

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.06.2016
CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

W.P.No.7964 of 2016

P.Keerthana

... Petitioner

Vs.

- 1 The Vice Chancellor
Chettinad Health City and Research Institute,
SH 121, Rajiv Gandhi Salai,
Kelambakkam,
Chennai - 603 103.
 - 2 The Controller of Examinations,
Chettinad Health City and Research Institute,
SH 121, Rajiv Gandhi Salai,
Kelambakkam,
Chennai - 603 103.
 - 3 The Registrar
Tamil Nadu Dr.M.G.R. Medical University,
No.69, Anna Salai, Guindy,
Chennai - 600 032.
 - 4 The Director of Medical Education,
Kilpauk,
Chennai - 600 010.
 - 5 The Medical Council of India,
Rep by its Director,
Pocket 8, Dwarka,
New Delhi - 110 077.
- ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to declare the petitioner (Regn. No.11101051) pass in the subject Surgery in Final MBBS Part II examination conducted in December 2015 by awarding grace marks/moderation marks as per the regulations followed by respondent University by considering that the petitioner is short of three marks for declaration of pass in a single subject.

For Petitioner : Mr.G.Sankaran

For Respondents: Mrs.Akshiya Ramadurai for R1 and R2
Mr.D.Ravichander for R3
Mr.P.Sanjai Gandhi for R4
Additional Government Pleader
Mr.V.P.Raman for R5

O R D E R

By consent, the writ petition is taken up for final disposal.

2.The petitioner in the affidavit filed in support of this petition would state among other things that she joined MBBS course based on the "selection" conducted by the first respondent College in the year 2010-11 and claims to have performed exceedingly well in the examinations. It is further stated by the petitioner that there are four subjects in the final year MBBS Part-II examination viz., (i) Medicine - Paper-I & Paper-II, (ii) Surgery - Paper-I & Paper-II, (iii) Obstetrics & Gynaecology Paper-I & Paper-II, (iv) Paediatrics including Neonatology. The results of the said examination were published by the respondent University on 12.02.2016 and to the shock and surprise of the petitioner, she was awarded with 137 marks for Surgery against the requirement of 140 pass marks and noted as "RA - Re-Appearance". According to the petitioner, she was declared failed by three marks in the subject of Surgery and in respect of all other subjects, she was declared to be passed by securing higher marks.

3.Mr.G.Sankaran, learned counsel appearing for the petitioner has drawn the attention of this Court to the decision taken by the Medical Council of India in the Board of Governors meeting for various subjects including grant of grace marks and would submit that in the light of the said guidelines, the petitioner is entitled to get a grace mark of 3 to pass the Surgery subject and in this regard, has also submitted a representation dated 17.02.2016, to the first respondent and since no orders have been passed, the petitioner is constrained to file this writ petition.

4.Per contra, Mrs.Akshiya Ramadurai, learned counsel who accepts notice on behalf of the respondents 1 and 2 has drawn the attention of this Court to the counter affidavit and would submit that the Medical College in which the petitioner studies, is covered under the aegis of the Medical Council of India and in addition, the respondent University has framed its internal regulations governing the courses offered and for MBBS course, it follows the regulations for Bachelor of Medicine and Bachelor of Surgery (MBBS) Degree Course in alignment with the Medical

Council of India Regulations and that apart it is a self-financed, independent and autonomous institution.

5.The learned counsel has also drawn the attention of this Court to paragraph nos.6, 10 and 11 of the counter affidavit and would submit that the academic performance of the petitioner is not good as claimed by her and since the discretion has been exercised not to award three marks, based on the opinion of the expert body, it cannot be interfered with by this Court, under Article 226 of the Constitution of India and prayed for the dismissal of the writ petition.

