

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE P.KESHA RAO

+ Writ Petition No.44450 of 2018

% Date: 10-12-2018

Dr. Valluru Siva Rama Krishna S/o Venkatadri,
Aged 48 years, Occ: Student, M.Ch.(Neurology),
(Rangaraya Medical College, Kakinada), R/o H.No.64-16-156,
Pratap Nagar, Kakinada, East Godavari District

... Petitioner

Vs.

\$ 1. Dr. N.T.R. University of Health Sciences,
Vijayawada, Krishna District, Andhra Pradesh,
Rep. by its Registrar

2. Controller of Examinations, P.G. Medical Exams.,
Dr. NTR University of Health Sciences, Vijayawada,
Krishna District, Andhra Pradesh

3. Principal, Rangaraya Medical College,
Kakinada, East Godavari District

4. Medical Council of India, Rep. by its Secretary,
Pocket-14, Sector-8, Dwaraka, New Delhi-110 077

... Respondents

! Counsel for Petitioner: Mr. K.V. Simhadri

Counsel for Respondents 1&2: Mr. Taddi Nageswara Rao,
Standing Counsel

Counsel for Respondent No.3: Government Pleader for
Medical Health and
Family Welfare

Counsel for Respondent No.4: Mr. S.Vivek Chandra Sekhar,
Standing Counsel

< Gist:

> Head Note:

? Cases referred:
Nil.

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Order: (per V.Ramasubramanian, J.)

Aggrieved by the rejection of his application for permission to write the examination for a Super Speciality Course in Neuro Surgery viz., M.Ch., the petitioner who is both a Professor and a student has come up with the above writ petition.

2. Heard Mr. K.V. Simhadri, learned counsel for the petitioner. Mr. Taddi Nageswara Rao, learned Standing Counsel, takes notice for the respondents 1 and 2 (University).

3. The petitioner joined M.Ch. (Neuro Surgery) in the Academic Year 2015-16. The Prospectus issued by the University for the Academic Year 2015-16 for admission into Super Speciality Courses, indicated two alternatives, available for the students in respect of the period of training. Clause 13 of the Prospectus reads as follows:

“13. PERIOD OF TRAINING:

13(i) The period of training shall be of 3 years duration in the department concerned. A candidate admitted into D.M/M.Ch Course shall pass the examination within 3 years from the date of completion of course. If he/she fails to pass the examination within the period specific above, he/she shall not be permitted to appear for the examination thereafter and qualify for the award of DM/M.Ch Degree.

13(ii) It is mandatory for the candidates admitted in Super Speciality courses to

(a) submit dissertation

OR

(b) publish two papers in peer reviewed journals as 1st Author.

NOTE: (a) or (b) to be selected within 1st six months after admission into the course. Log book is compulsory.”

4. It appears that the petitioner opted to submit a dissertation in terms of Clause 13(ii)(a) of the Prospectus. Apart from making such an option, the petitioner has in fact submitted a dissertation on 23-9-2017. But the said dissertation, has not yet been verified by the Head of Department.

5. As a result of the dissertation of the petitioner not being examined by the competent authority, the petitioner was not permitted to take the examination that was held in August, 2018. Therefore, the petitioner filed a writ petition in W.P.No.21043 of 2018, challenging the prescription contained in the Prospectus on the ground that they are in conflict with the Regulations of the Medical Council of India. But the said writ petition was dismissed by a learned Judge of this Court by an order dated 27-6-2018, however with liberty to the petitioner to make a representation in accordance with the Regulations. The operative portion of the order of the learned Judge reads as follows:

“In this case, since the petitioner has to exercise option within six months from the date of seeking admission, in the written instructions, it is clearly stated that the petitioner has opted for dissertation under Column 13(ii)(a) as per Prospectus of 2015-16 of Dr. NTR University of Health Sciences. Now he cannot turn round and say that he has opted for 13(ii)(b) and even submission of dissertation was in the month of March, 2018 and according to learned Standing Counsel the dissertation should be submitted before six months from the date of examination. Admittedly, the petitioner has submitted dissertation in the month of March, 2018. Since the admissions are for the Super Speciality Courses in Medicine,

this Court cannot direct the respondents to violate the conditions mentioned in the Prospectus for admissions.

In view of the same, I do not find any merit in the writ petition and the same is, accordingly, dismissed. However, this order will not preclude the respondent-authorities from considering the representations of the petitioner in accordance with Regulations. As a sequent to the disposal of this petition, miscellaneous petitions, if any, pending shall stand closed.”

