

THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE

AND

THE HON'BLE SHRI JUSTICE ANIL KUMAR JUKANTI

+ Writ Petition Nos.12121, 12132, 12142, 12144, 12145 and 14149 of 2024

% Date: 19.06.2024

Arya Bachu and others

... Petitioners

v.

\$ Union of India, Represented by its Secretary, Ministry of Health and Family Welfare, Nirman Bhawan, New Delhi-110011, and others.

... Respondents

! Counsel for the petitioners: Mr. Prabhakar Chikkudu

^ Counsel for respondent No.1 : Ms. Ande Vishala, representing Ms. L.Pranathi Reddy, learned Standing Counsel for Central Government

Counsel for respondent No.2 : Ms. Gorantla Sri Ranga Pujitha, learned Standing Counsel for National Medical Commission

Counsel for respondent Nos.3 and 4: Mr. Mahesh Raje, learned Government Pleader for Medical and Health

Counsel for respondent No.5 : Mr. A.Prabhakar Rao, learned Standing Counsel for Kaloji Narayana Rao University of Health Sciences

< GIST:

> HEAD NOTE:

? CASES REFERRED:

1. (1991) 1 SCC 212
2. (1994) 5 SCC 450
3. (1996) 3 SCC 709
4. (2008) 13 SCC 213
5. (2009) 14 SCC 690
6. (2024) 3 SCC 799
7. (1998) 6 SCC 131
8. AIR 2020 SC 5383
9. W.P.(C). 13180 of 2022 & CM APPL. 39902 of 2022, dt: 17.11.2022
10. (1984) 3 SCC 603
11. (1989) 4 SCC 187
12. (2016) 7 SCC 703
13. 2022 SCC OnLine SC 1737

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AND
THE HON'BLE SHRI JUSTICE ANIL KUMAR JUKANTI

WRIT PETITION Nos.12121, 12132, 12142, 12144,
12145 and 14149 of 2024

COMMON ORDER: *(Per the Hon'ble the Chief Justice Alok Aradhe)*

Mr. Prabhakar Chikkudu, learned counsel for the petitioners in all the writ petitions.

Ms. Ande Vishala, learned counsel represents Ms. L. Pranathi Reddy, learned Senior Standing Counsel for Central Government for respondent No.1.

Ms. Gorantla Sri Ranga Pujitha, learned Standing Counsel for National Medical Commission for respondent No.2 in all the writ petitions.

Mr. Mahesh Raje, learned Government Pleader for Medical and Health for respondent Nos.3 and 4 in all the writ petitions.

Mr. A. Prabhakar Rao, learned Standing Counsel for Kaloji Narayana Rao University of Health Sciences for respondent No.5 in all the writ petitions.

2. In this batch of writ petitions, the petitioners, who were admitted to first year MBBS course for the academic

year 2022-23, have assailed the validity of the regulation 10(3) of the Medical Council of India Regulations on Graduate Medical Education, 1997 (hereinafter referred to as “the old Regulations”), as amended on 01.08.2023, by which the provision contained in the old Regulations has been omitted. The petitioners have also assailed the validity of action of the respondents in giving Competency Based Medical Education Regulations, 2023 (hereinafter referred to as “the 2023 Regulations or new Regulations”) retrospective effect and in not permitting the petitioners to second year MBBS course by granting them the benefit of grace marks.

3. Facts giving rise to filing of these writ petitions briefly stated are that the petitioners had appeared in the NEET examination, which was held in the year 2022. The petitioners were admitted into the first year of MBBS course in various medical colleges situate in the State of Telangana for the academic year 2022-23.

4. It is not in dispute that under the old Regulations, a candidate, who has failed only in one subject, but has

passed in all other subjects, is entitled to maximum of 5 grace marks. The said provision reads as under:

“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.”

5. From a perusal of the 2023 Regulations, it is evident that the provision with regard to grant of grace marks was dispensed with. After commencement of new Regulations, the examination for the first year MBBS course was held in the month of November, 2023 in which the petitioners appeared. The petitioner in W.P.No.12121 of 2024 failed in two subjects, but cleared the examination only in one subject. However, the petitioners in the remaining writ petitions cleared two subjects and could not clear one subject. The said petitioners were deprived of the benefit of the grace marks on the ground that in 2023 Regulations, there is no provision, and were not promoted to the second year of MBBS course. In the aforesaid factual background, the petitioners have approached this Court seeking the reliefs as stated supra.

