

(2015) 01 JH CK 0066
In the Jharkhand High Court
Case No : L.P.A. No. 304 of 2014

Ranchi University and Others

APPELLANT

Vs

Devashish Robinson Tigga and Others

RESPONDENT

Date of Decision : 14-01-2015

Acts Referred:

Indian Medical Council Act, 1956 — Section 33

Citation : (2015) 1 AJR 519 : (2015) 2 JLJR 518

Hon'ble Judges : Virender Singh, C.J.; Aparesh Kumar Singh, J.

Bench : Division Bench

Advocate : Anoop Kumar Mehta, for the Appellant; Manoj Tandon and Rajesh Kumar, Advocates for the Respondent

Final Decision : Allowed

Judgement

Virender Singh, C.J.—Ranchi University, Ranchi (hereinafter to be referred to as "University" only), being aggrieved of the judgment/order dated 8th of July, 2014, handed down by learned Single Judge in W.P.(C) No. 1814 of 2013, whereby the University has been directed to award grace marks to respondent-Writ Petitioner, Devashish Robinson Tigga (hereinafter to be referred to as "Petitioner" only), as provided in Medical Council of India Regulations of Graduate Medical Education, 1997 (hereinafter to be referred as "MCI Regulations of 1997"), has filed the instant Letters Patent Appeal in which there was a delay of 15 days only, which already stands condoned by the Court vide order dated 12th December, 2014 and admitted for adjudication. Mr. Manoj Tandon has put in appearance on behalf of the Writ Petitioner and Mr. Rajesh Kumar appears for Rajendra Institute of Medical Sciences, Ranchi (for short "RIMS"), Respondent No. 2 herein.

2. We have been informed that in compliance to the impugned judgment, Petitioner has already been awarded Grace Marks and allowed to take Second Year MBBS Examination for which he was permitted as a special case. However, the result of the Petitioner for Second Year MBBS Examination has not been

declared by the University till date. Not only that the Petitioner has also been allowed to sit provisionally in the First Part of Third Year MBBS.

FACTS NEED TO BE NOTICED

3. The Petitioner, when not awarded Grace Marks in one of the subjects, "Anatomy" for the examination of First Year MBBS in a practical paper when he had cleared all other subjects, on account of the decision taken by Examination Board of the University, in its meeting held on 05.11.2012 resolving that no Grace Mark would be awarded in Practical/Clinical portion of the subject for all MBBS Examinations and that the maximum of 5 marks could be awarded as Grace Marks to Theory Portion only of a subject in MBBS Course, which decision was communicated by Controller of Examination of the University to Director, RIMS, Ranchi vide letter No. Ex/C/2428 dated 10.11.2012, sought quashment of the said letter/communication on the ground that by virtue of the MCI Regulations of 1997, formulated by Medical Council of India wherein Clause 13(10) of the said Regulations stipulates that Grace Marks up to the maximum of 5 marks may be awarded at the discretion of the University to a Student, who was failing only in one subject but passed in all other subjects, there appeared no rationale on the part of the University to take a decision to say that it would not award 5 Grace Marks in Practical/Clinical Examination and may award 5 Grace Marks in Theory Paper only.

4. Learned Writ Court, while relying upon the judgment of Kerala High Court, handed down by learned Single Bench in a case titled Arun Mozhi Varman K. and others v. The University of Calicut [N.P.(C) 37955 of 2010 (IT)], on which the Petitioner has strengthened his contentions, ultimately set aside the aforesaid decision taken by the University of not granting Grace Marks in Practical Examination observing that the said decision was discriminatory in nature and there appeared to be no rationale in it, being not based on any reason also. It is in this background, the University was directed to award Grace Marks to the Petitioner in Practical Examination of Anatomy subject with a further direction that after awarding of 5 Grace Marks, if he comes out to be successful, he will be allowed to take Second Year MBBS Examination.