6. Thereafter, the petitioner made a representation. But the same was rejected by the order impugned in the writ petition, forcing the petitioner to come up with the present writ petition.

7. The main contention of Mr. K.V. Simhadri, learned counsel for the petitioner, is that under Regulation 13(9) of the Post-Graduate Medical Education Regulations, 2000, inserted by way of amendment by a Notification dated 09-12-2009, a Post-Graduate student of a Post-Graduate Degree Course in Super Specialities is required to present one poster presentation, to read one paper at a National/State Conference and to present one research paper published or accepted for publication during the period of his Post-Graduate studies, so as to make him eligible to appear at the Post-Graduate Degree examination. Regulation 13(9) reads as follows:

“(9) A postgraduate student of a postgraduate degree course in broad specialities/super specialities would be required to present one poster presentation, to read one paper at a national/state conference and to present one research paper which should be published/accepted for publication/sent for publication during the period of his postgraduate studies so as to make him eligible to appear at the postgraduate degree examination.”

8. The contention of Mr. K.V. Simhadri, learned counsel for the petitioner, is that the prescription regarding the submission of a dissertation found in Clause 13(ii)(a) of the Prospectus was contrary to Regulation 13(a) and that therefore the same cannot hold the field.

9. But we do not think that the petitioner is now entitled to pitch his claim on the Post-Graduate Medical Education Regulations, 2000 of the Medical Council of India, for more reasons than one. They are as follows:

(i) The same contention has been rejected by a learned Judge in the first writ petition filed by the petitioner. The liberty granted by the learned Judge in the first writ petition cannot be taken to be a liberty to the Principal or the University to upset a finding recorded by the learned Judge on a legal issue;

(ii) The order of the learned Judge clinches the issue on the Medical Council of India Regulations vis-à-vis the University Prospectus. Unfortunately, that order has not been challenged on appeal; and

(iii) Apart from the fact that the petitioner made an option with eyes wide open at the time of his admission in the year 2015-16, to go in for a dissertation in terms of Clause 13(ii)(a) of the Prospectus, he has also submitted a dissertation. According to the petitioner, he has registered for dissertation on 23-9-2017. Even in the written instructions given by the University to the learned counsel, it is mentioned that the dissertation is under verification of the Head of Department as per the letter of the Head of Department dated 14-6-2018.

We do not know why at this stage the petitioner wants to go back on the dissertation already submitted and fall back upon the MCI Regulations to throw his own dissertation into the dustbin.

10. The learned counsel for the petitioner drew our attention to the research paper published by the petitioner along with his own Head of Department. But the issue is as to whether the petitioner can now go back on the option exercised and the submission of the dissertation in fulfilment of the option exercised.

11. Therefore, we are of the considered view that at this stage it is not open to the petitioner to question the condition stipulated in the Prospectus, on the ground that it runs contrary to MCI Regulations.

12. But nevertheless, we cannot be oblivious to the fact that the petitioner has missed the examinations scheduled to be held in August, 2018 and now scheduled to be held in December, 2018. The dissertation which is under consideration, should be processed in the interest of the individual as well as the institution.

13. The learned Standing Counsel for the University produced a copy of the letter dated 06-11-2018 sent by the Principal of the college to the University raising some issues and about the manner in which the dissertation was submitted by the petitioner. But we are of the considered view that if it is an accepted fact that a dissertation has in fact been submitted, the procedural infirmities or the manner in which it was

submitted should not deprive the petitioner of the benefit of examination of the dissertation in an objective manner.

14. Therefore, even while rejecting the challenge to the Prospectus condition, the writ petition is disposed of with a direction to the Principal of the college to ensure that the dissertation is processed, examined and a call taken by the Head of Department, in an objective manner without putting against the petitioner, the manner in which he submitted the dissertation. Such examination shall be completed within a period of one month so that the petitioner can be allowed to sit for examinations at least in the next schedule. In case the Head of Department is able to process the dissertation before the scheduled date of the examination and declare the results, the petitioner may be allowed to sit for the examination. Pending applications, if any, shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

P.KESHAVA RAO, J.

10th December, 2018.

Note:-

Issue C.C. by 11-12-2018.

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HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE P.KESHA RAO

Writ Petition No.44450 of 2018
(per VRS, J.)



10th December, 2018.
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