was disposed of on that basis.

11. It appears from the above order of the Division Bench dated 22nd January, 1998 that before initiating the above writ petition (in November 1997 writ petition No. 2472 of 1997). the petitioner invoked the writ jurisdiction of this Court once before as he was not allowed to appear in the first professional MBBS examination and on 21st February, 1997 the said writ petition was disposed of with a direction on the Vice-Chancellor to consider the prayer of the writ petitioner for "condoning short fall in required attendance upon giving him opportunity of hearing." Although the petitioner was heard pursuant to the order of the Vice-Chancellor but his representation was not allowed.

12. A Division Bench of this Court by an order dated 6 March 1997 allowed the petitioner to take the "ensuing" examination without prejudice to the rights and contentions of the parties to the appeal, but the result of the writ petitioner was

not to be published without leave of the Court or until the hearing of the appeal whichever was earlier. "Pursuant thereto, the petitioner was permitted to take the concerned examination. The appeal was allowed by the Division Bench by a Judgment dated 17 June 1997 observing, inter alia, that without creating a precedent and as a special case result of the writ petitioner may be published. The result of the writ petitioner was published but he was declared to have failed. He was allowed to take supplementary first professional MBBS examination and on that occasion also he failed" (quoted from the order of the Division Bench dated 22 January 1998). The petitioner thereafter filed a fresh writ petition challenging the result as also the validity of certain provision of the regulations framed by the University regarding first professional MBBS examination which was his second writ petition, namely, writ petition No. 2472 of 1997, which I have mentioned above.

13. The petitioner, it appears, had forgotten to state these facts in the present petition and the University or rather the respondents herein also did not mention these facts while preparing their Affidavit in-Opposition to the present writ petition, (see the writ petition of the petitioner and the List of Dates, see also the Affidavit-in-Opposition of the respondents particularly Pages 6 and 7 thereof).

14. The writ petitioner also did not think it necessary to mention the above order of the Division Bench dated 22nd January, 1998 nor did the respondents in their Affidavit-in-Opposition.

15. From the sequence of events as stated in the Affidavit-in Opposition of the respondents, it appears that in March 1998, the petitioner obtained leave of this Court to take his first MBBS examination once again for the third time. This time though the petitioner succeeded in his Biochemistry examination, but he failed in Anatomy for non-appearance.

16. On 3rd July, 1998, the petitioner took the supplementary examination once again which was his 4th attempt, this time without obtaining any leave of Court. The petitioner, however, could not succeed this time as well:

17. Having been unsuccessful as above, the petitioner, as far as I have been able to ascertain, initiated his said second writ petition in the month of November 1997 (writ petition No. 2472 of 1997) and the said writ petition was disposed of on 24th September, 1998 by the order of the Hon"ble single Judge whereby the Vice-Chancellor of the University was directed to hear the representation of the petitioner after affording the petitioner an opportunity of hearing with a note that the Vice-Chancellor would declare him "as passed if there was any scope for applying discretion."

18. Needless to mention, the said second writ petition of the petitioner was disposed of with the said order. Thereafter, on 3rd October, 1998 the Vice-Chancellor in his turn, having considered the case of the writ petitioner, expressed his inability to declare the writ petitioner as passed and thus rejected his representation.

19. Since the above order of the Vice-Chancellor, I find, is both interesting and important the last three paragraphs of his order are set out below:

It can be discerned from the regulations regarding 1st professional MBBS examination that the same demands from the students a high standard of academic proficiency, in all the spheres connected with medical study in tune with the expectations of the public at large from a qualified doctor. Perusal of the regulations also reveal that I am not clothed with any power to exercise discretion to declare any unsuccessful student as passed. In such a situation, I am afraid, I cannot declare Sri De as passed divorced from the relevant regulations.

Last but not the least, from the academic as also from the practical points of view it is absolutely undesirable that an unsuccessful student pursuing medical study is to be declared as passed on grounds of misplaced sympathy thereby setting a bad precedent.

For all the reasons aforesaid, I refuse to entertain the prayer of Sri De and the same stands rejected.

