

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.09.2020

Delivered on : 14.09.2020

CORAM :

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A.No.576 of 2020

The Chairman,
Sri Venkateshwaraa Medical College Hospital
and Research Centre,
No.13-A, Pondicherry-Villupuram Main Road,
Ariyur, Puducherry - 605 102. Appellant

Vs.

1. Dr.S.R.Keerthanaa
2. The Dean,
Sri Venkateshwaraa Medical College Hospital
and Research Centre,
No.13-A, Pondicherry-Villupuram Main Road,
Ariyur, Puducherry - 605 102.
- 3.The Registrar,
The Pondicherry University,
R.V.Nagar, Kalapet, Puducherry - 605 014.
4. Medical Council of India,
rep. by Secretary,
Sector VIII, Dwaraka Phase II,
New Delhi - 110 077. Respondents

(Cause title of respondent No.4 is accepted
vide order of the Court dated 14.7.2020
made in C.M.P.No.7436 of 2020 in
W.A.No. SR 44058 of 2020)

Prayer: Appeal filed under Clause 15 of the Letters Patent against the order dated 17.6.2020 made in W.P.No.8230 of 2020.

Prayer in WP No.8230 of 2020 : To issue a writ of mandamus praying to direct the petitioner to Petitioner to undertake the examination to be conducted by the 3rd Respondent University for the Final Year Post Graduate Medical Examination M.S. (Obstetrics and GYNAECOLOGY) to be conducted for the academic year 2019-2020 by the 1st and 2nd Respondents herein which is affiliated to the 3rd Respondent herein and publish the results for the same.

For Appellant : Mr.J.Abishek Jenasenan

For Respondents : Mr.T.T.Ravichandran
for respondent No.1

: Mr.M.Ravi
for respondent No.3

: Mr.V.P.Raman
for respondent No.4

JUDGMENT

The Hon'ble Chief Justice

The appeal has been filed by Sri Venkateshwaraa Medical College Hospital and Research Centre, Puducherry, questioning the order dated 17.6.2020, whereby the writ petition filed by the first respondent has been finally disposed of by a short order, which is extracted herein under:

"This matter is taken up for hearing through Video-Conferencing.

2. The petitioner seeks for issuance of a Writ of Mandamus directing the respondents to permit her to undertake the examination to be conducted by the third respondent University for final year M.S. (Obstetrics and Gynaecology) for the academic year 2019-2020.

3. Mr.Abishek Jinasenan, learned Standing counsel appearing for the College, viz., the respondents 1 and 2 would submit that the petitioner does not have

the required attendance of 80% and she has got only 71%.

4. Mrs.A.V.Bharathi, learned Standing Counsel for the third respondent. on instructions, would submit that the University has got the power to condone the deficit attendance to an extent of 10% on a proposal being made by the College.

5. In the light of the above submissions made by the learned counsels, this Writ Petition is disposed of with the following directions:

- i) the first respondent shall send the proposal for condonation of the deficit attendance along with requisite reasons and fees to the University by 23.06.2020. Upon receipt of the same, the third respondent shall take steps to condone the deficit attendance, which is within the permissible limit even according to the third respondent, and permit the petitioner to write the examination for the academic year 2019-20.
- ii) without waiting for the condonation of the attendance, the College shall allow the petitioner to pay the examination fee. Since it is stated that the last date for payment of examination fee was yesterday, i.e., 16.06.2020., I extend the time for payment of the examination fee till 24.06.2020. The petitioner shall also pay the fee for condonation of deficit attendance.
- iii) the College shall allow the petitioner to pay the examination fee by providing necessary access to her for on-line payment.
- iv) the parties are directed to act upon, on production of Web copy.
No costs. Consequently, connected miscellaneous petition is closed."

2. Shri Abishek Jenasenan, learned counsel for the appellant College, while arguing the appeal at the initial stage on 10.7.2020 had made a request that the learned Single Judge had allowed the writ petition without even impleading the Medical Council of India, on an erroneous concession recorded on behalf of the Pondicherry University regarding the requirement of minimum attendance for appearing in Post Graduate

examinations. We had passed the following order on 10.7.2020 in C.M.P.No.7436 of 2020 in W.A.No. SR 44058 of 2020:

"The petitioner/appellant Medical College has come up contending that the first respondent/writ petitioner was ineligible for appearing in the examinations, as the candidate had admittedly not attended the minimum of 80% training, including the assignments in all facets of the examination process, which is clearly stipulated in Clause 13.2 of the Regulations framed by the Medical Council of India.

2. The second ground raised is that the Medical Council of India was not even made as a party in the writ petition.

3. The third contention is that even if the University was the competent authority, the Regulations or even the Ordinances governing the academic matters for the Pondicherry University do not provide for any such grant.

4. Learned counsel has then also submitted that he may be permitted to pursue this appeal with the amended cause title with the Medical Council of India as respondent No.4.