6. Learned counsel for the petitioners submitted that the petitioners have vested right for grant of grace marks under the old Regulations, which could not have been taken away by enacting new Regulations. It is further submitted that the examination was held under the old Regulations. However, the marks were granted to the petitioners under the 2023 Regulations. It is further submitted that by virtue of repeal of the old Regulations, right, which is accrued to a person, cannot be taken away. In support of the aforesaid submissions, reference has been made to Section 6(c) of the General Clauses Act, 1897. It is also submitted that the petitioners have legitimate expectation of grant of grace marks, which cannot be taken away by enacting 2023 Regulations.

7. It is contended that the action of the respondents in giving retrospective effect to the Regulations is arbitrary. It is further contended that the impugned Regulations are in violation of Articles 14, 19 and 21 of the Constitution of India. In support of the aforesaid submissions reliance has been placed on the decisions of the Supreme Court in

Kumari Shrilekha Vidyarthi and others vs. State of U.P. and others¹, **Union of India and others vs. Tushar Ranjan Mohanty and others**² **State of A.P. and others vs. Mcdowell & Co., and others**³, **Kusumam Hotels Private Limited Vs. Kerala State Electricity Board and others**⁴, **Prakash Ratan Sinha vs. State of Bihar and others**⁵ and a Constitution Bench decision of the Supreme Court in **Sivanandan C.T. and others vs. High Court of Kerala**⁶.

8. On the other hand, learned counsel for respondent No.2 submitted that the 2023 Regulations have been given effect to from the date of its notification i.e., 01.08.2023. It is further submitted that since the examination was held after the 2023 Regulations were notified, the same have rightly been applied to the petitioners. It is contended that the petitioners neither have any vested right nor any fundamental right for grant of grace marks. It is also submitted that the scope of judicial review in academic

¹ (1991) 1 SCC 212

² (1994) 5 SCC 450

³ (1996) 3 SCC 709

⁴ (2008) 13 SCC 213

⁵ (2009) 14 SCC 690

⁶ (2024) 3 SCC 799

matters is extremely limited and in respect of the academic matters, the doctrine of legitimate expectation does not apply. In support of the aforesaid submissions, reliance has been placed on the decisions of the Supreme Court in **MCI vs. State of Karnataka**⁷, **Anand Yadav vs. State of U.P.**⁸ and a Division Bench of the Delhi High Court in **Sachin and others vs. Union of India and others**⁹.

9. Learned Standing Counsel for respondent No.5 University has submitted that the University has sent information to all the colleges in the State of Telangana that the examination shall be held as per the 2023 Regulations. It is further submitted that the petitioner in W.P.No.12121 of 2024 is not entitled to the benefit of grace marks as he has failed in two subjects. It is further submitted that the University is bound to give effect to the Regulations framed by the Medical Council of India and the same is binding on it. It is also submitted that mere reference to wrong provision does not invalidate the exercise of power.

⁷ (1998) 6 SCC 131

⁸ AIR 2020 SC 5383

⁹ W.P.(C). 13180 of 2022 & CM APPL. 39902 of 2022, dt: 17.11.2022

10. Learned counsel for the petitioners by way of rejoinder has submitted that no explanation has been offered on behalf of the respondents as to why the examination was held under the old Regulations and the results have been declared under the new Regulations.

11. We have considered the submissions made on both sides and perused the record.

12. The National Medical Commission Act, 2019 is an Act *inter alia* to provide medical education system that improves access to quality and affordable medical education and to ensure availability of adequate and high quality medical professionals in all parts of the country. Section 24 of the Act deals with powers and functions of Under-graduate Medical Education Board which *inter alia* provides for determination of standards of medical education at undergraduate level and oversee all aspects thereto. In exercise of powers under Sections 10, 24, 25 and 57 of the Act, the 2023 Regulations, which are statutory in nature, have been framed. The relevant extract of the Regulation reads as under:

“In subjects that have two papers, the learner must secure minimum 50% marks in aggregate (both papers together) to pass in the said subject.

