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

+ **W.P.(C) 9753/2016**

VIKAS BHARTIYA

..... Petitioner

Through: Mr. Ambika Ray, Adv.

versus

THE UNIVERSITY OF DELHI & ORS

..... Respondents

Through: Mr. Mohinder J.S. Rupal and
Ms. Disha Malhotra, Advs. for
R1 and R2.

Mr. T. Singhdev and Ms.
Biakthansangi, Advs. for R3.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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16.05.2017

1. The short question which arises for consideration in the writ petition is whether the petitioner is entitled to be given 7 grace marks in the Surgery paper of the Final Year Examination of MBBS. Even though Learned Counsel for the petitioner concedes that in terms of the Regulations issued by the MCI, maximum of 5 grace marks can be awarded at the discretion of the University to a student who has failed only in one subject but has passed in all other subjects, but the Madras High Court in its judgment in *W.P.(C) No. 3277/2015 Mr. Aswathanarayan Ramji v. Pondicherry Institute of Medical Sciences* (and connected writ petitions) decided on 16th February, 2015 has granted 5% grace marks to each of the petitioners therein.

2. On the other hand, Mr. T. Singhdev, learned counsel appearing for the

respondent no.3 states that in view of the Regulations of MCI it is very clear that only up to 5 grace marks can be awarded at the discretion of the University and as the petitioner requires 7 marks, the same cannot be granted. In so far as the judgment of the Madras High Court is concerned, it is the contention of Mr. Singhdev that it appears that the Regulation which was relied upon before the Madras High Court was downloaded from the website of the University and was not consistent with the Regulation of MCI. He further states that in view of the Regulations of the MCI, which determines the minimum standards of Education and which stipulates maximum 5 marks only the same needs to be followed. In this regard, he draws my attention to para 11 of the judgment of the Madras High Court in **Mr. Aswathanarayan Ramji (supra)** wherein the High Court has noted as under:

“Learned counsel for the Medical Council of India submitted that the regulation as shown to be applicable to the petitioners is not consistent with the Regulations of the Medical Council of India and therefore, there may be a need for amending said regulations.”

3. Mr. Mohinder J.S. Rupal, learned counsel appearing for the respondent University of Delhi would make similar submissions as has been made by Mr. Singhdev inasmuch as the discretion of the University is to award maximum of 5 marks, 7 grace marks as sought by the petitioner cannot be granted. That apart, it is his submission this Court would not like to issue a mandamus contrary to the Regulations of the MCI.

4. Having heard the learned counsel for the parties, there is no dispute

that the Regulations of the MCI stipulates maximum of 5 grace marks (which is reproduced as under) can be awarded at the discretion of the University, the relief as sought by the petitioner for grant of 7 grace marks cannot be granted:

“The grace marks up to a maximum of five marks may be awarded at the discretion of the University to a student who has failed only in one subject but has passed in all other subjects.”

5. In so far as the judgment relied upon by the counsel for the petitioner is concerned, I agree with the submission of Mr. Singhdev who referred to Para 11 of the Judgment, wherein the Court has noted the submission made by the Medical Council of India that the regulation as shown to be applicable to the petitioners is not consistent with the Regulations of the Medical Council of India. If that be so, the learned counsel for the petitioner cannot rely upon the judgment of the Madras High Court. As the Regulation of MCI, referred above being very clear, I am afraid the relief prayed for by the petitioner cannot be granted.

The petition is dismissed.

V. KAMESWAR RAO, J

MAY 16, 2017/jg