5. The permission to allow the Medical Council of India to be impleaded would be dependent upon the contest put forth in this regard, but keeping in view the submissions raised, we find that the impugned judgment requires a scrutiny, as it appears to have been disposed of without granting any time to file the counter-affidavit by the respondents or impleading the Medical Council of India.

6. Issue notice to the first respondent. The third respondent be also served within two days. Service may be effected on learned counsel who had appeared before the learned Single Judge.

Put up on 13.07.2020."

3. On 13.7.2020, after hearing learned counsel for the first respondent, we had passed the following order:

"Heard learned counsel for the petitioner/appellant and learned counsel for the first respondent Student.

2.We had posted this matter today for putting the respondent to notice to ascertain as to the availability of any rule regarding relaxation in the time period that is permitted under the regulations framed by the Medical Council of India to ensure 80% attendance. Learned counsel for the first respondent Student, who has put in appearance today submits that regulations which are being relied upon by the appellant now had been amended on 05.04.2018 and therefore, the learned Single Judge was correct in granting the relief as prayed for.

3.We do not find any such mention of such a power of relaxation being available by virtue of any amendment mentioned in the impugned order. Learned counsel submits that he will produce the said amendment tomorrow.

Put up on 14.07.2020."

4. When the matter was taken up on 14.7.2020, we finally allowed the application for impleading the Medical Council of India and we had heard Shri V.P.Raman, learned counsel for the said respondent on that day. The order passed on 14.7.2020 is reproduced herein under:

"We have heard learned counsel for the appellant College, the learned counsel for the Pondicherry University, Mr.M.Ravi and Mr.V.P.Raman, learned counsel for the Medical Council of India as well as Sri.K.M.Vijayan, learned Senior Counsel for the respondent petitioner.

2.This appeal has been presented questioning the directions issued by the learned Single Judge dated 17.06.2020 whereby the respondent petitioner has been allowed to pay the examination fee and take the examinations in question for the academic year 2019-2020 without waiting for the condonation of attendance, which has been directed to be considered by the respondent Pondicherry University.

3.The contention raised by the learned counsel for the appellant is that the writ petition has been virtually allowed with all the reliefs without impleading the Medical Council of India, and the description of attendance as per the Regulation 13.2 being not fulfilled by the respondent petitioner, the directions are contrary to law. He submits that the fact of recording a power available to the University to grant and condone the deficit

attendance to an extent of 10% may be the general power of the University in respect of other courses, but, with regard to post graduate medical course, the University has no such power and it is bound by the Medical Council of India Regulations, which provide for a minimum of 80% attendance.

4.To this, Mr.Ravi, learned counsel for the Pondicherry University, submits that the University cannot grant any such condonation in deficiency of attendance contrary to the Medical Council of India Regulations.

5.Sri.K.M.Vijayan, learned Senior Counsel appearing for the respondent petitioner, submits that the factual break-up of attendance given by the appellant is not correct and even otherwise, he submits that there is no default on the part of the respondent petitioner in attending the classes, which the respondent petitioner has done diligently and without incurring any ineligibility of attendance as alleged.

6.It is further submitted that the respondent petitioner shall bring on record documents and shall also file material to demonstrate that she has not violated the attendance norm and consequently, the direction issued by the learned Single Judge is justified. He, however, submits that this matter can be disposed of after exchange of affidavits provided the respondent petitioner is allowed the permission to take the examinations, which are scheduled to be held from tomorrow (15.07.2020).

7.We have considered the submissions raised and prima facie, we find that the first issue is as to whether the Pondicherry University has any power to condone the deficit attendance in respect of the post graduate medical classes presently in question contrary to Regulation 13.2 of the Regulations framed by the Medical Council of India. The second issue is as to whether the direction given by the learned Single Judge would amount to grant a relief to which the respondent petitioner was not entitled without having completed the attendance as per the case taken by the appellant, the break-up whereof has been given in paragraph 4 of the affidavit filed in support of the stay application. The third issue is as to whether the learned Single Judge could have proceeded to issue these directions without even

impleading the Medical Council of India, which, according to the appellant, was a proper and necessary party.

8. We find that the impleadment of the Medical Council of India was necessary as it is the regulations framed by the Medical Council of India that have to be taken into account for this purpose even if the Council is not conducting the examinations. We, therefore, having heard learned counsel for the parties, are satisfied that the writ petition had proceeded without impleading the Medical Council of India and therefore, we accept the request of the learned counsel for the appellant to implead the Medical Council of India as respondent no.4 in the present appeal.

9. Learned Counsel for the Medical Council of India, Mr.V.P.Raman, shall also file his response to this appeal in the above background as observed hereinabove.

10. Sri.Vijayan, learned Senior Counsel, submits that he will file his affidavit in response to this appeal. We find, in the interest of justice that time should be granted to the Medical Council of India, the Pondicherry University as well as to the respondent petitioner to file their affidavits, which shall be done within two weeks from today.

