

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 6179 OF 2021

Neha Raju More
and others

.. Petitioners

Versus

Union of India and others

.. Respondents

Mr. G. L. Gujar, Advocate for the Petitioners.
Mr. A. G. Talhar, ASG for Respondent No. 1.
Mr. N. V. Gaware, Advocate for Respondent No. 3.
Mr. K. C. Sant, Advocate for Respondent No. 4.
Mr. Alok Sharma, Standing Counsel for Respondent No. 5.
Respondent No. 2 is served.

WITH

WRIT PETITION NO. 6166 OF 2021

Utarkash Sunilbhai Sathe
and others

.. Petitioners

Versus

Union of India and others

.. Respondents

Mr. G. L. Gujar, Advocate for the Petitioners.
Mr. A. G. Talhar, ASG for Respondent No. 1.
Mr. K. C. Sant, Advocate for Respondent No. 3.
Mr. Alok Sharma, Standing Counsel for Respondent No. 4.

WITH

WRIT PETITION NO. 6648 OF 2021

Priyanka Dhanraj Kopnar
and another

.. Petitioners

Versus

Union of India and others

.. Respondents

Mr. A. V. Hon, Advocate for the Petitioners.
 Mr. A. G. Talhar, ASG for Respondent No. 1.
 Mr. K. C. Sant, Advocate for Respondent No. 2.
 Mr. Alok Sharma, Standing Counsel for Respondent No. 3.
 Mr. A. D. Sonkawade, Advocate for Respondent No. 4.

**WITH
 WRIT PETITION NO. 6458 OF 2021**

Priyanka Dhanraj Kopnar
 and another .. Petitioners

Versus

Union of India and others .. Respondents

Mr. A. V. Hon, Advocate for the Petitioners.
 Mr. A. G. Talhar, ASG for Respondent No. 1.
 Mr. K. C. Sant, Advocate for Respondent No. 3.
 Mr. Alok Sharma, Standing Counsel for Respondent No. 4.

**WITH
 WRIT PETITION NO. 6457 OF 2021**

Shruti Shriram Solunke .. Petitioner

Versus

Union of India and others .. Respondents

Mr. Ameya N. Sabnis, Advocate for the Petitioner.
 Mr. K. C. Sant, Advocate for Respondent No. 3.
 Mr. Alok Sharma, Standing Counsel for Respondent No. 4.

**WITH
 WRIT PETITION NO. 6380 OF 2021**

Priyanka Madhukar Pokale .. Petitioner

Versus

Union of India and others .. Respondents

Mr. Pawan K. Ippar, Advocate for the Petitioner.
 Mr. A. G. Talhar, ASG for Respondent No. 1.
 Mr. S. G. Karlekar, AGP for Respondent No. 2.
 Mr. K. C. Sant, Advocate for Respondent Nos. 3 & 4.

**WITH
WRIT PETITION NO. 7106 OF 2021**

Kalyani Pradeep Dighule .. Petitioner

Versus

Union of India and others .. Respondents

Mr. Ameya N. Sabnis, Advocate for the Petitioner.
Mr. A. G. Talhar, ASG for Respondent No. 1.
Mr. K. C. Sant, Advocate for Respondent No. 3.
Mr. Alok Sharma, Standing Counsel for Respondent No. 4.

**WITH
WRIT PETITION NO. 7290 OF 2021**

Suraj Sahebrao Narwade .. Petitioners
and others

Versus

Union of India and others .. Respondents

Mr. Ameya N. Sabnis, Advocate for the Petitioners.
Mr. A. G. Talhar, ASG for Respondent No. 1.
Mr. K. C. Sant, Advocate for Respondent No. 3.
Mr. Alok Sharma, Standing Counsel for Respondent No. 4.

**WITH
WRIT PETITION NO. 9520 OF 2021**

Ansari Mohammad Sarim Sabir Ahmed .. Petitioners
and another

Versus

Union of India and others .. Respondents

Mr. Rahul S. Pawar, Advocate for the Petitioners.
Mr. A. G. Talhar, ASG for Respondent No. 1.
Mr. Alok Sharma, Standing Counsel for Respondent No. 2.
Mr. K. C. Sant, Advocate for Respondent No. 3.

**CORAM : S. V. GANGAPURWALA &
R. N. Laddha, JJ.**

Date on which reserved for order : 05th October, 2021.

Date on which order pronounced : 29th October, 2021.

