

(2003) 03 KL CK 0117
High Court Of Kerala
Case No: WA. No. 2067 of 2002

Aish. M.S. and Others

APPELLANT

Vs

University of Calicut
and Others

RESPONDENT

Date of Decision: March 28, 2003

Acts Referred:

- Graduate Medical Education Regulations, 1997 - Regulation 12(2), 12(3), 12(4)
- Indian Medical Council Act, 1956 - Section 33

Citation: (2004) 1 ILR (Ker) 26

Hon'ble Judges: K.S. Radhakrishnan, J; K. Padmanabhan Nair, J

Bench: Division Bench

Advocate: K. Radhakrishnan, Sajeev Kumar K. Gopal, Binoy Vasudevan, Government Pleader and T.V. George, for the Appellant; S. Gopakumaran Nair and SC for R1 to R3 and K.L. Joseph, Govt. Pleader for R4, for the Respondent

Final Decision: Allowed

Judgement

Radhakrishnan, J.

This appeal arises out of the judgment in OP.20580/02. Writ petitioners wrote final year MDBS Examination conducted by the Controller of Examinations, University of Calicut in April 2002. They have passed in all the subjects in MDBS final year Part II Examination, the result of which was published on 19-6-2002 but declared failed in the practical examination in surgery. In the subject surgery for theory all of them secured high marks but were awarded marks ranging from 45 to 49 for practical examination, while the minimum required was 50. If the respondents are gracious enough to award the grace marks of five to practicals also just like theory subject all of them would pass the MBBS examination.

2. There are four subjects for final year MBBS, i.e. Medicine, Surgery, Obstetrics & Gynecology and Paediatrics. Among the said four papers, each paper consists of

theory and practical examination. For a pass in each subject a candidate must have obtained 50% in aggregate with a minimum of 50% in theory including orals and minimum of 50% in practical/clinicals. Medical examination in the country is governed by the provisions of the Medical Council of India Act, 1956. The Medical Council of India has framed Regulations on Graduate Medical Education, 1997 in exercise of the powers conferred u/s 33 of the Act. The Regulations indicate the manner in which the students are to be tested in examinations, distribution of marks in each paper and the minimum marks required for declaring the students as having passed in each subject. Regulation 12(3) deals with University examinations. Regulation 12(4) prescribes the distribution of marks under the caption "pass", it is prescribed as under:-

"Pass: In each of the subjects, a candidate must obtain 50% in aggregate with a minimum of 50% in Theory including orals and minimum of 50% in Practicals/clinicals"

Regulations would indicate that for each subject there is an internal assessment and Regulation 12(2)(iv) provides that weightage for the internal assessment shall be 20% of the total marks in each subject. Regulation 12(2)(v) provides that the candidate must secure at least 50% marks of the total marks fixed for internal assessment in a particular subject in order to be eligible to appear in the final university examination of that subject.

3. One of the questions that arises for consideration in this case is whether the requirement that a candidate must obtain 50% in theory including orals and a minimum of 50% in practice should be complied with by including theory/practical component of the internal assessment marks or by excluding them. If we hold that under the Regulations a candidate shall be declared to have passed, if he has got 50% of the aggregate marks in university theory + orals + internal assessment theory and 50% of the aggregate marks in university practicals + internal assessment practicals/clinicals, then the petitioners 2, 3, 4, 6, 7 and 9 will have to be declared as passed since they have secured 67, 65, 65, 65, 65 and 69 marks respectively. Minimum required for the pass in clinical and practical in the subject surgery is 65 consisting 50 as university marks and 15 internal assessment. An identical question came up for consideration before a Bench of this Court in WA. Nos. 1777 and 1831 of 2002. The Bench after examining the scope of the above mentioned Regulations and also ascertaining the views of Medical Council of India and perusing the counter affidavit resolves the above mentioned question. Dr. Arora, Joint Secretary of the Medical Council of India filed an affidavit, dated 24-9-2002 in that case. A clarification issued by the Medical Council of India addressed to Dr. K.M. Remeshchandra Babu, Member, Medical Council of India, Department of Chest Diseases, Calicut Medical College was also made available to the court. After considering all aspects of the matter a Division Bench declared that under the Regulations a candidate shall be declared to have passed, if he has got

50% of the aggregate marks in University theory + orals + internal assessment theory and 50% of the aggregate marks in University practicals + internal assessment practicals/clinicals. The above mentioned judgment is squarely applicable to the petitioners 2, 3, 4, 6, 7 and 9. Consequently we are inclined to direct the University to redeclare results in accordance with the above mentioned directions. The redeclaration of the results shall be done within a period of one month from the date of receipt of a copy of this judgment.