11. The direction given by the learned Single Judge in the impugned judgment calling upon the Pondicherry University to take steps for condoning the delay shall remain in abeyance, but the respondent petitioner shall be permitted to undertake the examinations that are to commence from tomorrow (15.07.2020), however, the results of her examinations shall not be declared, except with the leave of the Court.

12. Accordingly, the miscellaneous petition stands allowed. Let the appeal be numbered and necessary amendments be carried out.

List the appeal on 06.08.2020."

6. The Medical Council of India viz., the fourth respondent impleaded before us, has filed a counter-affidavit in this appeal, which is extracted herein under:

"1. I am working on the Law officer at Medical

Council of India and in my official capacity I am acquainted with the facts and circumstances of the cases and thus competent to swear to the present affidavit,

2. The present affidavit is filed in response to the order dated 14.07.2020 in the present proceedings wherein this Hon'ble Court was pleased to implead the Board of Governors in supersession of the Medical Council of India (MCI) as the 4th respondent.

3. It is submitted that the MCI in extra of powers under Sec.33 of the Indian Medical Council Act, 1956 has framed the Post Graduate Medical Education Regulations, 2000. Clause 13.2 of the said Regulation reads as under:

"All the candidates joining the Post Graduate training programme shall work as 'Full Time Residents' during the period of training and shall attend not less than 80% (Eighty percent) of the imparted training during each academic year including assignments, assessed full time responsibilities and participation in all facets of the educational process."

Further vide amendment notification dated 05.04.2010, in clause 13(2), in third line "each academic year" shall be substituted as "Academic Term of 6 months".

4. It is submitted that the above Regulation requires that the candidate attend not less than eighty percent of the imparted training in every academic term of six months. It is further submitted that the rules framed by the MCI are the minimum standard which cannot be diluted further. It is open to Universities to provide a higher standard than prescribed by MCI. Any rules framed by the 3rd respondent University or power exercised to condone attendance is subject to the above Regulations made by MCI and cannot dilute the requirements below the attendance requirement as prescribed in the Post Graduate Medical Education Regulations.

5. It is also relevant to point out that the MCI has issued a notice dated 24.07.2017 to the institution to discharge 6 students on the ground that they were legally admitted by the institution in violation of

merit. The 1st respondent is also one of the 6 candidates who stand discharged by the said communication of the MCI, The discharge notice was challenged by the appellant in W.P.1155 of 2018 wherein by an order of interim stay dated 22.01.2018, the students have continued their education. The 1st respondent has also filed a separate writ petition challenging the discharge notice in W.P.4016 of 2018 wherein a similar interim order has been passed. The writ petitions are pending and pleadings are complete. The same are posted for final hearing before the Learned Judge on 12.08.2020."

Thereafter, pleadings and papers were exchanged between the parties and matter was finally heard.

7. We may at the out set, on the basis of the aforesaid facts, clearly record that the very admission of the first respondent to the Post Graduate course in question is under a serious cloud because of the notice issued by the Medical Council of India on 24.7.2017 to the appellant for discharging six students on the ground that they were illegally admitted by the institution in violation of merit as fixed by the Centralized Admission Committee (CENTAC). It is categorically stated and is undisputed that the first respondent is also one amongst the six above stated candidates, who stands discharged by the communication of the Medical Council of India, but was continuing on the basis of an interim order to pursue her course passed in W.P.No.4016 of 2018, where pleadings have been completed and the same is pending final adjudication. It is, therefore, evident that the fate of the first respondent is primarily dependent upon her success or otherwise in the aforesaid writ petition, which is yet to be decided and the first respondent is temporarily surviving on the strength of the interim order passed therein.

8. In the writ petition filed by the first respondent, in paragraph (6), the following fact has been stated:

"6. In the meanwhile the Medical Council of India during the academic year 2017-2018 had found that admission to various courses should be done only under the supervision of the Central Admission Committee and some of the students were not found in the list provided by CENTAC. I state that the Medical Council of India in its Proceedings dated 24.7.2017 and 28.12.2017 found that I was not admitted through the Central Admission Committee and hence ordered my discharge as a student from the Medical College of the 1st and 2nd Respondents

herein. There are more than 25 students who are affected since they were not admitted to CENTAC and Writ Petitions were filed on their behalf. Therefore, I was constrained to file W.P.No.4016 of 2018 before this Hon'ble Court challenging the above discharge and this Hon'ble Court was pleased to grant an interim stay of the operation of the Order and the said Order is still force. Therefore I was able to continue my education and complete the first and second years of Post Graduate Education, which comprises of hospital duties and Peripheral posting to other hospitals and scan centre."

9. The first respondent in the writ petition has prayed for a mandamus to receive the examination fees, forward the application in respect of the final year examination to be conducted by the Pondicherry University, and issuance of hall ticket so that she could undertake the examination that was scheduled to be held in the month of July, 2020 for the Post Graduate Medical Course M.S. (Obstetrics & Gynecology). The complaint of the first respondent before this Court is that in spite of she having cleared all dues, she was not being allowed to undertake the examinations.

