HIGH COURT OF JUDICATURE AT BOMBAY

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8167 OF 2006

1. Ravi Shinde, age 20 years, residing at Hostel No.4, Government Medical College, Nagpur.
2. Amit Baheti, age 20 years, residing at Subhash Hostel, Indira Gandhi Government Medical College, Nagpur.
3. Rajeev Shukla, age 21 years, Residing at Boys' Hostel, Indira Gandhi Government Medical College, Nagpur.
4. Sachin Rathod, age 21 years, residing at Hostel No.4, Government Medical College, Nagpur.
5. Amol Ravankar, age 20 years, residing at Boys ostel, Indira Gandhi Government Medical College, Nagpur.
6. Ashish Bhagat, age 20 years, residing at Boys' Hostel No.4, Government Medical College, Nagpur.
7. Krishna Thackrani, age 20 years, residing at Boys' Hostel No.4, Government Medical College, Nagpur.
8. Pravin Murley, age 20 years, residing at Boys' Hostel No.4, Government Medical College, Nagpur.

::: Downloaded on - 20/05/2019 12:34:18 :::

HIGH COURT OF JUDICATURE AT BOMBAY

9. Vijay Bayaskar, age 20 years, residing at Boys' Hostel, Indira Gandhi Government Medical College, Nagpur.) ... Petitioners

Versus

1. Medical Council of India, Pocket 14, Sector 68, Dwarka, New Delhi – 110 075.)
2. The Deputy Registrar, Maharashtra University of Health Sciences, Nashik, having regional office at Government Dental College Building, 4th floor, St. Georges' Hospital Near C.S.T. Railway Station, Mumbai – 400 001.) ... Respondents

Mr. Pravin Singh h/f V.M. Thorat for the petitioners.

Ms. Simran Puri for respondent 1.

Mr. R.V. Govilkar for respondent 2.

CORAM : SMT. RANJANA DESAI &
SMT. ROSHAN DALVI, JJ.

DATE ON WHICH THE JUDGMENT RESERVED : 20TH NOVEMBER, 2007.

DATE ON WHICH THE JUDGMENT PRONOUNCED : 19TH DECEMBER, 2007.

::: Downloaded on - 20/05/2019 12:34:18 :::

HIGH COURT OF JUDICATURE AT BOMBAY

JUDGMENT : (Per Smt. Ranjana Desai, J.)

1. The case of the petitioners is that after passing their 12th standard examination, they were selected for MBBS course in the year 2005 in their respective colleges and all of them, thereafter, pursued the first MBBS course. They appeared for the examination conducted in or about 3/7/2006. All the petitioners failed in the said regular examination. Thereafter, they took the next supplementary examination conducted in or about November, 2006 and passed the said examination. The grievance of the petitioners is that respondent 2-University ought to have allowed the petitioners, after passing their first supplementary MBBS examination to join the regular batch or the main batch of the second MBBS course. According to the petitioners, they should have been allowed to take the second MBBS professional examination along with the students of the regular batch who had passed their first MBBS professional examination.

2. We have heard learned counsel appearing for the petitioners at great length. He has relied on Regulation 7(7) of the Regulations on Graduate Medical Education, 1997 of the Medical

::: Downloaded on - 20/05/2019 12:34:18 :::

HIGH COURT OF JUDICATURE AT BOMBAY

Council of India (for short, "the 1997 Regulations"). It reads thus:

> *"7. Training Period and Time Distribution.*
>
> *(1) xxx xxx xxx*
>
> *(2) xxx xxx xxx*
>
> *(3) xxx xxx xxx*
>
> *(4) xxx xxx xxx*
>
> *(5) xxx xxx xxx*
>
> *(6) xxx xxx xxx*
>
> *(7) "Supplementary examination may be conducted within 6 months so that the students who pass can join the main batch and the failed students will have to appear in the subsequent year".*

3. Learned counsel for the petitioners contended that supplementary examination has to be conducted by the University within six months. Regulation 7(7) clearly states that students who pass in the supplementary examination can join the main batch. Only the failed students will have to appear in the subsequent year. He submitted that Regulation 7(7) is framed with the specific object of saving six months of a student failing in regular examination so

