

(2015) 04 MAD CK 0198

In the Madras High Court

Case No : Writ Petition Nos. 2902 and 33442 of 2014 and M.P. Nos. 1, 1, 2 of 2014 and 1 of 2015

S. Kavya

APPELLANT

Vs

The Tamil Nadu Dr. MGR Medical University and Others

RESPONDENT

Date of Decision : 09-04-2015

Acts Referred:

Citation : (2015) 04 MAD CK 0198

Hon'ble Judges : M. Sathyanarayanan, J

Bench : Single Bench

Advocate : N.G.R. Prasad for Row and Reddy, for the Appellant; Sanjay Ramasamy, Advocates for the Respondent

Final Decision : Dismissed

Judgement

M. Sathyanarayanan, J.—By consent, both the writ petitions are taken up for final disposal.

W.P. No. 2902 of 2014

2.1. The petitioner is a student of second respondent institution which has been affiliated to the first respondent/University. The petitioner claims that she belongs to Schedule Caste community and hailing from a poor family and with great difficulty, she joined the second respondent institution. The petitioner also claims that she was the second topper in Higher Secondary Examination in Coimbatore District and she is also the first person from her village to join the Medical College. It is stated by the petitioner that she paid a sum of Rs. 3.60 lakhs to the second respondent institution and joined the medical course during the academic year 2010-2011 and thereafter she applied for medical loan from Indian Bank, Valparai Branch and it was not sanctioned. Therefore, she filed W.P. No. 18253/2012 before this Court and in the interregnum, she was not permitted to write the 2nd year M.B.B.S. examination on account of non-payment of fees. Hence, she filed W.P. No. 704/2013 and this Court, vide interim order dated

30.01.2013, directed the respondents to permit her to write the 2nd year examination with a rider that the results shall not to be published and she had also written the examination. This Court took up the above said writ petitions for final disposal and by a common order dated 21.08.2013, passed the following order:

"The Tamil Nadu Dr. M.G.R. Medical University is directed to publish the results of the petitioner with respect to the second year M.B.B.S. course as expeditiously as possible and in any case within a period of two weeks from the date of receipt of copy of the order.

The petitioner wanted the bank to sanction educational loan. The petitioner initially submitted an application for educational loan so as to enable her to pay the tuition fees for the academic years 2010-2011 and 2011-2012. Since, already two academic years have gone, the petitioner seeks educational loan for the entire period of M.B.B.S. Course.

The petitioner is given liberty to move a fresh application for educational loan and in the event of making any such application, the same shall be considered and disposed of by the Indian Bank, in accordance with the Regulations framed by Indian Banks Association within a period of fifteen days from the date of receipt of application.

Since this Court has directed the bank to consider the loan application and taking into account the delay involved in the matter, the institution is directed to forward the name of the petitioner to the University for the purpose of permitting her to write the ensuing examination for the third year M.B.B.S. Course. The University is directed to permit the petitioner to writ the examination."

2.2. In pursuant to the above said order, the petitioner has written the 2nd year M.B.B.S. examination, but to her shock and surprise she was awarded less marks in Paper I- General Microbiology Immunology and Systematic Bacteriology and Paper II - Virology, Mycology, Parasitology and Applied Microbiology. The petitioner applied for revaluation of the above said papers and upon revaluation, the first respondent awarded additional 2 1/2 marks for Paper I and with regard to Paper II, according to the petitioner, the second respondent left columns of second valuation without filling up any details and kept it blank. The petitioner on getting copies of the answer scrips of both papers, compared with relevant approved textbooks and formed an opinion that she is entitled to more marks. The petitioner filed W.P. No. 1672/2014 praying for issuance of a Writ of Mandamus directing the respondents to undertake second valuation of the petitioner's answer papers with approved books and notes and based on the report, award appropriate marks. When the above said writ petition was listed on 22.01.2014, the learned Additional Government Pleader (Education) took notice and sought time to get instructions and on 24.01.2014, this Court directed the petitioner to serve papers on the learned Special Government Pleader (Education) and thereafter, it has been adjourned and counter affidavit is yet to

be filed by the official respondents in the said writ petition.