20. Before I go on to the next topic, I cannot help saying that when the Vice-Chancellor found that he was not clothed with any authority to exercise his discretion to declare an unsuccessful student "as passed" why then he went on to comment that it was "absolutely undesirable that an unsuccessful student pursuing medical study" was "to be declared as passed" on the ground of "misplaced sympathy thereby setting a bad precedent" cannot, in my opinion, be understood and appreciated with a rational approach. The Vice-Chancellor, in my opinion, had no business to criticise the Court's order as he did without questioning the correctness or validity of the order itself. It is an admitted position that the Vice-Chancellor or for that matter the University did not question the correctness or validity of the order of this Court dated 24th September, 1998 as the Vice-Chancellor proceeded to consider the case of the petitioner as directed by this Court.

21. I also pointed out this aspect at the time of hearing of this writ petition and the learned Counsel appearing on behalf of the University as well as the Vice-Chancellor, I must admit, also fully appreciated the impropriety on the part of Vice-Chancellor in making the above comments.

22. Since the order of the Vice-Chancellor was further questioned by the writ petitioner and order or orders were passed subsequently, it is not necessary for me at this stage to examine whether the above comments on the part of the Vice-Chancellor in considering the representation of the petitioner were contemptuous as well.

23. On 7th October 1998, an application made by the petitioner for certain directions to permit him to take the internal assessment examination and the withdrawal of the said order dated 3rd October, 1998 of the Vice-Chancellor was

dismissed by the Hon''ble single Judge.

24. Being aggrieved, the petitioner preferred two separate appeals against the two orders, namely, the first order of the Hon''ble single Judge dated 24th September, 1998 and also the above order dated 7th October, 1998 whereby the said application of the petitioner was dismissed.

25. The said two appeals were also eventually dismissed on 12th July, 1999 by the Division Bench. In dismissing the said two appeals, the Division Bench in its Judgment, inter alia, observed as follows:

From the overall discussions made herein above and in view of the admitted fact that the writ petitioner/appellant had availed of four chances which were available to him on the basis of the regulations of the Calcutta University Authorities and in each of the examinations, the appellant had failed to secure pass marks either in one subject or the other. It is too late for the appellant to go to Court and ask for redressal of his grievances.

For the reasons aforesaid, we need not go into the other question whether the writ petitioner appellant was entitled to challenge the order of the Vice-Chancellor in this appeal as we have already decided this appeal on merits. Therefore, the appeal filed against the order of the Vice-Chancellor is not maintainable at this stage. It would be open to the writ petitioner/appellant to challenge the said order in accordance with law if occasion arises. We make it clear that we have not gone into the merits of the disputes raised by the writ petitioner/appellant against the order of the Vice-Chancellor. All questions relating to the order of the Vice-Chancellor are kept open to be decided in an appropriate forum.

26. The petitioner, being aggrieved, preferred a SLP or Petitions against the said order dated 12th July 1999 of the Division Bench which were also dismissed by the Supreme Court.

27. On 16th November, 1999 (as appears from the 2nd List of Dates of the petitioner), the petitioner initiated yet another writ proceeding in this Court which conveniently be called as the third writ petition (writ petition No. 2590 of 1999) or rather should it be called the 4th writ petition, as it appears from the Judgment of the Division Bench of this Court dated 12th July, 1999 (mentioned above) that the petitioner initiated a writ proceeding in this Court as he was allegedly not allowed by the three departments of Anatomy, Physiology and Biochemistry of the R.G. Kar Medical College to take the first MBBS examination which, as aforesaid, commenced on 19th March, 1997. The writ petitioner, therefore, sought intervention of this Court by way of a writ petition which was disposed of by an order by which the matter was referred to the Vice-Chancellor of Calcutta University and against that order an appeal was preferred presumably by the petitioner and the said appeal was also disposed of by the Appeal Court on 17.6.1997 observing, inter alia, that since "the student", namely, the petitioner "was allowed by this Court to sit in the examination the University

should publish the result of this writ petitioner forthwith as a special case and without creating any precedent." (see Annexure- R6 to the Affidavit-in-Opposition dated 25th February 2004).