::: Downloaded on - 20/05/2019 12:34:18 :::

HIGH COURT OF JUDICATURE AT BOMBAY

that after passing in supplementary examination, he can be promoted to the second MBBS course along with the regular batch. If Regulation 7(7) is not so interpreted, the regular batch will enter post graduate course much earlier. Learned counsel submitted that students like the petitioners who are not allowed to join the regular batch of second MBBS course are treated as an odd batch. He submitted that it is, therefore, necessary to direct the respondents to allow the petitioners to join the second MBBS course along with the regular batch and to allow them take the second MBBS regular examination along with the regular batch. It is also contended that as per Regulation 7(7), supplementary examination is to be conducted within 6 months so that the students who pass can join the main batch. Hence, the examination must be conducted immediately and results also should be declared immediately. In this case, examination though was conducted within six months, it was conducted as late as in November/December, 2006 and results were declared somewhere in January, 2007, thus defeating the very object of this rule.

4. We have also heard learned counsel for the Medical Council

::: Downloaded on - 20/05/2019 12:34:18 :::

HIGH COURT OF JUDICATURE AT BOMBAY

of India. She has drawn our attention to the affidavit in reply filed by Ashok Kr. Harit, Deputy Secretary, Medial Council of India, New Delhi. She has also drawn our attention to the judgments of the Punjab & Haryana High Court, Madhya Pradesh High Court and Andhra Pradesh High Court wherein Regulation 7 has been interpreted. She submitted that the failed students cannot be permitted to join the regular batch and take second MBBS professional examination along with the regular batch. That will put those students on par with meritorious students who pass the examination at the first attempt. She submitted that the failed students constitute a different batch for the purpose of appearing for the second MBBS professional examination. They have to complete three semesters and this requirement cannot be by-passed by permitting them to join the regular batch and take examination along with them in case they pass the supplementary examination.

5. In his affidavit, Ashok Harit, the Deputy Secretary, Medical Counsel of India has stated that the 1997 Regulations prescribe that an MBBS student before being permitted to appear in the second MBBS professional examination is mandatorily obliged to

::: Downloaded on - 20/05/2019 12:34:18 :::

HIGH COURT OF JUDICATURE AT BOMBAY

undergo 18 months teaching and training. As per the 1997 Regulations, supplementary examination is held within six months. By the time, the supplementary examination is held, the students of the main batch have already undergone about six months of their teaching and training in the second MBBS professional course. If the failed students are permitted to join the main batch upon their qualifying the first MBBS supplementary examination, they would have already missed out about six months of their teaching and training in the second MBBS course. Obviously, therefore, they cannot be permitted to take examination with the regular students because by that time, they would not complete the required 18 months teaching and training. This would be contrary to the statutory and mandatory regulations of the Medical Council of India.

6. Before we deal with the rival contentions, we must refer to the observations of the Supreme Court in ***State of Kerala v. T.P. Roshana (1979) SCC 580***. In that case, the Supreme Court has described the role which the Medical Council of India is expected to play in the field of medical education. We may quote the relevant

::: Downloaded on - 20/05/2019 12:34:18 :::

HIGH COURT OF JUDICATURE AT BOMBAY

observations of the Supreme Court.

> "The Indian Medical Council Act, 1956 has constituted the Medical Council of India as an expert body to control the minimum standards of medical education and to regulate their observance. Obviously, this high-powered Council has power to prescribe the minimum standards of medical education. It has implicit power to supervise the qualifications or eligibility standards for admission into medical institutions. Thus, there is an overall invigilation by the Medical Council to prevent sub-standard entrance qualifications for medical courses."

7. Thus, the Medical Council of India is an expert body entrusted with the task of ensuring that standard of medical education in India is maintained. It is a high powered council which controls the minimum standard of medical education and regulates their observance. Section 33 of the Medical Council of India Act, 1956 (for short, "the said Act") confers power on the Medical Council of India to make regulations with previous sanction of the Central Government to carry out the purpose of the said Act. It must be borne in mind that the 1997 Regulations with which we are concerned are framed by the Medical Council of India in exercise of powers conferred by section 33 of the said Act.