5. Heard learned counsel for the parties and gone through the records of the case.

6. Mr. Mehta submitted that the University had formulated the Rules of Moderation of Results of MBBS Examination in the year 1970 under Section 39 of the then Bihar State Universities Act (now Jharkhand State Universities Act) and according to Rule (3), if a Student in Practical in 1st MBBS and Final MBBS Part I Examination and in Clinical or Clinical-cum-Practical in Final MBBS Part II Examination is failing, he shall be deemed as a failure in the subject and that the University, in terms of those Rules of Moderation, only had decided not to give any Grace Marks to the Students of MBBS in Clinical/Practical portion of the subject of Medical Examination, in its meeting held on 05-11-2012, which in turn

was communicated by Controller of Examination of the University to Director, RIMS, Ranchi.

7. Mr. Mehta submitted that even in terms of Regulation 13(10) of the MCI Regulations of 1997, awarding of Grace Marks up to a maximum of 5 marks is also at the discretion of the University and that the University while exercising its discretion, resolved that the Grace Marks would be given only in Theoretical portion of a subject of Medical Examination and not in Practical/Clinical portion of the subject. Learned counsel submitted that the University, in its wisdom, thought of following its Rules of Moderation, formulated way back in 1970, more strictly in exercise of its discretion, which is in tune with Regulation 13(10) of MCI Regulations of 1997, which cannot be said to be discriminatory in nature or unreasonable on the face of it. Learned counsel submitted that may be the letter/communication addressed by Controller of Examination of the University to Director, RIMS, Ranchi is not assigning any reason, in so many words, for taking the decision by the Examination Board, in its meeting held on 05.11.2012, but, it was just a communication and nothing beyond that.

8. Mr. Mehta then submitted that the judgment, relied upon by the Petitioner in Aran Mozhi case (*supra*) and derived benefit also, is entirely distinguishable on facts as Moderation Rules in that case were altogether different from the one formulated by the University of Ranchi.

9. Mr. Mehta, on the strength of the aforesaid submissions, prays for setting aside of the impugned judgment of the learned Single Judge by upholding the decision taken by the Examination Board in not awarding the Grace Marks (maximum of up to 5 marks) in Practical/Clinical portion of the subject of Medical Examinations.

10. Per contra, Mr. Tandon, appearing for the Petitioner, supported the impugned judgment and submitted that the decision taken by the Examination Board has no rationale or reasoning as held by the learned Single Judge inasmuch as the decision taken by the University amounts to re-writing Medical Council of India Regulations, which is beyond the competence of the University as those Regulations are formulated by Medical Council of India with prior sanction of the Central Government in exercise of powers envisaged under Section 33 of the Medical Council of India Act, 1956, as such, this field is occupied by the central legislation only.

11. Mr. Tandon then submitted that till November, 2012 when the Examination Board thought of not granting Grace Marks in Practical/Clinical portion of the subject of Medical Examination, the University was granting Grace Marks in Theory as well as Practical portion of a subject to a student of MBBS Course if he had cleared all other subjects, therefore, for turning around altogether from the persistent practice having been adopted by the University, for years together, there should have been some cogent reasons or rationale in the sense, otherwise it can be said to be an irrational, unreasoned decision taken by the University,

whereas Regulation 13(10) of MCI Regulations of 1997 does not stipulate that there shall be no Grace Marks at all in Practical portion of the subject.

12. According to Mr. Tandon, in all fairness, the University should look at an individual case and when a situation so arises for granting Grace Marks keeping in view the performance of a particular student in other subjects, should decide, whether the said Student deserves Grace Marks in Theory portion of the subject or Practical/Clinical portion of the subject for the reason that the object of extending discretion is to remove real hardship of the Student, who has otherwise shown good performance and deserves to be declared successful and not just in a casual manner or a mechanical manner as done now by resolving that no Grace Marks shall be given in any Practical/Clinical portion of the subject for the MBBS Examinations. Learned counsel submitted that the same controversy had cropped in Arun Mozhi case (*supra*) with regard to some of the students, who were constrained to knock at the doors of Writ Court of Kerala High Court and ultimately, got a favourable order directing the University of Calicut to award Grace Marks to them for Practical also as provided in MCI Regulations of 1997 for the Academic Calendar 2005-10 and the said view was further upheld by the Division Bench of Kerala High Court in an appeal filed by the University of Calicut bearing W.A. 409 of 2011 decided on 28th March, 2011. He has drawn the attention of the Court to the Single Bench judgment as well as Division Bench judgment of the said case, in particular paragraphs 24 to 26 of Single Bench judgment.

