

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.04.2015

Delivered on: 29.04.2015

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN
W.P.Nos.6521, 6522, 9987, 9988, 10190, 10192,
10389 and 10390 of 2015
and M.P.Nos.1 of 2015 (8 M.Ps.)

W.P.No.6521 of 2015

1.S.Pragadeeshwer
2.P.Divya Lakshmi
3.V.N.Harsitha
4.S.Prayadharsini
5.P.Yoghashree
6.Eleena John
7.K.Vishnu Raja
8.M.Divya Bharathi
9.G.Himaja
10.Humaira Raffic Ahmed
11.M.Sakeena Begum
12.V.Karthick
13.S.Vijayakumar
14.D.Sabari Narayanan
15.D.Deepu Daniel .. Petitioners

1 S.Mugilan
2 S.Omeshwar
3 C.Niaz Mohamadeen
4 Radhika S.
5 Prasanna Kumar
6 M.Jumana Haseen
7 K.K.Vigneshwaran
8 E.Vignesh
9 R.Kaviamudhu
10 S.Ashuvath Kumar ...Petitioner in
W.P.6522/15

Vs.

1.The Medical Council of India,
Represented by its Secretary,
Pocket-14, Sector-8,
Dwarka, Phase-I,
New Delhi-110 077.

2.The Tamil Nadu Medical Council,
Represented by its Secretary,
No.914, Poonamalle High Road,
Arumbakkam, Chennai-600 106.

3.The Pondicherry University,
Represented by its Vice-Chancellor,
R.V.Nagar, Kalapet,
Puducherry-605 104.

4.Sri Venkateswara Medical College Hospital
and Research Centre,
Represented by its Principal,
No.13-A, Pondy-Villupuram Main Road,
Ariyur, Pondicherry-605 102.

5.The Registrar,
The Pondicherry University,
R.V.Nagar, Kalapet, Puducherry-605 104.

6.The Controller of Examinations,
The Pondicherry University,
R.V.Nagar, Kalapet,
Puducherry-605 104.

... Respondents in
W.P.No.6522/15)

(R5 and R6 impleaded as per orders dated
31.3.2015)

Prayer: (W.P.No.6521 & 6522 of 2015) Writ Petition filed under
Article 226 of the Constitution of India praying for issuance of a
Writ of Mandamus directing the respondents to declare the
petitioners as having passed in the final year subject Obstetrics
and Gynaecology with effect from 2.1.2015 for which the
examination was conducted in November - December 2014 as they have
all secured above 50% in the theory + oral and practical
separately.

W.P.No.9987 of 2015

J.Joshua

...Petitioner

Vs

1 The Medical Council of India
MCI Building Pocket 14 Sector 8 Dwarka
Phase I New Delhi 110 077

- 2 Controller of Examinations
Pondicherry University Kalapet Pondicherry
605 104
- 3 Sri Venkateswara Medical
College Hospital and Research Centre Ariyur
Puducherry 605 102 ...Respondents

to issue a writ of mandamus or any other direction or order similar thereto directing the 2nd respondent to grant 7 (Seven) Marks as grace marks towards the petitioners practical test of Obstetrics & Gynecology in the III Professional Part II M.B.B.S held on November 2014 Examinations as per Paragraph 3 of the Examination Regulations 2009-10 of the Pondicherry University

W.P.No.9988 of 2015

R. Durga

PETITIONER

Vs

- | | |
|---|---|
| 1 | The Medical Council of India
MCI Building Pocket 14 Sector 8 Dwarka
Phase I New Delhi 110 077 |
| 2 | Controller of Examinations
Pondicherry University Kalapet Pondicherry
605 104 |
| 3 | Sri Venkateswara Medical
College Hospital and Research Centre Ariyur
Puducherry 605 102 |
| | RESPONDENTS |

to be pleased to issue a writ of mandamus or any other direction or order similar thereto, directing the 2nd respondent to grant 4 (Four) Marks as grace marks towards the petitioners practical test of Obstetrics & Gynecology in the III Professional Part II M.B.B.S held on November 2014 Examinationss as per Paragraph 3 of the Examination Regulations 2009-10 of the Pondicherry University

WP.NO.10190 of 2015:

M.Gowthami

[PETITIONER]

 V_S

- 1 The Medical Council of India
MCI Building Pocket 14 Sector 8 Dwarka
Phase I New Delhi 110 077
- 2 Controller of Examinations

Pondicherry University Kalapet Pondicherry
605 104

- 3 Sri Venkateswara Medical
College Hospital and Research Centre Ariyur
Puducherry 605 102 ...Respondents

to be pleased to issue a Writ of Mandamus or any other direction or order similar thereto, directing the 2nd respondent to grant 7 (Seven) marks as grace marks towards the petitioners practical test of Obstetrics & Gynecology in the III Professional Part II M.B.B.S held on November 2014 examinations as per paragraph 3 of the Examination Regulations 2009-10 of the Pondicherry University

WP.NO.10192 OF 2015:
D.Arun Raj

[PETITIONER]

