

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10294 OF 2022
(Jivan Julalsing Parihar Vs. The National Medical Commission, Through
its Secretary and others)

Mr.G.G.Kadam, Advocate for the petitioner.
Mr.S.K.Kadam, Advocate for respondent No.1.
Mr.S.G.Karlekar, AGP for respondent/State.

(CORAM : RAVINDRA V. GHUGE AND
SANJAY A. DESHMUKH, JJ.)

DATE : OCTOBER 13, 2022

PER COURT :

1. The petitioner has put forth prayer clauses B and C as under :-

"B. Record and proceedings may kindly be called for.

C. This Hon'ble Court may kindly be pleased to issue a writ in the nature of mandamus or any other appropriate writ, order or direction to the respondent Nos. 1 and 3 to give one last chance to the petitioner by way of 5th attempt to appear for supplementary exam. of Biochemistry subject Paper-I and II of MBBS 1st year (Batch-2019) to be held in 2023."

2. We have considered the extensive submissions of the learned Advocates for the petitioner and respondent No.1 and the learned AGP. We have perused the petition paper book with their assistance. It is

contended in ground (VIII) on page 7, that the petitioner's case may be treated as a mercy request which was put forth before the University.

3. The learned Advocate for the petitioner, while addressing the Court, has not disputed that the 2019 Rules permit only 4 attempts for one academic year in the MBBS course. The petitioner obtained admission to the MBBS course with respondent No.4 Medical College and Hospital in September 2019. Following is the record of his 4 attempts taken for the first year examination :-

[a] The first attempt was in the examinations held in December 2020.

[b] The second attempt was in the examinations held in June 2021,

[c] The third attempt was practically after one year in the examinations held in March 2022.

[d] The 4th attempt was in the examinations held in July 2022.

4. There is no dispute that the petitioner can take only 4 attempts. It is also submitted that the petitioner has forwarded a mercy application to respondent No.4 to consider whether the College can allow a 5th attempt to the petitioner.

5. We can not go into the wisdom of the policy decision taken by the

competent authorities in mandating 4 attempts for a student. We also cannot modify the rules by issuing a direction, when the Rules do not prescribe a 5th attempt. In so far as the mercy request that the petitioner has made to the Medical College, we wonder, whether the Medical College, which is affiliated to the Maharashtra University of Health Sciences could come out with such a decision to allow a 5th attempt to an MBBS student, *de-hors* the rules.

6. The learned Advocate for the petitioner concedes that the petitioner never inquired as to how many attempts in each year were permissible, when he got his admission to the MBBS course in September 2019. He now states that he gathered knowledge about the maximum attempts permissible under the regulations owing to the circular dated 17.06.2022 issued by the Maharashtra University of Health Sciences which directed the Medical Colleges in the State of Maharashtra to make each student aware of the maximum 4 attempts permissible. The learned Advocate, therefore, submits that this petition may be treated as a mercy petition and it be recorded that the petitioner was made aware of the maximum 4 attempts by the circular dated 17.06.2022.

7. Rule 11.2.6 and 11.2.7 of the 2019 Regulations read as under :-

"11.2.6 : A learner shall not be entitled to graduate after 10 years of his/her joining of the first part of the MBBS course.

11.2.7 : (a) 2 : A maximum number of four permissible attempts would be available to clear the First Professional University Examination, whereby the First professional course will have to be cleared within 4 years of admission to the said course. Partial attendance at any University Examination shall be counted as an availed attempt."

8. We are surprised by the submission made by the learned Advocate for the petitioner that while he was preparing for his 4th attempt in July 2022, he came to know because of the circular that the 4th attempt could be his last attempt. We have no reason to entertain such argument, since the ignorance of the Regulations cannot be an excuse. When the Regulations do not permit a 5th attempt, we would not entertain this petition.

9. In the light of the above, this petition cannot be entertained and the same is, therefore, dismissed.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE, J.)