
(2000) 07 KL CK 0035
In the High Court Of Kerala
Case No : O.P. No. 17806 of 2000-T

Vidya Bhat T.

APPELLANT

Vs

Mahatma Gandhi University and Others

RESPONDENT

Date of Decision : 20-07-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 2000 Ker 415

Hon'ble Judges : D. Sreedevi, J

Bench : Single Bench

Advocate : S.P. Chaly and T. Gangadhara Bhat, for the Appellant; S.C.K. Gopalakrishna Kurup, for the Respondent

Judgement

D. Sreedevi, J.—O. P. No. 17806/2000 : The petitioner is a Final Year Student of Bachelor of Homoeopathic Medicine and Surgery in Dr. Padlar Memorial Homoeopathic Medical College, Chottanikkara. The said institution is affiliated to the first respondent-University and is functioning as provided by the University Regulations and Regulations issued by the Central Council of Homoeopathy. The Bachelor of Homoeopathic Medicine and Surgery, for short "BHMS", Course is a Bachelor Degree Course with five and a half years duration, including internship of one year. The petitioner, it is alleged, has passed her first and second year examination in Second Class. She has appeared for the Third Year examination during November, 1999 and the results of the same were published during May, 2000.

2. During the third year, altogether there were four subjects, viz. (1) Organon of Medicine, (2) Materia Medica, (3) Surgery, (4) Obstetrics and Gynaecology. The maximum marks awarded to these subjects is 1680. Minimum marks required for the pass for all the subjects is 840. Apart from this, as per the Scheme and Syllabus prepared and published by the first respondent-University, a separate minimum of 50% marks for the written, viva-voce and practical/clinical in each subject is also required.

3. It is alleged in the writ petition that when the results of 3rd year was published, the petitioner had passed in three subjects, except Surgery for want of minimum marks of 50% for the Clinical. The petitioner has secured 56 marks for Clinical in the subject of Surgery out of 120 marks. She had failed in the subject of Surgery for want of 4 marks. It is alleged that as per the Scheme, the Board of Examiners is vested with powers to grant grace marks up to a maximum of 1% of the total marks in the subject to a candidate enabling him/her for a pass in the particular examination. The total mark prescribed for the subject of Surgery is 480 and, therefore, 1% grace mark will come to 4.80. Therefore, if grace marks are awarded, the petitioner will pass the subject of Surgery. The petitioner then filed a representation to the University and the Board of Examination. But, so far no action has been taken. Therefore, the petitioner has filed this Original Petition for a writ of mandamus commanding the second respondent to award grace marks to the petitioner for Clinical in the subject of Surgery as provided in the Scheme and to pass appropriate orders on Exhibits P3 and P4 representations.

4. O. P. 19298/2000: This writ petition has also been filed by the same petitioner for a writ declaring that Exhibit P1 publication as illegal and to declare that the Regulation prescribed by the Central Council of Homoeopathy is binding on the respondent-University and to direct the respondents not to conduct 3rd Year BHMS Examination overlooking clause 11(1) of Regulation 7, Part 4 of Central Council of Homoeopathy BHMS Regulation 1983.

5. According to the petitioner, when the results of the 3rd Year was published, she had passed all the three subjects except Surgery for want of minimum marks of 50% for the Clinical. Therefore, the petitioner requested the respondents for awarding grace marks to her. But, the same was not considered by the respondents. In the meanwhile, the University had issued a notification in the Mathrubhumi Daily dated 8-7-2000 inviting applications for the supplementary examinations to be conducted for 1st, 2nd and 3rd Year BHMS Course. Exhibit P1 is the notification. The 3rd Year Examination is scheduled to start on 19th July, 2000 and last date for submitting the application for 3rd year BHMS Examination along with fee without fine fixed on 11-7-2000 and with fine of Rs. 20/- fixed on 12-7-2000. The petitioner has challenged this publication on the ground that it is illegal, arbitrary and violative of the Regulation of the Central Council of Homoeopathy B.H.M.S. Regulation, 1983, which is made as per Section 33 of Homoeopathy Central Council Act of 1973 and approved by Government of India and published in the Gazette of India dated May 11, 1983.