Vs

- 1 The Medical Council of India
MCI Building Pocket 14 Sector 8 Dwarka
Phase I New Delhi 110 077
- 2 Controller of Examinations
Pondicherry University Kalapet Pondicherry
605 104
- 3 Sri Venkateswara Medical
College Hospital and Research Centre Ariyur
Puducherry 605 102 ...RESPONDENTS

to be Pleased to issue a Writ of Mandamus or any other direction or order similar thereto, directing the 2nd respondent to grant 5 (Five) marks as grace marks towards the petitioners practical test of Pediatrics in the III Professional Part II M.B.B.S held on November 2014 examinations as per paragraph 3 of the Examination Regulations of Medical Council of India on Graduate Medical Education 1997 and Examination Regulations 2009-10 of the Pondicherry University

WP.NO.10389 of 2015:

A.Pradeepkumar

[PETITIONER]

Vs

- 1 The Medical Council of India
MCI Building Pocket-14 Sector-8 Dwarka
Phase-I New Delhi-110077.

2 Controller of Examinations
Pondicherry University Kalapet Pondicherry-
605104.

3 Sri Venkateswara Medical
College Hospital & Research Centre Ariyur
Puducherry-605102.

..Respondents

to pleased to issue a Writ of Mandamus or any other direction or order similar thereto, Directing the 2nd Respondent to grant 7 (Seven) Marks as grace marks towards the Petitioners practical test of Obstetrics and Gynecology in the III Professional Part II M.B.B.S held on November 2014 Examinations as per Paragraph 3 of the Examination Regulations 2009-10 of the Pondicherry University

WP.NO.10390 OF 2015:

Sainath Veeranki

[PETITIONER]

Vs

1 The Medical Council of India
MCI Building Pocket-14 Sector-8 Dwarka
Phase-I New Delhi-110077.

2 Controller of Examinations
Pondicherry University Kalapet Pondicherry-
605104.

3 Sri Venkateswara Medical
College Hospital & Research Centre Ariyur
Puducherry-605102.

...RESPONDENTS

to be pleased to issue a Writ of Mandamus or any other direction or order similar thereto, directing the 2nd Respondent to grant 6 (Six) Marks as grace marks towards the Petitioner practical test of Obstetrics and Gynecology in the III Professional Part II M.B.B.S held on November 2014 Examinations as per Paragraph 3 of the Examination Regulations 2009-10 of the Pondicherry University

For Petitioners

W.P.No.6521 and 6522/2015: Mr.R.Muthukumarasmy,
Senior Counsel
for Mr.A.Jenasenan

W.P.Nos.9987, 9988, 10190,
10192, 10389 and 10390/2015: Mr.K.Rajasekaran

For Respondents

: Mr.V.Balamurugane

Additional Govt. Pleader (Pondicherry)
for R2 in W.P.Nos.30389, 30390, 9987,
9988, 10190 and 10192 of 2015
for R3, R5, R6
in W.P.Nos.6521 and 6522 of 2015
Mr.V.P.Raman
for R1 in all W.Ps.
Mr.R.Krishnamuthy, Senior Counsel
for Mr.T.V.Lakshmanan
for R3 in W.P.Nos.10389, 10390, 9987,
9988, 10190 and 10192 of 2015
for R4 in W.P.Nos.6521 and 6522 of 2015
Mr.Veerakathiravan
for R2 in W.P.Nos.6521 and 6522 of 2015

C O M M O N O R D E R

By consent, all the writ petitions are taken up for final disposal.

2. Core issue involved in these writ petitions is one and the same and hence, all the writ petitions are disposed of by this common order.

W.P.Nos.6521 and 6522 of 2015

2.1. There are 15 petitioners in W.P.No.6521 of 2015 and 10 petitioners in W.P.No.6522 of 2015. All the petitioners are undergoing M.B.B.S. course in the fourth respondent institution, namely Sri Venkateswara Medical College Hospital and Research Centre, Ariyur, Pondicherry and they were admitted during the academic year 2010-2011. The petitioners would state that they have passed the 1st, 2nd and 3rd year M.B.B.S. examinations successfully and on successful completion of final year, they are eligible to undertake Compulsory Rotatory Residential Internship (CRRI) and on completion of the internship, they will be eligible to graduate in the M.B.B.S. course. The conduct of the M.B.B.S. course is governed by the Regulations on Graduate Medical Education, 1997 framed by the first respondent/Medical Council of India in exercise of powers conferred under Section 33 of the Indian Medical Council Act, 1956. The above said 1997 Regulations provides for the selection and admission of candidates into the M.B.B.S. course, curriculum to be followed, subjects to be taught, conduct of the examinations, attendance required and the program of internship to be followed by the candidates.

2.2. The subject matter in these writ petitions pertains to practical examinations conducted in the subject of Obstetrics and Gynaecology and the manner of conducting the said examinations is as follows:

Marking for the subject Obstetrics and Gynaecology as per the Medical Council of India Regulations on Graduate Medical Education, 1997	
Theory - two papers of 40 marks each Paper-I - Obstetrics including Social obstetrics Paper-II - Gynaecology, Family Welfare and Demography	80 marks
Oral (Viva) including record of delivery cases (20+10)	30 marks
Clinical/practical	50 marks
Internal Assessment (Theory-20; Practical-20)	40 marks
Total	200 marks

The petitioners would further state that for a candidate to be declared pass, he/she must obtain 50% aggregate marks with a minimum of 50% marks in theory including orals and minimum of 50% marks in theory/clinical.

