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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 2nd April, 2019

+ W.P.(C) 1834/2019 & CM Nos. 8571/2019, 14538/2019

POONAM CHAURASIA Petitioner

Through: Mr. Rajiv Dewan, Adv.

versus

UNIVERSITY OF DELHI AND ORS. Respondents

Through: Mr. Mohinder J.S. Rupal and
Mr. Prang Newmai, Advs. for
University of Delhi
Mr. T. Singhdev, Mr. Tarun
Verma and Ms. Puja Sarkar,
Advs. for the MCI

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

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J U D G M E N T (O R A L)

1. This writ petition deals with the mark sheet of the petitioner in the Third Provisional Part-II MBBS-2018 Examination, conducted by the Faculty of Medical Sciences, University of Delhi, specifically the marks awarded to the petitioner with respect to Paper 1 in the Examination, i.e. the 'Medicine' paper. The marks awarded to the petitioner, in the 'Medicine' paper, in the aforesaid examination, may be set out in a tabular form thus:

Paper No.	Paper Name	Written		Oral		Int. Asst.		Total		Practical		Int. Asst.		Total		Grand Total	
		Max. Marks	Marks Obt.	Max. Marks	Marks Obt.	Max. Marks	Marks Obt.	Max. Marks	Marks Obt.	Max. Marks	Marks Obt.	Max. Marks	Marks Obt.	Max. Marks	Marks Obt.	Max. Marks	Marks Obt.
	Part - I															400	229
	Total of Part - I															400	229
	Result : Passed																
1	Medicine ✓	120	58	20	12	10	14	130	84	100	60	30	15	130	75	300	159

2. Regulation 12(4)(d) of the Medical Council of India, Regulation on Graduate Medical Education, 1997 (hereinafter referred to as the '1997 Regulations') stipulates that, in order to pass in each subject, a candidate is required to obtain 50% aggregate with the minimum of 50% in the theory including oral and a minimum of 50% in practicals. It is this clause which forms the fulcrum of the controversy in the present case. Apart from this, the candidate is also required to obtain, overall in all the papers, 50% of the total aggregate marks, which, it is not disputed, the petitioner has obtained.

3. A glance at the above tabular statement would reveal that the petitioner has been awarded a grand total of 159 marks out of 300 in his Medicine paper. This figure of 159 out of 300 is a sum of two individual totals, being 84 out of 170 and 75 out of 130. The figure of 84 out of 170 is, in turn, a cumulative total of the marks obtained in the written, oral and internal assessment components, whereas the figure of 75 out of 130 is similar a total of the practical and internal assessment components. In other words, in working out the marks obtained of 84 out of 170 and 75 out of 130, the University has taken into account, in each case, the marks obtained by the petitioner in the internal assessment components.

4. As a consequence, in the practical part of the Medicine paper, the petitioner has been awarded only 75 marks out of 130, which falls short of 50%. The petitioner has, therefore, effectively failed in his Medicine paper.

5. The contention of Mr. R.K. Saini, learned counsel for the petitioner is that the inclusion of the marks awarded for internal assessment, in the total marks awarded to the petitioner for the “Practical” part of the Medicine paper, is directly contrary to the law laid down by the Supreme Court in *Maharashtra University of Health Sciences v. Pariyani Mukesh Jawaharlal & Ors.*, (2007) 10 SCC 201.

6. As against this, Mr. Rupal submits that, in awarding marks to the petitioner, the University has acted on the basis of the following Clause 10(a) of the Scheme of Undergraduate Examination and Distribution of Marks, which reads thus :

“To pass: In each of the subject a candidate must obtain 50% aggregate with a minimum of 50% in theory including oral and minimum of 50% in practicals.”

