
(1995) 09 RAJ CK 0015

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1566 of 1995

Ramswaroop Meena and Others

APPELLANT

Vs

University of Rajasthan and Others

RESPONDENT

Date of Decision : 14-09-1995

Acts Referred:

Constitution of India, 1950 — Article 14, 254(1)
Indian Medicine Central Council (Minimum Standards of Education in Indian Medicine)
Regulations, 1986 — Regulation 8.1
Indian Medicine Central Council Act, 1970 — Section 36
Rajasthan University Ordinances, 2009 — Ordinance 329(19)

Citation : AIR 1997 Raj 35

Hon'ble Judges : A.P. Ravani, C.J.; M.A.A. Khan, J

Bench : Division Bench

Advocate : N.K. Maloo, for the Appellant; R.D. Rastogi, for the Respondent

Final Decision : Allowed

Judgement

A.P. Ravani, C.J.—Petitioners, in all 10 in number, are students of B.A.M.S. (Bachelor of Ayurvedic Medicine and Surgery) in different colleges affiliated with the University of Rajasthan, Jaipur. Other 23 students have also prayed for being joined in the petition, and they have been permitted to be so joined. Their names are mentioned in Schedule-A to the writ petition.

2. The petitioners have challenged the constitutional validity of provisions of Rajasthan University Ordinance No. 329.N.19(e), (f) and (g). It is further prayed that the provision contained in Ordinance 329.N-19 (b) to (n) may be held to be invalid to the extent of repugnancy with the Regulations of 1986 and it be directed that they are not enforceable to the extent of repugnancy. By way of further prayer, it is prayed that the non-petitioners be directed to allow the petitioners to pursue studies for the second professional examination without any inter-ruption and the non-petitioner be also directed to permit the petitioners to appear in the second professional examination to be held sometime in December, 1995 as per the provisions of Regulations 8.1 and 8.2 framed by the Central

Council of Indian Medicine. The petitioners have further prayed that any other relief which may be deemed just and proper, may also be granted.

3. Petitioners belonged to the batch of March, 1992. They were admitted in B.A.M.S. Course after they passed Pre-Ayurved Test, which is an integrated course spread over 4 1/2 years. It is divided into first, second and third professional examination which is to be undertaken at the interval of one year and a half. Petitioners appeared in the first professional examination which was held in October, 1993, result whereof was declared on May 24, 1994 i.e. after a period of about seven months from the date of examination. Petitioners could not clear all the papers of the first professional examination.

The course for the second professional examination started and initially up to October, 1994 petitioners were allowed to sit in the classes of second year professional course. Supplementary examination for the students who had not passed all the papers of the first year professional course, was held from 29-11-1994 to 29-12-1994 in respect of theory papers. Practical examination was held on March 8-9, 1995. Till the writ petition was filed, the result was not declared. However, it appears that the result has been declared on May 24, 1995. In the month of October, 1994, the college authorities told the petitioners that they would not be allowed to sit in the classes for Second professional examination. Thus, the students who had already appeared in the first professional examination but could not clear all the papers and were required to clear one or more papers of the first professional examination in the three chances available to them as per the appropriate provision of the Ordinance of the University and the Regulations framed by the Indian Medicine Central Council, were told in October, 1994 that they would not be permitted to attend the classes of second professional examination. On enquiry, they were told that as per the provisions of Ordinance 329.N.19(f), framed by the University, they could not be allowed to take instructions for the second professional examination till they pass all the papers of the first professional examination.

4. The relevant provisions of the Ordinance 329.(N).19(e), (f) and (g) are reproduced herein below:-

"Order 329.N.19(e):

A candidate who after having been admitted to the First Ayurvedacharya class as per rules has attended a regular course of study in an affiliated Ayurvedic College for 1-1/2 academic years shall be eligible for admission to the First Ayurvedacharya Examination."

"Order 329.N.19(f):

A candidate, who after passing the First Ayurvedacharya Examination of the University, has attended a regular course of study in an affiliated Ayurvedic College for at least 1-1/2 academic years shall be eligible for admission to the Second Ayurvedacharya Examination. No candidate who has not passed the First

Ayurvedacharya Examination shall be allowed admission to the second Ayurvedacharya class."