2.3. The third respondent, namely Pondicherry University, vide proceedings dated 19.09.2014 fixed the schedule for the conduct of the final year examinations in the four subjects from 17.11.2014 to 01.12.2014 and also fixed the schedule for conduct of the oral examination and practical/clinical examination and the marking pattern is as follows:

Marking for the subject Obstetrics and Gynaecology as per the Pondicherry University Regulations	
Theory - two papers of 80 marks each Paper-I - Obstetrics including Social obstetrics Paper-II - Gynaecology, Family Welfare and Demography	160 marks
Oral (Viva)	20 marks
Clinical/practical	100 marks
Internal Assessment (Theory-40; Practical-30 including 5 marks for record)	70 marks
Total	350 marks

As per the Regulations framed by the third respondent/University, each candidate must obtain 50% marks in aggregate with a minimum of 50% in theory including orals and minimum of 50% in practicals and a minimum of 40% in theory examinations to be eligible for declaring as pass in the subject.

2.4. Annexure II of the third respondent University Regulations prescribes Working Sheet for the examinations to be conducted for the final year subjects and it is relevant to

extract the same:

SL.NO.	DESCRIPTION	OBST. & GYNE
1	No. of theory papers	2
2	Marks for each Theory paper	80
3	Total marks for theory paper	160
4	Minimum marks for theory paper	64
5	Practical/clinical marks	100
6	No. of long cases and marks	Obst.-1 - 40 marks Gyne-1-40 marks
7	No. of short cases and marks	Nil
8	Oral	20
9	Passing minimum for practical	50
10	Internal assessment	Theory-40 marks, Practical-25 marks and Record-5 marks
TOTAL MARKS		Part A (University Theory + Internal Assessment theory + oral) = 220 marks Part B (University Practical + Internal Assessment Practical) 130 marks

The Working Sheet also provides that a candidate has to secure a minimum of 50% in Part A and B along with minimum of 40% in University Theory examination to be declared pass.

2.5. The first respondent as well as the third respondent Regulations prescribe that a candidate has to secure 50% minimum marks in theory plus oral separately and practical/clinical separately to be declared as having passed in the said subject. The petitioners would further state that a mistake crept in the Working Sheet prescribed by the third respondent/University in Annexure II to its Regulations with respect to the subject of Obstetrics and Gynaecology and it is that though Sl.No.5 had fixed the marks for practical/clinical as 100 marks and Sl.No.8 had fixed the passing minimum for practical/clinical as 50 marks in line with the Regulations, Sl.Nos.6 and 7 which actually lay down the number of cases to be examined and prescribed for two long cases for 40 marks each and 'nil' number of short cases and thereby, the Working Sheet provided for practical/clinical for a total of 80 marks and not 100 marks as mentioned in Sl.No.5 of the Working Sheet and the Regulations of the University. According to the petitioners, on account of the said mistake, candidates were

examined on two long cases for a total of 80 marks and when their results were published on 02.01.2015 by the third respondent/University, all the petitioners were declared as failed in the subject of Obstetrics and Gynaecology and though all of them had secured above 55 marks (50% of 110 marks consisting of 80 marks for the practical/clinical + 30 marks for the internal assessment practical/clinical). They have been declared as fail on the ground that they have not secured above 65 marks (i.e., 50% of 130 marks consisting of 100 marks for the practical/clinical + 30 marks for the internal assessment practical/clinical) without taking into consideration of the fact that practical/clinical examinations were conducted only for 80 marks.

2.6. All the petitioners had approached the third respondent/University through their institution, namely the fourth respondent and the fourth respondent positively responded to the petitioners and requested the third respondent/University to rectify the mistake in the results and the petitioners reliably understand that the third respondent/University has also constituted a Committee to go into the issue and the said Committee held a meeting on 16.01.2015 and since no response is forthcoming, the petitioners as well as the fourth respondent institution in which they have undergone the M.B.B.S. course, submitted a written representation to the third respondent/University on 29.01.2015 and since, it has not been disposed of, all the petitioners had filed these writ petitions.

W.P.Nos. 9987, 9988, 10190, 10192, 10389 and 10390 of 2015

2.7. The petitioners in these writ petitions commenced studies in August 2010 and the third respondent institution, namely Sri Ventakeswara Medical College Hospital and Research Centre, Ariyur, Pududherry and they have cleared the subjects in the earlier years and in respect of practical examinations of the subject, namely Obstetrics and Gynaecology, the practical examination was conducted for 80 marks and subsequently, it was increased to 100 marks for certain convenience. The petitioners would state that they are short of less than 7 marks for the minimum of 40 marks to be qualified as pass and as per the Examination Regulations of the Pondicherry University, they are entitled to grace marks by the Board/Examination Committee, if the student has failed in only one subject and has passed in all the other subjects of a particular semester and Grace marks of up to 5% of theory marks can be added for one subject only, provided that by such an addition the student passes the annual/summative (viz., first professional, second professional etc.,) examination.