::: Downloaded on - 20/05/2019 12:34:18 :::

HIGH COURT OF JUDICATURE AT BOMBAY

8. In ***Dr. Preeti Srivastava v. State of M.P. (1999) 7 SCC 120***, the Supreme Court was dealing with the question whether it was open for the State to prescribe different admission criteria for special category candidates. While dealing with this question, the Supreme Court has reaffirmed the view taken by it in ***Ajay Kumar Singh v. State of Bihar (1994) 4 SCC 401*** that Medical Council Regulations have a statutory force and are mandatory.

9. It is necessary to read the 1997 Regulations in the light of the above observations of the Supreme Court.

10. Regulation 7(1) of the 1997 Regulations states that every student has to undergo a period of certified study extending over 4½ academic years divided into 9 semesters (i.e. 6 months each). Regulation 8 states the phase distribution and timing of examination. Phase I consists of 2 semesters. First MBBS professional examination is held during the 2nd semester of Phase I. Phase II consists of 3 semesters i.e. 18 months. Second MBBS professional examination is to be held during 5th semester of Phase

::: Downloaded on - 20/05/2019 12:34:18 :::

HIGH COURT OF JUDICATURE AT BOMBAY

II. Therefore, before a student takes second MBBS professional examination, he has to complete 18 months' mandatory training. A student who passes first MBBS professional examination held in the 2nd semester of Phase I can take second MBBS professional examination held in the 5th semester because he completes 18 months' mandatory training. A student who fails in the first MBBS professional examination held during the 2nd semester of Phase I cannot even proceed to Phase II training. Regulation 8(a) states that passing in first MBBS professional examination is compulsory before proceeding to Phase II training. Therefore, such a student has to take supplementary examination and pass the first MBBS professional examination. By the time, such a student passes the supplementary examination, Phase II training for second MBBS professional examination would have already begun. Such a student, therefore, cannot complete 18 months of mandatory training to be eligible to take second MBBS professional examination which is held during 5th semester. He cannot join the main batch and take second MBBS professional examination with them. He will have to join a batch consisting of other students who have similarly passed the supplementary examination and take examination with them after 18 months of mandatory training.

::: Downloaded on - 20/05/2019 12:34:18 :::

HIGH COURT OF JUDICATURE AT BOMBAY

Regulation 7(7) will have to be construed harmoniously having regard to the fundamental concept of training period and time distribution of the medical education laid down in the 1997 Regulations. Since Regulation 7(7) states that supplementary examination may be conducted within six months, University cannot be asked to hold it immediately after declaration of results. Besides, the scheme of the relevant regulations is such that even if it is held soon after the results of the first MBBS professional examination are declared, the failed students cannot take the second MBBS professional examination with the students of the regular batch after the results of the supplementary examination are declared.

11. In this connection, we may refer to the judgment of the Supreme Court in ***Council of Homeopathic System of Medicine, Punjab & Ors. v. Suchintan & Ors., JT 1993 (3) SC 727***, because though it deals with students who were doing diploma in Homeopathic Medicine, similar arguments were advanced in that case and somewhat similar Regulations were considered by the Supreme Court. The respondents had joined the Homeopathic

::: Downloaded on - 20/05/2019 12:34:18 :::

HIGH COURT OF JUDICATURE AT BOMBAY

Medical College, Chandigarh in the year 1987 to secure a diploma in Homeopathic Medicine and Surgery (for short, “DHMS”). The said course is of a duration of four years. It is divided into 3½ years of academic study and six months of internship. The course of study, its duration and the scheme of examination are regulated by the Homeopathy (Diploma Course) DHMS Regulations, 1983 framed by the Central Council of Homeopathy under section 20 of the Homeopathy Central Council Act, 1973. Regulation 8 talks of first DHMS examination. That examination has to be held at the end of 12 months of the course. Regulation 9 deals with second DHMS examination. It states that no student shall be admitted to the second DHMS examination unless he has passed first DHMS examination at the end of one year and he has attended course of instruction for a period of at least one year subsequent to his passing first DHMS examination. It further states that second DHMS examination shall be held at the end of two years of DHMS course. Regulation 11(iv) states that a candidate who appears at the examination but fails to pass may take supplementary examination held ordinarily after six weeks from the publication of the first examination results. Regulation 11(v) states that if a candidate obtains pass marks in supplementary examination or the

