

CWP No.18429 of 2016 (O&M)

[1]

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.18429 of 2016 (O&M)
Date of decision: 15.03.2017**

Dr. Raj Bahadur Singh and others

...Petitioners

Versus

Medical Council of India and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Gurminder Singh, Senior Advocate, with
Mr. R.P.S. Bara, Advocate, for the petitioners
in CWP No.18429 of 2016.

Mr. Ramandeep Singh, Advocate, for
Mr. H.S.Dhindsa, Advocate, for the petitioners
in CWP No.21080 of 2016.

Ms. Lavanya Paul, AAG, Punjab.

Mr. M.S.Longia, Advocate and
Ms. Shivani Sharma, Advocate, for the respondent-MCI.

Mr. Gautam Pathania, Advocate,
for the respondent-Baba Farid University.

Mr. B.D.Sharma, Advocate,
for respondent No.7 in CWP No.18429 of 2016.

Mr. A.S.Nabhewala, Advocate,
for respondent No.12 in CWP No.18429 of 2016.

Rakesh Kumar Jain, J.

This order shall dispose of 4 petitions bearing CWP Nos.18429,
19118, 19277 and 21080 of 2016 as the issues involved in all these petitions

are common. However, for the sake of convenience, the facts are being extracted from CWP Nos.18429 of 2016.

The petitioners, who are the MBBS doctors and presently doing MD/MS in different branches in their respective Institutes/Colleges affiliated to the Baba Farid University of Health Sciences, Faridkot (hereinafter referred to as the “University”), had appeared in the final year examination of their respective MD/MS courses in the session of May/June 2016. They are all aggrieved against the result of their examination, declared by the University, in which they have failed as it is allegedly conducted in violation of the Post Graduate Medical Education Regulations, 2000 (hereinafter referred to as the “Regulations”), framed by the Medical Council of India (hereinafter referred to as the “MCI”) on 07.10.2000. It is alleged that the courses of MBBS and MD/MS are regulated by the MCI, constituted under the Indian Medical Council Act, 1956 (hereinafter referred to as the “Act”). The petitioners have referred to Clauses 14(1)(b), 14(4)(b)(iii), and relevant part of Appendix-II, which are also reproduced as under for a ready reference:-

- “14. EXAMINATIONS
- xxx

xxx

xxx

xxx
- (1) EXAMINERS
- (a) xxx

xxx

xxx

xxx
- (b) For all Post Graduate Examinations, the minimum number of Examiners shall be four, out of which at least 2(Two) (50%) shall be External Examiners, who shall be invited from other recognized universities from outside the State. Two sets of internal examiners may be appointed one for M.D./M.S. and one for

diploma.

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|--|-----|-----|-----|-----|
| | xxx | xxx | xxx | xxx |
|--|-----|-----|-----|-----|
- (4) Doctor of Medicine (M.D.)/Master of Surgery (M.S.)
- | | | | | |
|-----|-----|-----|-----|-----|
| i) | xxx | xxx | xxx | xxx |
| ii) | xxx | xxx | xxx | xxx |
- iii) The Theory examinations shall be held sufficiently earlier than the before Clinical and Practical examination, so that the answer books can be assessed and evaluated before the commencement of the Clinical/Practical and Oral examination.”

“Appendix-II

POST GRADUATE EXAMINATION
GUIDELINES ON APPOINTMENT OF POST
GRADUATE EXAMINERS

- 1.) No person shall be appointed as an Internal Examiners in any subject unless he/she has 3 years experience as recognized PG Teacher in the concerned subject. For External Examiners he/she should have minimum 6 years of experience as recognized PG Teacher in the concerned subject.
- | | | | | |
|-----|-----|-----|-----|-----|
| 2.) | xxx | xxx | xxx | xxx |
|-----|-----|-----|-----|-----|
- 3.) An Examiner shall ordinarily be appointed for not more than two consecutive terms.
- 4.) The Internal Examiner in a subject shall not accept External Examinership for a college from which External Examiner is appointed in his subject.
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|------------|-----|-----|-----|-----|
| 5.) to 7.) | xxx | xxx | xxx | xxx |
|------------|-----|-----|-----|-----|
- 8.) Where there is more than one center of examination, there shall be co-ordinator/convener/Chairman who shall be the senior most internal examiner, appointed by the University and shall supervise and coordinate the examination on behalf of university with the independent

authority.”