2.8. The petitioners would further claim that though in the previous examinations, the Pondicherry University did not provide for grace marks for the practical examinations, it was omitted

from the Examination Regulations conducted by it from the academic year 2009-2010 onwards and as a result, the University has granted grace marks in the practical examinations to several students in the past and hence, filed these writ petitions directing the third respondent University to award 7 grace marks in the subject of Obstetrics and Gynaecology in the III Professional Part II MBBS examinations held during November, 2014, as per Para 3 of the Examination Regulations 2009-10 of the University.

2.9. Notices were ordered to the respondents. In W.P.Nos.6521 and 6522 of 2015, the learned Judge, vide order dated 31.03.2015, has taken note of the submission made on behalf of the Pondicherry University that the plea made by the petitioners as well as the University is not as so innocent, but something more to it and thought fit to direct the University to constitute an independent Committee preferably by two members who should not have been involved earlier in the evaluation process of the respondent University with a further direction that the said Committee appointed shall summon the Chief Examiner, Examiners, External Examiners, who have affixed their signatures in the mark sheets drawn in the above said subjects and also further indicated that subject to the findings rendered by the Committee and subject to further orders, the request made by the petitioners to undergo CRRI will be considered and directed the listing of the matter on 10.04.2015.

2.10. All the writ petitions were listed for hearing on 16.04.2015 and on that day, the report of the Committee was submitted in a sealed cover and this Court has perused it and directed the learned Standing Counsel for Pondicherry University to handover the same to the Registrar (Judicial), High Court of Madras, with a further direction to furnish copies of the report and annexures to the respective learned counsel appearing for the parties and keep the original report in safe custody.

3. The respective learned counsel appearing for the petitioners, after receiving the copies of the report and annexures, submitted that admittedly the students have no role to play in the mistake/lapse committed by the institution and therefore, they cannot be penalized. Attention of this Court was also drawn to the report of the Committee, who had examined all the examiners and they were unanimous and categorical in their view that the students who have undergone examinations were evaluated for 80 marks and the marks were not recalculated for the maximum of 100 marks when they were uploaded. It is the further submission of the respective learned counsel appearing for the petitioners that the former Principal of the institution, in his reply dated 30.03.2015, has also indicated that the examinations were conducted in a fair manner and the Professor and Head of Department of Obstetrics and Gynaecology, namely Dr.K.M.G.Premaleela, in her letter dated 3.01.2015, addressed to

the Controller of Examinations, Pondicherry University, has also stated that marks were awarded on the basis of maximum marks of 80 (Obstetrics 40 marks + Gynaecology 40 marks), instead of maximum marks of 100 and the marks awarded to the students on the basis of maximum marks of 80 were uploaded daily in the Pondicherry University Website and the marks were not converted on the basis of maximum marks of 100. In sum and substance, it is the submission of the respective learned counsel appearing for the petitioners that for the mistake committed by the institution, more particularly by the Professors and Head of the Department of Obstetrics and Gynaecology of the institution, the petitioners cannot be penalized and recalculation to be done and the marks have to be uploaded on the basis of maximum marks of 100 and in that event, all the petitioners would pass the examination and even if some of them had failed in one subject, they can be declared to be pass by awarding grace marks in terms of amended regulations and hence, prays for appropriate orders.

4. Per contra, Mr.V.Balamurugane, learned Additional Government Pleader (Pondicherry) appearing for the third respondent University would vehemently contend that as per the University Regulations, maximum marks is 100 and in fact, the institution is very well aware of the same and in previous academic years, the examinations in the particular subject were conducted only for maximum marks of 100 and not for 80 marks, but curiously for the present academic year, the students were evaluated for 80 marks as against the maximum marks of 100 and there is a sinister motive behind it. The learned Additional Government Pleader appearing for the third respondent University has invited the attention of this Court to the typed set of documents filed by them and would submit that the system and scheme of examination wing would not give any chance to evaluation otherwise for maximum of 100 marks for the reason that the computer module clearly indicates that the maximum marks is 100 in the earlier examinations conducted during 2014 and the Associate Professor of Obstetrics and Gynaecology of the fourth respondent institution Dr.P.B.Hiremath signed it for 100 marks and therefore, the institution cannot plead ignorance. The learned Additional Government Pleader appearing for the third respondent University has further invited the attention of this Court to the number of students passed in the practical examinations conducted during 8th to 13th December 2014 and would contend that from 8.12.2014 to 10.12.2014, Internal Examinees were examined and almost all the students had passed and however, between 11.12.2014 to 13.12.2014, External Examiners, namely Dr.Chitra, Assistant Professor of Obstetrics and Gynaecology, JIPMER, Pondicherry and Dr.V.Sumathy, Professor of Obstetrics and Gynaecology, Stanley Medical College, Chennai were examined and from their view, the students had passed and it proved the fact that the institution has deliberately evaluated the performance of the students only for maximum of 80 marks as against 100, though they were very well aware of the fact.