"Order 329.N.19(g):

A candidate who, after passing the First Ayurvedacharya Examination of the University, has attended a regular course of study for three academic years prescribed for the Final Ayurvedacharya Examination and has passed the Second Ayurvedacharya Examination of (he University earlier shall be eligible for admission to the Final Ayurvedacharya Examination."

5. As per the provisions of the Indian Medicine Central Council Act, 1970, "Central Council" has been constituted under the provisions of Section 36 of the Act. Central Council is empowered to make Regulations with the previous sanction of the Central Government. Relevant part of Section 36 of the. Act reads as follows :-

"36. Power to make regulations. -- The Central Council may, with the previous sanction of the Central Government, make regulations generally to carry out the purposes of this Act, and without prejudice to the generality of this power, such regulations may provide for -

(a) to (h).....

(i) the courses and period of study and of practical training to be undertaken, the subjects of examination and the standards of proficiency therein to be obtained, in any University, Board or medical institutions for grant of recognised medical qualifications;

(j).....

(k) the conduct of professional examinations, qualifications of examiners and the conditions of admission to such examinations;

(1) to (p)....."

6. In exercise of the aforesaid powers, the Central Council has framed the Indian Medicine Central Council (Minimum Standards of Education in Indian Medicine) Regulations, 1986 (in short "the Regulations"). The said Regulations have been amended in the year 1989. Regulation 8.1 provides for first professional examination to be held at the end of one and half years, Regulation 8.2 provides for second professional examination to be held at the end of three years and . Regulation 8.3 provides for third professional examination to be held at the end of 4 1/2 years.

7. As far as first professional examination is concerned, it is to be held during the period commencing from first day of July to December 31 of the next year. The examination should ordinarily be completed by the end of December. Supplementary examination of first professional examination is required to be held within two months of declaration of result. Subsequent, first professional

examination is to be held every sixth month and for which a candidate "shall ordinarily be allowed three chances for passing the first professional examination." It is further provided that a student who failed in one or more subjects of first professional examination may be allowed to keep term in second professional course. As far as third professional examination is concerned, it is specifically provided that only those students who pass in all subjects shall be allowed to take on the third professional examination. Sub-clause (iv) of Regulation 8.1 specifically provides that the candidate, failed in one or more subjects in examination, shall be eligible to appear in supplementary examination. Sub-clause (v) of Regulation 8.1 further provides that the candidates who fail to pass the first professional examination in three opportunities shall not be allowed to continue their studies. In such cases also, provision is made that in case of personal illness of a serious nature, of a candidate and in unavoidable conditions/circumstances, the Vice Chancellor of University may permit one more opportunity for passing the first professional course.

8. As far as second professional examination is concerned, it is provided that the course will commence in January following the first professional examination and the examination is to be held ordinarily in June/July of the year after completion of three years. The second professional examination is to be held after one and half years of first professional examination in the subjects mentioned in the Regulations. In sub-clause (iii) of Regulation 8.2 it is provided that the candidate must pass at least one subject for being eligible to appear in supplementary examination. Sub-clause (iv) of Regulation 8.2 provides that the supplementary examination to second professional course shall be held ordinarily in September and those who remain failed in one or more subjects in supplementary examination shall be eligible to appear in the subsequent two professional examinations which may be held every sixth month. Sub-clause (v) of Regulation 8.2 provides that such candidates who pass first professional examination in supplementary and register for the second professional afterwards, shall not be allowed summer vacation and will have to undergo instructions during the period.

9. Third professional examination is provided in Regulation 8.3 which is the final one and it has to be held after three academic years after the first professional examination and it is to comprise of the subjects mentioned in the Regulations. Sub-clause (ii) of Regulation 8.3 provides that if a candidate remains failed in one or more subjects in final professional examination, he/she shall be eligible to appear in those subjects in subsequent third professional examination which may be held every sixth month.