::: Downloaded on - 20/05/2019 12:34:18 :::

HIGH COURT OF JUDICATURE AT BOMBAY

subsequent examination, he shall be declared to have passed at the examination as a whole. Regulation 10 deals with third DHMS examination. A student can take that examination 1½ years subsequent to the passing of the second DHMS examination.

12. The respondents appeared in the first year DHMS annual examination in June, 1988. Since, they did not get required percentage of pass marks in some subjects, they had to re-appear. They were permitted to join the second year class after June, 1988. Under the interim orders of the High Court, they appeared in the examination. They simultaneously took their third chance for the first year DHMS examination and finally, cleared all the papers. They also appeared in one or more subjects in the second year DHMS examination and, accordingly, took supplementary examination in June, 1990. They were declared “pass” in that examination. They joined the third year DHMS examination and completed the course of study. In view of that, the Principal of the college in August, 1991, recommended and forwarded their examination forms for the third year examination to the appellant-council. The appellant-council declined to permit the respondents to take the examination since they had not completed the one year

::: Downloaded on - 20/05/2019 12:34:18 :::

HIGH COURT OF JUDICATURE AT BOMBAY

course of study between passing the first DHMS examination and appearing in the second DHMS examination and, therefore, they were not eligible to appear in the third year examination. In short, the appellant-Council's case was that the examination had not been passed in accordance with the scheme prescribed under Regulations 8 and 9. The respondents filed writ petition in the Punjab & Haryana High Court. The High Court allowed the writ petition. The High Court was of the view that the minimum course of study as provided by Regulations 9 and 10 was not mandatory. It appears that the High Court considered the provision of supplementary examination and felt that if a candidate were to pass in supplementary examination, he will have to remain at home till the next annual examination and, therefore, he is allowed to undergo the course of next academic year provisionally by harmoniously construing Regulations (iv) and (vi) of Regulation 11.

13. The Supreme Court construed Regulation 9 and observed that there are two requirements of admission to the second DHMS examination, firstly there must be a lapse of one year period between the passing of first DHMS examination and taking the second DHMS examination and secondly subsequent to the

::: Downloaded on - 20/05/2019 12:34:18 :::

HIGH COURT OF JUDICATURE AT BOMBAY

passing of first DHMS examination, the student has to undergo the course of study for one year. The Supreme Court observed that if a candidate passes in the supplementary examination, the requirement of one year cannot be enforced. The Supreme Court referred to the Oxford Dictionary meaning of the word "supplement" and observed that the adjective "supplementary" means an examination to make up the deficiencies. The Supreme Court observed that therefore, it stands to reason that only when deficiencies are made up, the whole becomes complete. The Supreme Court made it clear that therefore passing the supplementary examination would not relate back to the annual examination. What counts is when the whole is made up and from that time of making up the whole, one year or one and half year must elapse for second or third DHMS examinations.

14. In our opinion, the ratio of this case would be clearly attracted to this case. This judgment was taken into consideration by the Punjab & Haryana High Court in ***Jyotis Cherian John & Ors. v. Baba Farid University of Health Science & Ors. In Writ Petition No.15899 of 2002*** to which we shall now advert. In that case, the

::: Downloaded on - 20/05/2019 12:34:18 :::

HIGH COURT OF JUDICATURE AT BOMBAY

Punjab & Haryana High Court had an occasion to deal with a similar question. The petitioners in that case appeared in the first MBBS professional examination held in June, 2002 but failed to clear it. They filled forms for appearing in the supplementary examination scheduled to be held in September, 2002 and filed a writ petition questioning the decision taken by the University not to admit them to the second MBBS professional course. They prayed that a direction be issued to the University to permit them to prosecute studies in the second MBBS course and then allow them to take second MBBS professional examination by condoning the deficiency in the minimum period of studies. Regulation 7(7) of 1997 Regulations fell for the court's consideration.