5. The learned Senior Counsel appearing for the third respondent University has drawn the attention of this Court to Page 109 of the typed set of documents and would submit that if the plea of the petitioners that the marks obtained by them out of maximum marks of 80 are to be recalculated and converted by taking into consideration the maximum marks of 100, the following would emerge:

Total Failures before Conversion	61
Total Failures after Conversion	26
Eligible for grace after conversion	8
Total passed after conversion	27
Total pass including grace	35

It is contended by the learned Additional Government Pleader appearing for the third respondent University that total failures before conversion is only 61 and if the plea of the petitioners is accepted, the failures after conversion would be only 26 and total pass after conversion would be 27 and by awarding grace marks, it would be 35 and if this kind of practice is allowed, the quality of medical education would suffer and would further urge that the subject of Obstetrics and Gynaecology concerns with delivery and neonatal care and there cannot be any compromise on quality. It is also pleaded by the learned Additional Government Pleader appearing for the third respondent University that it may be permitted to initiate appropriate action against the institution as well as the examiners concerned and taking into consideration the welfare of students, the University is ready to conduct practical/clinical examinations for all the petitioners immediately.

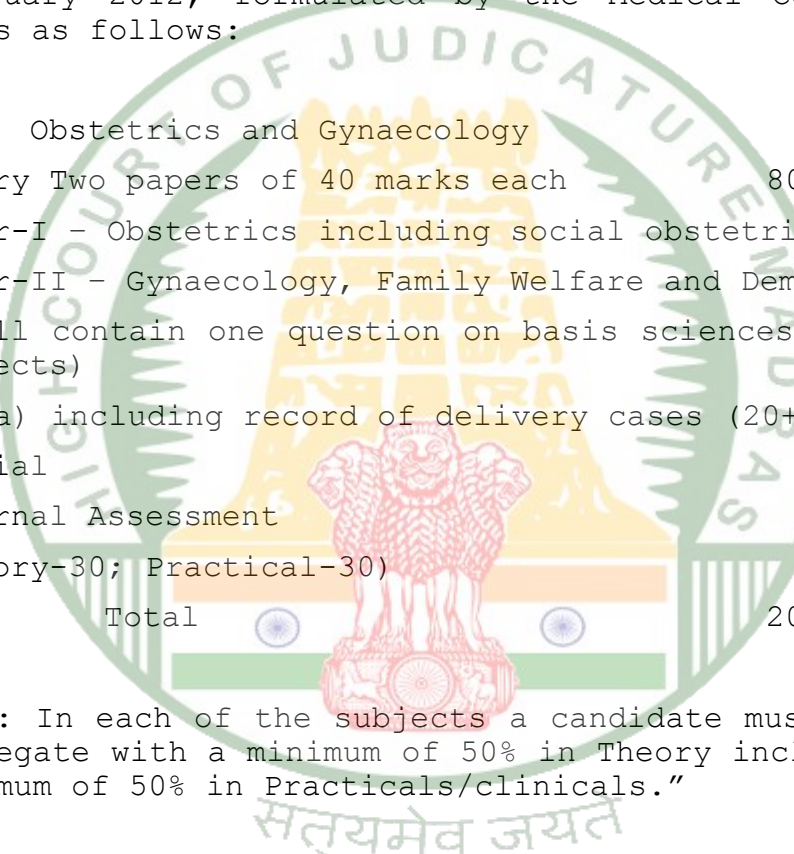
6. Mr.R.Krishnamurthy, learned Senior Counsel appearing for the fourth respondent institution/college in which the petitioners had undergone studies would submit that calculation on the basis of maximum marks of 80 was an inadvertent mistake and the institution immediately took damage control exercise by submitting representation to the University and also supported the cause of the students who have no role to play in the said mistake and taking into consideration the future and welfare of the students, recalculation of marks may be done on the basis of maximum marks of 100 by means of conversion and prays for appropriate orders.

7. Heard the submissions of Mr.V.P.Raman, learned Standing Counsel appearing for the Medical Council of India (MCI), who would submit that MCI as well as Pondicherry University are under statutory obligation to maintain quality and excellence in the field of medical education and there cannot be any compromise and

hence, prays for appropriate orders.

8. This Court paid its anxious consideration and best attention to the submissions made by the respective learned counsel appearing for the petitioners and the respective learned Standing Counsel appearing for the Pondicherry University and Medical Council of India and also perused the materials placed before it.

9. Regulations on Graduate Medical Education, 1997, amended upto February 2012, formulated by the Medical Council of India prescribes as follows:



“(c) Obstetrics and Gynaecology	
Theory Two papers of 40 marks each	80 marks
Paper-I - Obstetrics including social obstetrics	
Paper-II - Gynaecology, Family Welfare and Demography	
(shall contain one question on basis sciences and allied subjects)	
Oral (Viva) including record of delivery cases (20+10)	30 marks
Clinical	60 marks
Internal Assessment	
(Theory-30; Practical-30)	
Total	200 marks

Pass: In each of the subjects a candidate must obtain 50% in aggregate with a minimum of 50% in Theory including orals and minimum of 50% in Practicals/clinicals.”

It has been indicated that in each of the subjects, a candidate must obtain 50% in aggregate with minimum of 50% in Theory including orals and minimum of 50% in Practicals/clinicals.