10. The petition was disposed of without the Medical Council of India having been impleaded and after recording the statement of learned counsel for the Pondicherry University that the University had powers to condone the deficit attendance to an extent of 10% on a proposal being made by the College.

11. It appears that a dispute was raised with regard to the payment of fee after the first respondent took admission in the institution and it was the grievance of the first respondent that the College authorities were demanding an exorbitant fee over and above that is prescribed in the brochure regarding admissions through the Management Quota. This dispute relating to payment of fee was raised by the first respondent by filing W.P.No.17744 of 2019, where a mandamus was sought restraining the College from charging fee in excess of the requirements as are entailed in the Government Orders. The aforesaid writ petition was entertained and the following order was passed on 25.7.2019:

"Learned counsel for first respondent seeks time to file counter.

2. The same is objected to by learned counsel for petitioner stating that the petitioner would not be in a position to continue the course unless the Writ Petition is finally decided.

3. Learned counsel for first respondent submits that there will not be any problem for the Writ Petitioner to continue the course till the disposal of the present Writ Petition. The said submission is recorded.

Post on 01.08.2019."

12. The said dispute with regard to payment of fee continued and the first respondent was not being issued No Dues Certificate to enable her to appear in the examinations that compelled her to file W.P.No.6539 of 2020. The said writ petition was contested both by the appellant College as well as the Pondicherry University only on the issue with regard to the dispute of outstanding fees, where the first respondent has given an undertaking that any outstanding fees will be paid subject to the result of W.P.No.17744 of 2019. The Court, however, took notice of the fact that the first respondent might be put to grave hardship if she is not allowed to submit her application for the examination and therefore, disposed of the writ petition in respect of No Dues Certificate to be issued to the first respondent by the following order dated 18.3.2020:

"This writ petition has been filed for the issue of writ of Mandamus directing the 1st respondent to issue the examination application form counter signed in order to enable the petitioner to apply for the examination and appear for the final year Post-graduation Medical examination, which is scheduled to be held in the Month of April 2020.

2. The case of the petitioner is that she is presently doing her Post Graduation in the 1st respondent college. The petitioner had got admission under the Management quota and there is already a dispute between the college and the petitioner, with regard to the fees payable by the petitioner. According to the petitioner, the 1st respondent college had determined a fees over and above the fees fixed by the Fees Committee. The petitioner claims that she has paid the Fee that has been fixed by the Fees committee.

3. The petitioner has already approached this Court and filed WP No.17744 of 2019, for a direction to the respondent college not to charge any fees, over and above the fees fixed by the Committee. This Court has entertained the said writ petition and based on the undertaking given by the Counsel for the respondent college that the petitioner will be permitted to continue in the Course, a date was

fixed for hearing in the said writ petition.

4. In the meantime, the 3rd respondent has issued itinerary for the examination of the 3rd year Course and the on-line registration commences on 02.04.2020. According to the petitioner, the 1st respondent has issued a circular to the effect that no due form must be obtained from the 1st respondent, counter signed by the Head of the Department and after the remittance of the examination fees only, the application form will be issued. The petitioner has stated that she was not allowed to obtain the no due form. Therefore, she had made a representation in this regard on 02.03.2020 to the 1st respondent. Since the same has not been acted upon, the present writ petition has been filed before this Court, seeking for appropriate directions.

5. Mr.T.T.Ravichandran, learned counsel appearing on behalf of the petitioner submitted that the petitioner has given an undertaking even in the representation submitted to the 1st respondent on 02.03.2020 to the effect that the outstanding fee, if any, will be paid by the petitioner subject to the orders passed in the writ petition pending in WP No.17744 of 2019. The learned counsel submitted that in spite of such an undertaking being given by the petitioner, the 1st respondent has not given the no due form till date. The learned counsel further brought to the notice of this Court that the petitioner has given a similar undertaking even in the affidavit that has been filed in support of the writ petition at paragraph No.11 of the affidavit. The learned counsel submitted that the 1st respondent must be directed to issue the application form along with the no due form.

6. The learned counsel appearing on behalf of the 1st and 2nd respondents submitted that an undertaking was already given before this Court to the effect that the petitioner will be allowed to continue in the Course, till the disposal of the writ petition in WP No.17744 of 2019. The learned counsel submitted that the petitioner has to pay the fees fixed by the 1st respondent college and according to the 1st respondent college no exorbitant fees has been charged and the petitioner is bound to pay the fees fixed by the College. Without doing so, the petitioner is not entitled for

a no due from the 1st respondent college.

7. The learned counsel appearing on behalf of the Pondicherry University, submitted that the University has already issued the itinerary for the 3rd year examination and the on line registration commences from 02.04.2020. The learned counsel further submitted that the examination is scheduled to be conducted during the month of April 2020.

8. This Court has carefully considered the submissions made on either side and also perused the materials available on record.