13. Mr. Tandon then submitted that the University did not even bother to file any Counter Affidavit before the Writ Court and in order to strengthen its appeal, has made an attempt to supply reasons by way of an Affidavit, but University cannot be permitted to supplement what was not before the learned Writ Court. In support of his submissions, he has relied upon a judgment of Constitution Bench of Supreme Court of India handed down in case *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, .

14. Mr. Tandon lastly submitted that the entire career of the petitioner is at stake, who although performed very well in all other subjects except in Practical portion of Anatomy subject for which he has been declined the Grace Marks. He submitted that may be on the strength of the impugned judgment, he has been allowed to sit in the Examination of Second Year MBBS Course and is presently pursuing Third Year MBBS (Part I) also, if not granted only 3 Grace Marks in Practical Examination, he will have to reappear in all the subjects of First Year MBBS and in that eventuality, his result for Second Year MBBS, which has been withheld by the University, will not be declared, which, in turn, would deprive him of pursuing the studies of even Third Year MBBS (Part I) also, therefore, prays for dismissal of the instant appeal filed by the University upholding the judgment of learned Single Judge with a further prayer to declare the result of the Petitioner for MBBS Second Year.

15. On a specific query put to Mr. Mehta, whether in the event of not granting

Grace Marks to the Petitioner in Practical portion of the subject, "Anatomy" in which the Petitioner is failing, he will have to appear in all the subjects of MBBS First Year, he, after getting the instructions from the Controller of Examination of the University stated at the Bar that in this eventuality, the Petitioner will have to take the examination of "Anatomy" subject only, which would consist of both the portions, i.e., Theory and Practical and he is not required to clear all the subjects once again.

16. Since it was a communication only sent by Controller of Examination of the University to Director, RIMS, Ranchi whereby conveying the decision taken by the Examination Board of the University in its meeting held on 05.11.2012 with regard to stopping awarding of Grace Marks in Practical/Clinical portion of a subject, which communication was questioned by the Writ Petitioner, we, for our satisfaction, called for the proceedings of the meeting. Mr. Mehta has placed on record attested copy of Extract from the said Proceedings and reads:--

"Item No. 2. Considered the request of students of R.I.M.S., Ranchi regarding awarding of Grace Mark in Clinical portion of the subject of 3rd Professional Part-I Examination -2012 (A) and it was resolved that University regulation regarding moderation of result of M.B.B.S. Examinations regarding award of Grace mark be strictly followed for the Examinations to be conducted after 03-10-2012 i.e. the date of meeting of the Examination Board in which decision of awarding of Grace marks in Clinical/Practical portion of the subject of Medical examinations was considered and resolved that no grace mark be awarded in practical/Clinical portion of a subject for all M.B.B.S. examinations. However, maximum of 5 marks be awarded as grace mark to theory portion only of a subject in M.B.B.S. Course.

This resolution may be send to Sri Miritunjay Mahato. Examination Department."

17. We also inquired from Mr. Mehta, whether prior to the decision taken by the Examination Board in its meeting held on 05-11-2012, University was awarding Grace Marks in Practical portion of the subject also to the students of the M.B.B.S., despite their Rules of Moderation in place, formulated way back in 1970 under Section 39 of the then Bihar State Universities Act (now Jharkhand State Universities Act), he fairly submitted that the University had been granting Grace Marks in Theory as well as Practical portion of the, subject and has exercised this discretion in some isolated cases, but, is now strictly following its decision taken on 05-11-2012 in the meeting of the Examination Board of the University.

18. Irrespective of an individual case, the vital issue for our consideration is, whether there appears to be any good reason or rationale for the University in deviating from its earlier practice of granting Grace Marks up to 5 marks in Theory as well as Practical portion of a subject to a Student of MBBS, who was clearing all other subjects of the Examination or the decision now taken in its meeting held on 05.11.2012 is without any basis, therefore, discriminatory or arbitrary in nature, as already held by the learned Single Judge.