10. As per the M.B.B.S. syllabus and Regulations formulated by Pondicherry University, Working Sheet for the Third Professional and Part II Examination is given and is relevant to extract the same:

Sl.No .	Description	----	----	Obst & Gnae	---
1	No of Theory Papers			2	
2	Marks for each Theory Paper			80	
3	Total marks for Theory Paper			160	
4	Minimum marks for Theory Paper			64	
5	Practical/Clinical marks			100	
6	No of Long cases and marks			Obst-1 40 marks Gynae-1 40 marks	
7	No of short cases and marks			Nil	
8	Oral			20	
9	Passing minimum for Practical			50	
10	Internal Assessment			Theory 40, Practical 25 & Record 5	
	Total Marks			Part A = 220 Part B = 130 Total = 350	

Total marks - Part A (Univ. Theory + Int. Assess. Theory + Oral)

Part B (Univ. Pract. + Int. Assess.

Practical)

The candidate has to pass individually in Part A and Part B. Passing minimum is

50% aggregate in each part. In addition the candidate has to obtain in

University Theory - 40% minimum and in

University Practical Examination - 50% minimum

If the candidate fails in one part, he has to appear for both the Parts of the concerned subject.

The above Regulations also provides for award of grace marks in case of failure in one out of all subjects for the particular semester and it relevant to extract the same:

GRACE MARK

Grace Mark in case of failure in ONE out of all subjects for the particular semester

A passing board is constituted for finalizing the results of each phase. The Heads of the Departments or the members, the board allots grace marks maximum of 5 for one subject. The grace mark of 5 will be added for one subject only after the marks obtained in the University examination are scaled down to 100% in the particular subject - Theory. The grace marks of 5 is applicable to all the University examinations of MBBS conducted semester-wise. No Grace marks will be added for Practicals. Grace mark will not be applicable when the candidate takes up the University Examination in a compartmental manner."

11. The Screen Shot of <http://10.10.57/Pondicherry/MainPage.html/> dated 26.03.2015 reads as follows:

"2008-Sri Venkateswara Medical College Hospital & Research Centre, Puducherry

Practical Marks

Degree Code: MBBS M.B.B.S. Short name : PR
Exam: D III Professional Part Max Mark: 100
Subject: D1034 Obstetrics & Gynaecology Practical
Viva Subject: D1032 Obstetrics & Gynaecology Max Mark: 20
Batch: 01

12. It is not in serious dispute that in respect of previous years, maximum mark prescribed was 100 marks and in fact, the institution is also very well aware of the same. After the results were published, most of them failed in the subject of Obstetrics and Gynaecology and the Principal of the institution, namely Dr.M.Chaudhury has written a letter dated 03.01.2015 to the Controller of Examinations, Pondicherry University stating that when the result of the final year M.B.B.S. Part II examination was published on 02.01.2015, it was found that more number of candidates have failed in the subject of Obstetrics and Gynaecology and on enquiry from the Head of the Department of Obstetrics and Gynaecology Dr.K.M.G. Premaleela, it is ascertained that the University practical marks were awarded for 80 maximum marks instead of 100 marks and requested the University to calculate the maximum marks by taking into consideration the maximum mark of 100 and the results of the students who appeared for the final year MBBS Part II Examination in the subject held in November, 2014 be published afresh and further request is also made that if students failed in one subject, grace marks may be awarded and the results may be declared accordingly.

13. The Professor and Head of the Department of Obstetrics and Gynaecology of the institution, namely Dr.K.G.M.Premaleela, in her letter dated 03.01.2015 addressed to the Controller of Examinations, Pondicherry University stated that marks were awarded by taking into consideration the maximum marks as 80 instead of 100 and they were uploaded daily in the Pondicherry Website and they were not converted to out of 100 marks and further stated that the manuscript copy of the working sheet of the calculation in the said subject duly signed by all the four examiners are in her possession and can be produced for scrutiny if required and made a request to do the needful. The students had also submitted a representation dated 29.01.2015 to the Vice Chancellor, Pondicherry University to rectify the mistake as they are unable to register their names in the Tamil Nadu Medical Council and it will also affect their eligibility to appear for the Post Graduate Entrance Examination this year. The Professor and Head of Department of Obstetrics and Gynaecology of the institution, in her letter dated 29.01.2015, addressed to the Vice Chancellor, Pondicherry University, admitted that the said mistake is on her part and requested the Vice Chancellore to accept her sincere apology and excuse her for the same and further appealed to him to issue directions to the authorities concerned for early release of the results of the final year Part II MBBS on the basis of the revised marks in the subject of Obstetrics and Gynaecology in the interest and welfare of the students. The Principal of the College has also recommended the said request and forwarded the same to the Vice Chancellor for favourable orders.

14. The Fact Finding Committee, appointed in pursuant to the interim order of this Court dated 31.03.2015 made in W.P.Nos.6521 and 6522 of 2015, had recorded the submissions of all the examiners as well as the officials attached to the Office of the Controller of Examinations of Pondicherry University. The statement of Mr.S.Rajkumar, Section Officer, Examination Wing reads that the guidelines regarding uploading are known to all colleges and the examinations in 2014 were not the first time that the college was uploading the results and he would further add that last year also the internal examiners were the same and the results were uploaded for a minimum of 100 and not out of 80. Similarly, Mr.S.Kamaraj, Senior Technical Assistant, Examination-Computer Section stated that he demonstrated to the Fact Finding Committee the sequence of uploading procedure that needs to be adopted by any institution in general and Sri Venkateswara Medical College and Research Centre in particular and also showed how the screen page opens at the University portal at the college and where the maximum mark was indicated as 100 for practical examinations in Obstetrics and Gynaecology and also explained as to how the system works. The Fact Finding Committee also examined the external examiners, namely Dr.Anuradha, Professor of Obstetrics and Gynaecology, Sri Muthukumaran Medical College,