4. We are now concerned with the claim of first, fifth and eighth petitioners. We have already declared that under the Regulations on Graduate Medical Education, 1997 the minimum marks required for a pass in University Examination is that 50% of the aggregate marks in University theory + orals + internal assessment theory and 50% of the aggregate marks in University practicals + internal assessment practicals/clinicals. In the examination conducted in April 2002 for surgery the first petitioner obtained a total mark of 104 when the minimum required is 85. For clinical and practical he has obtained 45 university marks when the minimum requirement is 50. For internal assessment he has got 18 marks where minimum required is 15. The minimum marks required for pass in clinical and practical is 65, but he secured only 63 with a shortage of 2 marks. As far as 5th petitioner is concerned, he has obtained 62 marks out of 65 with a shortage of 3 marks and as far as 8th petitioner is concerned, she has obtained 63 out 65 with a shortage of 2 marks. They were declared failed by the University as they did not secure minimum university marks of 50 required for the practicals. According to them, if grace marks five is awarded to the practicals also they could be declared as passed. Their grievances were taken up before the 2nd respondent Controller of Examinations and the University. The Pass Board of the Final MBBS Part II Examination April, 2002 in its meeting held on 11-6-2002 had decided to give upto five marks as moderation for the theory examination for those who have passed clinical examination (practical examination). University has produced the decision of the Pass Board as Annexure-II along with the statement. Several representations were preferred by the students for awarding grace marks to practicals also. With regard to that a communication was sent by the Professor and Chairman of the Final MBBS Part II, to the Controller of Examinations, Calicut University, the relevant portion of the same reads as follows:

"As far as the grace marks for the practical is concerned, I have contacted all the 5 members of the pass board.

Dr. M.L. Dathan & Dr. P.T. Thomas proposes to give grace marks for the practical whereas Dr. F. Abdul Majeed, Dr. Sreedevi & Dr. Johny Vincent believes, grace mark is not appropriate. The majority of the members oppose any further grace marks.

Upholding the sanctity, integrity and dignity of the University of Calicut, and pass board, myself the chairman do not want to act against the verdict of the majority of the pass board members.

I think I have answered the two problems given to me and I have taken quite a few days to study the situation with a view to help as many students to pass as possible without violating rules.

It will be appropriate to request to Dean to give sensible and legally tangible solutions to the various issues at least hereafter.

I also ascertain from the records you have sent that M.G. University has passed students based on aggregate and this is one of the documents you have sent. Students of Calicut has genuine grievance that their counter parts at Kottayam passed (100%) against MCI norms. This may be brought to the attention of DME and MCI as well".

The fate of the students centres round the decision of the pass board, two of them favouring the award of grace marks to practicals and three against. Normally a court of law would not interfere with the discretion exercised by the pass board. But the Court can examine whether the discretion exercised by the pass board is in conformity with the rules governing the award of grace marks and also would achieve the object sought to be achieved by awarding the grace marks. We may now refer to the Rules for MBBS University Examinations framed by the Director of Medical Education, Kerala, Thiruvananthapuram based on the Indian Medical Council Regulations on Graduate Medical Education 1997 as published in part III Section 4 of the Gazette of India dated 17th May 1997 at pages 1701 to 1726. Clause 5 deals with grace marks which is extracted below for easy reference.

"A grace mark upto a maximum of 5 marks may be awarded for any of the 4 examinations, at the discretion of the pass board, to a student who has failed only in one subject. The grace marks may be given for either theory or practical or for both in one subject."

(emphasis added)

In exercise of the powers conferred by Section 33 of the Indian Medical Council Act 1956 (102 of 1956) the Medical Council of India with the previous approval of the Central Government amended the Regulations on Graduate Medical Education, 1997 which is called "Graduate Medical Education (Amendment) Regulations, 2002. In the Regulations on Graduate Medical Education 1997, in Regulation 13, after sub-regulation (9) the following sub-regulation was inserted which reads as follows:

"The grace marks upto a maximum of five marks may be awarded at the discretion of the University to a student who has failed only in one subject but has passed in all other subjects."