Their grievance is that earlier the written examination papers of the students of MD/MS were used to be checked and marked manually by the examiners appointed in accordance with the Regulations well before the practicals and as per the guidelines of the MCI, the answer books were to be evaluated by the 4 examiners, 2 internal examiners and 2 external qualified examiners and the average marks had to be computed but in their case, examinations of MD/MS took place in May/June 2016 and the result was declared from 25.07.2016 onwards, the answer books have not been checked by the two external qualified examiners and two internal examiners of their respective institutes rather the University has introduced a self-invented e-checking mode. It is further the case of the petitioners that it is nowhere provided in Regulations that the students have to obtain 40% marks in each paper, rather the only condition was of 50% marks in aggregate. The petitioners have also alleged that the University has not appointed internal examiners from the same institute despite the fact that the information supplied to the petitioners under the Right to Information Act, 2005 was that the “internal examiner” would mean the examiner from the faculty of the same department of the college/institution and the “external examiner” would mean the examiner appointed from outside the State. It is also submitted that the e-checking of the answer books, which contains subjective type answers running into about 35 to 40 pages, even in one minute, is humanly impossible. It is also submitted that the evaluation of theory papers has not been done before evaluation of practical papers,

whereas it is provided in the Clause 14(4)(b)(iii) of the Regulations that “the theory examinations shall be held well in advance before the Clinical and Practical examination, so that the answer books can be assessed and evaluated before the commencement of the Clinical/Practical and Oral examination”. In this regard, it is submitted that the theory examination were held on 1st, 3rd, 7th and 9th June of 2016, whereas practicals were held from 13th June to 25th June of 2016 and the theory papers were checked thereafter from 1st July, 2016 to 25th July, 2016.

It is further submitted that the Regulations are binding in nature and has referred to the decision of the Supreme Court in the cases of **Dr. Preeti Srivastava and another vs. State of M.P. and others**, (1999) 7 Supreme Court Cases 120 and has also submitted that the Executive Committee of the MCI can issue or amend Regulations as envisaged under Section 19-A of the Act and in this regard, reference has been made to a decision of the Karnataka High Court in the case of **Shri Basaveshwar Vidya Vardhak Sangha, Bagalkote and another vs. The Medical Council of India, New Delhi**, ILR 2015 KAR 2891. Further reference has been made to Section 19-A of the Act, which provides that (1) the Council may prescribe the minimum standards of medical education required for granting recognized medical qualifications (other than post-graduate medical qualifications) by Universities or medical institutions in India, (2) copies of the draft regulations and of all subsequent amendments thereof shall be furnished by the Council to all State Government and the Council shall before submitting the regulations or any amendment thereof, as the case may

be, to the Central Government for sanction, take into consideration the comments of any State Government received within three months from the furnishing of the copies as aforesaid, and (3) the Committee shall from time to time report to the Council on the efficacy of the regulations and may recommend to the Council such amendments thereof as it may think fit.

On the other hand, it is averred in the reply filed by the University that there were total 418 candidates appeared for their respective final examinations for MD/MS courses in May-June, 2016 and out of these, 312 candidates failed. Out of the 106 candidates who failed the examinations, 59 candidates failed in the theory examinations, 23 candidates failed in practical examinations and 24 candidates failed both in theory as well as practical examination. It is further averred that the petitioners have failed in theory examination and out of 59 candidates who have failed only in the theory examination, 43 candidates have approached this Court. It is further averred that 4 examiners were appointed to evaluate the answer sheets out of which, 2 were internal examiners from the colleges in the State of Punjab and 2 were external examiners from the colleges outside the State of Punjab. There were 4 papers for each candidates appearing for MD/MS course and out of 4 papers, two papers were evaluated by the internal examiners and two by the external examiners. It is further averred that only one examiner is required to check one paper out of the four papers and as such, Paper-I and Paper-2 for each specialty were evaluated by two internal examiners, appointed for the concerned specialty, and Paper-3 and Paper-4 were evaluated by two external examiners appointed for each specialty. It

is further averred that the University has introduced the e-evaluation method for the postgraduate examinations from the session May-June, 2016 onwards and in order to train the examiners for e-evaluation, the University conducted a training session on 10.05.2016 at the University Library, Academic Block, BFUHS Campus, Faridkot and vide University's letter dated 27.04.2016, the Principals of all the Medical Colleges in the State of Punjab were asked to depute one faculty member as Nodal Officer, along with one IT personnel, to attend the training session for the purpose of disseminating the procedure to be followed for e-evaluation. The training session was conducted at the University campus on 10.05.2016 and was attended by various teachers appointed as Nodal Officers by their respective Medical Colleges. The University possesses the complete record of the evaluation process adopted for the examinations. The method of e-evaluation involves putting a unique bar code on the answer sheets and the answer sheets without the original roll no. are scanned and appeared on the computer screen of the evaluator. The question paper of each specialty is provided with a unique question paper code. All the evaluators are provided with a evaluator ID. The link to download the answer sheet is provided to the evaluator through e-mail along with the password to access the link. This password has to be reset by the examiner before evaluation. As the link and the new password are available only to the evaluator, no one can access the answer sheets. Only the evaluator can access the answer sheets using his/her ID and password. As the process of evaluation is done on the computer screen, no signatures of the evaluator are required and the

