
(1991) 03 KAR CK 0011
In the Karnataka High Court
Case No : Writ Petition No. 20824 of 1990

Sandeep Shenai

APPELLANT

Vs

Mangalore University, Mangalore and another

RESPONDENT

Date of Decision : 27-03-1991

Acts Referred:

Citation : AIR 1992 Kar 202 : (1991) 2 KarLJ 140

Hon'ble Judges : G.P. Shivaprakash, J

Bench : Single Bench

Advocate : Sri S. Vijayashankar, for the Appellant; Sri P. Vishwanatha Shetty, for the Respondent

Judgement

1. Issue rule.

The question that arises for consideration in this petition is whether failure to attend an examination should be construed as failure to pass the examination. In other words, whether the non-attendance of a candidate at an examination should be treated as an attempt at an examination? . -

2. The facts of the case, in brief, are as follows: The petitioner was a student of the Kasturba Medical College, Manipal, which is affiliated to the first respondent University. From the averments in the petition, it appears that the petitioner has maintained a good academic record throughout, having obtained I Class in the I Year M.B.B.S., Degree examination and again I Class with Distinction at the II Year M.B.B.S., Degree examination. However, the petitioner could not take the Final Year M.B.B.S., Part-I examination, which was held from 17th January 1989, though he had paid the necessary fee to the first respondent University for entrance to the said examination. According to the petitioner, he could not take the Final Year M.B.B.S. examination, which was held from 17th January 1989 as he was hospitalised for treatment of viral hepatitis from 9th December 1988 to 27th December 1988 and that he was advised complete rest till 27th January 1989. In these circumstances, he was unable to attend the examination. The

petitioner, therefore, addressed a letter dated 2nd January 1989 to the second respondent, who is the Registrar (Evaluation) of the first respondent University indicating that he was withdrawing from the said examination because of his ill-health. The medical certificate issued by the Associate Professor, Department of Medicine, Kasturba Medical College, Hospital, Manipal, certifying that the petitioner was in the hospital from 9th December 1988 to 27th December 1988 because of viral hepatitis infection, was also enclosed to that letter. In this petition, the said letter and the medical certificate are produced as Annexures C and D, respectively. It appears in response to the said letter, the Principal of the Kasturba Medical College, Manipal, received a reply dated 2nd February 1989, which is produced as Annexure-E from the second respondent. It reads thus :

"This was reference to the representation dated 2-1-1989 of Sri K. Sandeep Shenai (Reg. No. 8521060) Final M.B.B.S., candidate of your institution and I am to inform you that if a candidate is absent after having registered for the examination he cannot withdraw even on medical grounds and he may be treated as repeater for the subsequent examination. Sri K. Sandeep Shenai may be informed that he will have to be treated as repeater for the subsequent examination."

Thereafter, the first respondent University has sent to the petitioner, the marks-sheet dated 10th March 1989 stating that the petitioner was absent for the theory as well as practical examinations. In these circumstances, the petitioner appeared for the Final M.B.B.S., Part I examination held in June/ July, 1989. In that examination, the petitioner has secured very good marks, in that he has secured 259 marks out of 360 marks, which works out to 72%. Despite the fact that the petitioner has secured such good marks, he was not declared by the first respondent University as having passed in I Class with Distinction, which according to the marks he has secured, he is entitled to under the relevant Ordinance. The I Class Distinction is conferred on students, who have secured more than 70% in the examination. In fact I Class Distinction is what the petitioner had secured in the II Year M.B.B.S., Degree examination held in July 1988.

3. The petitioner, therefore, gave a representation to the Syndicate of the first respondent University that he was entitled to be declared as having passed the Final Year M.B.B.S., Degree examination in I Class with Distinction. To that representation dated 1-12-1989 (Annexure-G), the petitioner received a reply dated 23-12-1989 marked as Annexure-H to the effect that having regard to all aspects of the matter, it was not possible for the University to consider his appearance in the Final Year M.B.B.S. examination held in June/July 1989 as first appearance. This was because, according to the University, the petitioner having remitted the examination fee by itself was sufficient to hold that he had made an attempt at the previous examination and whatever be the reason for his absence at the examination, it was of no relevance and that should be treated as an attempt at an examination.

4. The relevant Ordinance bearing on the question at issue is extracted hereunder :

"5. Successful candidates who obtain 65 per cent of total number of marks or more in the examination in the first attempt shall be placed in the I Class in order of merit. Other successful candidates shall be placed in the II Class in alphabetical order. Successful candidates obtaining 70% marks or more in the first attempt shall be placed in I Class with distinction. Only those candidates who have passed the whole examination in first attempt will be eligible for distinction or prize or class."