9. It is an admitted fact that the petitioner is continuing to do the course in the 1st respondent college and she is in her 3rd year. There is a dispute with regard to the fees payable by the petitioner to the 1st respondent college and the petitioner claims that the 1st respondent is demanding for fees in excess of the fee fixed by the committee. The said issue is pending before this Court in WP No.17744 of 2019. In the said writ petition, the 1st respondent has made a statement to the effect that the petitioner will be allowed to continue in the course till the disposal of the writ petition.

10. The petitioner has made a representation to the 1st respondent on 02.03.2020, seeking for the examination form and no due form. The petitioner has also given a specific undertaking that any outstanding fees will be paid subject to the result of the said writ petition pending in WP No.17744 of 2019. A similar undertaking has also been given by the petitioner in the affidavit filed in support of the present writ petition. This undertaking is found at paragraph No.11 of the affidavit.

11. In the considered view of this Court, the petitioner will be put to grave hardship if she is not allowed to submit her application for the examination. The interest of the 1st respondent college is secured in view of the undertaking given by the petitioner. Therefore, there is no reason as to why the petitioner should not be allowed to take the examination conducted by the 3rd respondent university in the Month of April 2020. This Court has to ensure that the interest of both the petitioner and the 1st respondent is safeguarded.

The undertaking given by the petitioner safeguards the interest of the 1st respondent and by directing the 1st respondent to enable the petitioner to get the application form with such undertaking, safeguards the interest of the petitioner.

12. In the result, this writ petition is disposed of with a direction to the 1st respondent to issue the necessary no due form to the petitioner to enable the petitioner to apply on-line for the examination, which opens on 02.04.2020. No costs. Consequently, the connected miscellaneous petition is also closed."

13. It is to be noted that the issue of attendance had not been raised till then and it is the contention of learned counsel for the appellant that the attendance came to be calculated later when the examinations were about to be held in July, 2020. It is in this background when the first respondent was not being allowed to undertake the examination in spite of the said direction, she approached this Court by filing the writ petition giving rise to the present appeal.

14. As noted, the Medical Council of India had not been made party before the learned Single Judge, but the said respondent has now filed its counter-affidavit clearly taking a stand that the appellant College has come out with a case that the first respondent has only cleared 71% attendance, which is short of the minimum required 80% attendance. According to Regulation 13.2 of the Post Graduate Medical Education Regulations, 2000 (quoted herein above) since the first respondent has not recorded 80% attendance according to the said Regulation, which is binding on the College, the University as well as the student, no mandamus could have been issued by the learned Single Judge ignoring the same.

15. The second vital aspect in this matter is that even though the respondent Pondicherry University through its counsel had made a statement that the University had power to condone the deficit attendance, they have filed a counter-affidavit in this appeal. Paragraphs (4) to (8) whereof are extracted herein under:

"4. I humbly submit that as per Pondicherry University PG Regulations No.13.2 under Training Programme it is stated that "All candidates joining the Post Graduate training programme shall work as full time residents during the period of training and shall attend not less than 80% (Eighty percent) of the imparted training during each academic year including assignments, assessed full time

responsibilities and participation in all facts of the educational process. But the 1st Respondent had obtained only 71% of attendance for all three years together (Against Regulation) the period from 2017-2018 to 2019-2020. (2017-2018: 54% 1st year, 2018-2019:77% 2nd year, 2019-2020: 82% 3rd year). So, the 1st Respondent had not obtained 80% in each Academic year of her PG studies.

5. I humbly submit that the 2nd Respondent had not recommended/submitted for any condonation application on behalf of 1st Respondent to the 3rd Respondent in this matter. Incompletion of required term days will result in incomplete training Jeopardize the life of the Human beings. Human life cannot be compromised in any account.

6. I humbly submit that the Pondicherry University has not granted any such condonation in deficiency of attendance for the student undergoing Post Graduate Medical course contrary to the Medical Council of India Regulations.

7. I further state that the Pondicherry University has already communicated to the Appellant that the 1st respondent was discharged by the MCI along with other five students in and by proceeding MCI-23(1)/MC/2017/163868 dated 28.12.2017. Hence the Pondicherry University has communicated to the students that the recognition for six students will be considered only when MCI/Govt. of Puducherry, gives approval vide letter No.PU/Aca.7/Recog/PG/SVMCH&RC/2017-18/187, dt. 06.02.2018. Thus in the absence of approval from MCI/Government of Puducherry, the First Respondent is ineligible for completion of Course and to appear in the examination.

8. I further submit that the Examination Wing of Pondicherry University had issued a Hall Ticket to 1st Respondent, as per the High Court of Madras Interim Order in CMP.No.7436 of 2020 in WA. No.SR.44068 of 2020 vide dt.14.07.2020 only subject to the outcome of the Writ Petition and based on an undertaking given by the First Respondent and as such the First Respondent cannot claim any right on the basis of her appearance in the examination."