7. The afore-extracted clause, on which the University of Delhi seeks to place reliance, it may be noted, is identical to Regulation 12(4) of the Regulations on Graduate Medical Education, 1997, framed by the Medical Council of India. The Supreme Court, in its judgment, in *Maharashtra University of Health Sciences (supra)* has examined this Regulation and categorically held, in that regard thus :

“16. The point in controversy in regard to interpretation of MCI Regulation 12(4) can be understood with reference to the following illustration:

<i>Subject</i>	<i>Total Marks</i>	<i>Candidates' Marks</i>
I. Theory (two papers of 50 marks each)	100	47

II. Orals (viva)	20	12
III. Practicals	40	17
IV. Internal Assessment:	20	16
(a) Theory	20	15
(b) Practical		
Total	200	107

17. Regulation 12(4) provides that to pass in a subject, a candidate should obtain 50% in the aggregate with a minimum of 50% in theory including orals and minimum of 50% in practical. The marks secured by the candidate (in the illustration), when assessed as per the interpretation of the University, results in the candidate failing in the subject. The very same marks when assessed as per the interpretation of the students (and MCI), result in the candidates passing in the subject. The calculations are given below:

University interpretation (candidate fails in the subject):

1. Aggregate (I+II+III+IV) : 107 marks out of 200 marks
2. Theory plus oral (I + II) : 59 marks (out of 120) (47 and 12 out of 100 and 20 marks)
3. Practicals (III) : 17 (out of 40)

As the candidate secured less than 50% in theory including orals (that is 59 out of 120) and less than 50% in practicals (that is 17 out of 40), he failed under the heads of theory (plus orals) and practicals. As a consequence, though he secured more than 50% in the aggregate, he failed in the subject.

Interpretation of MCI/students (candidate passes in the subject):

1. Aggregate (I+II+III+IV) : 107 marks out of 200 marks
2. Theory plus oral : 75 marks out of 140

[I+II+IV(a)]	(47, 12 and 16 out of 100, 20 and 20)
3. Practicals [III+IV(b)]	: 32 marks out of 60 (17 and 15 out of 40 and 20)

As the candidate secured more than the minimum of 50% under all the heads of passing, that is, in the aggregate, in theory (plus orals), and practicals, he passed in the subject.

18. MCI Regulation 12 is divided into four parts, namely (i) attendance, (ii) internal assessment, (iii) University examination, and (iv) distribution of marks to various disciplines. Clause (1) makes it clear that unless a student has the minimum attendance (75%) he cannot appear in the University examination (external evaluation). Similarly, Clause (2) makes it clear that unless a student secures 35% of the total marks fixed for internal assessment in a particular subject, he will not be eligible to appear in the University examination of that subject. *Thus, the requirement relating to attendance and requirement relating to internal assessment act as eligibility requirements to participate in the University examination.*

19. The scheme of MCI Regulation 12 also makes it clear that there will be internal assessment as well as the external assessment (University examination) in regard to theory as well as practicals. Clause (2) of MCI Regulation 12 makes it clear that in addition to providing the eligibility to appear in the University examination, the internal assessment also provides a weightage to an extent of 20% of the total marks in each subject. Clause (4) of MCI Regulation 12 makes it clear that for passing in each subject, a candidate must obtain 50% of marks in the aggregate. There is no controversy in regard to what is meant by aggregate. It is the aggregate of external examination marks and internal assessment marks. Where the maximum of 100 marks are for theory papers, 20 marks are for oral, 40 marks are for practicals, in all 160 for externals and 40 marks are for internal assessment, the aggregate is 200. A candidate should secure in all a minimum of 100 marks out of 200. The requirement relating to passing in aggregate complies with sub-clause (iv) of Clause (2) of Regulation 12, as internal

assessment marks (secured out of 40 marks, which is 20% of total marks) are also counted.

20. *The controversy is in regard to the method of calculating the passing marks for the other two heads of passing, namely, “theory including orals” and “practicals”. The scheme of the MCI Regulations requires the student to pass the University examination (externals) with 50% in theory (including oral) and 50% in practicals, and also secure 50% of marks in the aggregate of the total marks for external examination and total marks for internal assessment.*

21. *What is to be noticed is that Clause (4) of Regulation 12 requires that a minimum of 50% in theory including orals, should be obtained by a student. It does not say 50% in theory including orals and internal assessment (theory). It should be remembered that the marks are distributed as 100 for theory (external), 20 for oral (external), 40 for practical (external) plus 20 for theory (internal) and 20 for practicals (internal). If the intention was to club the marks for internal assessment with the marks secured in external examination, the marks would have been distributed in the following manner:*

