

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.10.2018

Coram

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P.No.21392 of 2018 and
WMP.Nos.25084 and 25085 of 2018

Sanjayan P.

... 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 Certiorarified Mandamus, to call for the records in Proceedings of 2nd respondent in PU/CE/E5/2017-18/171 dated 24.05.2017 and to quash the same as illegal, incompetent, unconstitutional and without jurisdiction, further to direct the 2nd respondent to award grace mark of 5 marks in Ophthalmology 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

O R D E R

This Writ Petition has been filed challenging the proceedings of the 2nd respondent in PU/CE/E5/2017-18/171 dated 24.05.2017 and to quash the same as illegal, incompetent,

unconstitutional and without jurisdiction and for further direction, directing the 2nd respondent to award grace mark of 5 marks in Ophthalmology examination conducted in May, 2018 to the petitioner.

2. The petitioner states that he is a studious and discipline student, who has joined in the first respondent College to pursue the M.B.B.S. Examination. It is admitted that the petitioner belongs to 2014-2015 batch. The petitioner appeared for the Examination in respect of III Professional Part I in November, 2017. The petitioner failed in ENT by five marks and Ophthalmology by two marks. The petitioner once again appeared in May, 2018 and passed in ENT, but failed in Ophthalmology. It is not in dispute that the petitioner though passed ENT in two attempts, could not pass the Ophthalmology even in the second attempt. However, relying upon the Clause 13 (10) of the Medical Council of India Regulations on Graduate Medical Education, 1997, which states that 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, the petitioner sent a representation to the University for awarding four marks as grace marks to get pass in Ophthalmology enable him to appear for III Professional Part II examination in October, 2018. Since the representation was not considered by the University, the petitioner has come forward with the present Writ Petition.

3. The learned Counsel appearing for the second respondent has filed a detailed counter affidavit stating that the University can also have its own regulations in fixing standards. The University derives power to determine standards for admission into the University under Section 5(19) of the Pondicherry University Act by framing regulations regarding examination, evaluation or any other mode of testing. She stated further that it is not necessary to match the regulations of Medical Council of India in entirety.

4. The learned Counsel for the third respondent relied upon Regulation 13(10) of the Medical Council of India Regulations on Graduate Medical Education, 1997 which 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.'

5. From the reading of the above regulation, it is seen that the regulation gives a discretion to the University to award 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. This discretion has probably permitted the University to frame its own regulations which contains the following clause:

'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 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 mark 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.'

The regulation, on examination, specifically provides for grace marks in case of failure of a candidate in one subject out of all subjects for the particular semester. As per the regulation of the University, a candidate is not eligible to get grace marks, if he passes all subjects in the next attempt. A candidate who could not clear the examination in all other subjects in the first attempt is not entitled to get the grace marks at the discretion of the University. Since the University has an absolute discretion as per the Regulations of the Medical Council of India, the regulation framed by the University as extracted above is valid and binding on the institution and the students.

6. The learned Counsel appearing for the petitioner, however, relied upon a judgment of a Division Bench of this Court in the case of K.Magesh vs. Medical Council of India and others etc. batch in W.A.Nos.325 to 333/2017 dated 11.4.2017 wherein it has been held as follows:

'8. In this regard, it is worthwhile to refer relevant decisions rendered by the various Courts. In the 'Tamil Nadu Dr.M.G.R. Medical University, rep. by its Registrar & Another Versus P.Anand & Others, reported in 2011 (6) CTC 801, the Division Bench has considered the guideline framed by the University and its implementation when the same was issued in the mid term of the course. It has been held in para 29, which reads as under :

'29. The grievance of the students both in the first M.B.B.S. as well as final M.B.B.S. is that the guideline framed by the appellant University is inconsistent to regulation 12(4) of the MCI Regulation and thereafter, the same is repugnant. Further, it is contended that the impugned guideline is arbitrary and unreasonable and violative of Article 14 of the Constitution and the students having joined the course in 2006-07 having been informed that the evaluation of the examination would be in accordance with the MCI Regulation had a legitimate expectation that such regulation shall be applicable till they complete the course and therefore, the students in their writ petitions have pointed out various instances to justify their stand that the impugned guidelines suffer from the vice of gross discrimination and unreasonableness and violative of Article 14 of the Constitution.'

7. However, the learned Counsel appearing for the University states that the judgment of the Division Bench of this Court has no application to the present case and relied upon the judgment of learned Single Judge of this Court who has considered the similar issue in W.P.No.4565 of 2018 in the case of R.Kangadevi Vs. The Controller of Examinations, Pondicherry University, Kalapet, Puducherry-14 and others. After referring to the regulations framed by the Medical Council of India as well as the regulations of the University on Examinations, this Court has held as follows:

'14. On a reading of the Circular dated 29.06.2016 of the Pondicherry University and the Medical Council of India Regulations 1997 and the Examination Regulations of Pondicherry University 2009-10, extracted supra, it is clear that grace marks will not be applicable to a candidate, if he/she takes up the University Examination in a compartmental manner and further, grace marks will not be awarded for practical papers from the academic session May 2016 onwards. Even assuming that there is no ratification as per the Circular dated 29.06.2016, as per the Circular dated 24.05.2017 of the Pondicherry University, Grace marks will not be applicable when the candidate takes up the University Examination in a compartmental manner and that grace marks may be awarded to a student, who has failed in a single subject while appearing for all papers prescribed for that particular session.