16. Learned counsel for the Pondicherry University Shri M.Ravi submits that the statement on behalf of the counsel for

the University before the learned Single Judge appears to be an error, inasmuch as the University had only conceded to the existence of general powers, which are contained in Chapter XV of the statutory provisions applicable to examinations framed under Section 27(g) of the Pondicherry University Act [Act 53 of 1985]. Learned counsel has clearly contended before this Court that even though the Pondicherry University is a Central University created by an act of Parliament, and having powers in matters of examinations, yet it is bound by the Regulations of the Medical Council of India, which are special regulations relating to attendance of medical courses. The relevant provision of Chapter XV viz., Clause 2 is extracted herein under:

"2. A candidate shall be deemed to have undergone a regular course of study for the period specified for the course if he/she has fulfilled the requirement as given below:

- a) All candidates must put in 75% of attendance in Arts (Humanities), Science, Commerce and Law and 80% in Medical and Technological Courses for each semester / year as the case may be. The attendance should be reckoned in terms of number of working days only and not subject-wise.
- b) The Principals of affiliated colleges / institutions and the Heads of Departments of University are authorized to condone deficiency in attendance upto a maximum of 10% of the number of days for each semester/year, as the case may be, it being assumed that colleges / institutions / University Departments will normally put in not less than 90/180 working days per semester / year, as the case may be.

The prescribed fees for condonation of shortage in attendance shall be collected by the Principal of the college/institution and the Deans / Heads of the Departments of the University, as the case may be, and remitted to the University.

- c) All candidates prior to their permission to appear at the examination should produce a certificate of attendance, certificate of satisfactory conduct, certificate of progress, clearance of dues from the Dean of the School or Head of the college/institution concerned, as the case may be."

17. It is worth noticing that a concession given by a counsel against law is not admissible, and as a matter of fact any such concession should be avoided. The statement made by the learned counsel for the University before the learned Single Judge even if is taken to be a concession, the same is against the statutory provisions of the Regulations framed by the Medical Council of India. Such concession, therefore, cannot come to the aid of the first respondent. For reference, we rely on our Division Bench judgment in the case of the Chairman, Tamil Nadu Uniformed Services Recruitment Board v. M.Madhan Kumar [W.A.No.670 of 2020, decided on 31.8.2020], MANU/TN/4552/2020.

18. The first respondent in her counter-affidavit has categorically stated that the calculation of 71% of attendance is incorrect and she has never admitted that her attendance was short. The background in which the first respondent was statedly harassed to approach this Court time and again to enable her to pursue her study has been detailed in her counter-affidavit. It is her case that she is nowhere to blame and as a matter of fact, it was on account of judicial interventions that firstly, she was allowed to pursue her Post Graduate Course, the admission whereof was secured under the interim order passed in W.P.No.4016 of 2018, which still continues to be in force. It is also the clear case of the first respondent that no objection was taken to her attendance at any stage, which is evident from the order dated 18.3.2020 in W.P.No.6539 of 2020 and also the order passed as late as on 25.7.2020 in W.P.No.17744 of 2019. Consequently, it is not open to the appellant College to contest the issue of attendance before this Court.

19. An argument has been advanced by Shri M.Ravi, learned counsel for the Pondicherry University that the first respondent has not challenged the impugned order and therefore, she should be presumed to have accepted the question of shortage of attendance, and it is only the power to condone that remained to be exercised.

20. We cannot accept this argument because firstly, we find that the University has in the present case approbated and reprobated by taking a stand inconsistent to law before the learned Single Judge, even though it has rectified it before us. Therefore, it does not lie in the domain of the University to raise this plea. Even otherwise, since we are upholding the stand of the Medical Council of India, then it is only a matter of calculation of the quantum of the alleged shortage of attendance which remains to be resolved and learned counsel for the first respondent is right in his submission that such shortage was never admitted by the first respondent before the

learned Single Judge and it was only to facilitate the consideration of such attendance that the directions issued by learned Single Judge were sought to be abided by, as they extended an equitable relief to the first respondent.

21. In the above backdrop, it is evident that the very admission to the course of the first respondent in M.S. (Obstetrics & Gynecology) is still in jeopardy and subject to the outcome of W.P.No.4016 of 2018. Unless the first respondent clears the said hurdle, it will not be possible to acknowledge either the right of the first respondent to complete her studies or undertake the examinations on the basis of such shaky admission to the course.

22. The second question is with regard to the law relating to attendance. The contention raised by the learned counsel for the first respondent that the University Regulations will override the Regulations of the Medical Council of India is clearly unacceptable, inasmuch as the Regulations framed by the Medical Council of India are in order to sustain standards of medical education, which has time and again being held to be the power of the Medical Council relatable to the competence of the Parliament to make laws in this regard in terms of Entry 66 of List I. It is not necessary to detail the judgments on this issue, inasmuch as the Apex Court has already acknowledged this authority of the Medical Council of India to frame Regulations in this regard that will have an overriding effect over any general law. The University has also conceded before us that it has a general power of attendance, as indicated in Chapter XV of the Regulations extracted herein above, which is subject to the Special Regulations pertaining to attendance framed by the Medical Council of India. We are, therefore, unable to accept this argument of the first respondent that the Pondicherry University had any power to either fix the minimum of attendance or even condone any shortage in respect thereof in the absence of any such power conferred on the University under the Regulations framed by the Medical Council of India that have an overriding effect.