10. Regulation 8.1 of the Regulations is much more relevant and needs to be reproduced in its entirety for deciding the questions raised in the petition. Regulation 8.1 reads as follows:-

"8.1. FIRST PROFESSIONAL EXA- MINATION: (To be held at the end of I 1/2

years)

(i) The first professional period shall start from 1st day of July and end on 31st December next year. The examination shall ordinarily be completed by the end of December. The Supplementary examination of First Professional shall be held within two months of declaration of result. The subsequent First Professional examination will . be held every six months and failed candidate shall ordinarily be allowed 3 chances for passing First Professional

However, a student failed in one or more subjects of First Professional examination may be allowed to keep term in Second Professional Course. Only those students who passed in all subjects shall be allowed to take on the Third Professional examination,

(ii) The First Professional examination shall be held in the following subjects : -

1. Padarth Vigyan
2. Astanga Sangharh (Sutrasthan)
3. Sanskrit
4. Ayurved Ka Itihas
5. Rachna Sharir
6. Kriya Sharir.

(iii) The candidates before presenting themselves for this examination shall obtain a certificate of completing the prescribed course of theory and practical in the prescribed subjects of. the First Professional examination.

(iv) A candidate failed in one or more subjects in examination shall be eligible to appear in supplementary examination.

(v) Candidates who fail to pass the First Professional examination in three opportunities shall not be allowed to continue their studies. However, in case of personal illness of a serious nature of a candidate and in unavoidable conditions/ circumstances, the Vice Chancellor of University may permit one more opportunity for passing the first professional course."

11. As far as the petitioners are con-cerned, they appeared at the first professional examination which was held in October, 1993, result whereof was declared on May 24, 1994. The petitioners could not clear all the papers therefore, they were required to clear the papers in which they failed in three chances available to them. As indicated above, supplementary examination for the theory was held in November/December, 1994. Practical examination was held in March, 1995, result of which has been declared on May 24, 1995, In the way of the petitioners, a difficulty has arisen on account of the stand taken by the University that in view of the provisions of Ordinance 329.N. 19(f), they cannot be granted admission to Second Ayurvedacharya Class.

12. Ordinance 329.N.19(f) has been amended and has come into force w.e.f. 25-2-1991. Prior to it, the relevant provision of the Ordinance was contained in Clause (b) of Ordinance 329,N.11, which read as follows:-

"(b) A candidate who having appeared at the First Ayurvedacharya (Bachelor of Ayurvedic Medicine and Surgery) Examina- tion of the University has attended a regular course of study in an affiliated college for one academic year shall be eligible for appearing at the Second Ayurvedacharya (Bachelor of Ayurvedic Medicine and Surgery) provided that a candidate has, in the meanwhile, passed the First Ayurvedacharya (Bachelor of Ayurvedic Medicine and Surgery) Examination."

13. On reading Regulation 8.1 of the Regulations, it would be evident that a student failed in one or more subjects of First Professional examination may be allowed to - keep term in Second Professional course. This is the specific provision made in Regulation 8.1 framed by the Central Council of Indian Medicine in exercise of powers u/s 36 of the Indian Medicine Central (contd. on col. 2nd) Council Act, 1970. The object behind this provision is to see that there is minimum drop outs and the least possible wastage of the national wealth in the form of student community. The Central Council in its wisdom thought that a student who might have failed in one or two papers may be given three chances for passing the First Professional examination. The Central Council has also made specific provision that a student failed in one or more subjects in the First Professional examination may be allowed to keep term in second professional course. However, the University Ordinance 329.N.19(f) inter alia provided that no candidate who has not passed the First Ayurvedacharya examination shall be allowed admission to the Second Ayurvedacharya class. Thus, on the one hand, Regulations framed by the Centra! Council provide that a student who has failed in one or more subjects of the first professional examination shall ordinarily be given three chances to pass the first professional examination. It also provides that such student may be allowed to keep term of second professional course. A student cannot keep term unless he is given admission in second professional course. Therefore, it is evident that this particular provision of Ordinance 329.N. 19(f) is in direct conflict with the provisions of Regulation 8.1 of the Regulations. Both these provisions are reproduced hereinbelow in juxta position to highlight the repugnancy between the two:-

Relevant part of Regulation 8.1 Ordinance 329-N-I9(f)

However, a student failed in one or more subjects of First Professional examination may be allowed to keep term in Second Professional Course. Only those students who pass in all subjects shall be allowed to take on the Third Professional examination.

No candidate who has not passed the First Ayurvedacharya Examination shall be allowed admission to the second Ayur-vedacharya class".