28. It appears that the writ petitioner also initiated another writ proceeding (writ petition No. 2511 of 1999 by the end of November 1999) challenging the marks awarded to him in the first MBBS supplementary examination.

29. On 12th May, 2000, having considered the above two writ petitions, the Hon"ble Single Judge was of the opinion that both the two writ petitions should be heard by a larger Bench and on that basis the matter was directed to be placed before the Hon"ble Chief Justice for referring the matter to a larger Bench.

30. The University, however, contested the writ petitions by using its Affidavit or Affidavits and on 6th November, 2000 a Division Bench presided over by the Hon"ble Chief Justice and an Hon"ble Judge was pleased to refer the matter back to the Hon"ble single Judge for hearing the writ petitions on merits.

31. On 9th January, 2001, the writ petition (W.P. No. 2590 of 1999) whereby the writ petitioner challenged the said order of the Vice-Chancellor dated 3rd October, 1998 was dismissed by the Hon"ble single Judge on merits. The other writ petition (No. 2511 of 1999) as appears from the Affidavit in Opposition, was kept pending and perhaps is still pending?

32. The petitioner, needless to mention, challenged the said order or rather the Judgment of the Hon"ble single Judge dated 9th January, 2001 and the Appeal Court by its Judgment was pleased to dismiss the appeal on 10th September, 2001. Against the dismissal of the said appeal, the petitioner, however, preferred a review petition claiming that the Judgment of the Appeal Court dated 10th September, 2001 should be reviewed and on 22nd January, 2003, the said review petition was also dismissed by the Appeal Court.

33. The petitioner this time invoked the Special Leave Jurisdiction of the Supreme Court challenging the above two orders of the Appeal Court dated 10th September, 2001 and 22nd January, 2003 respectively, and on 26th September, 2003 the Supreme Court was pleased to dispose of the SLP by the order which I have set out in the opening paragraph of this Judgment.

34. I have tried to set out above, both the history of the past proceedings initiated by the writ petitioner both in this Court and also in the Supreme Court as well as the recent history of the present litigation, as far as I have been able to ascertain from the records of the present proceeding; including the respective "Notes of Arguments" of both the writ petitioner and the respondents and also the list of dates prepared and filed by the learned Counsel of the petitioner after the commencement of hearing of this proceeding.

35. It must also be mentioned that the list of dates which was filed along with the writ petition, was not comprehensive at all as a result the learned Counsel sought leave of this Court to file yet another list of dates after the hearing of the

writ petition, as aforesaid, was commenced.

36. According to the writ petitioner, the present writ proceeding was initiated by him with the leave of the Supreme Court to initiate appropriate proceeding "in the matter of increment of his marks". The last SLP was according to the petitioner the culmination of a series of litigation which the petitioner was constrained to initiate and continue against the University or rather the respondents mainly because the Vice-Chancellor of the University, the second respondent herein, had refused to grant the petitioner relief in terms of the directions in the Judgment and order of this Court dated 24th September, 1999 (the order of the Hon"ble single Judge) on writ petition No. 2472 of 1997 (also reported in AIR 1999 Cal. 1960).

37. The alleged cause of action, however, arose in favour of the writ petitioner to initiate the present proceeding when the Vice-Chancellor or rather the respondents failed to consider the said representation dated 3rd November, 2003 (quoted in its entirety in the beginning of this Judgment).

38. The question is whether the alleged cause of action of the present proceeding can be said to be a good cause of action and if the answer to this is in the affirmative, then whether the petitioner is entitled to the relief or reliefs as sought for by him.

39. The contention of the petitioner is, as far as I have been able to appreciate, the Supreme Court by its order dated 26 September 2003 on his Special Leave Petition, in fact, allowed the petitioner to approach the University for obtaining grace marks to succeed in the first MBBS examination.

40. On a plain reading of the said order of the Supreme Court dated 26 September 2003, it does not appear, however, that the Supreme Court was pleased to allow the petitioner to approach the authority, namely, the University for obtaining grace marks in the first place. The Supreme Court, in my opinion, merely allowed or permitted the petitioner to withdraw his SLP and on that basis the SLP was dismissed as withdrawn.

