

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2018

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH  
AND  
THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.A.No.869 of 2018 and  
CMP.Nos.7681 & 8682 of 2018

S.Srisakthish ... Appellant

-vs-

- 1.The Medical Council of India,  
MCI Building Pocket-14, Sector-8,  
Dwaraka Phase-7,  
New Delhi-110 007.
- 2.The Controller of Examination,  
Pondicherry University, Kalapet,  
Puducherry.
- 3.Pondicherry Institute of Medical Sciences  
rep.by its Registrar,  
Kanagachettykulam, Kalapet,  
Puducherry. .... Respondents

Appeal filed under Clause 15 of Letters Patent, against the order passed by this Court in W.P.No.4497 of 2018 dated 09.04.2018.

WP.No.4497 of 2018:Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus to direct the 2nd respondent to issue fresh mark list to the petitioner by awarding the Improved Internal Assessment marks secured by the petitioner in November 2017 in Community Medicine as per the representation of the petitioner dt 15.2.2018

For Appellant :: Mr.AR.L.Sundaresan,  
Sr.Counsel for Mr.M.Raja Sekhar

For Respondents:: Mr.V.P.Raman for R1  
Mrs.A.V.Bharathy for R2

JUDGMENT  
(Delivered by HULUVADI G.RAMESH, J.)

The appellant herein filed a writ petition in W.P.No.4497 of 2018 before this Court praying for a direction to the second respondent to issue fresh mark list to him by awarding the Improved Internal Assessment Marks secured by him in November 2017 in Community Medicine as per his representation dated 15.02.2018.

2.The case of the appellant is that he has completed 12<sup>th</sup> Standard in the year 2010 by securing 946 marks out of 1200 marks; thereafter, he joined MBBS in the third respondent's institution under Management Quota in July 2010 and completed his first year in May 2013 and wrote the second year examinations in November 2014 and cleared all his second year papers in November 2016. The appellant was continuing his third year classes and appeared for the third year examination for three subjects, namely Community Medicine, ENT and Ophthalmology. It is the further case of the appellant that the Community Medicine subject consists of two papers, Paper-I, Paper-II Oral, Theory, Internal Assessment and Practical Internal Assessment and similarly, ENT subject consists of one paper - Theory, Oral, Practical, Theory and Practical Internal assessment and the last Ophtalmology subject consists of one paper Theory - Oral, Practical, Theory Internal Assessment and Practical Internal Assessment. He attended and failed in all these three papers in May 2016 and again in November 2017, the appellant has passed Ophthalmology papers and failed in other two papers. However, he secured 25 marks out of 40 in theory Improved Internal Assessment and 18 marks out of 30 in clinical Improved Internal Assessment Marks in Community Medicine. The last Improved Internal Assessment Marks in the grade sheet will be added and the results will be declared as per the marks secured by the candidate. However, when the mark list for November 2017 was uploaded in the website, the Improved Internal Assessment Marks secured by the appellant in November 2017 Exam in respect of theory and clinical papers of Community Medicine subject, had not been taken into consideration while calculating the total and the appellant had been declared fail in respect of the said Community Medicine paper. As per the first respondent's guidelines, there is no restriction in appearing for supplementary examination and hence the appellant approached the second respondent to bring to his knowledge about the Improved Internal Assessment Marks secured by the appellant in the supplementary examination conducted in November 2017, which is not reflected in the Internal Assessment Marks awarded to the appellant, but they have taken into consideration the Internal Assessment Marks secured by the appellant in May 2017 alone and issued the mark list. Hence, the appellant has filed the writ

petition for the relief stated supra.

3.The appellant has filed additional affidavit before the writ Court stating that the second respondent's counsel has taken up a categorical stand and furnished a communication dated 12.04.2017 stating that Improvement of Internal Assessment Marks can be considered on only one time basis and the frequent requests for improvement for the same student whenever repeating the examinations, cannot be considered. It is also stated that the second respondent has picked up and chosen the candidates as per their whims and fancies from Sl.Nos.6 to 11 of the list produced by the learned counsel for the second respondent, for award of Improved Internal Assessment Marks, and the fact remains that those candidates have made more than one attempt for their Improved Internal Assessment, which is contrary to the stand taken by the second respondent. When the very same benefit was extended to the similarly placed candidates in Sl.Nos.6 to 11 of the list, why not the appellant alone should be denied the benefit? This was the argument made before the writ Court, on behalf of the appellant.