(a) <i>Theory:</i>		
(i)	Two papers of 50 marks each	100 marks
(ii)	Internal Assessment	20 marks
(b)	Oral (viva)	20 marks
(c) <i>Practical/Clinical:</i>		
(i)	External Assessment	40 marks
(ii)	Internal Assessment	20 marks
Total		200 marks

But the distribution of marks under Regulation 12(4) is as under:

(a) <i>External:</i>		
(i)	Theory - 2 papers	100 marks
(ii)	Oral (viva)	20 marks
(b)	Practicals	40 marks

(c)	<i>Internal:</i>		
(i)	Theory	20	
(ii)	Practical	20	40 marks
	Total		200 marks

22. *The scheme of distribution of marks makes it clear that University examination (external assessment) is kept separate and distinct from the internal assessment. Regulation 12(4) when read in its normal and natural sense, does not contemplate for clubbing of internal assessment with external examination. When the provisions of Regulation 12 are clear and unambiguous, it is impermissible to add words into it. When the Regulation requires that a candidate must obtain a minimum of 50% of marks in “theory including orals”, it is not possible to read it as 50% marks in “theory including orals and internal (theory)”. Similarly, when the Regulation provides that a candidate must obtain a minimum of 50% of marks “in practicals”, it is not possible to read them as “in practicals and internal (practicals)”. Therefore, when the Regulation provides that a minimum of 50% of marks in theory including orals, it excludes internal assessment and it means that the candidate should secure a minimum of 50% marks out of 120 marks (that is 100 marks for theory and 20 marks for orals). Similarly, when the Regulation provides that a candidate must obtain a minimum of 50% of marks in practicals, it means he should secure 20 out of 40 marks in practicals.”*

(Emphasis supplied)

8. In conclusion, the Supreme Court holds in para 27 of the report, thus :

“27. We, therefore, accept the interpretation put forth by the University in respect of MCI Regulation 12 as correct and hold that clauses 56(2) and 57 of amended University Ordinance 1/2002 are in consonance with clauses 92) and (4) of MCI Regulation 12. *We also hold that internal assessment marks cannot be clubbed with University*

examination (external) marks to ascertain whether a candidate has passed in Theory with orals, and practicals. We further hold that the clarification given by MCI in its letter dated 17.9.2002 and the clarification in its reply affidavit are contrary to MCI Regulation 12(4). Consequently, a student has to secure marks as follows to pass in a subject :

- (i) 35% in internal assessment (for eligibility to appear for university examination)*
- (ii) 50% of the total marks for Theory with Orals (only externals)*
- (iii) 50% of the marks for Practicals/Clinicals (only externals)*
- (iv) 50% of the aggregate (total of externals and internals)”*

(Emphasis supplied)

9. Clearly, while working out the two totals for the Medicine paper, the University erred in adding the marks obtained by the petitioner in the “Internal Assessment” Components. *Sans* the said addition, the petitioner would score 70 out of 140 in his Written and Oral Papers, and 60 out of 100 in practicals – in each case, above the prescribed pass percentage of 50%.

10. Mr. Rupal candidly acknowledges that if one were to apply the principles laid down by the Supreme Court, the petitioner would undoubtedly pass in his medicine paper.

11. It be noted that the writ petition also includes a prayer for awarding of grace marks. However, these grace marks are relatable to the internal assessment components of the medicine paper. In view of the fact that the said marks are not includible while working out the marks obtained by the candidate, the issue of award of marks becomes unnecessary. No findings are, therefore, being given on this prayer.

12. In view thereof, the issue in controversy being covered in favour of the petitioner by the judgment of the Supreme Court in *Maharashtra University of Health Sciences (supra)*, the writ petition is allowed. The petitioner is declared as having passed in his medicine paper in Part-II of his Third Professional MBBS Examination, 2018.

13. Needless to say, consequential reliefs, if any, would enure to the benefit of the petitioner.

14. There shall be no order as to costs.

C. HARI SHANKAR, J

APRIL 02, 2019/kr