41. The learned Counsel on behalf of the petitioner, in fact, submitted before the Supreme Court that law permitted the "authority" to grant grace marks and on that basis permission was sought for on behalf of the petitioner to withdraw the SLP so that the petitioner could approach the "authority" for such purpose. The Supreme Court, however as appears from the order itself, was pleased to record the submissions in the first three lines of the said order dated 26th September, 2003 and merely permitted the petitioner to withdraw the SLP and the SLP was thus dismissed as withdrawn. The petitioner sought for withdrawal of SLP as the petitioner could not approach the University with his prayer for grace marks keeping the SLP pending.

42. The order of the Supreme Court did not or does not even suggest anywhere that with the order of dismissal of the SLP of the petitioner, the Supreme Court

intended to create any obligation on the part of the University, or for that matter on its Vice Chancellor to consider the prayer of the petitioner for grace marks if the petitioner approached or had approached the University with such prayer. The Supreme Court did not even have any occasion to consider whether there was any "law, or any statutory rule or provision" which permitted the authority to grant grace marks, let alone to consider the scope of such "law, or statutory rule, or provision".

43. By the order of the Supreme Court, in my opinion, the petitioner cannot be said to have acquired any right far from any legal right to approach the University for grace marks and naturally, as I have just said, the said order did not create any obligation on the part of the University, or for that matter on the part of the Vice-Chancellor to consider the case of the prayer of the petitioner for awarding grace marks in his favour to enable the petitioner to succeed in the first MBBS examination in the first place.

44. The petitioner, in my opinion, therefore, did not gain any advantage by the order of dismissal of the SLP on the basis of his submission as recorded in the order of the Supreme Court at all.

45. The question now is, whether the respondents had or have any obligation to consider "the representation" of the petitioner "dated 3rd November 2003" as made by him after the said order of the Supreme Court dated 26th September, 2003. Much argument was advanced by the learned Counsel on behalf of the writ petitioner that under the provisions of Regulation 34(1) of the Calcutta University First Regulations 1979 (in short Regulations 1979), the respondents or rather the University had enough power "to add to the marks obtained by a candidate in any subject at any examination, in exceptional circumstances as or when recommended by the examiners."

46. The University, therefore, or rather the Vice-Chancellor of the University should have considered the matter invoking the said Regulation 34(1) for addition of marks in order to make the petitioner's succeed in the first MBBS examination pursuant to his said representation dated 3rd November, 2003.

47. The respondents not only did not invoke the said Regulation 34(1), it was argued, it did not even think it necessary to consider the representation of the petitioner.

48. The said Calcutta University First Regulations 1979 were framed or rather amended under the provisions of the Calcutta University Act 1979 and the said amended Regulations 1979 were rightly termed by the learned Counsel for the petitioner as "delegated legislation".

49. For the sake of convenience the entire text of Regulation 34 of the said Regulations 1979 is set out below:

Power for general addition of marks etc. at examinations.

34(1). The Faculty Council for Post-Graduate or Council for Under Graduate Studies concerned shall have power generally to add to the marks obtained by candidates in a subject or paper at any examination in exceptional circumstances to be specifically recorded, and on the recommendations of the Examination Board, where there is one, or the body of examiners where there is no Examination Board and not otherwise.

(2) Notwithstanding the provisions of paragraph (1), Post-Graduate or Council for Under-Graduate Studies satisfied that injustice has been done or is likely to be examination in view of the fact that the question paper set in a subject is stiff lengthy or comprises questions beyond the scope of the prescribed syllabus contains errors, printing or otherwise, the Council may issue such directions as it may consider necessary.

50. Having read and considered the above provisions [both Regulations 34(1) and (2) of Regulation 1979], I do not think, it can be said that the said provisions in Regulation 34(1) or in Regulation 34(2) cast any obligation on the part of the University or the particular authority or authorities of the University to consider the case of a candidate as a general rule whenever a candidate or candidates approach the University for addition of marks to make him succeed in an examination or examinations covered by Regulation 34 in general.

