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WP No.10761 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2023

CORAM

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P. No.10761 of 2022
and
W.M.P. No.10398 of 2022

S.Divya

... Petitioner

Versus

1.The National Medical Commission,
rep. by its President,
Pocket 14, Section 8,
Dwarka, Phase I,
New Delhi – 110 011.

2.The Tamil Nadu Dr. MGR University,
rep. by its Registrar,
69, Anna Salai,
Guindy, Chennai – 600 032.

3.The Controller of Examinations,
Tamil Nadu Dr. MGR University,
69, Anna Salai,
Guindy, Chennai – 600 032.

4.The Trichy SRM Medical College Hospital and
Research Centre rep. by its Dean,
Irungalur, Trichy – 621 105.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus directing the respondents 2 to 4 to conduct a supplementary clinical examination on any date to enable the



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petitioner to clear her MD Pathology Course, since she was prevented from attending the clinical examination held on 31.08.2020, by providing an opportunity as per the Advisory Note No.MNC/MCI-23(1)2021/Med/009831 dated 21.06.2021 issued by the first respondent, by considering her representations dated 30.09.2020 and 25.08.2021.

For Petitioner : Mr.N.Manokaran

For Respondents : Ms.Subaranjani Ananth for R1

Mr.Elayaraj Kumar for
M/s.Ramalingam Associates
for R2 and R3

Mrs.Sarashwathy,
Senior Panel Counsel for R4

ORDER

This petition has been filed seeking a direction to the respondents 2 to 4 to conduct a supplementary clinical examination on any date to enable the petitioner to clear her MD Pathology Course, since she was prevented from attending the clinical examination held on 31.08.2020, by providing an opportunity as per the Advisory Note No.MNC/MCI-23(1)2021/Med/009831 dated 21.06.2021 issued by the first respondent, by considering her representations dated 30.09.2020 and 25.08.2021.

<https://www.mhc.tn.gov.in/judis> 2. It is the case of the petitioner that she has been completed her MBBS



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in Vinayaga Medical College, Karaikkal in the year 2004-2010. Thereafter, she has applied for post-graduation and got admission in MD Pathology in the 4th respondent college pursuant to the admission slip issued dated 08.06.2015. The petitioner successfully completed her MD course, but she could not clear the clinical examination in May 2018 as she has underwent Caesarean section delivery. Due to her family situation, she could not clear the exams. When the petitioner appeared for the exam in Tanjore on 31.08.2020, she was not allowed to enter the exam hall for want of Covid-19 RTPCR Test. Subsequently, the petitioner went to her native and collect her Covid-19 test report. After production of the result, she was permitted to participate in other examinations. Thereafter, the petitioner submitted a representation in person dated 30.09.2020 to the second respondent, who after appraising the entire conduct of the petitioner, assured to conduct a clinical exam after convening an appropriate board meeting at the University. Meanwhile, the first respondent issued an Advisory Note dated 21.06.2021 in view of the Covid-19 cases. Due to inaction from the second respondent, the petitioner sent a representation dated 25.08.2021 to the respondents 2 and 3 by reiterating her grievance. Without considering the same, the 3rd respondent sent a communication to the petitioner dated 13.10.2021 by referring to MCI norms prescribed by the first respondent. Without having any option, the petitioner



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has filed the present writ petition.

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3. The learned counsel for the petitioner submitted that the petitioner has cleared all her theory subjects. Merely non production of the RTPCR Test report, the petitioner was prevented for writing the clinical examination, which is not sustainable one. Therefore, this Court may issue a direction to the second respondent to conduct the fresh clinical examination to enable the petitioner to complete the MD Course.

4. The learned counsel appearing for the first respondent submitted the reply affidavit and the relevant paragraphs are extracted hereunder:

"11. It is further submitted that the petitioner now after once again appearing in the Final University Examination held on 2021, wherein she has been declared failed in the Theory Paper and resultantly failed in the Final University Examination in 2021 also, cannot rake the issue of her not being permitted to attend the Clinical Examination held on 31.08.2020. The petitioner is estopped by her own conduct in appearing in the next Final University Examination held on 2021, from claiming any relief on the basis of her not being permitted to attend the clinical Examination held on 31.08.2020 and in any event, now the petitioner has passed the Clinical Examination in 2021, but



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has failed in the Theory Paper. The present writ. petition deserves to be rejected on this ground atone. It is prayed accordingly.

12. It is respectfully submitted that it is an admitted position that the petitioner has been consistently failing in the Theory Paper in the Final. University Examination held in May 2018, October 2018, May 2019, October 2019 and January 2021, thus, it appears that due to certain extraneous reasons the petitioner was able to pass in the Theory Paper in August, 2020 and is willing to forgo her passing the Clinical Examination in January 2021 and seek a Supplementary Clinical Examination to be held in reference with the Clinical Examination wherein she was unable to attend on 31.08.2022 as it would be apparent to the petitioner that she would be unable to qualify in the Theory Papers in the future Final University Examination also. The present writ petition deserves to be rejected on this ground atone. It is prayed accordingly.

13. It is humbly submitted that in any event a perusal of Regulation 14 of Post Graduate Medical Education Regulations, 2000 would demonstrate that the Theory Papers and the Practical Examination have to be maladroitley pass as a whole in the same attempt i.e. the Main Final Year Examination or the Supplementary Examination and that there is no provision for permitting candidates to pass the



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Final University Examination in a piece meal manner wherein they will selectively qualify in the 4 Theory Papers and subsequently pass the Practical Examination. Thus, the prayer sought for in the present writ petition is entirely contrary to the Statutory Regulations of the answering respondent in this regard. The present writ petition deserves to be rejected on this ground alone. It is prayed accordingly.

5. The respondents 2 and 3 have filed their counter and the relevant paragraphs are extracted hereunder:

"6. ...she appeared in the examination conducted during October 2020. She had failed in the theory examination obtaining marks 151/400. She had passed in the practical examination obtaining 133/300. She did not appear in the examinations conducted during May 2021 and 2021.

.....

12. I further submit that the petitioner was allowed for all the components of the examination and marks were allotted based on her performance in the examinations. As far as the practical exams are concerned the same were conducted by the respective centers and the university could view the marks only after appropriate entries were made by the institution. Hence, these respondents submit that the issue of not allowing the petitioner for a practical examination does not come under the purview of the University as the University has no role in the same. "



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6. Heard the learned counsel on either side and perused the materials available on record.

7. The facts in the present case are not in dispute. Admittedly the petitioner joined MD course and the period of the course came to be ended in the year 2019. Due to personal issues, the petitioner has not attend her clinical examination.

8. The prayer sought for by the petitioner that she shall be allowed to write the practical alone and consider the pass theory of May 2020 session which was held in August 2020 is completely contrary to the norms. As per NMC, obtaining a minimum of 40% marks in each theory paper and not less than 50% cumulatively in all the 4 papers for degree examination is a must. Obtaining 50% marks in practical examination shall be mandatory for passing the examinations. Both the written and clinical are components of the total marks. As per the norms, every candidate shall secure not less than 50% marks in each paper, which shall be included in theory and practical, including clinical and viva voice examination. Therefore, the prayer sought for by the petitioner cannot be granted.



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9. However, liberty is granted to the petitioner to make a fresh application before the second respondent for participation of the entire theory examination as well as the clinical examination in July 2023. Upon receipt of such application, the second respondent University shall allow the petitioner to participate in the examinations as a whole to clear the MD course.

10. With the above directions, the writ petition is disposed of . No costs. Consequently, connected miscellaneous petition is also closed.

27.04.2023

Index : Yes/No
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To

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