4.The learned counsel for the second respondent has submitted before the writ Court that a categorical decision has been taken by the second respondent-University that the Internal Assessment Marks for Improvement will be considered on only one occasion, and the appellant has also availed of the same and hence, the appellant would not be entitled to any relief prayed for in the writ petition. She also rejected the contention of the appellant that other similarly placed students have made more than one attempt for their Improved Internal Assessment.

5.After hearing both sides, the learned single Judge came to the conclusion that in terms of the decision taken by the second respondent-University, the Improvement of Internal Assessment Marks can be considered only for the first time seekers and that no student can, as a matter of right, is entitled to seek the improvement of Internal Assessment Marks periodically and therefore the case of the appellant does not deserve consideration. Observing so, the learned single Judge dismissed the writ petition.

6.Challenging the order passed in the writ petition, the present appeal has been filed by the student.

7.The learned senior counsel appearing for the appellant has submitted that the learned single Judge has failed to note that the communication of the second respondent stating that Improved Internal Assessment Marks can be considered only for first time seekers is contrary to the guidelines fixed by the first respondent- Medical Council of India. He further submitted that the learned single Judge has erred in holding that no student as

a matter of right is entitled to seek the Improved Internal Assessment Marks, as the same is contrary to the guidelines fixed by the first respondent. He contended that when the very same benefit was extended to the similarly placed candidates in Sl.Nos.6 to 11 of the list produced by the second respondent, it is not correct to deny the said benefit to the appellant alone, which only amounts to discrimination. Stating so, he prayed for quashing the impugned order passed by the learned single Judge.

8.The learned counsel for the second respondent has argued the case in terms of the submissions made before the learned single Judge and finally submitted that the impugned order passed by the learned single Judge is a well considered one and the same does not require any interference. The learned counsel for the first respondent has specifically submitted that only to impart discipline, this type of stand is taken by the University and if this decision is interfered with, the quality of students pursuing their course in Medicine, will diminish.

9.Heard the learned counsel on either side and perused the materials available on record.

10.First of all, it has to be borne in mind that before taking a policy decision, all related aspects have to be considered in detail and proper opportunity should be given to the concerned persons. In the present case, it is the stand of the counsel for the second respondent that the University has taken a categorical decision that the Internal Assessment Marks for improvement will be considered on only one occasion, and since the appellant had availed of the same, he will not be entitled for the relief prayed for. In support of her contention, the learned counsel for the second respondent has relied upon the letter dated 17.10.2017 of the second respondent circulated to the third respondent and all other colleges. But it is relevant to state that in respect of Internal Assessment Marks for improvement, the Medical Council of India does not rely upon any Rules. Of course, what has been ordered by the University is a matter of restriction. It may be a reasonable restriction, since permitting them to write the improvement examinations without any restriction may not hold good, as a matter of discipline. According to the learned counsel for the second respondent University, with regard to regulating conduct of such improvement examinations and maintaining discipline is concerned, in the absence of any prohibition by Medical Council of India, some regulatory activities have to be made and that is what the University has done.

11.But the learned counsel for the appellant has relied upon the Division Bench Judgment of this Court in the case of K.Magesh and Others v. Medical Council of India, New Delhi and

others, reported in 2017 0 Supreme(Mad) 643, in support of his contention that mere passing of a Circular contrary to the practice which was followed years together, all of a sudden that too in the midterm of the course, giving it retrospective effect, without assigning any good reason or rationale for the University's decision deviating from its earlier practice of granting permission for writing Improvement Examinations, is discriminatory and arbitrary in nature.

