

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 22.10.2018

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THE HONOURABLE **MR.JUSTICE S.S.SUNDAR**

**W.P.No.21365 of 2018 and
WMP.No.25042 of 2018**

M.Vetrivel ... Petitioner

Vs.

1. Indira Gandhi Medical College and Research Institute rep. by its Director-Principal, Kathirkamam, Puducherry-605 009.
2. The Controller of Examinations, Pondicherry University, Kalapet, Pondicherry-605 014.
3. The Medical Council of India rep. by its Secretary, MCI Building Pocket-14, Sector-8, Dwaraka Phase-I, New Delhi-110 077.

... Respondents

Writ Petitions filed under Article 226 of the Constitution of India praying to issue a writ of Mandamus, directing the 2nd respondent to award 4 marks as grace mark in ENT Examination conducted in May, 2018.

For Petitioner : Mr.M.Muruganantham

For Respondents : Mr.C.T.Ramesh,
Additional Government Pleader
(Pondy) for R1

Mr.A.V.Bharathi for R2

Mr.V.P.Raman for R3

ORDER

This Writ Petition has been filed for issuing a Writ of Mandamus, directing the 2nd respondent to award four (4) marks as grace marks in ENT Examination conducted in May, 2018 to the petitioner.

2. The petitioner joined the M.B.B.S. Course in the first respondent Institution in 2013-2014. The petitioner states that he is a meritorious student based on his credentials in High School and Higher Secondary School Examinations. The petitioner appeared for "III Professional Part I" Examination and he passed in all the subjects except in one subject, namely, ENT. It is not in dispute that as per the Medical Council of India Regulations, there is a provision for awarding grace marks up to a maximum of five marks to a student who has failed only in one subject, but has passed in all the other subjects. Regulation 13(10) of the Medical Council of India Regulations on Graduate Medical Education, 1997 reads as follows:

"13(10). 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."

3. It is the case of the petitioner that he is entitled to the benefit of Regulation 13(10) of the Medical Council of India Regulations on Graduate Medical Education, 1997 and the second respondent University should be directed to award four grace marks to him in ENT subject so that the petitioner will be in a position to complete the course. He has cleared all other professional subjects except ENT and the petitioner would be allowed to appear for his final year examination only if he passes in ENT Subject. The petitioner in the affidavit filed in support of his writ petition has given the marks obtained by him in all the theory as well as practical subjects. As per the particulars given by the University, it is seen that the petitioner has secured 50% and above in all the theory papers except in one subject, namely, ENT.

4. The Second Respondent has filed a detailed counter. However, according to the second respondent, the petitioner is governed by the Pondicherry University MBBS Regulations 2009-10 and that he is short of six marks to get a pass in the said ENT Examination. In paragraph 7 of the counter affidavit, the second respondent has given a chart which is extract for convenience here under :

	Theo ry mark out of 80	Oral out of 20	Intern al out of 20	Total out of 120	Practic al out of 50	Intern al out of 30	Total out of 80	Grand Total out of 200
Passing Minimum	40% of 80 32	...	35% of 20 07	50% of 120 60	50% of 50 25	35% of 30 11	50% of 80 40	50% of 200 100
Marks obtained	36	10	08	54	32	11	43	97

5. It is the case of the second respondent that the petitioner secured 50 marks out of 120 in ENT against the minimum marks of 60 required for passing ENT in May, 2018 Examination. Since the petitioner has failed for want of six marks, it is stated by the second respondent that the petitioner cannot get pass by awarding five marks as grace marks and hence he is not entitled to any relief.

6. The contention of the second respondent in the counter affidavit is slightly confusing in the sense that the second respondent has added internal marks and calculated the required marks for passing the subject. Since the internal marks were added by the second respondent, as per the calculation of the second respondent, the petitioner has to secure six more marks to pass in the ENT Examination conducted in May, 2018. The petitioner has secured 8 out of 20 marks in Internal-Theory and 11 out of 30 in Internal-practical. Since pass per centage is only 35%, it is stated that the petitioner though passed in both internals, he is

short of 6 marks to pass as he has secured only 54 out of sixty in Theory.

7. The learned Counsel appearing for the petitioner, however, relied upon a judgment of the Hon'ble Supreme Court in the case of **Maharashtra University of Health Sciences rep. by Deputy Registrar vs. Paryani Mukesh Jawaharlal and others** reported in **(2007) 10 Supreme Court Cases 201** wherein the Hon'ble Supreme Court has dealt with a similar issue. It is relevant to extract paragraphs 21 to 23 here under:

"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) Theory	
(i) Two papers of 50 marks each	100 marks
(ii) Internal Assessment	20 marks
(b) Oral (viva)	20 marks
© Practical/Clinical:	
(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) External :		
(i) Theory – 2 Papers		100 marks
(ii) Oral (viva)		20 marks
(b) Practicals		40 marks
© Internal:		
(i) Theory	20	
(ii) Practical	20	40 marks

		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% of marks "in theory including orals and internal (theory)." Similarly, when the Regulation provides that a candidates 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.

23. We may examine the issue from another angle. MCI Regulation 12(2)(iv) provides that a weightage for the internal assessment shall be 20% of the total marks in each subject. Thus, the weightage for internal assessment would arise when the total marks (or aggregate) in each subject are considered and not otherwise. That is, where the total marks are 200, internal assessment marks would be 40 marks. Therefore, Regulation 12(4) rightly provides that the total of 200 marks consist of 160 marks for externals (University examination) and 40 marks for internals (college assessment) maintaining the ratio of 80:20, thereby implementing the requirement of MCI Regulation 12(2)(iv). But if internal assessment marks are also to be clubbed with theory (external) marks or practical (external) marks, it leads to absurd and incongruous results. For example, for practicals, if internal assessment marks are clubbed with examination marks, then the minimum of 50% would be 30 out of 60 (that is 40 plus 20). This results in the weightage for internal assessment becoming 33.33% (20 out of 60) thereby violating Regulation 12(2)(iv). Similarly, if a minimum of 50% of marks in theory including orals is read as 50% of marks in theory including orals and internal (theory), then a candidate should secure 70 out of 140 marks. This means the weightage of for internal assessment becoming 14.28% (20 out of 140). This demonstrates the internal assessment marks were never intended to be clubbed with marks of University examination (externals) to ascertain whether a student has passed in theory including the orals and practicals."