(Emphasis supplied)

14. The underlined portion of the Regulation and that of the Ordinance is in direct conflict with each other. Regulation 8.1 is framed by the Central Council of Indian medicine in exercise of powers conferred upon it u/s 36 of the Act of 1970, which is a central legislation enacted by the Parliament in exercise of powers conferred upon it under Entry No. 66 of List I of VIIth Schedule of the Constitution of India. The Ordinance 329.N. 19(f) is framed by the University in exercise of the powers conferred upon it under the University of Rajasthan Act, 1946 which is a piece of legislation enacted by the State legislature in exercise of power conferred upon it under Entry 25 of List III of VIIth Schedule of the Constitution of India.

15. To the extent that the provision contained in the State Legislation is repugnant to the provisions made by the Central Legislature the same is void as provided under Article 254(1) of the Constitution of India. Nothing is pointed out that this part of the provision is saved by the provisions of Article 254(2) of the Constitution of India. In this connection, a reference may be made to a decision of the Supreme Court in the case state of Tamil Nadu v. Adhi-yaman Educational and Research Institute (1995) 3 JT(SC) 136: (AIR 1995 SCW 2179). In that case, a question arose as regards the provision of All India Council for Technical Education Act, 1987 and Tamil Nadu Private Colleges (Regulation) Act, 1976 and the rules framed thereunder. After examining the relevant provisions of the Acts and the case law, the Supreme Court inter alia observed that the expression "co-ordination" used in Entry 66 of the Union List of the Seventh Schedule to the Constitution does not merely mean "evaluation". It means harmonisation with a view to forge a uniform pattern for a concerted action according to a certain design, scheme or plan of development. It therefore, includes the action not only for removal of disparities in standards but also for preventing the occurrence of such disparities. It would, therefore, also include power to do all things which are necessary to prevent what would make "co-ordination" either impossible or difficult. Supreme Court further held that this power is absolute and unconditional and in the absence of any valid compelling reasons, it must be given its full effect according to its plain and express intention. Supreme Court further observed that to the extent that the State legislation is in conflict with the Central legislation though the former is purported to have been made under Entry 25 of the Concurrent List but in effect encroaches upon legislation including subordinate legislation made by the Centre under Entry 25 of the Concurrent List or to give effect to Entry 66 of the Union List, it would be void and inoperative.

If there is a conflict between the two legislations, unless the State legislation is saved by the provisions of the main part of Clause (2) of Article 254, the State legislation being repugnant to the Central legislation, would be inoperative.

16. Learned counsel for the petitioners has also relied upon a decision of the Supreme Court in the case of University of Delhi Vs. Raj Singh and others, However, in our opinion, in view of the aforesaid decision of the Supreme Court in the case of Adhiyaman Educational and Research Institute (AIR 1995 SCW

2179) (supra), it is not necessary to refer to this decision in further details.

17. Similarly, reliance has been placed on a division bench decision of this Court in the case of Ram Krishna Trivedi v. University of Rajasthan (1992) 2 R LR 729. In para4 of this judgment it is inter alia observed as follows:-

"Entry 25 of List III (Concurrent List) of the 7th Schedule to the Constitution is "education including technical education, medical education and Universities subject to the provisions of entries 63, 64, 65 and 66 of List-I, vocational and technical training of labour". The aforesaid list is wide enough to include in its ambit the question of laying down the minimum standards or eligibility of admission to various medical and Ayurvedic Colleges. Therefore, Regulations which were framed with the approval of the Central Government in exercise of the powers u/s 36 of the Act by the Central Council have the force of law and will override the provisions of Ordinance framed by the University and if anything is contrary to the regulations in the Ordinance, it will be invalid".