12.In the said decision of this Court, the judgment of the High Court of Andhra Pradesh in K.Nithesh Kumar (Dr.) & Others vs. Dr.NTR University of Health Sciences, Vijayawada, rep.by its Registrar, reported in MANU/AP/0488/2009 has been relied upon. Paragraphs-9 and 10 of the judgment of this Court in K.Magesh and Others v. Medical Council of India, New Delhi and others, reported in 2017 0 Supreme(Mad) 643, reads as under:

"9.In K.Nithesh Kumar (Dr.) & Others Versus Dr.NTR University of Health Sciences, Vijayawada rep.by its Registrar (MANU/AP/0488/2009), the High Court of Andhra Pradesh, has held as under:

"6.It has already been mentioned that the petitioners have been admitted into PG courses in the academic year 2006-2007. It is a matter of record that the rules and regulations, framed by the University that were in force when the petitioners were admitted, provide for addition of five grace marks by the University, in case such an addition would enable the candidate to pass the examination. It is not even necessary that a candidate must apply for it. Addition is almost automatic, in case it would have the effect of a candidate being declared as passed in the subject concerned. Though it is mentioned as addition of grace marks, that process is part of the scheme of the course. It is settled principle of law that the norms of admission, the scheme of the course and various facets leading to the conferment of a degree, that were in force at the time of admission of a candidate, must remain same till he completes the course in accordance with those very rules. Law does not permit alteration of the same when the candidate is half way through. Reference, in this context, must be made to the judgments in Motilal Padampat Sugar Mills v. State of U.P. (AIR 1979 SC 621) and Nimesh Mehta v. State of Maharashtra [(2005) 13 SCC 707]. This view was expressed by this Court in A.Sundara Kami

Reddy v. Principal, Guntur Medical College,  
Guntur [(1968) An.W.R.56]”.

10. For the foregoing discussion, we conclude that the claim of the appellants cannot be rejected based on the so-called Circular dated 29.6.2016 issued by the second respondent giving it to the retrospective effect. We noticed from the marks obtained by the appellants that some have failed by shortage of even one mark and some have failed even on shortage of 2, 3 or so. If a student fails in one subject that too a minimum marks, having performed excellent and come out successful in all the subjects, he should not be driven to reappear for the said subject and in the mean time, he may lose his further career of education and in order to avoid this, the Medical Council of India, thought it fit to introduce of awarding grace marks to the students who passed in all subjects, but failed in one subject”

13. The above judgment relates to issuance of grace marks. Rules and regulations framed by the University which were in force when the petitioners therein were admitted, provided for addition of five grace marks by the University. But a Circular has been issued not to award grace marks by the University, like that of the present case. This Court held that various facets leading to the conferment of a degree, that were in force at the time of admission of a candidate, must remain same till he completes the course in accordance with those very rules and that the law does not permit alteration of the same when the candidate is half way through. In the said circumstances, this Court concluded that the claim of the petitioners therein cannot be rejected based on the Circular.

14. In the present case, the appellant herein joined the Course in July 2010. At the time of joining the Course, the Rules therein provided for writing supplementary examinations without any restriction and accordingly the appellant wrote the supplementary examination conducted in November 2017, but the same was not reflected in the Internal Assessment Marks awarded to the appellant, as the Management has taken into consideration only the Internal Assessment Marks secured by the appellant in May 2017 and issued the mark sheet, based on the Circular dated 17.10.2017. By letter dated 12.04.2017 the second respondent wrote a letter to the third respondent stating that improvement of internal assessment marks can be considered only for one time and frequent requests for writing improvement examinations cannot be considered and the same was followed by issuance of a Circular dated 17.10.2017 by the University to the third respondent and other colleges. As per the principles enunciated in the judgment of the High Court of Andhra Pradesh at Hyderabad

in K.Nithesh Kumar's case (cited supra), it is clear that various facets leading to the conferment of a degree that were in force at the time of admission of a candidate, must remain same till the candidate completes the course in accordance with those very rules.

15. In the case on hand, with regard to conduct of Improved Internal Assessment Examination, the Circular has been issued by the University in the absence of any prescription or regulation by the Medical Council of India. As such, there is no restriction for writing Improved Internal Assessment Examination any number of times, in the absence of any regulation by Medical Council of India. But the Circular has been issued restricting the number of attempts to one. When the student was admitted in the course, there were no restrictions. It is settled principle that norms of admission, scheme of the course and various facets leading to the conferment of a degree that were in force at the time of admission of a candidate, must remain same till he completes the course in accordance with those very rules. Thus, the rules cannot be changed in the middle of the year. In the present case, the Circular has been issued only after the student has attended the Improvement Examination. The issuance of Circular by the University stopping furthermore attempts is nothing but penalising the students by way of victimising without proper intimation / opportunity. In this respect, though originally a letter dated 12.04.2017 was issued by the second respondent to the third respondent in advance, before issuing the Circular dated 17.10.2017, no opportunity was provided to the students. Before taking such a decision, one opportunity should have been provided to the students. It is a matter of principle of natural justice. It is not proper on the part of the University to issue such a Circular lifting the facilities that were given to the students at the time of admission to the college at once.

