

(1994) 08 BOM CK 0012

In the Bombay High Court

Case No : Writ Petition No. 2634 of 1993

Vijay Annasaheb Bihade

APPELLANT

Vs

Amravati University and another

RESPONDENT

Date of Decision : 05-08-1994

Acts Referred:

Citation : (1994) 08 BOM CK 0012

Hon'ble Judges : L. Manoharan, J;H.W. Dhabe, J

Bench : Division Bench

Advocate : S.G. Aney and Z.A. Haq, for the Appellant; B.R. Gawai for Respondent No. 1 and C.S. Kaptan, for the Respondent

Final Decision : Allowed

Judgement

H.W. Dhabe, J.—This petition can be disposed of at this stage. The case of the petitioner is that since he was ill, he could not appear for the Winter Examination of 1991. By our interim order dated 24th January 1994, we had directed that the question whether the petitioner was ill and was taking the treatment at Akola at the time of his Winter Examination of 1991 should be examined by the Principal of the respondent No. 2 College by giving him an opportunity of being heard. He should then send his report to the respondent No. 1 University, whose Registrar should then examine the report and take his decision, whereafter both the reports should be sent to us. The reports of the Registrar of the respondent No. 1 University and the Principal of the respondent No. 2 College are filed now before us.

2. Perusal of the report of the Registrar of the respondent No. 1 University shows that the petitioner was ill during the period from 28-8-1991 to 8-9-1991 when he was admitted to the hospital of Dr. A. V Bhagwat, Akola, and was under the treatment of Dr. Pramod Thakare for Acute depressive Psychosis". The certificate of Dr. Thakare, which is filed along with the petition, shows that after his treatment in the hospital, the petitioner was advised to avoid severe physical or mental strain for one term i.e. for six months. The Principal of the respondent

No. 2 College in his report found that the above reason given by the petitioner was genuine. He has, therefore, recommended one additional chance to the petitioner to appear for the First M.B.B.S. Examination. The Registrar of the respondent No. 1 University has, however, stated in his report that clause 16 of the Ordinance No. 55 does not permit such chance. Further he has found that the petitioner had not taken the permission of the Principal of the respondent No. 2 College to take the treatment outside the College Hospital.

3. It may be seen that the Ordinance No. 55 leading to the M.B.B.S. Degree framed by the Nagpur University under the Nagpur University Act, 1974 continues to apply to the Medical Colleges affiliated to the Amravati University after it was established under the Amravati University Act, 1983. However, after continuance of the said Ordinance 55 in the Amravati University, the said clause 18 is renumbered as Clause 16 and further that by the Ordinance No. 4 of 1991, the Amravati University has amended the said Ordinance No. 55 with effect from 1991-92 academic Session, and in clause 16, thereof, it has reduced the chances to appear at the First M.B.B.S. Examination from five to four.

4. In the judgment of this Court in the case of Pramod Namdeorao Nawarkhede vs. Nagpur University and others, 1993 Mh.LJ. 145, we have considered clause 18 of the said Ordinance No. 55 applicable in the Nagpur University. While interpreting the said clause 18 of the said Ordinance No. 55, we have held that it is necessary to read it down, because in certain cases, such as the students who reside at a place different from the place where their Medical College is situated, and fall ill there, it may not be possible for them to take the treatment in the Hospitals attached to their Medical College. In such cases, however, they have to satisfy the Principal of their College that they had taken the medical treatment in a dispensary or hospital different from the hospital of their college and were not in a position to appear for the First M.B.B.S. Examination in that year because of their illness there, upon which the Principal of the College can consider and certify their cases for non-appearance at the said examination in question, so that such non-appearance is not included as an attempt or a chance to appear at the said examination. In this case, since the Petitioner had stated that he had orally told the Principal about his illness, which question was difficult to be determined, particularly when the person who was working as a Principal at that time was no more in service, we had passed the above interim order dated 24-1-1994.

5. Since there is always a possibility of a dispute or controversy arising about the illness and the medical treatment taken by the student in a hospital or dispensary or under a Medical Practitioner at a place other than the place where the Medical College and its hospital is situated, as in the instant case, it is necessary to lay down the procedure in this regard for proper certification by the Dean/Principal of the Medical College that the student concerned was ill and was not, therefore, in a position to take up the particular chance in that year to appear for the First Year MBBS Examination.

6. As regards the procedure to be followed in this regard, it shall be obligatory upon the student concerned to inform the Principal/Dean of the College within a reasonable time about his illness and about the fact that he is taking the medical treatment at a place other than the place where his college is situated and if he cannot appear in the First MBBS Examination in that particular year, he should submit the proper Medical Certificate to the Dean/Principal of his college from the place where he is taking medical treatment, so that he can verify the truth or otherwise of the same at that time itself, and can record his opinion whether the student concerned is in a position to take up the examination in question or not in that year. It is on the basis of such opinion expressed by him that he can give a certificate whether an additional chance should be given to the student concerned or not after he has exhausted all the five or now four chances available to him to pass the First M.B.B.S. Examination. The above procedure thus needs to be complied with by the student concerned to avail of an additional chance under clause 16 of the aforesaid Ordinance No. 55 applicable in the Amravati University, or in clause 18 of the said Ordinance applicable in the Nagpur University.

7. The reports of the Registrar as well as the Principal clearly show that the petitioner was taking the treatment at Akola i.e. at a place other than the place where the respondent No. 2 College is situated i.e. Amravati and was thus not in a position to take up the examination of Winter 1991. The learned counsel for the respondent No. 1 has urged before us that in fact as per Ordinance No. 4 of 1991, which amends the Ordinance No. 55 with effect from the session 1991-92, four chances are only allowed for passing the First M.B.B.S. Examination and not five. However, no such stand is taken in the return filed in the instant case. On the contrary, the learned Counsel for the petitioner has brought to our notice that the petitioner had taken his first chance in October, 1990 examination, which was prior to the amendment and that even the Authorities had considered the case from the point of view that the petitioner was entitled to five chances. However, it is not necessary for us to go into this question because no such plea is raised in the return of the respondent No. 1 University. The Petitioner is, therefore, entitled to get one more chance in view of his inability to appear for the Winter 1991 Examination due to his illness.

8. In the result, the instant Writ Petition is allowed. The respondents 1 and 2 are directed to allow the petitioner one more chance to appear for the First Year M.B.B.S. Examination in Winter 1994. Rule in the above terms. No costs.