ORDER (*Per S. V. Gangapurwala, J.*) :

. The petitioners in all these writ petitions are the first year students of B.A.M.S. course in the respondent Ayurvedic college. The petitioners have failed to clear the first year in four years. They have exhausted all the attempts permissible. The petitioners seek directions against the respondents to allow them to appear for ensuing B.A.M.S. first year examination. In some of the petitions clauses 6(1)(c), 6(2)(c), 6(3)(c) and 6(4)(d) of regulation 5 of schedule I of Indian Medicine Central Council (Minimum Standard of Education in Indian Medicine) Regulations, 1986 (hereinafter referred to as 'Regulations of 1986') as amended vide Indian Medicine Central Council (Minimum Standard of Education in Indian Medicine) Amendment Regulation, 2016 (hereinafter referred to as 'Amendment Regulation of 2016') are also assailed. As all these writ petitions are based on similar set of facts and involve common question of law, to avoid rigmarole are decided by common judgment.

2. Clause 6 of the Amendment Regulation of 2016 is relevant.

Clauses 6(1)(c) and 6(4)(d) are relevant for the consideration. The failed student of the first professional examination is allowed to appear in the second professional examination, but the student shall not be allowed to appear in third professional examination unless the student passes all the subjects of first professional examination and maximum four chances shall be given to pass first professional examination within a period of maximum three years. The students failed in any of the four professional examinations in four chances shall not be allowed to continue his or her studies provided that, in case of serious personal illness of a student and in any unavoidable circumstances, the Vice Chancellor of the concerned University may provide one more chance in any one of four professional examinations.

3. In the present case, all the students have already exhausted additional chance within the discretionary powers of the Vice Chancellor and they are not allowed to appear for the first year B.A.M.S. examination inter alia are precluded from continuing with the B.A.M.S. course.

4. Mr. Gujar, Mr. Hon, Mr. Sabnis, Mr. Ippar and Mr. Pawar learned counsel for the petitioners in respective writ petitions canvass their submissions.

5. The substratum of the contentions of the learned counsel for the petitioners is that the regulations are discriminatory. There are no such limits on the attempts for M.B.B.S., B.D.S. and B.A.M.S. courses and these courses also are after passing 12th science exam and are relating to the jurisdiction of health university as well as National Medical Commission. As per existing regulations a BDS student is allowed to complete the course within nine years and MBBS student is allowed to complete the course in 10 years. However, for MBBS and BDS courses there are no restrictions on the number of attempts for passing the first year. The BHMS course is given differential treatment. The learned counsel further submit that the year 2020-2021 is an extraordinary year on account of COVID-19 pandemic and the lock-down. The learned counsel further submit that all the courses under the health university and the Indian Medicine Commission should be given the same treatment. There should be no discrimination. The learned counsel relied upon the judgment of the Apex Court in a case of *Shri Krishnan Vs. The Kurukshetra University, Kurukshetra* reported in *1976 1 SCC page 311* and another judgment of the Apex Court in a case of *Guru Nanak Dev University Vs. Sanjay Kumar Katwal and Another* reported in *(2009) 1 SCC 610*. The petitioners are not guilty of misrepresentation. As the petitioners are allowed to continue the respondents now cannot preclude the petitioners from continuing with

the course.

6. The learned counsel also sought to buttress their submissions by suggesting that a person passing the BAMS course is equally competent for the post of Medical Officer Block-A as a person passing MBBS course and is placed in the same pay scale. In view of that, there is no reason to discriminate. The learned counsel submit that when the outer limit of nine years is provided to pass the course, there is no rational nexus in limiting four attempts for the first year. In any case, the student has to complete the course within nine years as such, limiting the number of attempts for each year may not be necessary and would not serve any purpose.

7. The learned counsel for the petitioners also rely on the judgment of the Division Bench of this Court at Aurangabad dated 10.10.2013 in Writ Petition No. 3391 of 2013 with other connected writ petitions and submit that this Court in the said case had set aside the ordinance prohibiting the limit of attempts to pass the first year BAMS course.

8. Mr. Sant, Mr. Sharma, Mr. Talhar, Mr. Gaware, and Mr. Sonkawade learned counsel for the respondents submit that the Amendment Regulation of 2016 have been framed in exercise of powers conferred under sub-section 1 of Section 36 of Indian Medicine

Central Council Act 1970 (hereinafter referred to as 'Act of 1970'). These petitioners are not serious towards their academics. They could not clear the first year in five attempts i.e. four attempts under the rules and one attempt under the discretionary powers of Vice Chancellor. The regulations are framed with an aim of producing graduates having profound knowledge of Ayurveda as well as the knowledge of scientific advances in modern medicine. The quality of education has to be maintained. The students particularly in medical education after becoming graduates will deal with the life of the people. The petitioners at the time of getting admission were aware of the existence of the Amendment Regulation of 2016. The Division Bench of this court under interim order dated 03.12.2013 in Writ Petition No. 4720 of 2012 had observed about no end to the number of chances provided under the Indian Medicine Central Council (minimum standards of Education in Indian Medicine) (Amendment) Regulation, 2012 (hereinafter referred to as 'Amendment Regulations of 2012') and expected an affidavit from the authorities that how a student despite failing in the first attempt endlessly go on appearing in the examination without any limit on their chance to reappear. The learned counsel relies on the judgment of the Apex Court in a case of ***Rachna and others Vs. Union of India and Another*** reported in **(2021) 5 SCC 638**. In the said case, the Apex Court in spite of pandemic did