19. Mr. Tandon very vehemently argued that taking the decision by the University

for not granting Grace Marks in Practical portion of the subject of the MBBS Examination amounts to rewriting of MCI Regulations of 1997. He, in his attempt, tried to make his submissions, somewhat attractive, submitting that it was beyond the competence of the University, the field being already occupied by the Central Legislation, as MCI Regulations were formulated with prior sanction of the Central Government in exercise of powers of Section 33 of the Medical Council of India Act, 1956, but, when appreciated in the right perspective, the contention of Mr. Tandon carried no weight at all, for a very simple reason that taking the decision by the University of not awarding Grace Marks in Practical portion of a subject is not in any manner against the MCI Regulations, 1997, rather, it is in tune with Regulation 13(10) of the MCI Regulations of 1997, which reads:--

"13. APPOINTMENT OF EXAMINERS:

(10) The grace marks up to a maximum of five marks may be awarded at the discretion of the University to a student who has failed only in one subject but has passed in all other subjects." 20. In this regard, rather a clarification from Medical Council of India was asked for in respect of one of the candidates of Tamil Nadu, namely, A. Renuka, wherein after referring to Regulation 13(10) of MCI Regulations of 1997, it was stated as follows:--

"In view of the above, the grace marks up to a maximum of five marks may be awarded either in theory or in practical examination at the discretion of the University to a student who has failed only in one subject but has passed in all other subjects." There is a reference to aforesaid fact in a case titled B. Aanantha Lakshmi Vs. The Tamil Nadu Dr. M.G.R. Medical University and Others-- > in which the same issue had cropped up and ultimately the learned Writ Court, finding no illegality in the impugned portion of the resolution passed by the University in not awarding Grace Marks for Practical portion, upheld the decision of the University. (Photocopy of the judgment is annexed with the record of the Letters Patent Appeal on hand).

21. Viewed thus, we dispel the arguments advanced by Mr. Tandon in this regard and hold that the decision taken by the University cannot, in any manner, be said to be against the MCI Regulations of 1997.

22. We would now examine, whether the decision taken by the University in its meeting held on 05.11.2012 whereby the Examination Board resolved that henceforth the Moderation of Results of MBBS Examination regarding award of Grace Marks would be strictly followed for the Examinations to be conducted after 03.10.2012, although, does not spell out, in so many words, the reasons for arriving at that conclusion giving go by to the earlier persistent practice of granting Grace Marks in Theory as well as Practical portion of the subject of the MBBS Examination, has any rationale in it or has been taken without any basis.

23. We are conscious of the fact that in the Rules of Moderation of Results of MBBS Examinations, formulated by the University on the strength of the then

Bihar State Universities Act (now Jharkhand State Universities Act), in Rule 3 there is no reference to grant of Grace Marks to a Student in Clinical-cum-Practical portion of the subject and it only refers to one condition that if the Student is failing in Practical-cum-Clinical, he shall be deemed as a failure in the Subject. The discretion of the University to grant Grace Marks on its own, even in the practical portion of the subject came into being when MCI Regulations 1997 were forced, wherein University was given the discretion to grant Grace Marks up to the maximum of 5 marks only to a student, who has failed only in one subject but has passed in all other subjects as per Regulation 13(10) of MCI Regulations of 1997. We are also conscious of the fact that even after MCI Regulations of 1997, the University had adopted the practice of granting Grace Marks in Theory as well as Practical portion of the subject to a Student, who had cleared all other subjects thereby exercising its discretion in both the eventualities, but, in considered view, the decision, now taken, by the University in not granting Grace Marks in Practical portion of the subject, cannot be said to be arbitrary or mechanical. We would now delve in to deep discussion in this regard.