(emphasis added)

Director of Medical Education in fact wrote a letter No. B1-11746/02/DME dated 25-6-2002 to the Registrar of University of Calicut after examining the

representation received from final year MBBS students of Medical College, Thrissur stating as follows:

I am to inform that as per the MBBS Curriculum prepared on the basis of regulation on Graduate Medical Education 1997 Medical Council of India (Modified upto 2001) it is clearly mentioned that grace marks upto a maximum of 5 in total may be awarded for an examination (I MBBS II MBBS III MBBS Part I & II) at the discretion of the passing board for a student to pass in one or more subjects in the examination it is not specifically mentioned in the regulation that moderation cannot be given to practical examination."

(emphasis added)

The principle generally to be followed in awarding grace marks by the pass board has been examined by the Apex Court in Maharashtra State Board of Secondary & Higher Secondary Education v. Amit and Anr. (2002) 6 FCC 153. In that case the Apex Court interfered with the award of grace marks but laid down certain principles which are generally to be followed in the matter of awarding grace marks. Relevant portion of the same is extracted below:

"However, before advertng to the provisions of the aforesaid Regulation, we consider it appropriate to note the principles which the court has to keep in mind while dealing with a case of this nature where grace marks are claimed under the relevant Regulations. It cannot be disputed that the academic standards are laid down by the appropriate authorities which postulate the minimum marks that a candidate has to secure before the candidate can be declared to have passed the examination. The award of grace marks is in the nature of a concession, and there can be no doubt that it does result in diluting academic standards. The object underlying the grant of grace marks is to remove real hardship of a candidate who has otherwise shown good performance in the academic field but is losing one year of his scholastic career for the deficiency of a mark or so in one or two subjects, while on the basis of his overall performance in other subjects, he deserves to be declared successful. The appropriate authorities may also provide for grant of grace marks to a candidate who has taken part in sports events etc. considering the fact that such candidates who have obtained a level of proficiency in any particular game or event may have devoted considerable time in pursuit of excellence in such game or event. However, a rule for the award of grace marks must be construed strictly so as to ensure that the minimum standards are not, allowed to be diluted beyond the limit specifically laid down by the appropriate authority. It is only in a case where the language of the statute is absolutely clear that the claim for the award of grace marks can be sustained. Normally the court shall be slow to extend the concession of grace marks and grant a benefit where none is intended to be given by the appropriate authority".

(emphasis added)

While rendering the above judgment the Apex Court was following its earlier decision in [Board of School Education, Haryana Vs. Arun Rathi and others](#), .

5. The above mentioned decisions would indicate that the grant of grace marks being a matter of concession and which tends to dilute academic standards, regulations dealing with grant of grace marks should not be generously and liberally construed but emphasis was made on the underlined portion referred to above. The discretion could be exercised by the authorities on taking note of otherwise overall performance on the subject and the consequences a candidate has to face but for exercising the discretion in favour of the candidate, especially when there is a provision for awarding grace marks. When the discretion is exercised arbitrarily or based on misunderstanding the rules or principles governing award of grace marks Court can interfere. As early as in 1891 by Lord Halsbury in *Sharp v. Wakefield*, (1891) AC 173 observed thus:

"Discretion" means when it is said that something is to be done within the discretion of the authorities that something is to be done according to the rules of reason and justice, not according to private opinion, according to law and not humour. It is to be not arbitrary, vague, and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man competent to the discharge of his office ought to confine himself".

In the instant case Director of Medical Education and two members of the pass board had taken the view that minimum grace marks could be awarded in practicals and not to be limited to theory alone.

6. Considering the entire facts and circumstances of the case we feel discretion ought to have been exercised in favour of the students since all of them have passed with high marks in all the subjects but for a few marks in the practicals. The question is whether a student be declared failed on that ground alone or discretion be exercised in his favour by awarding grace marks for practicals and declare him passed. An identical question came up for consideration before a Bench of this Court in WA.1951/02 and this court directed the University to give grace marks to practicals. We are of the view the petitioners 1, 5 and 8 are entitled to get minimum grace marks in the practicals also. If so awarded, they would pass out of MBBS Examination. Under such circumstance we are inclined to give a direction to the University to award them minimum grace marks for pass in surgery practicals as well. This should be done within a period of one month from the date of receipt of a copy of this judgment.

Writ appeal is allowed as above. We may hasten to add that the learned single Judge dismissed the writ petition essentially following his own judgment in OP.Nos. 19727/02 and 19851/02 which have already been reversed by another Division Bench in WA.1831/02 and 1777/02 respectively. We are also in agreement with the judgments of the Division Bench. Consequently this appeal has to be allowed. We

therefore set aside the judgment of the learned single Judge and direct the respondents to carry out the above mentioned directions within one month from today.