2.3. The petitioner would further state that the respondents did not sent her hall ticket for the 3rd year examination and on 14.11.2013, she went to pay Rs. 25,000/- towards 3rd year examination fees to the second respondent. However, the second respondent accepted only Rs. 8,500/- towards examination fees for the second year arrear papers i.e., Papers I and II and returned the remaining amount. The father of the petitioner also submitted a representation dated 21.11.2013 to the first respondent/University requesting for issuance of the hall ticket enabling the petitioner to write the 3rd year examination, but no response was forthcoming. Since the 3rd year examination was scheduled on 03.02.2014 and that the petitioner was not issued with the hall ticket, she came forward to file this writ petition praying for issuance of a Writ of Mandamus directing the respondents 1 and 2 to direct her to write the 3rd year M.B.B.S. examination and to pass such further orders.

2.4. The petitioner, pending disposal of the said writ petition, filed M.P. No. 1 of 2014, praying for an interim direction directing the first respondent/University to permit the petitioner to write 3rd year M.B.B.S. examination. The learned Judge, vide interim order dated 31.01.2014 has recorded the facts leading to the filing of the writ petition and granted interim direction as prayed for and it is relevant to extract para 6 of the said order:

"6. Though initially this Court is not inclined to adhere to the request made by the learned counsel for the petitioner in view of the last minute approach, but taking into account the earlier order passed by this Court, that considering the pendency of writ petition in W.P. No. 1672 of 2014 seeking second revaluation as also letter to the 1st respondent for issuance of hall ticket and that taking into consideration the equity involved in this matter, the 1st respondent is directed to permit the petitioner to write 3rd year M.B.B.S. examination scheduled to be commenced from 03.02.2014, by accepting necessary examination fees. However, it is ordered that results shall not be published until further orders of this Court. It is also made clear that this order shall not be taken to be a binding precedent to any other persons and also shall not confer any right to claim equity as that of the petitioner."

2.5. In pursuant to the above said interim order, the petitioner was directed to write the 3rd year M.B.B.S. examination. Challenging the said interim order dated 31.01.2014, the first respondent/University preferred an appeal in W.A. No. 757/2014 and it was dismissed by a Division Bench of this Court, vide judgment dated 18.06.2014, by observing as follows:

"3. The order passed by the learned Single Judge has been given effect to and further, sufficient safeguard has also been given to the appellant.

In view of the foregoing, we find no merit in the writ appeal. Hence, the writ appeal is dismissed. No costs. Connected Miscellaneous Petitions are closed."

2.6. The petitioner thereafter filed M.P. No. 2 of 2014 praying for interim direction directing the first respondent to declare the results of the 3rd year examination of the petitioner. M.P. Nos. 1 and 2 of 2014 in this writ petition as well as W.P. No. 1672 of 2014 filed by the petitioner were listed for hearing on 21.07.2014 and the learned Judge has passed the following order:

"Though M.P. No. 2 of 2014 is for a direction to the first respondent to declare the petitioner's result of the third year MBBS examination, the learned counsel for the petitioner confines his prayer only to permit the petitioner to write the examination in Micro-Biology - Paper I and II.

Heard Mr. NGR Prasad, learned counsel for the petitioner and Mr. Sanjai Ramaswami, learned counsel for the first respondent University.

Without difficulty, it can be concluded that the petitioner can be allowed to write Micro-Biology-Paper I and II, in which she earlier failed. The only area of dispute between the petitioner and University is as to whether she can be allowed to go to the next year, without passing the examination or not despite having filed a writ petition seeking revaluation, the petitioner is now ready to write the arrears. Since, it is also a mandatory requirement for her to write the examination, there will be an interim direction to the first respondent to permit the petitioner to write Micro-Biology Paper I and II, in which she failed."

2.7. M.P. No. 1 of 2014 in this writ petition was listed for hearing on 20.01.2015 and the learned Judge, taking note of the submission made by the learned counsel for the second respondent University that the results of the 3rd year examination written by the petitioner have not been declared and the further fact that unless the petitioner clears all the papers of the 3rd year, she will not be entitled to sit for the 4th year examination scheduled to commence from 02.02.2015, passed an order directing the second respondent University to publish the results of the petitioner's 3rd year M.B.B.S. examination and also made it clear that such publication shall be without prejudice to the contentions raised by the University in the counter affidavit filed in the writ petition and such publication shall be done on or before 23.01.2015 and directed the listing of the matter on 27.01.2015.