23. We may now turn to the judgments cited by learned counsel for the first respondent. The first is the judgment of a learned Single Judge of the Karnataka High Court in the case of Dr.Nagesh M. v. Medical Council of India and others [W.P.No.54413 of 2016, decided on 21.4.2017].

24. We have perused the said judgment and we find that the Medical Council of India in the said case had supported the cause of the student petitioner therein that he had the required attendance. This has been categorically indicated in paragraphs (7) and (12) of the said judgment. Over and above, there was an

Enquiry Committee constituted to inquire into the complaints and there was a report disclosing that the petitioner therein was eligible to appear in the examination, but had been wrongly victimized by the College authorities.

25. In the instant case, the learned Single Judge, in our opinion, has disposed of the writ petition without there being any enquiry made or without undertaking any exercise to that effect. The facts of the present case, therefore, are clearly distinguishable from the facts of the judgment of the Karnataka High Court and therefore, the ratio thereof is not applicable in the present matter.

26. The second judgment relied on is in the case of J.Jebagiftson v. The Secretary and Correspondent (Chairman), Infant Jesus College of Engineering, Tirunelveli and others, [W.P.(MD) Nos.9770 of 2008 and 3344 of 2009, decided on 14.6.2011], with regard to an Engineering Course and is by a learned Single Judge of the Madurai Bench of this Court. We clearly find that the said judgment turns on its own facts, where the candidate was ailing and the Court observed that the ailment was not on account of any deliberate act on the part of the student. Nonetheless, there was an interim order in that case and the writ petitions were disposed of. However, the clear distinction between the present case and the aforesaid judgment is that in the instant matter the issue is governed by the Regulations framed by the Medical Council of India that are binding, which was not the case before the learned Single Judge in the above mentioned judgment.

27. The third judgment relied on by learned counsel for the first respondent is in the case of Ankita Meena v. University of Delhi [Civil Writ Petition No.5194 of 2018, decided on 15.5.2018], which was in relation to the pursuit of LL.B Course and shortage of attendance involved therein.

28. The Delhi High Court, in the said case, agreed with the observations made by a learned Single Judge in Smt Deepti v. Vice Chancellor, University of Delhi, [W.P.(C) No.18051 of 2006, decided on 20.4.2007] and accepted the stand of the University that 1975 Rules would prevail and the Ordinances relied on would not apply. It was also recorded as a matter of fact that the candidate therein obtained 56% attendance and therefore, she was short of attendance and hence, ultimately, dismissed the writ petition. The judgment of the Delhi High Court, therefore, is not in favour of the first respondent, but against her. Learned counsel for the first respondent, however, submitted that the matter was taken up in Special Leave to Appeal (C) No.23898 of 2018 in the case of Dhananjay Kumar and others v. University of Delhi and others, where an interim order was

passed for declaring the results of the petitioner. The interim order dated 28.7.2020, on which heavy reliance has been placed, is quoted below:

"Having heard learned senior counsel appearing for the parties and upon perusal of the instant application for directions, we direct that the results of the present applicant/petitioner viz., Ankita Meena, for the IV and VI Semesters shall be declared by the respondent (s).
The instant application for directions stand disposed of accordingly.

List the main matter along with connected matter (s) for final hearing in due course."

29. In the above circumstances, even though the judgment of the High Court goes against the first respondent, we do not find any reason to apply the interim order of the Apex Court in any way to support the cause of the first respondent. Even otherwise, the interim order does not indicate any position of law declared by the Apex Court and the same cannot be treated either as a precedent or stare decisis. Thus, none of the judgments relied on by learned counsel for the first respondent comes to his aid.

30. Having cleared the deck of the legal issues, we find that the learned Single Judge has proceeded to allow the first respondent to undertake the examinations which she has undertaken, but her results are in jeopardy.

31. In the background aforesaid, once we find that the very admission of the first respondent is seriously under dispute and has to be decided by the learned Single Judge in W.P.No.4016 of 2018 that is pending consideration, we find that the interest of justice would be served by allowing the matter to be dependent upon the disposal of the aforesaid writ petition, but so far as the impugned judgment is concerned, we find it unsustainable, as the judgment has been delivered without taking notice of the aforesaid facts as well as law and without giving an opportunity to a proper and necessary party, namely, the Medical Council of India, to contest the matter relating to shortage of attendance.

