

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No.20843 of 2018 (O&M)

Date of Decision:15.10.2018

Dr. Sunil Mahajan and others

. Petitioners

Vs.

Baba Farid University of Health Science, Faridkot and others

. Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: - Mr.P.S. Bajwa, Advocate,
for the petitioners.

Mr.Nitin Kaushal, Advocate,
for respondent No.1.

Mr.Sahil Sharma, DAG, Punjab.

Mr.M.S. Longia, Advocate,
for respondent No.6-MCI.

RAKESH KUMAR JAIN, J.

The petitioners are the students of MS Orthopaedics, who are aggrieved against the manner in which their practical and *viva voce* examination was held on 04.06.2018 in violation of the Guidelines for Competency Based Postgraduate Training Programme for MS in Orthopaedics [for short 'the Guidelines'].

All the petitioners have failed in their practical examination. Their grievance is that as per the Guidelines, the maximum number of students to be examined in one day cannot be more than 5.

In this regard, he has referred to Clause 3 of the Guidelines, which read as under: -

“Practical/Clinical: The practical examination should consist of the following and should be spread over two days, if the number of pot graduate students appearing is more than five.”

After notice, the respondents have filed their respective replies. It is submitted in the reply filed by respondent No.4 that the practical examination of 8 students were held in one day in terms of the Post Graduate Medical Education Regulations, 2000 (amended upto July, 2017) [for short ‘the Regulations’] in which Clause 14(2) provides that *“that the maximum number of candidates to be examined in clinical/practical and oral on any day shall not exceed eight for M.D./M.S., degree, eight for diploma and three for D.M./M/Ch. Examinations”*.

It is submitted in the reply filed by respondents No.1 to 3 that the Guidelines are not mandatory and cannot override the Regulations of the MCI. It is further submitted that the clinical/practical examinations were held on 4.6.2018 & 5.06.2018 for the MS Orthopaedics pertaining to GMC, Amritsar & SGRD, Amritsar at the centre GMC, Amritsar. It is further submitted that on 4.6.2018, 8 candidates/students from GMC, Amritsar were examined and on 5.6.2018, 5 students of SGRD, Amritsar were examined. Thus, it is submitted that the practical examination was held strictly in accordance with the provisions of the Regulations.

In rebuttal, learned counsel for the petitioners has submitted that it is provided in the Regulations that there will be 4 theory papers out of which one paper shall be of Basic Medical Sciences and other paper shall be of Recent Advances whereas, in the Guidelines, it is categorically provided as to what would be the four theory papers, therefore, the Guidelines shall

have to be followed. He has also referred to the affidavit of an earlier student Dr.Sukhpal Singh dated 20.9.2018, who has stated that when he had appeared in the practical examination in May/June 2016, 9 students had appeared in the practical examination which was spread over two consecutive days.

I have heard learned counsel for the parties and perused the record.

The petitioners are solely relying upon the Guidelines to contend that there should not be more than 5 students on one day to take the practical/*viva voce* examination whereas, the respondents have relied upon the Regulations as per which the practical/*viva voce* examination of the 8 students can be held in a day. Learned counsel for the petitioner has failed to cite any law to the effect that the Guidelines would prevail upon the Regulations whereas, there is no dispute that the Regulations have the force of law as the same has been made in terms of the powers conferred under Section 33 read with Section 20 of the Indian Medical Council Act, 1956 by the Medical Council of India with the previous sanction of the Central Government and the Guidelines do not appear to have any statutory force. It is otherwise mentioned in the Guidelines that the purpose of the Guidelines is to provide teachers and learners illustrative guidelines to achieve defined outcomes through learning and assessment. Guidelines are prepared by the various subject-content specialists and the Reconciliation Board of Academic Committee has attempted to render uniformity without compromise to the purpose and content of the document.

Thus in the presence of the Regulations in which Clause 14(2) specifically provides that maximum number of candidates to be examined in clinical/practical and oral on any day shall not exceed eight for MD/MS

degree and in the present case also the respondents have not violated the said Regulations because not more than 8 students/candidates of MS Orthopaedics were examined for their practical/*viva voce* on one day i.e. 4.6.2018, I do not find any merit in the present petition and hence the same is hereby dismissed.

(RAKESH KUMAR JAIN)
JUDGE

15.10.2018

Vivek

Whether speaking /reasoned : Yes/No

Whether Reportable : Yes/No