W.P. No. 33442 of 2014

3.1. The petitioner, on getting the benefit of the above said interim order in and by which her 3rd year M.B.B.S examination results have been published, has filed this writ petition praying for issuance of a Writ of Mandamus directing the respondents 1 and 2 to permit her to write the 4th year M.B.B.S. examination and to pass such further orders. When this writ petition was listed for hearing on 17.12.2014, this Court directed the listing of the matter on 22.12.2014 along with W.P. Nos. 2902/2014 and 1672/2014 and this Court, vide order dated 04.03.2015, has directed the listing of the matters on 06.04.2015. However, prior to that date, this writ petition along with W.P. Nos. 1672/2014 and 2902/2014 and miscellaneous petitions were listed for hearing on 28.01.2015

and the learned Judge, having taken note of the earlier orders, has passed the following order:

"6. In the light of the above facts, if the petitioner is not permitted to sit for the examination, ultimately, if the petitioner succeeds in the writ petitions, the status quo anti cannot be restored. Therefore, this Court is of the view that considering the peculiar facts and circumstances and the interim direction issued in the three writ petitions from time to time, the petitioner should be permitted to sit for the 4th year examination, subject to the result of the writ petitions. The respondent/ University are directed not to declare the results of the petitioner. However, it is made clear that petitioner shall not claim any equity on the ground that she sat for 4th year examination pursuant to this order."

3.2. According to the writ petitioner, in pursuant to the interim order dated 21.07.2014 made in W.P. No. 2902/2014 and M.P. Nos. 1 and 2 of 2014 and W.P. No. 1672/2014, she has written the arrear papers of the 2nd year, namely Microbiology Papers I and II and she has cleared the arrears and availing the benefit of interim orders, she has cleared the 3rd and 4th year examinations. The petitioner filed M.P. No. 1 of 2015, praying for an interim direction directing the first respondent to declare the results of her 4th year M.B.B.S. examination in pursuant to the interim order passed by this Court on 28.01.2015. In the affidavit filed in support of M.P. No. 1 of 2015, the petitioner would state that the results of other candidates were published in the University Website on 20.03.2015 and her results were not published and all the students are to be sent for internship training and since she has cleared all the papers, she is also entitled to be sent for the said training and on account of non-declaration of her 4th year examination results, she was not deputed for training. The petitioner would further state that the respondents will send the students in batch wise based on their year of completion and unless she is deputed for the said training along with her classmates, her career will be affected.

4. Mr. N.G.R. Prasad, learned counsel for the petitioner, in his usual vehemence, would submit that though the rule do not permit revaluation, the second respondent voluntarily done revaluation which resulted in additional 2 1/2 marks in respect of 2nd year Paper I - Microbiology and in pursuant to the interim order dated 21.07.2014, she has cleared the 2nd year arrear papers and this Court also passed various orders permitting the petitioner to write the 3rd and 4th year examinations and she has also written it and the results of the 3rd year examination was also directed to be published in terms of the interim order dated 20.01.2015 and hence, there cannot be any impediment in directing the respondents to declare the results of the 4th/final year examination also and the same would enable the petitioner to go for internship training along with her batchmates. The learned counsel for the petitioner further submitted that since the order dated 18.06.2014 passed in W.A. No. 757/2014, preferred against the interim order dated 31.01.2014 made in W.P. No. 2902/2014 and M.P. No. 1/2014, has reached finality, it is not open to the first respondent to contend that

in the light of the Regulations referred to in the counter affidavit, the relief sought for by the petitioner cannot be granted, is wholly unsustainable.

5. Per contra, Mr. Sanjai Ramaswami, learned Standing Counsel appearing for the first respondent University has invited the attention of this Court to the counter affidavit in W.P. No. 2902/2014 and would submit that the petitioner has failed in the subject of Paper-I -General Microbiology Immunology and Systematic Bacteriology and at her request, copies of the answer scripts were furnished to her. The first respondent would further state that there is no provision for revaluation as in the 36th Meeting of the Standing Academic Board on 23.12.2008, a resolution was passed in and by which the provision for revaluation was withdrawn and would contend that it is not correct to state that while revaluing the papers, the first respondent has granted 2 1/2 marks for Paper-I and not granted any mark for Paper-II. The first respondent also placed reliance upon Regulations 7 and 8 of the Medical Council of India and would state that as per the said Regulations, a candidate is not eligible to appear for the 3rd year examination unless she passed all the subjects of the 2nd year examination and on account of the same, she was not issued with the hall ticket. It is further stated by the first respondent that as per the interim order passed by this Court, the petitioner was permitted to write the examination scheduled to be held from 03.12.2014 onwards and since the petitioner has not fulfilled the norms of the Medical Council of India, her results could not be published. The first respondent also took a stand that if the results of the petitioner is published, it will become a wrong precedent to other candidates to bye-pass the norms of the Medical Council of India prescribed for M.B.B.S. examination. The learned Standing Counsel appearing for the first respondent would submit that the above said Regulation is having statutory force and therefore, the first respondent cannot deviate from such Regulation and the petitioner was shown indulgence by this Court by means of various interim orders and the said interim orders also make it clear that those orders have been issued without prejudice to the rights and contentions raised by the University and hence, the petitioner cannot take advantage of the same. It is the further submission of the learned Standing Counsel for the first respondent that when a statutory regulation prescribes a thing to be done in a particular manner, it should be done only in that manner and not in any other manner and hence, the stand taken by the petitioner is wholly untenable and prays for dismissal of these writ petitions.