15. The contention of the Petitioner that Medical Council of India Regulations will not be applicable to students, who have joined the M.B.B.S. course prior to the amendment, may not be correct. Even assuming it is so, grace marks can be awarded only if the candidate fails in one subject. In the case on hand, the Petitioner had appeared in three papers, viz Community Medicine, ENT and Ophthalmology in the III Professional - Part I M.B.B.S. Examination held in June 2017 and could clear only ENT subject in the first attempt. She appeared for the remaining two papers in November 2017 and could clear only Community Medicine in the second attempt. Despite two attempts, the Petitioner could not clear the subject 'Ophthalmology' and she has approached this Court seeking grant of 3 marks as grace marks, as she had secured only 57 marks in 'Ophthalmology'. Of course, appearing for the same paper again and again will undoubtedly make the candidate well-versed in the subject.

16. At this juncture, it is worth referring to a decision of the Supreme Court in the case of Padma Sundara Rao Vs. State of Tamil Nadu, reported in 2002 (3) SCC 533, wherein, it is held as follows:

"9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington Vs. British Railways Board (1972 (2) WLR 537 = 1972 AC 877 (HL)). Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."

17. The Petitioner can seek grant of grace marks as a matter of right, if she had failed in only one subject among the three papers she appeared in June 2017. Since, she failed in two subjects, she is certainly not entitled to grace marks, in view of the above Medical Council of India Regulations cited supra. The Regulations of Medical Council of India will prevail and the 1st Respondent/University is bound to follow the same. Furthermore, the Circular dated 29.06.2016 cannot be read in a truncated manner and it

nowhere says that students, who have joined the Course prior to the MCI Regulations would have the benefit of grace marks and those who have joined after the amendment of the Regulations, would not be entitled to the benefit.''

8. It is to be noted that the judgment of the Division Bench of this Court in W.A.Nos.325 to 333/2017 dated 11.4.2017 relied upon by the learned Counsel for the petitioner has no application. The Division Bench has applied the principle of legitimate expectation by stating that a person who is entitled to the benefit of granting grace marks on getting admission to an educational institution cannot be deprived of that benefit, at the later stage of his course by the University. The principle that was accepted and applied in the judgment of the Division Bench has no application in the present case having regard to the admitted fact. It is not in dispute that the petitioner failed in ENT as well as in Ophthalmology when he took the examination in November, 2017. But he made a second attempt in ENT and Ophthalmology in May, 2018 and passed in ENT, but once again failed in Ophthalmology. No grace marks can be awarded by the University, since the petitioner has taken up the University Examination in compartmental manner. If a candidate is given grace marks for every examination he takes, that will certainly affect the standard in Medical Education. This Court is unable to find any reason to direct the respondent University to award grace marks to the petitioner. Hence, this Writ Petition is liable to be dismissed.

9. In the result, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Deputy Registrar

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Sub Asst. Registrar

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To

1. Director-Principal,
Indira Gandhi Medical College and Research
Institute, Kathirkamam, Puducherry-605 009.

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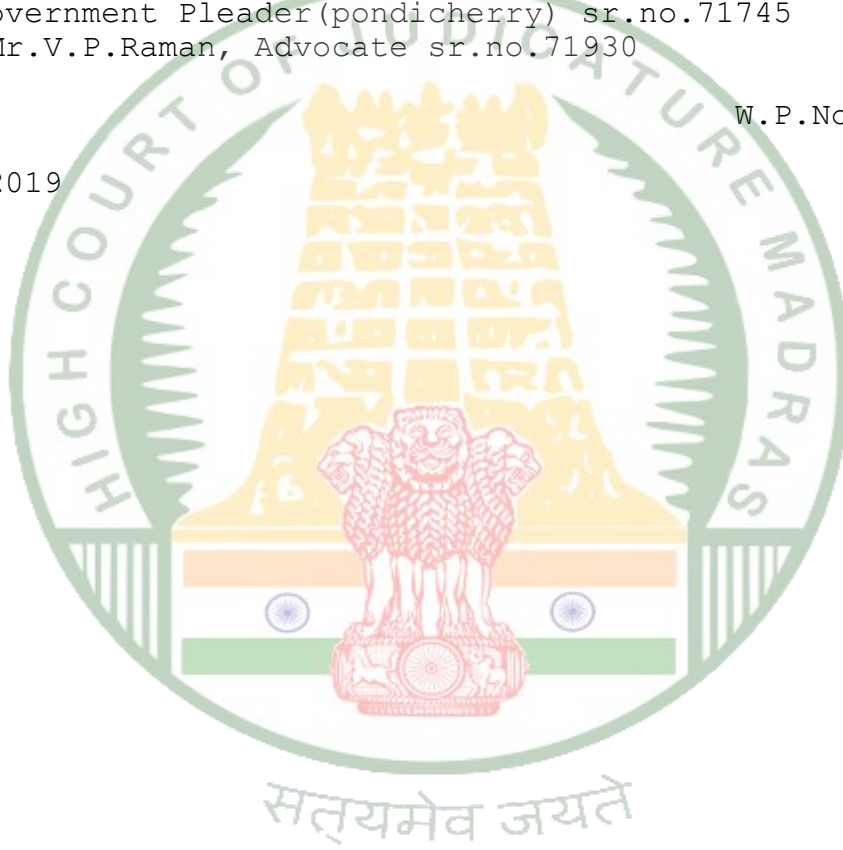
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New Delhi-110 077.

+1cc to Mr.M.Muruganantham, Advocate sr.no.71869
+1cc to Mr.A.V.Bharathi, Advocate sr.no.71729
+1cc to Government Pleader(pondicherry) sr.no.71745
+1cc to Mr.V.P.Raman, Advocate sr.no.71930

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