authenticity of the evaluation can be verified through the details of the IP Address. It is further averred that the evaluation of each and every petitioner's answer sheet can be traced through the electronic foot prints available with the service provider and the electronic foot prints can trace all the details about the evaluation process including the Question paper code, Unique Barcode, Evaluator ID, Time of Evaluation, IP Address and the MAC address of the computer. The process of e-evaluation has been implemented to ensure complete transparency and secrecy and to maintain high standards of medical education.

The University has further given the details of the internal and external examiners in its reply and has further submitted that the condition of securing at least 40% marks in each theory paper apart from a cumulative score of at least 50% marks in all four papers to clear the examination in degree courses has been implemented by the respondent-University on the directions of the MCI issued vide letter dated 28.01.2015. The relevant part of the letter dated 28.01.2015 issued by the MCI is as under:-

“This is to inform you that the Academic Committee at its meeting held on 03.09.2014 considered the matter with regard to Postgraduate Examination for Postgraduate courses in the Medical faculty. The recommendations of the Academic Committee were duly approved by the Executive Committee at its meeting held on 20.11.2014, which is reproduced below:

“Postgraduate Examinations.

The Academic Committee noted that the students are required to pass theory and practical

examinations separately in terms of the governing provisions pertaining to the scheme of examination in the Postgraduate Regulation and recommended that an examinee should obtain minimum 40% marks in each theory paper and not less than 50% marks cumulatively in all the four papers for Degree examination and three papers in Diploma examination to be cleared as “passed” at the said Degree/Diploma examination as the case may be.”

Keeping in view of the above decision of the Committee, all the examining Universities having medical faculty are hereby directed to scrupulously implement the aforesaid decision prospectively.”

The University has also made a reference of another letter dated 11.02.2015 issued by the MCI, which is also reproduced as under:-

“This is to inform you that the Academic Committee at its meeting held on 03.09.2014 considered the matter with regard to Postgraduate Examination in Postgraduate courses. The recommendations of the Academic Committee were duly approved by the Executive committee at its meeting held on 20.11.2014, which is reproduced below:-

PG Examinations.

The Academic Committee noted that the students are required to pass theory and practical examinations separately in terms of the governing provisions pertaining to the scheme of examination in the PG Regulations and recommended that an examinee should obtain minimum 40% marks in each theory paper and not less than 50% marks cumulatively in all the four

papers for degree examination and three papers in diploma examination to be cleared as “passed” at the said degree/diploma examination as the case may be. Upon approval from the competent authorities of the Council the same may be notified for the information of all concerned.

Keeping in view the above decision of the Committee, all the Universities are hereby directed to strictly follow the above decision.”

It is also submitted that the e-evaluation was adopted on the pattern of Rajiv Gandhi University of Health Sciences, Bangalore, to which there was no objection by the MCI and before introducing the new method of e-evaluation/digital evaluation, sufficient public notice was given in the Tribune dated 15.12.2015. The relevant part of the notice, which is alleged to have been published and reproduced in the reply by the University, is also reproduced as under:-

“The evaluation of answer scripts of more than 3 lakh students of medical, dental, pharmacology, physiotherapy, and nursing colleges, affiliated to the Baba Farid University of Health Sciences (BFUHS) will soon go digital.

The BFUHS has decided to introduce a digital examination system to check paper leaks and tampering with answer-sheets. According to the new system, question papers will be e-transferred to examination centres minutes before the start of examination. The e-transfer of question papers and digital evaluation will help curb paper leaks and tampering with answer scripts, said Raj Bahadur, Vice-Chancellor, BFUHS.

The BFUHS will be the first medical University in North and the second in the country to implement the system of digital evaluation of answer sheets. The Rajiv Gandhi University of Health Sciences (RGUHS) in Karnataka, the first medical University in the country to implement this system, has roped an agency to provide technological support for the digital examination system.

Sources in the BFUHS said under the new system answer scripts would be scanned by the software provider and uploaded on the system for evaluation on the same day after the exam.