6. This Court has carefully considered the rival submissions and also perused the materials available on record.

7. It is relevant to extract the following Regulation of the Medical Council of India:

"7. Training Period and Time Distribution:

(1) Every student shall undergo a period of certified study extending over 4 1/2 academic years divided into 9 semesters (i.e., of 6 months each) from the date of commencement of his study for the subjects comprising the medical

curriculum to the date of completion of the examination and followed by one year compulsory rotating internship. Each semester will consist of approximately 120 teaching days of 8 hours each college working time, including one hour of lunch.

(2) The period of 4 1/2 years is divided into three phases as follow:--

(a) Phase I (2 semesters)

(b) Phase II (3 semesters)

(c) Phase III Part I (two semesters) and Part II (two semesters)

8. Phase Distribution and Timing of Examinations:-SEMESTERS

Note:

a) Passing in 1st Professional is compulsory before proceeding to Phase II training.

b) A student who fails in the II Professional examination, should not be allowed to appear III Professional Part I examination unless he passes all subjects of II Professional examination.

c) Passing in III Professional (Part I) examination is not compulsory before entering for 8th and 9th semester training, however passing of III Professional (Part I) is compulsory for being eligible of III Professional (Part II) examination..."

8. The above said Regulation of the Medical Council of India mandates that a candidate is not eligible to appear for 3rd year examination unless he/she passes all the subjects of 2nd year M.B.B.S. examination. Admittedly, the petitioner failed in Paper I- General Microbiology Immunology and Systematic Bacteriology and Paper II - Virology, Mycology, Parasitology and Applied Microbiology and inspite of suo motu revaluation of Paper I, which resulted in award of additional 2 1/2 marks, she has not cleared Paper-I. As already pointed out, in pursuant to the interim order dated 31.01.2014 made in W.P. No. 2902/2014 and M.P. No. 1/2014, the petitioner was allowed to write the second year arrears and in pursuant to the interim order, the results of the petitioner was published and by series of interim orders passed by this Court, the writ petitioner was permitted to write the 3rd year examination and her results were published and she was permitted to write the 4th year examination also. This Court, in the interim order dated 28.01.2015 made in W.P. No. 1672/2014, W.P. No. 2902/2014 and M.P. No. 1/2014 and W.P. No. 33442/2014 and M.P. No. 1/2014 made it very clear that the petitioner should be permitted to sit for the 4th year examination subject to the results of the above said writ petition and the first respondent/University was directed not to declare the petitioner's results and the said order also makes it very clear that the petitioner shall not claim any equity on the ground that she sat for the 4th year examination pursuant to the interim order passed by this Court. Thus from the above facts, but for the series of interim orders passed by this Court the petitioner would not have written the 3rd and 4th year M.B.B.S. examination.

9. The petitioner, under the guise of filing M.P. No. 1/2015 in W.P. No. 33442 of 2014, wants the first respondent University to declare her results of the 4th year M.B.B.S. examination and depute her for internship training along with her batchmates. As per Note b) to Regulation 8 of the Medical Council of India, a student who fails in the II Professional examination should not be allowed to appear for III Professional Part I examination unless he passes all subjects of II Professional examination. Admittedly, the petitioner did not pass in Papers I and II of the 2nd year Professional examination in first attempt and inspite of suo motu revaluation, she did not pass and in pursuant to the interim order dated 21.07.2014 (referred to above) she was allowed to write 2nd year arrears and she cleared the same. The petitioner, taking advantage of the leniency and sympathy shown by this Court by way of interim orders, wants to join with her batchmates who cleared their papers in the first attempt.