Mangadu, Dr.Jayanthi, Professor and Head of Department, Obstetrics and Gynaecology, Meenakshi Medical College, Kanchipuram, Dr.Chitra, Assistant Professor of Obstetrics and Gynaecology, JIPMER, Pondicherry, and Dr.V.Sumathy, Professor of Obstetrics and Gynaecology, Stanley Medical College, Chennai and except Dr.Chitra, other examiners would state that marks were uploaded for 80 marks and not for 100 marks. Dr.Chitra stated that after conducting of the examinations, Dr.Premaleela, Head of the Department of Obstetrics and Gynaecology of the institution had approached her, a month thereafter stating that she should sign on revised mark sheets of students as they were evaluated for only 80 instead of 100 marks and would further state that she did not agree initially but relented eventually and signed after the Head of Department, Dr.Premaleela stated that it was being done to correct a mistake done and that it was not wrong and would further state that she was not present at the time of uploading of marks and she did not notice that the maximum marks were 100 and not 80.

15. Dr.P.B.Hiremath, Associate Professor of Obstetrics and Gynaecology of the fourth respondent institution has stated that he did not notice the screen of the portal showing 100 as the maximum marks and he has used worksheets for entry of marks with maximum marks as 80 as per the marks allotted for the two long cases and the marks obtained were not revised for 100 before uploading. He also stated that he conducted such exams on earlier occasions and claimed that he did not remember the maximum marks as 100. Dr.K.G.M.Prameela, Professor and Head of Department, Obstetrics and Gynaecology of the institution, who played crucial role would state that she was the convenor of the examinations of the above said subjects and he evaluated the performance of the students for 80 marks as per the scheme and she has not revised the marks for a maximum of 100 marks before uploading the same and she did not notice the screenshot showing 100 as the maximum and she did not remember what the maximum marks were in the two examinations previously conducted by her and she pleaded that it was an unintentional mistake not wilfully done and it needs to be corrected.

16. The Fact Finding Committee, on a thorough consideration of the statements of the examiners and staffs and on perusal of the documents produced before it, opined that there is no mention regarding recalculation in the guidelines and though the screen page at the portal at the time of uploading of marks does show 100 as the maximum marks, none of the six examiners have taken note of the same and this is inspite of conducting exams and uploading marks for 100 marks on earlier occasions. Insofar as the plea made by the Professor and Head of Department of Obstetrics and Gynaecology of the institution, the Committee found that she was the examiner on earlier two occasions, but she did not remember to do the same before uploading the marks at that time. The Fact Finding Committee has recorded a crucial finding that the records

indicate that such a mistake has never happened in any of the medical colleges affiliated to Pondicherry University including Sri Venkateswara Medical College on any previous occasion. The Committee has also suggested a clear cut regulations for evaluation without scope for such lapse/mistake. The report of the Fact Finding Committee would indicate that it is not as if external as well as internal examiners had conducted practical examinations of the above said subject for the first time and all of them had previously calculated marks by taking into account the maximum marks as 100. It is also stated the Web portal/Screen shot of the University available at the end of the institution clearly indicate the maximum marks as 100 and it is not made clear as to how the maximum marks was taken as 80 instead of 100 either by Dr.K.G.M.Premaleela, Professor and Head of Department of Obstetrics and Gynaecology or by the Principal of the institution. The Regulations of Medical Council of India as well as Pondicherry University would clearly indicate the maximum marks as 100 and not 80.

17. In Sahiti and Others v. The Chancellor, Dr.N.T.R. University of Health Sciences and Others [2008 (13) Scale 464], the High Court of Andhra Pradesh has upheld the action of the Vice Chancellor of Dr.N.T.R.University of Health Sciences, Vijaywada, of re-verification/re-evaluation/re-examination of answer scripts of 436 students who had failed in the first year M.B.B.S examination during academic year 2006-07 and it was set aside by an appeal by the Division Bench and upheld the decision of the Executive Council to cancel the result of re-verification of answer scripts and asking 294 students, who were declared passed on re-verification of answer scripts to re-appear in examination of first year M.B.B.S. One of the student made a challenge to the said judgment by filing an appeal before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court has taken into consideration the provisions of N.T.R. University of Health Sciences Act, 1986 and held that Vice Chancellor has the right to regulate the work and conduct of officers and other employees of the University and he has also emergency powers to deal with any untoward situation. On the facts of the case, the Hon'ble Supreme Court found that if the Vice Chancellor was of the opinion that re-evaluation of the answer scripts is necessary, he should have directed revaluation of answer scripts of all 992 students who had failed and revaluation of answer scripts could not have been confined only to 436 students who had never applied for revaluation of their answer script. The Hon'ble Supreme Court of India ultimately upheld the judgment of the Division Bench of the Andhra Pradesh High Court and dismissed the appeal. The said judgment lay down the proposition that as per the features of the Act, the concerned University Vice Chancellor has power to take appropriate action relating to the affairs of the University which includes conduct of the examinations also. In terms of the Pondicherry University Act, if the Vice Chancellor is vest with any such power, it is always open to her to take such decision by taking into

consideration relevant norms and regulations also and this Court is not expressing any opinion in that regard as its attention is not drawn to the relevant provisions/regulations of the Pondicherry University.