51. The Vice-Chancellor of the University on that basis cannot also be compelled under the provisions of the said Regulation 34(1) to refer the case of the petitioner to the Council for under-graduate studies for consideration of the petitioner's representation nor can the Council for under-graduates be directed to consider the case or the representation of the petitioner for addition of marks. I am afraid, I have not been able to read anything in the provisions of the Regulation 34 of the said Regulation 1979 to compel the University or any particular authority or body of such University to consider the representation of the petitioner for addition of marks in the first place.

52. It was submitted on behalf of the petitioner at the time of obtaining the said order of the Hon''ble Supreme Court dated 22nd September 2003 that since the University or the authority or the authorities under it enjoyed the power of giving grace marks, the petitioner would approach that authority or authorities for such purpose.

53. The Supreme Court, as cited above, did not say anything as to what the petitioner should or would do after the said SLP was dismissed as withdrawn. It was entirely for the petitioner to decide. If the University, or rather the respondents herein did not or do not intend to award grace marks in response, to the petitioner's appeal then can the University or any authority or body under it be compelled to be gracious enough to award grace marks in favour of the petitioner under the provisions of Regulation 34(1) of the said Regulations 1979, well, my answer to that is clearly in the negative.

54. In the present case, the petitioner was and is seeking a favour from the

University and if the University or rather the respondents are unable, or are not willing to show the petitioner any favour, then the Court in exercise of its writ jurisdiction cannot, in my opinion, compel the University, or an authority or body under it to do an favour to the petitioner or to be gracious to him by adding or giving grace marks to a particular subject or subjects to make him succeed in the examination.

55. It is not my purpose, nor is it necessary to consider whether the Court in general has the power to direct the University or an authority or authorities under it, or an educational institution to exercise its or their discretion in a particular way while considering a case of a student or the cases of the candidates for awarding grace or extra marks to make such student, or the candidates succeed in the examination or examinations.

56. This certainly will depend on the facts and circumstances of a particular case and Rules and Regulations, if any, governing such a case. It will suffice my purpose, however, to say that the facts and the circumstances of this particular case do not warrant me to pass any direction of that nature, whereby I can direct the University or an authority or body under it to even consider the representation of the petitioner under the provisions of Regulation 34(1) or under am other Regulation or Regulations.

57. I am also not minded to embark upon an enquiry whether the Vice-Chancellor "as under an obligation to disclose that the University had sufficient power under Regulation 34(1) to add marks to make an unsuccessful candidate succeed in a particular examination. The allegation of fraud on the part of the Vice-Chancellor or rather on the part of the University in not taking into account the provisions under Regulation 34(1) of the said Regulations 1979, or in not disclosing the existence of such Regulation while considering the earlier representation of the petitioner is not worthy of any enquiry in the facts and circumstances of the present case as well.

58. The earlier order of the Vice-Chancellor dated 3rd October, 1998 in which the concerned Vice-Chancellor, inter alia, said that he was not clothed with any authority to entertain the case of the petitioner, was challenged by the petitioner and the petitioner became unsuccessful in his attempt to upset the said order.

59. The petitioner questioned the validity of the said order of the Vice-Chancellor dated 3 October 1998 by way of his said second Special Leave Petition. I do not know, however, whether the petitioner would have succeeded in his attempt to upset the said order of the Vice Chancellor eventually, as the petitioner, as aforesaid, decided to abandon the proceeding by inviting the Supreme Court to dismiss his SLP as withdrawn. It is still a mystery to me as to why the petitioner did not invite the Supreme Court to consider whether the case of the petitioner deserved a consideration or a fresh consideration under the provisions of Regulation 34 or rather sub regulation (1) of Regulation 34 of the said Regulations 1979, when the petitioner allegedly discovered the existence of the

said Regulation 34 and that the Vice-Chancellor, or for that matter the University did not deliberately apply or consider the case of the petitioner under the said Regulation. The said order dated 3rd October, 1998 of the Vice Chancellor or rather the correctness thereof cannot, therefore, be questioned today.