5. Sri P. Vishwanatha Shetty, learned counsel appearing for the University, submitted that in view of the above Ordinance, even though the petitioner has secured more than 70% marks in the Final Year M.B.B.S. examination held in the month of June/July 1989, the petitioner is not entitled to be classified as having passed in I Class with Distinction. According to Sri Vishwanatha Shetty, the fact that the petitioner had once remitted the examination fee for the Final Year M.B.B.S. examination even though he did not take the said examination held in January 1989, disqualifies him from securing the academic honour of having passed in I Class with Distinction. He submitted that I Class Distinction is conferred on students, who have attained academic excellence by securing high marks of 70% and more in the very first attempt at the examination. Since, according to him, the petitioner has secured high marks only at the second attempt, taking into account his absence at the January 1989 examination, he is not entitled under the aforesaid Ordinance for the academic honour of having passed Final Year M.B.B.S. examination in I Class with Distinction.

6. As far as the petitioner is concerned, this is a matter of great import to his future career, since the fact that he has passed in 1 Class with Distinction in the Final M.B.B.S. examination, will assist him in securing admission to Post-Graduate courses, besides securing recognition of his abilities from his professional colleagues.

7. Sri S. Vijayashankar, learned counsel appearing for the petitioner, submitted that what is contemplated under the aforesaid Ordinance as an attempt, must be understood to mean an attempt at an examination by writing the answers to the questions and has not been successful at the examination. According to him a mere payment of the examination fee and registration of the candidate at an examination cannot be construed as an attempt or failure at an examination. He relied on a decision of the Supreme Court in *Abhijit Vs. Dean, Government Medical College, Aurangabad and Another*, in support of his submission that the circumstances which prevented the candidate from taking an examination should not be treated as an attempt which would disqualify the candidate from obtaining the academic distinction. He submitted that the petitioner has throughout maintained excellent academic record as is evident from his performance at the I Year, II Year and Final Year M.B.B.S . examinations.

8. In the case of *Abhijit v. Dean, Medical College*, the Supreme Court was interpreting a note under Rule IV.5(e) of the Rules for Appointment of Residents under the III Year Residency Programmes at Government Medical Colleges, which reads as hereunder :

"For the purpose of the reductions, non-appearance at any examination when due, is deemed as an attempt at the said examination."

The following observation of the Supreme Court in the above context is relevant for the purpose of determining the question raised in this petition.

" ** We are also of the view that if the rule has the effect of treating failure to appear at the examination because of serious illness as non-appearance at the examination so as to make the candidate liable to a deduction of five per cent of marks when seeking admission to a Post-Graduate course the rule is indeed arbitrary."

I may also usefully refer to a Division Bench decision of this Court in *Guru Murthi v. University of Mysore* 1963 Mys LJ (Suppl) 512 where this Court observed as follows in the context of an Ordinance of the Mysore University which limited the number of attempts a student can make to pass an examination. The relevant portion of the observation is at page 520. It reads thus :

" ** It is not inconceivable that a student who has given a glorious account, of himself in his preliminary examination finds it difficult to pass the final examination in his first attempt for a multitude of reasons over which he has no control such as his own illness or some adversity in his family. If a person in that situation who did not in the exercise of his wisdom desist from taking the examination but indiscreetly sat for the examination and failed in it and that failure was ascribable to the pressure of adventitious external circumstances, he would find himself in the difficult predicament of never again being able to take the final examination but driven to the necessity of consoling himself with the thought that he can get at least an ordinary B.Sc. degree if the Academic Council in the exercise of its discretion permitted him to sit again for that examination. That Ordinance 92(c) can penalise a person of exceptional attainments by subjecting him to the mechanical grinding of an automation during the most plastic years of human life as if the University is a mere foundry or a mint is what may be urged as the most effective criticism of the reasonableness of its provisions. To this reproach may be added the further denunciation that, this clause which in its operation confronts a person of real promise and merit with impediments more formidable than those placed in the way of one who took his own time to succeed in the preliminary examination but was able to pass the final examination in his first attempt, discounts merits and favours accidental success. That that is not how a university should function which, being the alma mater as it is called, should nurture its children by a benevolent though proper assessment of the attainment of each one of them is it should be admitted one of the most modern educational ideals."

Keeping in view the above decisions, in my opinion, in the instant case, the non-appearance of the petitioner because of illness, at the Final M.B.B.S. examination held in the month of January 1989 cannot be considered as an attempt and therefore the petitioner is entitled to the reliefs sought.

9. In the result, I make the following order :--

(i) Rule made absolute,

(ii) Writ petition allowed.

(iii) The first respondent-University is directed to declare the result of the petitioner, on the basis that the petitioner has passed the whole of the examination in first attempt in Final M.B.B.S., Part I examination held in January 1989, in I Class with Distinction and confer on him such other Awards/Medals/Academic Distinction to which he is entitled to under the relevant Regulations/Ordinances on the basis of the above declaration.

(iv) Two months granted for compliance.

10. Petition allowed.