16. In view of the above stated circumstances, the impugned order passed by the learned single Judge is set aside and the writ appeal is allowed. The respondents 2 and 3 are directed to issue fresh mark list to the appellant by awarding the Improved Internal Assessment Marks secured by him in November 2017 in Community Medicine as per his representation dated 15.02.2018, within a period of six weeks from the date of receipt of a copy of this judgment. No costs.

Sd/-  
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

KM

To

1.The Medical Council of India,  
MCI Building Pocket-14, Sector-8,  
Dwaraka Phase-7,  
New Delhi-110 007.

2.The Controller of Examination,  
Pondicherry University, Kalapet,  
Puducherry.

3.The Registrar,  
Pondicherry Institute of Medical Sciences  
Kanagachettykulam, Kalapet,  
Puducherry.

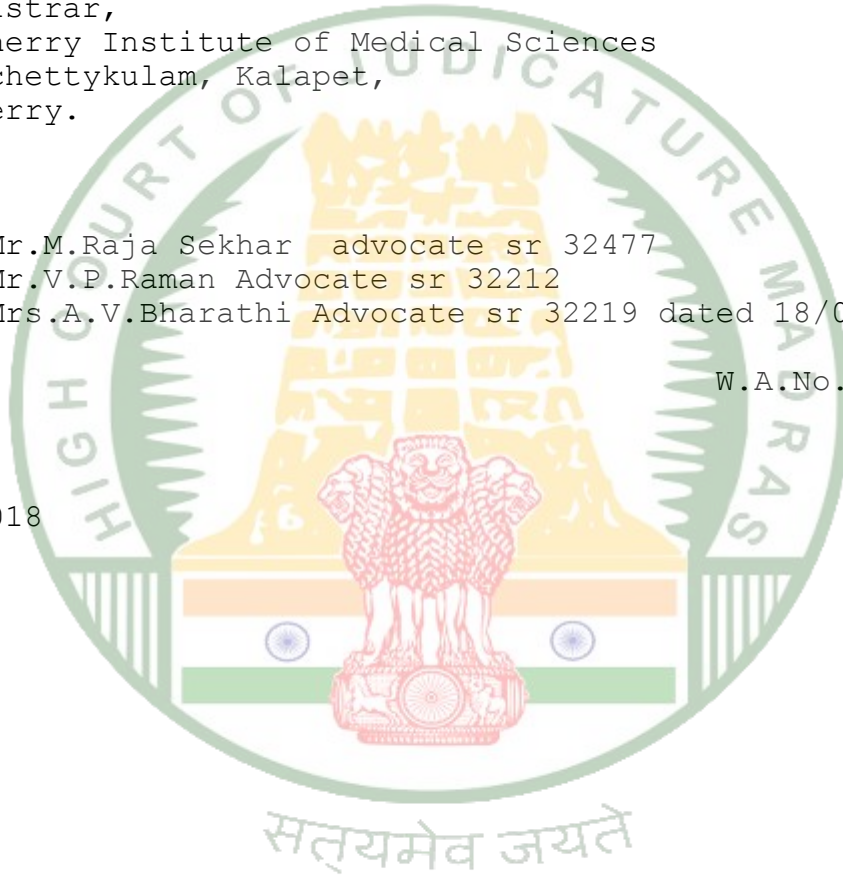
+1 cc to Mr.M.Raja Sekhar advocate sr 32477

+1 cc to Mr.V.P.Raman Advocate sr 32212

+1 cc to Mrs.A.V.Bharathi Advocate sr 32219 dated 18/06/2018

W.A.No.869 of 2018

aa11/06/2018



WEB COPY