6. Admittedly, the petitioner is a Final Year Student of BHMS Course in Dr. Padiar Memorial Homoeopathic Medical College, Chottanikara. She has passed the 1st and 2nd Year Examinations and appeared for the 3rd Year Examination; but failed in one subject. The petitioner has got 56 marks for Clinical in the subject of Surgery. The minimum marks required for a pass is 60. The total mark prescribed for the subject of Surgery is 480 and, therefore, 1% of the total

marks will come to 4.80. According to the petitioner, she is entitled to get grace marks as per Exhibit P2 Scheme. Exhibit P2 reads as follows :--

"There shall be a Board of Examiners consisting of all the internal and external examiners of Theory and Practicals, for each examination. The Chairman of the Board of examiners appointed by the University shall supervise and co-ordinate the conduct of examination.

The final tabulation of marks of University Examination and Internal Assessment shall be done by the Board.

The Board may grant grace marks up to a maximum of one percent of the total marks in the subject to a candidate enabling him to pass in the particular examination".

From this, it is clear that the petitioner is entitled to 1% of the total marks as grace marks. She has already obtained 56 marks. The grace marks that she can expect is 4.80 marks. According to her, if this 4 marks is awarded, she will get 60 marks for Clinical and will pass the subject Surgery.

7. The learned Standing Counsel for the University submitted that the petitioner cannot claim grace mark as of right. It is a discretion vested with the University or the Board to award grace marks. The learned counsel has also produced a copy of the order dated 24-11-1999 of the Mahatma Gandhi University for my perusal. This would go to show that as per the letter dated 9-7-1997 from the Secretary, CCH, New Delhi, It has decided to award grace marks up to 3% or 10 marks whichever is less to the student who has failed in one subject but has passed in all other subjects at the discretion of the University/Board. As per U.O. No. AC.AIV-2/927/99 dated 22-5-1999, the Vice Chancellor of the University, subject to ratification by the Academic Council, has approved the proposal to implement the award of grace marks to BHMS students. The High Court of Karnataka has abolished the system of awarding grace marks to the students under the said category. As per letter dated 18-10-1999 from the Secretary, CCH, New Delhi, It was informed that the Executive Committee of the CCH, in its meeting held in August 1999, has decided not to award any grace marks to any student admitted in BHMS degree course. Therefore, the University cancelled the decision to award grace marks by order dated 24-11-1999. Therefore, the question of awarding grace marks does not at all arise for consideration. Even if there is provision for award of grace marks, a student cannot, as a right, claim award of grace marks. It is a discretionary right vested with the Board of Examination.

8. The petitioner has already filed Exhibits P3 and P4 representations before the Board of Examiners. If those representations are not disposed of by the respondents, they are directed to dispose of the representations within two weeks from the date of receipt of a copy of this judgment. Subject to the above direction, O.P. 17806/2000 is disposed of.

9. In O. P. 19298/2000, the petitioner wants a declaration that the publication under Exhibit P1 is illegal. The publication for examination for the 2nd and 3rd Year BHMS decree course was fixed to be held on 18th and 19th of July, 2000 respectively. Exhibit P2 is the Regulation of the Central Council of Homoeopathy. Regarding the results and readmission to examination, the Regulation reads as follows :--

"11(i) Every candidate for admission to an examination shall 21 days before the date fixed for the commencement of the examination send to the authority concerned his application in the prescribed form along with the examination fee".

From this, it is clear that every candidate for admission to an examination shall get 21 days before the date fixed for commencement of the examination. The publication is dated July 8, 2000. The Third Year Examination was fixed to be commenced on July 19, 2000, The respondents are entitled to conduct the examination only after 29th of July, 2000. The complaint of the petitioner is that she will not get sufficient time for preparing the examination. This argument appears to be sound In the light of the Regulation, Exhibit P2. By virtue of Exhibit PI publication, the candidate will get only eleven days before the examination. The University is bound by the provisions of the Regulations of the Central Council of Homeopathy. Therefore, the conduct of the examination on the 19th of this month is illegal and as such Exhibit P1 is liable to be quashed. But, the learned Standing Counsel Mr. K. Gopalakrishna Kurup submitted that the University is willing to postpone the examination giving the students 21 days in between the date of publication and the date of examination. Therefore the question of declaration that the publication is illegal does not arise.

In the result. O.P. 19298/2000 is disposed of declaring that the Regulation prescribed by the Central Council of Homoeopathy is binding on the respondent-University. O. P. 17806/2000 is disposed of with the direction in paragraph 8 of the Judgment.