60. It is on the above basis, I think, the learned Counsel for the University, or rather the respondents had submitted that the present proceeding should be held to be barred by the principles of Res judicata or the principles analogous thereto.

61. The only question whether the Vice-Chancellor should have or should refer the representation of the petitioner dated 3rd November, 2003 to the authority or body named in Regulation 34(1) for consideration of the petitioner's representation, the answer is, the Vice Chancellor in the facts and circumstances of the present case cannot be compelled to refer the matter to the body or the authority named in Regulation 34(1) to consider the said representation of the petitioner, let alone adding any grace marks, or extra marks to make the petitioner succeed in the first MBBS examination.

62. The contention of the petitioner that the University by invoking Regulation 34(1) of the said Regulations 1979 added grace marks or extra marks in favour of the students or candidates whose cases were identical or almost similar to the case of the petitioner, does not pursued me to hold that the case of the petitioner is so strong, or rather so exceptional that the University should be directed to consider the representation of the petitioner for addition of marks under Regulation 34(1) to make him succeed in the first MBBS examination.

63. In other words, the above allegations of discrimination against the University or the respondents are not strong enough. True, the University or the authority or authorities under it enjoy certain discretion under the provisions of Regulation 34(1) of the said Regulations 1979. The petitioner, however, I am afraid, has not also been able to make out a case that the University or its authority or authorities had or have failed to exercise their discretion or discretions as enjoyed by them under the provisions of Regulation 34(1) of the said Regulations 1979 in favour of the writ petitioner when they ought to have so exercised in the facts and circumstances of the present case.

64. The learned Counsel on behalf of the University or rather the respondents, however, sought to argue that even assuming that the University in other cases awarded extra marks to make a particular candidate or candidates succeed in their respective examinations, then the University could at best be said to have committed irregularities in awarding extra or grace marks in favour of such candidates. The University could not, the learned Counsel argued further, as a matter of course, be compelled to commit the same irregularity in the case of the petitioner by awarding him extra or grace marks to make him succeed in the examination in question. I think the learned Counsel for the University had gone too far to even suggest such kind of irregularity or irregularities on the part of the University in awarding grace or extra marks in favour of a particular

candidate or some candidates in the past. It is not my purpose to find out whether in the earlier cases, the University committed any irregularity or committed any mistake in awarding extra or grace marks in favour of the candidate or candidates to make them succeed in their respective examinations.

65. The question perhaps is whether the petitioner has been able to make out a case that the case of the petitioner is a fit case for a mandatory direction on the University or the authority or authorities under it to consider the representation of the petitioner under the provisions of Regulation 34(1) of the 1979 Regulations. I have already held that I have not been able to pursue myself to hold that the petitioner has been able to make out such a case to obtain a mandatory direction upon the University or the authority or authorities under it to consider the petitioner's representation for addition of marks or for extra or grace marks to make him succeed in the first MBBS examination in the first place.

66. It is by now well established that the grant of relief or reliefs in exercise of power under the writ jurisdiction is discretionary and I do not think, the petitioner has been able to make out a case where I should exercise such discretion in favour of the petitioner to give the petitioner relief or reliefs as sought for.

67. Since in the facts and circumstances of the case, I have not been able to convince myself that the petitioner is entitled to any discretionary relief in his favour on this writ petition, I think an elaborate discussion of the cases as cited at the hearing and as referred to in the respective Notes of Arguments of both the writ petitioner and the respondents would be wholly unnecessary.

68. In view of the above, I am constrained to dismiss the writ petition. There will, however, be no order as to costs.

69. The dismissal of this writ petition should not, however, be construed as an injunction against the writ petitioner restraining him from approaching the University for seeking or obtaining grace marks in his favour from the University, but it will be for the University and the University alone, when such approach has already been made, to decide what it should do about it.

70. Having said this, it must also be noted that the learned Counsel for the respondents submitted in no uncertain terms at the hearing that in the facts and the circumstances of the case, the case, or the representation of the petitioner did not merit any further consideration at all.