Criteria for passing a subject: A candidate shall obtain 50% marks in University conducted examination separately in Theory and in Practical (practical includes: practical/clinical and viva voce) in order to be declared as passed in that subject.

... ..

There shall be no grace marks to be considered for passing in an examination.”

13. From perusal of the 2023 Regulations, it is evident that the same have come into force with effect from 01.08.2023. The 2023 Regulations have not been given any retrospective effect but have come into force on the date of the publication, i.e., 01.08.2023. The examination for the first year MBBS course was held in the month of November, 2023 after the 2023 Regulations were notified. Therefore, merely because the 2023 Regulations have been made applicable to the case of the petitioners who have appeared in the examination after commencement of the 2023 Regulations, the same cannot be held to be retrospective (see **Punjab University vs. Subash Chander**¹⁰).

¹⁰ (1984) 3 SCC 603

14. The petitioners were admitted to the first year of MBBS course in the year 2022-23. No promise was either made or could be deemed to have been made to the petitioners that there will be no alteration of the Regulations regarding the requirement of passing of the examination or award of the grace marks and that the old Regulations shall continue to apply to the petitioners until they have finished their course.

15. The parameters of judicial review in case of a challenge to subordinate legislation are well settled. There is a presumption in favour of the constitutionality or validity of the subordinate legislation and the burden is on the person who assails the same to show that it is invalid. A subordinate legislation can be struck down either on the ground of lack of legislative competence or violation of fundamental rights or violation of provisions of the Constitution. The same can also be struck down on the ground that it fails to conform the statute under which it is made or it exceeds the authority conferred by the enabling Act. The subordinate legislation can also be struck down on

the ground that it suffers from manifest arbitrariness. The presumption of constitutional validity exists at a higher degree in case of subordinate legislation made in exercise of powers conferred by the Constitution as they have a greater sense of legal efficacy (see **Supreme Court Employees' Welfare Association vs. Union of India**¹¹, **Cellular Operators Association of India vs. Telecom Regulatory Authority of India**¹² and **Kerala State Electricity Board vs. Thomas Joseph**¹³).

16. In the instant case, the 2023 Regulations have been framed in exercise of powers under Sections 10, 24, 25 and 57 of the Act and the authority was competent to enact the same. It is not the case of the petitioners that the Authority enacting the Regulations either lack legislative competence or do not conform to the statute under which it is made or is exceeding the limits of the Authority conferred by the enabling Act. It is also not the case of the petitioners that the 2023 Regulations are repugnant to the laws of the land.

¹¹ (1989) 4 SCC 187

¹² (2016) 7 SCC 703

¹³ 2022 SCC OnLine SC 1737

17. Now we may examine whether the 2023 Regulations suffers from manifest arbitrariness. The petitioners have neither any fundamental right nor any statutory right for grant of grace marks. The Undergraduate Medical Education Board has the authority to determine the standards of medical education. The petitioners also do not have any accrued or vested right for grant of grace marks. The petitioners have to acquire the qualifying marks as per the Regulations prescribed at the time of the examination. Therefore, merely because the provision with regard to grant of grace marks has been dispensed with, the same would not render the Regulations arbitrary.

18. The contention that the examinations were held under the old Regulations does not deserve acceptance as the examinations were admittedly held in the month of November after commencement of the 2023 Regulations with effect from 01.08.2023. Reference to the old Regulations in the mark sheet appears to have been made erroneously. The petitioners cannot be said to have legitimate expectation that the Regulations framed under

the Act cannot be amended till they pass the MBBS examination. Therefore, the contention that the legitimate expectation of the petitioners has been violated is equally misconceived. Therefore, the 2023 Regulations do not suffer from any infirmity. However, it will be open for the respondents to consider the case of the petitioners for grant of grace marks in the peculiar facts and circumstances of the case.

Accordingly, the writ petitions are disposed of. No costs.

Miscellaneous petitions, pending if any, shall stand closed.

ALOK ARADHE, CJ

ANIL KUMAR JUKANTI, J

19.06.2024

Note: LR copy to be marked.
(By order)
Es/pln