According to the new system, every answer script will be allotted a barcode, an optical machine-readable representation of the roll number, so that the evaluator cannot identify the student, they said.

While every answer scripts will undergoes evaluation with two evaluators, but a third evaluator will come in if the difference of marks awarded by the two evaluators is of more than 15 marks.”

The petitioners have also filed a counter-affidavit in which it is averred that the condition of securing 40% marks in each theory paper is not a part of the Regulations and cannot be imposed upon them as the Regulations have a binding force and in case any decision has been taken by the MCI, the said decision should have been made part of the Regulations by way of amendment. It is also submitted that there is a complete violation of Clauses 14(4)(b)(iii) of the Regulations because the answer books of the theory papers were not assessed and not evaluated before commencement of the clinical/oral examinations. It is also submitted that out of the two set of examiners, namely, two internal and two external examiners, there is no

reference or averment in the reply that the external examiners were also trained in the e-evaluation of the answer sheets and also nothing has been brought on record to show that the Nodal Officers of the respective Medical Colleges, to whom the training of e-evaluation was given, had further imparted the said training onto the rest of the internal examiners. It is further submitted that the University did not appoint the internal examiners from the faculty of the same department of the college/institution and in this regard, reference has been made to the information obtained from the MCI under the Right to Information Act, 2005, on 05.01.2017, which is reproduced as under:-

Information sought	Reply
Kindly supply the following information regarding the Post Graduate Examination for MD/MS as mentioned below:- In the Post Graduate Examination for MD/MS, explain the definition of 'Internal Examiner' and 'External Examiner' as per the MCI Rules and Regulations.	This is to inform that "Internal Examiner" means the examiner appointed from the faculty of the same department of the College/Institution and "External Examiner" means the examiner appointed from outside the State. A copy of the relevant portion of Postgraduate Medical Education Regulation, 2000 in this regard is enclosed.

Further the petitioners have submitted that as per the information obtained, checking of the answer sheets of the petitioners by the

internal and external examiners by way of e-evaluation has taken between one minute to 24 hours. For example, Dr. S.K.Sharma, an external examiner in the Faculty of Medicine, took one minute in examining the answer sheet, Dr. Monica Gupta, an external examiner in Medicine, took 3 minutes for the same, Dr. Pardeep Garg, an external examiner in surgery, took 4 minutes, whereas some of the examiners, namely, Dr. D.K.Verma, an external examiner in surgery, took 10 hours 30 minutes. Similarly, as per the chart provided to the Court as Annexure P-18, the internal examiners took time which varies between 7 minutes to 23 hours 40 minutes.

I have heard learned counsel for the parties and perused the available record with their able assistance.

The dispute in this case is regarding the result of the theory papers of the present petitioners, who are 43 in number, out of whom 40 petitioners have appeared in MD/MS courses and 3 in Postgraduate Diploma course. They have been declared “fail” after e-evaluation of their answer sheets. The grievance of the petitioners may be summarized as under:-

The first grievance of the petitioners is that the respondent-University has violated the provisions of Clause 14(1)(b) of the Regulations because it has imposed a condition of securing 40% marks in each theory paper and 50% marks cumulatively in all the four papers for the degree course and 3 papers for the Diploma course, whereas it is not so provided in the Regulations. The relevant regulation has already been referred to in the earlier part of this order in which the condition of securing 40% marks in each paper is conspicuous by its absence. However, the said condition has

been introduced on the basis of the letters of the MCI dated 28.01.2015 and 11.02.2015, which have not been made part of the Regulations, which regulates the examination procedure. It has been repeatedly held by the Supreme Court that the Regulation has a binding force and has been so admitted also by the MCI in its reply that every medical college is bound to take the examinations of postgraduate courses in accordance with the provisions of the Regulations. Section 19A of the Act further provides the procedure for incorporating any amendment in the Regulations which has not been followed. Thus, the letters dated 28.01.2015/11.02.2015 could not have been followed/relied upon by the University, resulting into the failure result of the petitioners who could not have achieved 40% marks in each paper but had 50% marks in aggregate. Accordingly, it is held that the procedure adopted by the University of asking for 40% marks in each paper on the basis of the letters of the MCI, which do not form part of the Regulations, is totally erroneous and illegal.