18. We are in respectful agreement with the view taken by the division bench in the aforesaid decision.

19. Legality and validity of the provisions of Ordinance 329.N.19(f) has also been challenged on the ground that the same is unreasonable and arbitrary. First part of the said Ordinance prescribes the eligibility criteria for admission to the Second Ayur-vedacharya examination. It provides that no candidate who has not passed the first Ayur-vedacharya examination shall be allowed admission to the second Ayurvedacharya Class. This is directly in conflict with the provisions of the Regulation which provides for giving three chances to a student who has failed in one or more subjects of first professional examination. The very purpose of giving three chances to the student would stand frustrated if admission to the second professional class is made conditional by prescribing the eligibility criteria that a candidate should have passed the first Ayurvedacharya Examination. The purpose of giving three chances to a candidate is to see that the student remains in the main stream of the study and there is no wastage of the national wealth. By prescribing the eligibility criteria of passing the First Ayurvedacharya examination or the first professional course, the very purpose of giving three chances is frustrated. There is no rationale behind this provision. It is not the case of the University that there is any practical difficulty in allowing admission to the students who failed in first professional examination, to second professional examination when they might be preparing for availing of the chances provided to them for appearing at the supplementary examination. No reasonable ground is advanced to make departure from the Regulations framed by the Central Council. Therefore, even if the Regulations are considered to be directory and not mandatory, then also, there must be some reasonable ground for making departure from the provisions of the Regulations. No such ground is advanced. Therefore, the aforesaid part of the Ordinance 329.N. 19(f) is liable to be struck down as being unreasonable and arbitrary.

20. It was contended by the learned counsel appearing on behalf of the respondents that the Ordinance in question is aimed at raising the standard of education and it does not lower down the standards. It is not understood how by restricting the entry to second professional course, the standards of education would be raised. It may be noted that the University Ordinance does not provide that three chances which have been made available as per the Regulations would not be available to the students. Had such a provision been made, it would have been again in direct conflict with the Regulations made by the Central Council. Once the Central Council has given this facility to the students for passing the first professional examination in three chances, by no stretch of reasoning, it can be said that the standards of education would be raised by restricting the admission of the students on condition of the candidate having passed the First Professional examination. This would merely lengthen the period of study. Instead of 4 1/2 years degree course in all, it maybe extended to 5 years or 5 1/2 years or 6 years depending upon the capacity and perseverance of the candidate concerned to pass the First Professional examination in three chances made available to him.

21. Here, reference may be made to un-amended provision of the Ordinance which, was contained in Cl. (b) of Ordinance 329.N.11 and which has been reproduced hereinabove, in which there was no condition of passing the First Professional examination for being admitted to Second Ayurvedacharya Course. All that was required was that a student must have appeared at the First Ayurvedacharya Examination and he must have attended regular course of study in an affiliated college for one academic year. Thus, history of the legislation also suggests that there was no need to prescribe the condition of passing the First Ayurvedacharya Examination for being eligible to be admitted to Second Ayurvedacharya course. As far as the standard of education is concerned, it may be noted that no student is permitted to appear in Third professional examination unless he clears all the subjects of the first professional examination. This is so provided in Regulation 8.1. A student is provided maximum three chances to clear all the papers of the First Professional examination. As provided in Regulation 8. I(v), a candidate who fails to pass the first professional examination in three opportunities, shall not be allowed to continue his studies further. Therefore, there is no question of lowering down the standards of education when a candidate who has failed in one or more subjects of the First Professional Examination, is admitted to the 2nd Year professional course.

22. Learned counsel for the respondents has relied upon the following decisions:-

1. R. Chitralekha v. State of Mysore, AIR 1964 SC 1823;
2. State of Madhya Pradesh and Another Vs. Kumari Nivedita Jain and Others,
3. Javid Rasool Bhat and Others Vs. State of Jammu and Kashmir and Others,
4. Dr. Ambesh Kumar Vs. Principal, L.L.R.M. Medical College, Meerut and Others,

5. Ajay Kumar Singh and Others Vs. State of Bihar and Others,

23. However, in our opinion, none of the aforesaid decisions is of any help in interpreting the provisions of the Regulations and . the Ordinance in question,

24. For the aforesaid reasons, the writ petition is required to be allowed partly.

25. In the result, the writ petition is allowed in part. The following provision contained in Ordinance 329. N. 19(f) of the University of Rajasthan is declared to be void and inoperative as being in conflict with and repugnant to Regulation 8.1 of the Regulations:

"No candidate who has not passed the First Ayurvedacharya Examination shall be allowed admission to the Second Ayurveda--charya class."

26. The respondents are directed to allow the petitioners to pursue their studies for the Second Professional Course and are further directed to permit the petitioners to appear in the Second Professional Examination to be held in or about the month of Dec. 1995 provided they fulfil other conditions of the Ordinance.

27. The writ petition stands allowed to the aforesaid extent, with no order as to costs.