24. Mr. Tandon submitted that Regulation 13(10) of MCI Regulations of 1997 should be applied with regard to an individual case, depending upon the performance of a particular student for the purposes of granting Grace Marks up to 5 marks either in Practical portion or Theoretical portion, as the case may be. Arguments advanced by Mr. Tandon appeared to be little bit attractive on the face of it, but deserve to be rejected for the reason that if this discretion of granting Grace Marks is allowed in an individual case, then in that eventuality, there would be more chances of arbitrariness, which Court cannot allow. Therefore, what has to be seen is that, this discretion should be exercised uniformly without there being any exception to it, realizing the overall hardships of the students. If the discretion is exercised uniformly, it cannot be said to be arbitrary, as is held by the Apex Court in case titled *The Maharashtra State Board of Secondary and Higher Secondary Education Vs. Amit and Another*, .

25. The University, may be at a belated stage, has now thought of carving out a classification between two portions of a subject of Medical Science for the purposes of awarding grace marks, which exercise could be done by the University at an early stage also, especially after Regulation 13(10) of MCI Regulations of 1997 came into being, giving the University a complete discretion in this regard. What is required to be appreciated by the Court is, whether this classification, now done, is arbitrary, artificial or evasive and if it is not, and has reasonable relation to the object to be achieved, then, certainly it cannot be termed as unreasonable or irrational on any count. In order to pass such test, as held by the Constitution Bench of the Hon'ble Supreme Court in reference to the constitutionality of *In Re: The Special Courts Bill, 1978*, , two conditions must be fulfilled, namely, (i) that the classification must be found on an intelligible differentia, which distinguishes those that are cropped together from others; and (ii) that the differentia must have a rational relation to the object sought to be achieved by the Act.

26. Let us now apply the aforesaid ratio in the present case also, which, ultimately, will have effect upon other students also, being an issue of that nature.

27. So far as Theoretical portion of the subject in Medical Science is concerned, there is possibility of error in evaluation and checking of theory papers since examiners cannot have the weighing balance for the same, therefore, there can be some just justification for grace mark in the theory, but, in Practical/Clinical paper, the situation is altogether different. The student has to come up to certain minimum standards of skill which are tested in Practical/Clinical Examination before he is given licence to practice medicine and serve the public. Therefore, Practical/Clinical Examination, in our considered view, is a very important examination for a Medical Student for assessing candidate's proficiency and skill. It would also include evaluation of management and approach of handling emergencies as well. A deficiency in clinical skills cannot and should not be covered with grace marks, otherwise this can pose dangerous situation in the long run. Further, it is important to distinguish and highlight the difference between theoretical knowledge and assessment of Clinical Skill by the examiners in a fair, objective and unbiased manner. It is for this reason that, external examiners are also called for Practical/Clinical papers so that the assessment of a student is made uniformly by the Chairman and Coordinator of whole examination programme.

28. There are umpteen examples of required minimum skills pertaining to different specialties which can be considered as must know for all would be doctors. For example, it is not possible to compromise on the skill required for conducting a normal delivery. Similarly for making a diagnosis, the doctor is supposed to be full conversant with normal standards of various blood tests so that he can interpret the reports out of range indicative of disease. For student of Anatomy, as is the case on hand, it is essential to know various anatomical landmarks to know what lies underneath the skin, only then he can learn basics of surgery of any type. Thus, there cannot be grace marks in place of minimum levels of required skills. There can be many more examples of this type in other subjects as well, but we do not feel the necessity of entering into that much of details.

29. Further, we feel that in such cases, in the Scheme of Examination of the University, if a Student is allowed to appear in subsequent Supplementary or other Special Exams to clear the subject in which he has failed in Practical/Clinical, it only would lead to improvement in his proficiency and skills and would be in the larger interest of the student as well as the Society.

30. Further, it is known that for passing, Medical Council of India has stipulated that student must score minimum 50% in theory and 50% in practical or clinical examination separately. This minimum norm cannot and should not be further diluted in practical or clinical examination at least which test assesses the skills of the future doctor. On the other hand, it is possible to improve knowledge by

reading from books, internet and from attending refresher courses. Hence, there can be some justification in giving grace marks in theory portion of the subject but not in practical or clinical. In our view, giving grace marks in Practical or Clinical portion of the subject would tantamount to compromising with the quality and competence of the student.