15. Referring to the judgment of the Supreme Court in ***Dr. Preeti Srivasthav's case (supra)***, the Punjab & Haryana High Court vide its judgment dated 27/2/2003 held that the University had the jurisdiction to lay down conditions for admission to the next higher class/phase of the course for maintaining the standard of medical education in the colleges affiliated to it. The High Court held that the petitioners cannot be allowed to take examination of second

::: Downloaded on - 20/05/2019 12:34:18 :::

HIGH COURT OF JUDICATURE AT BOMBAY

MBBS professional course, without fulfilling the statutory condition of eligibility, namely 18 months study.

16. In the judgment delivered in ***Writ Petition No.574 of 2002 on 4/9/2002 in Kamlesh Kumar Bhilware & Anr. v. State of M.P. & Ors.,*** the Madhya Pradesh High Court while dealing with the same Regulations held as under :

> *"8. Submission of learned counsel for the petitioners was based mainly on Regulation 7. Learned counsel contended that since in terms of Regulation 7, the students who have cleared the supplementary examination can join the main batch of IInd year and hence, they have acquired a right or in other words, have become eligible to appear in the main examination, I do not agree to this submission as in my view, it has absolutely no merit. Regulation 7 no where says that the moment a student clears the supplementary examination, he is allowed to appear in the main examination of IInd year. It is an enabling provision and that too in relation to allowing the student to attend the classes along with the main batch of IInd year. Attending classes is one thing and to become eligible in appearing in the examination is altogether different thing. So long as the student does not complete 18 months in regular studies in IInd year as provided in Regulation, whether as a student coming from supplementary stream or otherwise, he has no right to appear in the examination. Indeed, there cannot be a compromise on the requirement*

::: Downloaded on - 20/05/2019 12:34:18 :::

HIGH COURT OF JUDICATURE AT BOMBAY

> *prescribed for eligibility criteria. After all, these regulations which have a statutory force and binding effect both on institution imparting education as also on students are meant for strict observance and cannot be allowed to be deviated. The Courts cannot interpret the statutory regulations in a way which may result in relaxation of education standard and the norms."*

The Madhya Pradesh High Court also added that if such students are allowed to take second MBBS professional examination with the main batch, that would mean giving preference to less meritorious students.

17. In the judgment delivered in ***Writ Petition No.17899 of 2004 in Amarbir Singh s/o. S. Kashmir Singh & Ors. v. Baba Farid University of Health Science, Faridkot,*** the Punjab & Haryana High Court was considering similar question. After considering the relevant decisions on the point, it was held that 18 months' course of studies before a candidate can be permitted to take the second MBBS professional examination, must commence to run after a candidate has fully qualified the first MBBS professional examination. It was further held that the course pursued by the students prior to qualifying the first MBBS professional examination

::: Downloaded on - 20/05/2019 12:34:18 :::

HIGH COURT OF JUDICATURE AT BOMBAY

cannot be clubbed with the course pursued by them after having cleared the first MBBS professional examination so as to compute 18 months' mandatory training period before they can be allowed to appear in the second MBBS professional examination.

18. We are in respectful agreement with the above view. Once it is accepted that Medical Council of India is duty bound to supervise and maintain standard of medical education, its regulations will have to be so construed as to achieve its objective. The 1997 Regulations would, therefore, reflect Medical Council's anxiety to ensure that minimum standards of medical education prescribed by it are controlled. The 1997 Regulations are, therefore, held to be mandatory. Any lowering of eligibility norms would have adverse effect on medical education. Regulation 7(7), therefore, cannot be so read as to do away with the requirement of completing 18 months' mandatory training before taking second MBBS professional examination.

19. In the circumstances, we find no substance in the petition. The petition is dismissed.

::: Downloaded on - 20/05/2019 12:34:18 :::

HIGH COURT OF JUDICATURE AT BOMBAY
सत्यमेव जयते

[SMT. RANJANA DESAI, J.]

[SMT. ROSHAN DALVI, J.]

::: Downloaded on - 20/05/2019 12:34:18 :::