

(2002) 09 KAR CK 0038
In the Karnataka High Court
Case No : Writ Petition No. 30699 of 2002

Subhashish Talukder

APPELLANT

Vs

The Principal, M.R. Medical College and Others

RESPONDENT

Date of Decision : 12-09-2002

Acts Referred:

Citation : (2002) ILR (Kar) 4644 : (2002) 6 KarLJ 219 : (2002) 4 KCCR 2812

Hon'ble Judges : N. Kumar, J

Bench : Single Bench

Advocate : K. appa Rao and K. Dhiraj Kumar, for the Appellant; Praveen Kumar Raikote, for Respondent-1, S.A. Nazeer, for Respondent-2 and D.S. Hosamath, for Respondent-3, for the Respondent

Final Decision : Allowed

Judgement

N. Kumar, J.—The petitioner was admitted to MBBS(RS) in the M.R. Medical College, Gulbarga. The petitioner appeared for the examination of Phase I MBBS(RS) which was held in September/October 2000. The subjects were Anatomy, Biochemistry and Physiology. He failed in all the three subjects. The petitioner again appeared for the aforesaid examination which was held in April 2001, and he failed in all the three subjects. Again, he appeared for the third time in the month of October 2001. He was issued hall-ticket for appearing in the examination only in two subjects, namely, Anatomy and Biochemistry, and insofar as the subject Physiology is concerned, though it was printed on the hall-ticket, it was record off. Therefore, the petitioner was not permitted to take the examination of Physiology during his third attempt. On enquiry he was told that he is deemed to have passed and therefore they have scored out the said subject. The petitioner again failed in the aforesaid two subjects for which he wrote examination. Again he took the examination which was held in April 2002, in respect of all the three subjects as by that time he came to know the information that he has passed in the subject Physiology was false. However, in this examination he passed in two subjects, namely, Anatomy and Biochemistry,

but again he failed in Physiology. Therefore, the petitioner deposited the amount of Rs. 9,166-00 towards referred fees on 5-8-2002 and Rs. 365-00 towards examination, fee in respect of the subject Physiology. Thereafter, the college did not give him the examination form for appearing in the examination to be held on 18-9-2002 on the ground that as the petitioner had failed continuously for four attempts, he is not eligible to appear in the examination. Therefore, the petitioner has filed this writ petition contending, insofar as the subject Physiology is concerned, earlier he has appeared in the examination on only three occasions and therefore, it would be a case of appearing for the examination fourth time and not fifth time. Therefore, he has sought for a mandamus to the respondents to permit the petitioner to appear for the examination Phase I MBBS(RS) scheduled to be held on 18-9-2002.

2. Learned Advocates appearing for respondents 2 and 3 submitted, admittedly the petitioner has paid fees four times and he took four attempts to complete the other two subjects and therefore the petitioner is not entitled to 5th attempt in view of the eligibility criteria prescribed by the Regulations under the Graduate Medical Education, 1997, and therefore they submit that the petitioner is not entitled to the relief sought for.

3. In order to appreciate the rival contentions, it is necessary to have a look at the eligibility criteria prescribed by the Medical Council of India as well as the Rajiv Gandhi University of Health Sciences, Karnataka. The said eligibility criteria reads as under:

"8. Eligibility for examination.--To be eligible to appear for University examination a candidate.--

(a) should have undergone satisfactorily the approved course of study in the subject/subjects for the prescribed duration;

(b) should have attended at least 80% of the total number of classes in theory and practical/clinical, separately, to become eligible to appear for examination in that subject/subjects;

(c) should fulfil any other requirement that may be prescribed by the University from time to time;

(d) who fails in any subject/subjects of MBBS Phase-I, has to put one academic term before he/she becomes eligible to appear for the next examination;

(e) should pass in all the Phase I (Pre-clinical) subjects, before joining the Phase II (Para-clinical) subjects, for which he will be permitted not more than four chances (actual examination), provided four chances are completed in three academic years from the date of enrolment".

(emphasis supplied)

Clause 8(e) which is relevant for the purpose of this case makes it clear that a candidate to be eligible to appear for the University examination, should pass in

all the Phase I (Pre-clinical) subjects before joining the Phase II (Para-clinical) subjects, for which he will be permitted not more than four chances (actual examination) provided four chances are completed in three academic years from the date of enrolment. This provision is in the nature of a benefit conferred on the students. Therefore, beneficial construction ought to be placed on the said provision in order to achieve the object which is sought to be achieved by the said provision. Two limitations are imposed under the said provisions which are, (i) the candidate will be permitted not more than four chances (actual examination); and (ii) the said four chances are to be completed in three academic years from the date of enrolment. In other words, in three academic years, from the date of enrolment the candidate would have six chances to complete the examination. Therefore, he should complete the examination in four out of the aforesaid six chances. He will not be permitted more than four chances.

4. The intention of the Legislature is made very clear by the words "permitted" and "actual examination" in the said rule. A candidate may pay the necessary fee, may make an application to take the examination, he may be issued with hall-ticket and thereafter he should actually take the examination. It is only if he does not pass after actually taking the examination four times, he is debarred from taking the examination on fifth occasion. In other words, these four chances have to be counted with reference to the candidate writing the actual examination four times. If after paying the necessary fee and making the application if he is not permitted to take the examination, that would not amount to a chance. A candidate may not be permitted to take the examination on the ground of want of attendance or not fulfilling any other requirement prescribed by the University, though he has paid the examination fee, then it would not amount to a chance or an attempt. Similarly, if a candidate after paying the fees, making the application, obtaining hall-ticket, may not be able to actually write the examination for various reasons. For example, due to ill-health he may not be able to write the examination. In an extreme case on the date of the examination, the student may leave the house to the college to write the examination and he may meet with an accident which prevents him from writing the examination. Then, under those circumstances chance cannot be counted against such an eventuality. What is of essence is, he must write four times the actual examination and if he fails, he would not be eligible to write the examination for the fifth time. Therefore, payment of examination fee, making an application, issue of an hall-ticket, are not relevant to decide whether the candidate has taken a chance in the examination. It is the actual writing of the examination four times which has to be - counted as a chance under the aforesaid rules.

5. In the light of the aforesaid law, in the instant case, on the third occasion though the petitioner had paid the necessary fees, made the application and was issued an hall-ticket, by scoring off the word "Physiology" subject in the hall-ticket, he was prevented from writing the examination. Therefore, he did not

actually write the examination. Therefore, the examination held in October 2001, cannot be counted as a chance insofar as the subject Physiology is concerned. If that is excluded he has taken the examination only thrice and he is eligible to take examination for the fourth time in the examination to be held in September 2002. By an interim order of this Court, a direction was issued to the authorities to receive the fee and accept the application form and permit the petitioner to take the examination. Under these circumstances, the action of the respondents in refusing to permit the petitioner to take the examination on the ground that it would amount to fifth attempt is concerned, is arbitrary and illegal. Hence, I pass the following order:

Writ petition is allowed. The respondents are directed to permit the petitioner to take the Physiology subject in Phase I MBBS(RS) scheduled to be held on 18-9-2002 and declare his result.

Parties to bear their own costs.