8. In the present case, it is admitted in the counter affidavit that as per Pondicherry University Regulations 2009-10, the grace marks of 5 will be added for one subject after the marks obtained in the University Examination are scaled down to 100% in the particular subject-Theory. There is no indication from the regulations that internal should be added. Further, the petitioner has secured 54 out of 120 marks in theory including internal. If this is scaled down to 100%, the petitioner's total is 45 out of hundred and with the grace marks of 5, he gets 50%. Therefore, even as per Pondicherry University Regulations, the petitioner is entitled to 5 marks as grace marks.

9. In the course of arguments, the learned Counsel appearing for the second respondent submitted that the University is entitled to frame its own regulations and it is not necessary that the University regulations should correspond or match the Medical Council of India Regulations in entirety. It is further stated that the regulations of the University is only to maintain higher standard and it is not necessary that the regulation prescribing higher standard can be found fault with, merely because, it is inconsistent with the regulations framed by the Medical Council of India.

10. The submission of the learned Counsel for the second respondent has no merits in the present context for two reasons. First of all, the University conducts only the external examinations in theory and

in oral. The internal marks are not assessed by the University. No regulation is shown or produced before the Court to justify the stand of the University. Any regulation to include the internal marks for the purpose of awarding grace marks cannot be taken as one to achieve better standard or higher standard by the University. The University has, of course, a discretion in this and of course, can have any parameters for awarding grace marks. However, the stand taken by the University is that the University has included the internal marks of the candidate for the purpose of arriving at the marks required for the candidate to pass in the subject. This cannot be countenanced as the matter has already been dealt with by the Supreme Court and the Hon'ble Supreme Court has categorically found that the internal marks cannot be included. The 50% required for a candidate for the purpose of grace marks could only be added with the marks obtained in Theory. The internal assessment marks could never be clubbed with the marks of the University for this purpose.

11. For the foregoing reasons, this Court finds that the petitioner is entitled to grace marks as per the regulations of the University and hence, the writ petitioner is entitled to succeed. As a result, the second respondent is directed to award four marks to the petitioner in the subject ENT and to treat the petitioner as a candidate who secured pass marks in ENT and permit him to go for the next examination.

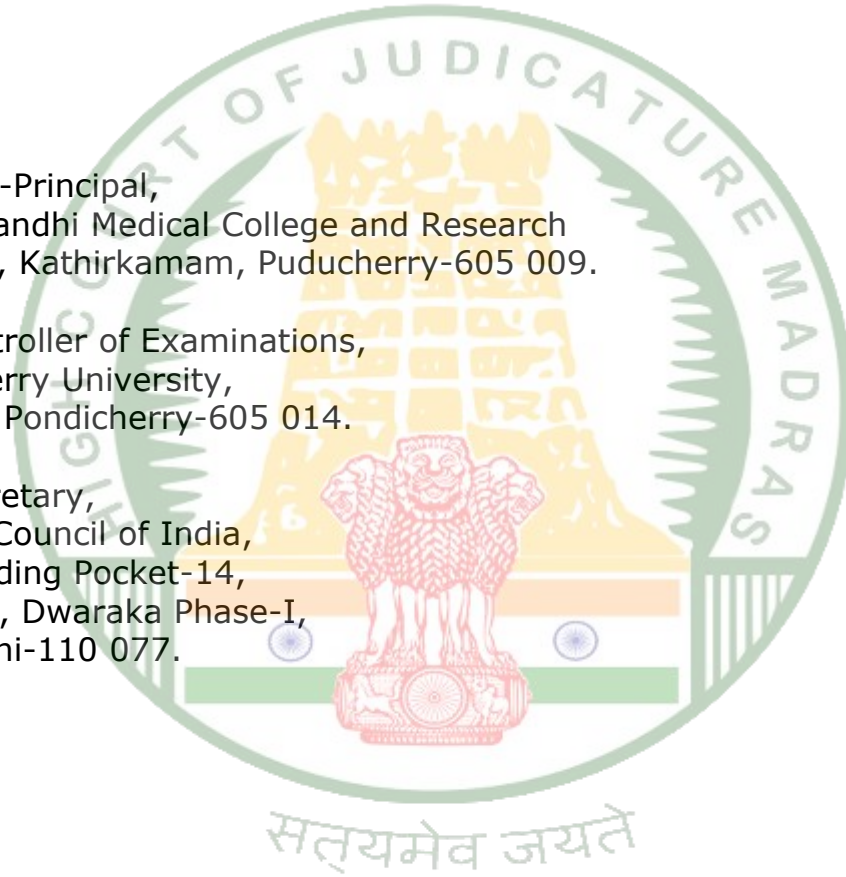
12. With the above observations and directions, the Writ Petition is disposed of . No costs. Consequently, the Miscellaneous Petition is closed.

22.10.2018

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To

1. Director-Principal,
Indira Gandhi Medical College and Research
Institute, Kathirkamam, Puducherry-605 009.
2. The Controller of Examinations,
Pondicherry University,
Kalapet, Pondicherry-605 014.
3. The Secretary,
Medical Council of India,
MCI Building Pocket-14,
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S.S.SUNDAR, J.
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