18. Pondicherry University M.B.B.S. Syllabus and Regulations (Under Graduate Medical Course) specifically stipulates that for long cases for Obstetrics and Gynaecology, marks to be awarded is 40 and in respect of oral examination, 20 marks to be awarded and minimum pass marks for practical is 50, internal assessment, for theory 40 marks to be awarded, for practical 25 marks to be awarded and for record 5 marks to be awarded and the total marks to be awarded is 350 (Part A - 220 and Part B - 130). It also provides for award of grace marks in case of failure in one out of all subjects for the particular semester. As per the said Regulations, maximum marks is 100 and not 80 and in the light of the said statutory regulation, this Court cannot direct the University to recalculate marks from maximum marks of 80 to 100.

19. In Govt. of Orissa v. Hanichal Roy [(1998) 6 SCC 626], the Hon'ble Supreme Court considered the case wherein High Court has granted relaxation of service conditions and held that High Court could not take upon itself the task of the statutory authority and the only order which the High Court could have passed was to direct the Government to consider his case for relaxation forming an opinion in view of the statutory provisions as to whether the relaxation was required in the facts and circumstances of the case and issuing such a positive direction by the Court was illegal and impermissible. Similar view was reiterated in LIC v. Asha Ramchandra Ambekar [(1994) 2 SCC 718].

20. As already pointed out, the subject of Obstetrics and Gynaecology is one of the important subjects and therefore, there cannot be any compromise on the quality of evaluation of the said subject both in Theory as well as in Practical/Clinical. The right guaranteed under Article 21 of the Constitution of India includes the protection and safeguarding the health and life of the public at large from mal-medical treatment. In the light of the same, this Court is unable to give any positive direction to the Pondicherry University to recalculate/reconvert the marks awarded by taking into consideration the maximum marks as 100. If the Pondicherry University Act/Rules/Regulations provides that the Vice Chancellor/Academic Council is having any such power to grant such relaxation, it is always open to them to do so by taking into consideration of the fact that the writ petitioners/students are not at fault. In the alternative, it is always open to the University to once again conduct practical examinations in respect of the subject of Obstetrics and Gynaecology immediately without loss of time in respect of the students of fourth respondent institution. This Court is also of the view that persons who are

responsible for the said lapses including the institution are to be dealt with sternly as the petitioners/students are suffering only on account of their lapse/alleged misdeeds. It is also open to the Medical Council of India as well as the Pondicherry University to proceed against them in the manner known to law and see to that, no such things occur in future.

21. In the result, these Writ Petitions are disposed of on the following terms:

(i) In the event of Pondicherry University Act/Rules/Regulations provides for relaxation and conversion of marks awarded out of maximum marks of 80 to maximum marks of 100, it is always open to the Vice Chancellor/Academic Council or other statutory body constituted under the Act to do so.

(ii) Alternatively, it is also open to the University to once again conduct practical examination for the subject of Obstetrics and Gynaecology, without loss of time in respect of the students of fourth respondent institution, namely Sri Venkateswara Medical College Hospital and Research Centre, Ariyur, Pondicherry.

(iii) The Medical Council of India as well as the Pondicherry University are at liberty to initiate appropriate action against the examiners concerned as well as against the Institution in accordance with norms and regulations by applying the principles of natural justice.

(iv) It is also open to the petitioners/students to initiate appropriate legal action against the persons concerned including the institution.

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22. These Writ Petitions are disposed of accordingly with a cost of Rs.25,000/- (Rupees Twenty Five Thousand Only) payable by the institution, namely Sri Venkateswara Medical College Hospital and Research Centre, Ariyur, Pondicherry to the Tamilnadu Mediation and Conciliation Centre of High Court, Madras within four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

List for compliance on 09.06.2015

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

jvm

To

- 1.The Secretary,
The Medical Council of India,
Pocket-14, Sector-8,
Dwarka, Phase-I,
New Delhi-110 077.
- 2.The Secretary,
The Tamil Nadu Medical Council,
No.914, Poonamalle High Road,
Arumbakkam, Chennai-600 106.
- 3.The Vice-Chancellor,
The Pondicherry University,
R.V.Nagar, Kalapet,
Puducherry-605 104.
- 4.The Principal,
Sri Venkateswara Medical College Hospital
and Research Centre,
No.13-A, Pondy-Villupuram Main Road,
Ariyur, Pondicherry-605 102.
- 5.The Registrar,
The Pondicherry University,
R.V.Nagar, Kalapet,
Puducherry-605 104.
- 6.The Controller of Examinations,
The Pondicherry University,
R.V.Nagar, Kalapet, Puducherry-605 104.
- 7.The Secretary,
Tamil Nadu Mediation and Conciliation Centre,
High Court, Madras.

+1 cc to Mr.T.V.Lakshmanan, Advocate sr.23810

+2 ccs to M/s.A. Jenasenan, Advocate, Sr. 23795

in W.P.Nos.6521, 6522, 9987,
9988, 10190, 10192,
10389 and 10390 of 2015

ALA (CO)
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