not allow an additional attempt as the relaxation is not permissible in the rules. The reliance is also placed on the judgment of the Division Bench of the Gujarat High Court in a case of *Dharmina Dineshbhai Patel Vs. Central Council of Indian Medicine Through Chairman* dated 05.04.2021 in R/Special Civil Application No. 3818 of 2021 with R/Special Civil Application No. 4847 of 2021. In the said case also, further attempt was not allowed and challenge was also to the same rules.

9. We have considered the submissions canvassed by the learned counsel for the respective parties.

10. The Regulations of 1986 are amended by the Amendment Regulation of 2016 by the Central Council of Indian Medicine with the previous sanction of Central Government in exercise of powers conferred by Clauses (i), (j) and (k) of sub-section 1 of Section 36 of the Act of 1970. Schedule I of the regulation 5 of the Regulation of 1986 was substituted by the Amendment Regulation of 2016. Rule 6 of the Schedule I prescribes the scheme of examination and it reads as under :

6. Scheme of examination – (1) (a) The first professional session shall ordinarily start in July and the first professional examination shall be at the end of one academic year of first professional session;

(b) The first professional examination shall be held in the following subjects, namely :-

- (i) Padarth Vigyan evam Ayurved Itihas;
- (ii) Sanskrit;
- (iii) Kriya Sharir (Physiology);
- (iv) Rachana Sharir (Anatomy); and
- (v) Maulik Siddhant evam Ashtanga Hridaya (Sutra Sthan);

(c) The failed student of first Professional shall be allowed to appear in second professional examination, but the student shall not be allowed to appear in third professional examination unless the student passes all the subjects of first professional examination and maximum four chances shall be given to pass first professional examination within a period of maximum three years.

(2) (a) The second professional session shall start every year in the month of July following completion of first professional examination and the second professional examination shall be ordinarily held and completed by the end of month of May or June every year after completion of one year of second professional session;

(b) The second professional examination shall be held in the following subjects, namely ;-

- (i) Dravyaguna Vigyan (Pharmacology and Materia Medica);
- (ii) Rasashastra evam Bhaishajya Kalpana (Pharmaceutical Science);
- (iii) Roga Nidan evam Vikriti Vigyan (Diagnostic Procedure and Pathology); and
- (iv) Charak Samhita-Purvardh (and ancient Ayurvedic text, Part-I);

(c) The failed student of second second professional who have passed all the subjects of first professional examination shall be

allowed to appear in third professional examination, but the student shall not be allowed to appear in final professional examination unless the student passes all the subjects of second professional examination and maximum four chances shall be given to pass second professional examination within a period of maximum three years.

(3) (a) The third professional session shall start every year in the month of July following completion of second professional examination and the third professional examination shall be ordinarily held and completed by the end of the month of May or June every year after completion of one year of third professional session;

(b) The third professional examination shall be held in the following subjects, namely ;-

- (i) Agad Tantra Vyavahar Ayurveda evam Vidhi Vaidyaka (Toxicology and Medical Jurisprudence);
- (ii) Charak Samhita-Uttarardh (an ancient Ayurvedic text, Part-II);
- (iii) Swasthavritta and Yoga (Preventive and Social Medicine and Yoga);
- (iv) Prasuti evam Striroga (Obstetrics & Gynaecology); and
- (v) Bal Roga (Paediatrics);

(c) The failed student of third professional who have passed all the subjects of first and second professional examinations shall be allowed to appear in final professional examination and maximum four chances shall be given to pass third professional examination within a period of maximum three years.

(4) (a) The final professional session shall be of one year and six months duration and shall start every year in the month of July following completion of third professional examination and the final professional examination shall be ordinarily held and

completed by the end of month of October or November every year after completion of one year and six months of final professional session;

(b) The final professional examination shall comprise of the following subjects, namely ;-

- (i) Shalya Tantra (General Surgery);
- (ii) Shalakya Tantra (Diseases of Head and Neck including Ophthalmology, Ear, Nose, Throat and Dentistry);
- (iii) Kayachikitsa (Internal Medicine-including Manas Roga, Rasayan and Vajikarana);
- (iv) Panchakarma; and
- (vi) Research Methodology and Medical-statistics;

(c) Research Methodology shall remain in the department of Samhita, Siddhant but for the purpose of teaching, Bio-statistician shall be required as part time to teach Research Methodology;

(d) The student failed in any of the four professional examinations in four chances shall not be allowed to continue his or her studies :

Provided that, in case of serious personal illness of a student and in any unavoidable circumstances, the Vice Chancellor of the concerned University may provide one more chance in any one of four professional examinations;

(e) To become eligible for joining the compulsory internship programme, all four professional examinations shall be passed within a period of maximum nine years including all chances as mentioned above.