10. In the considered opinion of the Court the petitioner cannot be permitted so for the reason that clearance of all the subjects in the 2nd year is mandatory and unless the petitioner clears 1st and 2nd year papers, she will not be permitted to move to 3rd year, but the petitioner was permitted to write the 3rd and 4th year examinations purely on account of the above said interim orders. If this Court directs the first respondent/University to declare the results of the petitioner for the 4th/final year examination undergone by the petitioner with a direction permitting the petitioner to undergo internship training, then it will be putting premium to non-meritorious performance of the petitioner insofar as the 2nd year arrears are concerned and in the process, she will join with her batch mates who would have cleared the 1st year and 2nd year papers without any arrears. The Regulations pointed out above specifically prescribes the same and being a statutory Regulation, this Court cannot deviate from it. The Medical Council of India, being a regulatory body of medical education in this country, is an expert body and keeping in mind the standard of excellence to be achieved in the field of medical education, has incorporated such Regulations and in the light of the catena of decisions rendered by the Hon"ble Supreme Court of India, this Court cannot interfere with such a decision of the expert body.

11. In *Regional Officer, C.B.S.E. Vs. Ku. Sheena Peethambaran and Others*, AIR 2003 SC 3720 : (2003) 7 JT 502 : (2003) 7 SCALE 129 : (2003) 7 SCC 719 : (2003) 3 SCR 275 Supp : (2003) AIRSCW 4233 : (2003) 6 Supreme 491 , the Hon"ble Supreme Court of India has observed as follows:

"6. This Court has on several occasions earlier deprecated the practice of permitting the students to pursue their studies and to appear in the examination under the interim orders passed in the petitions. In most of such cases it is ultimately pleaded that since the course was over or the result had been declared, the matter deserves to be considered sympathetically. It results in very awkward and difficult situations. Rules stare straight into the face of the plea of sympathy and concessions, against the legal provisions."

12. In *Guru Nanak Dev University Vs. Parminder Kr. Bansal and another*, AIR

1993 SC 2412 : (1993) JT 449 Supp : (1993) 4 SCC 401 the Hon"ble Supreme Court observed that such interim order is subversive of academic discipline. The relevant observations are as under:

"7. ... We are afraid that this kind of administration of interlocutory remedies, more guided by sympathy quite often wholly misplaced, does no service to anyone. From the series of orders that keep coming before us in academic matters, we find that loose, ill-conceived sympathy masquerades as interlocutory justice exposing judicial discretion to the criticism of degenerating into private benevolence. This is subversive of academic discipline, or whatever is left of it, leading to serious impasse in academic life. Admissions cannot be ordered without regard to the eligibility of the candidates. ... The courts should not embarrass academic authorities by themselves taking over their functions."

13. Yet in another case i.e. in A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Another, AIR 1986 SC 1490 : (1986) 1 SCALE 895 : (1986) 2 SCC 667 : (1986) 2 SCR 749 the Hon"ble Supreme Court of India held that:

"10. ... We cannot by our fiat direct the University to disobey the statute to which it owes its existence and the regulations made by the University itself. We cannot imagine anything more destructive of the rule of law than a direction by the court to disobey the laws."

14. In Central Board of Secondary Education Vs. Nikhil Gulati and Another, (1998) 2 AD 209 : AIR 1998 SC 1205 : (1998) 1 CTC 435 : (1998) 1 JT 718 : (1998) 1 SCALE 634 : (1998) 3 SCC 5 : (1998) 1 SCR 897 : (1998) AIRSCW 1012 : (1998) 2 Supreme 58 the Hon"ble Supreme Court of India deprecated the practice followed by the High Court to issue direction and also observed that such aberrations should not be treated as a precedent in future.

15. The prayer sought for by the petitioner in M.P. No. 1/2015 in W.P. No. 33442/2014 is also beyond the scope of the main prayer in the writ petition itself and on that ground also, M.P. No. 1 of 2015 cannot be ordered. The petitioner was shown enough indulgence by this Court on account of the above said interim orders and this Court do not want to deprive the benefit given to the petitioner on account of the above said interim orders. However, in view of the above cited reasons, the petitioner cannot join with her batchmates to undergo internship training in the light of the above said Regulations. The interim orders also make it very clear that the said orders shall not confer any right to claim equity, by the petitioner.

16. In the result both the writ petitions are dismissed, subject to the above observations. No costs. Consequently, the connected miscellaneous petitions are closed.