31. We have, therefore, made an attempt to examine this issue on a broader spectrum in order to arrive at conclusion whether the discretion, exercised by the University resolving that henceforth no Grace Marks would be given in Practical portion of the subject has any rationale in it, even though the reasons are not assigned for arriving at the conclusion, and the answer we get is that the intention behind taking this decision is absolutely logical and it has relation to the object sought to be achieved. Weighed thus, the approach of the University not to grant Grace Marks to a student, who has failed in Practical/Clinical subject in the MBBS Exams, cannot be said to be without rationale, rather it seems to advance the larger public interest in having a better qualified and skilled Medical Graduate on conclusion of MBBS Course.

32. We have gone through the judgment rendered in Arun Mozhi case (supra), wherein the decision taken by the University in not granting the Grace Marks in Practical Examination has been held to be bad on the ground that the University had been granting Grace Marks in all previous years and there was no subsequent development, warranting any change in its approach, therefore, no valid reason to deny Grace Marks in the Practical for a particular year. We, however, respectfully differ from the said view on account of supplying our own reasons as referred to hereinabove while examining the issue in detail.

33. We are also conscious of the fact that the University has not filed any Counter before the learned Writ Court and in order to substantiate its pleas, filed an affidavit during the pendency of the present Appeal, supplementing certain grounds which were not agitated before the learned Writ Court on which count, Mr. Tandon relied upon Supreme Court Judgment handed down in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, , wherein it is held in paragraph 8 as under:--

"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out." 34. The aforesaid view has been diluted to some extent where larger public interest is involved and in such situation, additional grounds can also be looked into to examine the validity of an order as held by the Hon''ble Supreme Court in case Chairman, All India Railway Rec. Board and Another Vs. K. Shyam Kumar and Others, . The Hon''ble Supreme Court in paragraph 45 held as follows:--

"45. We are of the view that the decision-maker can always rely upon subsequent materials to support the decision already taken when larger public interest is involved. This Court in *Madhyamic Shiksha Mandal, M.P. v. Abhilash Shiksha Prasara Samiti* found no irregularity in placing reliance on a subsequent report to sustain the cancellation of the examination conducted where there were serious allegations of mass copying. The principle laid down in *Mohinder Singh Gill* case is not applicable where larger public interest is involved and in such situations, additional grounds can be looked into to examine the validity of an order. The finding recorded by the High Court that the report of CBI cannot be looked into to examine the validity of the order dated 4-6-2004, cannot be sustained." 35. We, after examining the issue, in its right perspective, find no difficulty in holding that despite the fact that University was granting Grace Marks in Theory as well as Practical portion of a subject to MBBS Students till the decision was taken by the Examination Board in November, 2012, as referred to in the communication letter No. Ex/C/2428 dated 10.11.2012, impugned by the Writ Petitioner, yet the decision, now taken, may be at belated stage, for not granting the Grace Marks for Practical portion of a subject to a student, who has otherwise cleared all other subjects of the Medical Examination, as done in this particular case, is not without any basis, logic or rationale as also the decision taken by the University, in our considered view, is in tune with Regulation 13(10) of MCI Regulations of 1997, having exclusive discretion in this regard and rightly exercised also uniformly to achieve the object behind it.

36. Resultantly, the appeal, on hand, deserves to be allowed by setting aside the impugned judgment of the learned Writ Court declaring the decision taken by the University in terms of the Communication, Letter No. Ex/C/2428 dated 10.11.2012 (impugned in the Writ Petition) to be discriminatory. In turn, the Writ Petition bearing W.P.(C) No. 1814 of 2013, filed by the Writ Petitioner, also deserves to be dismissed. Ordered accordingly. Since in terms of the impugned judgment, the Petitioner has already been 16 L.P.A. No. 304 of 2014 awarded Grace Marks and on being successful, allowed to take Second Year MBBS Examination also as a special case, he will have to take the complete Examination of one subject, "Anatomy" (Theory and Practical), which shall be conducted by the University as a special case or may be along with other students of MBBS First Year, if their Examinations are not over by now and depending upon the result of that subject, the result of Second Year MBBS, which has been withheld by the University, shall be declared. If the Rules so provide, the Petitioner may be allowed to continue with studies for Third Year MBBS Examination (Part I), so that his career is not jeopardized and his studies are not affected.