11. The petitioners are admitted to the BAMS course after introduction of the Amendment Regulation 2016. On the date of

admission to the BAMS course, they were aware of the existing rules. In 2019, Regulations on Graduate Medical Education Regulations (Amendment), 2019 are amended and MBBS student is also required to pass first year in four permissible attempts.

12. The Regulation 2016 are introduced with the object that the bachelor of Ayurveda education shall produce graduate having sound knowledge of Ayurveda so as to become efficient physician and surgeon competent to serve the people.

13. It is worth considering that the petitioners have admittedly not been able to clear the first year in four attempts, they were also given the benefit of discretionary powers of the Vice Chancellor of the fifth attempt. They could not clear the first year in the fifth attempt also. The Apex Court in a case of ***State of Maharashtra Vs. Sant Dnyaneshwar Shikshan Shastra*** held that possibility of simultaneous obedience is not a relevant test for finding out the repugnancy.

14. The controversy in the matter is set to rest by the Division Bench of the Gujarat High Court in a case of ***Dharmina Dineshbhai Patel*** (supra). It held the rule 6 of the Amendment Regulation of 2016 to be valid and does not amount to discrimination.

15. In academic matters the powers of judicial review of this Court

would be in a narrow campus. It has been observed by the Apex Court in a case of *Maharashtra State Board of Secondary and Higher Secondary Education and another Vs. Paritosh Bhupesh Kurmarsheth* reported in *AIR 1984 SCC 1543* that the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and departments controlling them.

16. The Amendment Regulation 2016 is a subordinate piece of legislation. These rules are promulgated by the Central Council of Indian Medicines in exercise of powers conferred by Clauses (i), (j) and (k) of Section 36 of the Act of 1970 and after obtaining previous sanction of the Central Government. The subordinate legislation can be challenged only on the grounds a statutory legislation can be assailed. The regulations/legislation can be challenged on two grounds (i) the legislation framed is in excess of authority, (ii) is arbitrary and unreasonable that no man of reasonable and ordinary prudence would accept it. The amendment regulations as observed supra are notified with the sanction of the Central Government as per the powers conferred by clauses (i), (j) and (k) of sub-section 1 of Section 36 of the Act of 1970 by the Central Council of Indian Medicine ergo such

regulations cannot be held to be beyond the legislative powers or competence. The regulation is framed with an aim and object that the students should take their course sincerely and become competent graduates who deal with the life of the patients. The said Regulation 2016 is not arbitrary, unreasonable nor smacks of malafides.

17. The Apex Court in a case of *Rachna and others Vs. Union of India* (supra) observed as under :

"It is the settled principle of law that policy decisions are open for judicial review by this Court for a very limited purpose and this Court can interfere into the realm of public policy so framed if it is either absolutely capricious, totally arbitrary or not informed of reasons. In the present case, we do not find that the policy framed is unreasonable or arbitrary.

18. In a case of *Padmanabh Ratnakar Muley and others Vs. The State of Maharashtra and others* in Writ Petition No. 3391 of 2013 with other connected writ petitions decided on 10.10.2013 relied by the petitioners, the Division Bench of this Court held that the University had no authority to frame any regulations limiting the attempts when in fact, Amendment Regulations of 2012 did not provide for it. In the present case Amendment Regulation of 2016 itself limit the number of attempts.

19. It has been held by the Apex Court in a case of ***Ashutosh Gupta Vs. State of Rajasthan and others*** reported in ***(2002) 4 SCC 34*** that if a law has to be struck down as violative of Article 14 of the Constitution of India, the inequality must arise under the same piece of legislation or under the same set of laws, which have to be treated together as one enactment. In the said case, it is held that the students prosecuting MBBS and BDS courses cannot be equated together and have always been treated differently. Merely because object is common, the two heterogeneous classes cannot be clubbed together. In the present cases, the challenge of the petitioners on the ground of discrimination due to absence of any such ceiling in the MBBS or the BDS course discipline is unsustainable and misconceived.

20. In light of the aforesaid, the challenge to the regulations shall fail. The regulation 6 of the Amendment Regulations of 2016 is not arbitrary, nor ultra virus to the constitution.

21. In view of the aforesaid, no relief can be granted to the petitioners. Writ petitions, as such stand dismissed. No costs.

(R. N. Laddha)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

PS.B.