6.This Court has carefully considered the rival submissions and it is also relevant to extract paragraph nos.6, 10 and 11 of the counter affidavit hereunder:

"6.The answering Respondents state that the past academic performance of the petitioner student is significant in this regard. The petitioner was admitted into the university for the Bachelor of Medicine and Bachelor of Surgery course ('MBBS'), commencing from the academic year 2010-2011. In

the first year, the petitioner failed to clear any of the examinations at the first instance in June 2011. Following the MCI Guidelines in this regard, the petitioner was thus required to repeat the first year and re-appear for the classes and examinations. Only in June 2012, the petitioner student cleared the first year examinations with 56%. In the second year as well, the petitioner student had arrears in two subjects and subsequently cleared the examinations only in June 2014, with 58%. While the petitioner was expected to clear the third year, Part I Courses in December 2014, the student only managed to clear the examinations in June 2015 with 60%, after having failed in one subject. Subsequently, the petitioner student appeared for the final year, part II examinations which took place in January 2016. The results were published on 12.02.2016, and the petitioner had cleared the following subjects and obtained marks as follows:

1. Medicine Paper I and II - a total of 314 out of 600, where the minimum marks required is 300 marks.
2. Obstetrics and Gynaecology Paper-I & Paper-II - a total of 271 out of 400, where the minimum marks required is 200.
3. Paediatrics - a total of 115 out of 200 marks, where the minimum marks is 100.

In the subject 'Surgery', the petitioner failed to obtain the minimum marks required and her marks are as follows:

Component	Marks Awarded	Passing Minimum	Maximum Marks
Theory + Oral	137	140	280
Practical/Clinical	137	100	200
Internal	62	42	120
Aggregate	336	300	600

10. In order to ensure that the highest academic standards of medical education are maintained, the respondent university consistently adopts the practice of exercising discretion to award grace marks only in exceptional circumstances. Such circumstances are cases where the student body collectively raise an official issue as regards the difficulty level of the question papers, or where the overall pass percentage in the subject is critically low in the opinion of the concerned heads of departments, indicting difficulty level of the papers, or where in the opinion of the concerned heads of departments, the question papers do not conform to the principle of uniform distribution of syllabus.

11. Applying this policy, in the instant case, a meeting was conducted on 11.02.2016, where the Board deliberated upon the marks awarded to the student and considered whether any exceptional circumstances for grant of grace marks had arisen. It was deeply discussed and unanimously agreed upon that, especially in light of the high pass percentage of 81% overall and specifically 94% in the subject of 'SURGERY' was secured in the third year Part-II final examinations, no special circumstances for the grant of grace marks had arisen. The petitioner cannot now approach this Hon'ble Court to obtain grace marks which exclusively vests within the discretion of the university. In fact, the petitioner's representation to the university after the publication of results was again considered and the University Board in its wisdom found that no grant of grace marks is necessitated. The respondent university reiterates that it is committed to rendering quality education and producing adequately groomed and equipped students to practice the noble medical profession in the interest of the society at large."

7. It is the stand of the respondents 1 and 2 that MCI Regulations grant them, a discretion to grant grace marks upto five marks in case the student has passed in all subjects but failed in one subject. But however, such grace marks cannot be

demanded as a matter of right. It is also stated by the respondents 1 and 2 that such discretion will be exercised only in exceptional circumstances. Such circumstances are cases where the student body collectively raise an official issue as regards the difficulty level of the question papers, or where the overall pass percentage in the subject is critically low in the opinion of the concerned heads of departments, indicting difficulty level of the papers, or where in the opinion of the concerned heads of departments, the question papers do not conform to the principle of uniform distribution of syllabus. However, in the subject of Surgery, the overall percentage is 94% and therefore, the respondents felt that there is no need to exercise discretion in favour of the petitioner by awarding grace marks.

8. In the considered opinion of this Court, the case on hand, the respondents 1 and 2 had exercised their discretion on a set of guidelines and it cannot be faulted with. It is also brought to the notice of this Court that the supplementary examination is going to be held and the petitioner is also permitted to write the examination.

9. In the light of the above facts and circumstances, this Court though sympathise with the petitioner is not inclined to grant any relief to the petitioner. Accordingly, the writ petition is dismissed. No costs.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To

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1 cc to Government Pleader, Sr. 33671

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