32. Accordingly, we allow the appeal and set aside the impugned order dated 17.6.2020 to the extent it records the concession of the Pondicherry University and directs the University to condone the shortage of attendance of the first respondent. We, however, leave the issue of payment of fee clearance dues open, which would be subject to the outcome of W.P.No.17744 of 2019, but the main issue pertaining to the

validity of the admission of the first respondent will have to be adjudicated in W.P.No.4016 of 2018. We also leave the question of the percentage of attendance open to be adjudicated by the learned Single Judge with regard to the first respondent, as to whether it is 71%, or otherwise is capable of being construed as minimum of 80% as required under the Regulations, which will however be necessary in the event the first respondent succeeds in her writ petition viz., W.P.No.4016 of 2018. The declaration of the final results of the first respondent will therefore be dependent on the outcome thereof.

33. We further direct that the results of the examinations undertaken by the first respondent in terms of the impugned order shall remain in abeyance. We, accordingly, restore the Writ Petition No.8230 of 2020 to its original number and direct the appellant, Pondicherry University and the Medical Council of India to file their counter-affidavits in the writ petition that has given rise to this appeal. The Medical Council of India, through its appropriate authority shall stand impleaded in the writ petition and necessary corrections to that effect shall be carried out in the Memo of Writ Petition itself. The writ petition viz., W.P.No.8230 of 2020 on being restored shall now be clubbed along with W.P.No.4016 of 2018 and shall be heard simultaneously by the learned Single Judge. The appellant as well as the respondents may exchange their pleadings expeditiously so that the matter is not held up for final adjudication before the learned Single Judge.

With the said observations and directions, the appeal is partly allowed. No costs. Consequently, C.M.P.No.8153 of 2020 is closed.

Sd/-

Assistant Registrar (CS-III)

//True copy// सत्यमेव जयते

Sub Assistant Registrar

bbr

To

1. The Dean,
Sri Venkateshwaraa Medical College Hospital and Research
Centre,
No.13-A, Pondicherry-Villupuram Main Road,
Ariyur, Puducherry - 605 102.

2.The Registrar,
The Pondicherry University,
R.V.Nagar, Kalapet,
Puducherry - 605 014.

3. The Secretary,
Medical Council of India,
Sector VIII, Dwaraka Phase II,
New Delhi - 110 077.

Copy To

The Section Officer,
Judicial Section,
High Court, Madras.

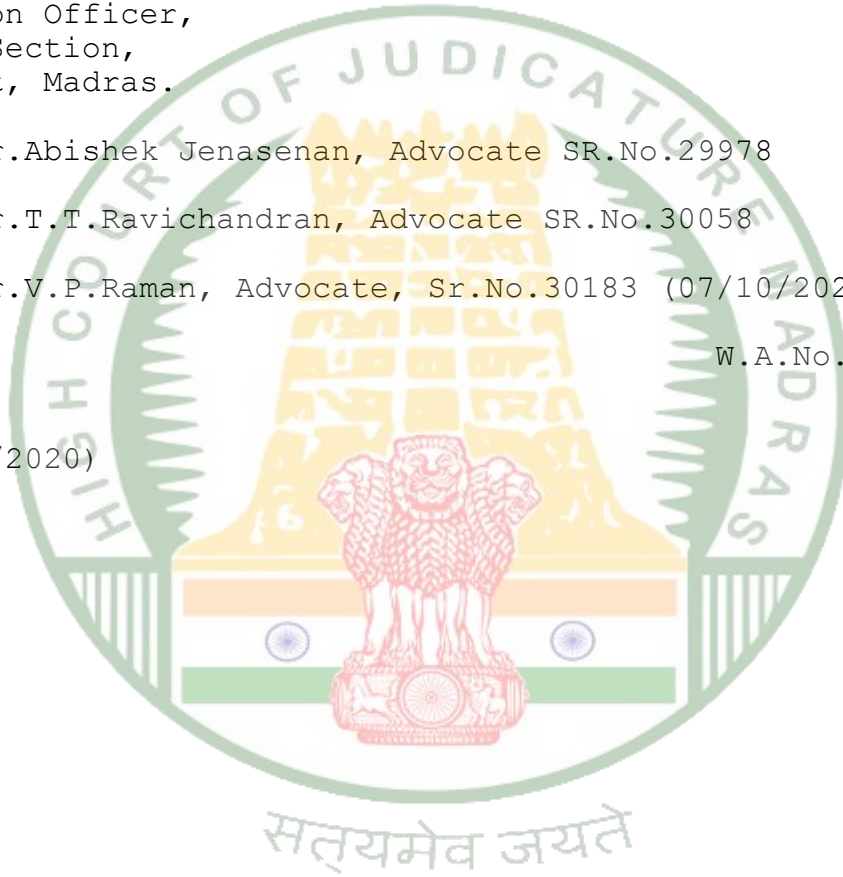
+2cc to Mr.Abishek Jenasenan, Advocate SR.No.29978

+1cc to Mr.T.T.Ravichandran, Advocate SR.No.30058

+1cc to Mr.V.P.Raman, Advocate, Sr.No.30183 (07/10/2020)

W.A.No.576 of 2020

AJS (CO)
GMY (23/09/2020)



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