The second grievance of the petitioners is that the University has not followed the provisions of Clause 14(4)(b)(iii) of the Regulations in which it is provided that the theory examinations have to be held well in advance before the clinical and practical examination, so that the answer books of the theory papers can be assessed and evaluated before the commencement of the Clinical/Practical and Oral examination. In this regard, a specific affidavit has been filed by the petitioners that the theory examinations were conducted on 1st, 3rd, 7th and 9th June of 2016, whereas practicals were held from 13th June to 25th June of 2016 and the theory

papers were checked thereafter from 1st July, 2016 to 25th July, 2016. The case of the petitioners is that Regulation 14(4)(b)(iii) was made to ensure that the examiners, who had assessed the theory papers, could make a comprehensive assessment at the time of practical and then award the practical marks. There is no denial to this fact on the part of the University that the theory papers were checked after the practicals were over, therefore, there is no difficulty in holding that there is a violation of Clause 14(4)(b)(iii) of the Regulations, which is mandatory in nature.

The third grievance of the petitioners is that the University had not appointed two internal examiners from the faculty of the Department of the same college/institution and have rather appointed the internal examiners from the other Universities from the State of Punjab, as admittedly mentioned in the reply. In this regard, the petitioners have relied upon the information derived from the MCI under the Right to Information Act, 2005, received vide their letter of the MCI dated 05.01.2017. The said information has also been reproduced earlier, in which the internal examiner has been defined as the examiner appointed from the faculty of the same department of the college/institution. In the present case, since the internal examiners were not appointed from the faculty of the same department of the college/institution, therefore, it is again the violation of the provisions of the Regulation and in this regard, reference could be made to an order passed by this Court in the case of **Dr. Vikas Aggarwal and others vs. Dental Council of India and others**, CWP No.13756 of 2015, decided on 18.09.2015 and in the case of **Dr. Jasleen Kaur and others vs. Medical**

Council of India and others, CWP No.21385 of 2015, decided on 07.01.2016, in which words “from the respective institutions” has been specifically mentioned in respect of the internal examiners, having been accepted by the University. Consequently, it can be safely held that if the internal examiners, as stated by the University in its reply that they have been appointed from the medical institutions of the State of Punjab and not from the faculty of the same department of the respective institutions where by the petitioners were studying, then the said procedure is totally wrong and erroneous. Thus, the paper checked by the internal examiners has no value.

The last grievance of the petitioner is about the e-evaluation of the answer sheets, which runs into 35 to 40 pages, covering about 10 subjective questions. In this regard, the MCI has replied that “*The Postgraduate Committee considered the E-mail dated 27/09/2016 received from Ms. Shivangi Sharma, Advocate and associate of Sh. Manpreet Singh Longia, Standing Counsel of MCI in the Hon'ble High Court of Punjab & Haryana at Chandigarh and petition received in the case of D. Raj Bahadur Singh and other v/s Medical Council of India and ors in CWP No.18429 of 2016 in the Hon'ble Punjab and Haryana High Court at Chandigarh from the Asst. Registrar. Hon'ble High Court with regard to evaluation of answer book of MD/MS examination by e-checking mode. The Committee after perusal of relevant provisions of Postgraduate Medical Education Regulations, 2000 noted that the Medical Council of India Regulations have not spelt out the modalities for evaluation. This aspect is left to the wisdom*

of the university authorities concerned.”

Accordingly, the University has adopted the e-evaluation, may be in order to check the cheating at any quarter but the important question is that as to whether the examiners were imparted the necessary training for the purposes of e-evaluation?

The reply filed by the University only talks of the training having been imparted upon one Nodal Officers called from each Medical University/College and there is no reference at all about the said Nodal Officer having imparted training to the internal examiners drawn from the various medical colleges of the State of Punjab. There is no reference at all that the training of e-evaluation has been imparted to the external examiners who have been drawn from the Medical Colleges situated outside the State of Punjab. Thus, without proper training of e-evaluation of the said internal and external examiners, there is a high element of risk which has created a doubt in the mind of the petitioners because some of the evaluators have even taken between one minute to evaluate the answer sheet running into 40 pages, covering 10 subjective questions. Thus, this Court is of the considered opinion that in the absence of any evidence brought on record on the part of the University of having imparted necessary training to the external and internal examiners about the e-evaluation system and the manner and time in which the answer sheets have been checked, the doubt in the mind of the petitioners about proper evaluation has to be sustained and cannot be ruled out.

Thus, the cumulative discussion of all the aspects on the issues

involved in these cases leads to an irresistible conclusion that the University has violated the mandatory provisions of the Regulations and as such, the result of the petitioners, declaring them fail in the examination, is hereby quashed.

Consequently, all the writ petitions stand allowed.

March 15, 2017
vinod*

(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned: Yes/No

Whether Reportable: Yes/No