

Sunil Kumar D.S. and Others Vs. Mysore University and Another

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Court : Karnataka

Decided On : Nov-05-1999

Reported in : 2000(1)KarLJ307

Judge : Tirath S. Thakur, J.

Acts : [Medical Council Act, 1956](#) - Sections 33; [Dentists Act, 1948](#) - Sections 20(2)

Appeal No. : Writ Petition Nos. 35605 to 35619, 36722, 36751 to 36778 and 35633 to 35636 of 1999

Appellant : Sunil Kumar D.S. and Others

Respondent : Mysore University and Another

Advocate for Def. : Sri T.R. Rajendra Kumar and ;Sri D.V. Shailendra Kumar, Advs.

Advocate for Pet/Ap. : Sri N. Devadas and ;Sri. K.V. Narasimhan, Advs.

Judgement :

ORDER

1. The petitioners in all these writ petitions are MBBS students studying in Institutions affiliated to the respondent-Mysore University. Admitted prior to the year 1996-97, the respondent continues to offer the examinations for the earlier

batch of students. Results of the examinations conducted during July 1999 showed that the petitioners had failed in one or more subjects. Most of them appear to have applied for revaluation of their answer scripts' and re-totaling of their marks, which respondent is examining. The grievance of the petitioners in these petitions relates primarily to the validity of a notification dated 15th of July, 1999 issued by the University declaring that its regulations providing for award of grace marks shall have no application to Graduate/Postgraduate Medical Courses and such other Courses as are governed by any Central Legislation. Having said so the respondent appears to have declined the request for award of grace marks to the petitioners no matter some if not all of them qualify for the award of such marks as per the regulations of the MCI. The petitioners contend that the view taken by the University is opposed to the true spirit of the direction given by a Single Bench of this Court in two writ petitions referred to in the impugned Circular. They have prayed for a mandamus directing the respondents to award grace marks either as per the Regulations framed by the University or those framed by the Medical Council of India.

2. The impugned notification has been issued pursuant to the orders of this Court in Kum. Swapna Lakshman v Bangalore University and Others and Irshad v Gulbarga University. In Swapna Lakshman's case, supra, the question that fell for consideration was whether the petitioner was entitled to the award of grace marks in terms of the Regulations framed by the Bangalore University. While answering the said question in the negative, Bharuka, J., held that the Regulations in question were in conflict with those framed by the Dental Council of India under Section 20(2)(h) of the [Dentists Act, 1948](#). Reliance was placed upon an earlier decision in Dhimant Singh K. Goleria v Vice-Chancellor, Kuvempu University, where the learned Judge had taken a similar view in regard to the provisions in Medical Council Act and the Regulations framed thereunder. The Court had in Dhimant Singh's case, supra, observed as under.-

Therefore, in view of the above Regulations the general regulations framed for awarding grace marks by the State Universities to the extent it is inconsistent with the aforesaid Regulation will be inapplicable for MBBS examination'.

3. In Irshad's case, supra, a similar question arose in the context of the Regulations framed by the Gulbarga University. The Court reiterated the legal position stated earlier and made the following general observation in regard to the efficacy of the Regulations and/or ordinances of the Universities governing examinations regulated by any Central Act or Rules framed thereunder:

'It is clarified that henceforth all the Universities in the State should take due notice of law declared by the Supreme Court as explained above and should not apply any general University Regulations or Ordinances framed for the examinations held by the Universities if such examinations are regulated by any Central Act and the Regulations framed thereunder.

The learned Registrar General is directed to send a copy of this judgment to the Registrars of all the Universities in the State for due compliance'.

4. It is in pursuance of the above that the Universities have issued separate notifications clarifying that the general Regulations framed by them would have no application to the MBBS or BDS examinations or any other examination covered or regulated by a Central Legislation or any Regulation framed thereunder.

5. In Miss Lisa Ninan and Others v Medical Council of India and Others, also the petitioners were undergoing a MBBS Course in Institutions affiliated to the Rajiv Gandhi University of Health Sciences. Since they were admitted during the session 1997-98, their examinations were being conducted by the said University. Having failed in one or the other subject, the petitioners had in that bunch of cases approached the University for the award of grace marks, which request was declined on the ground that the MCI Regulations framed in the year 1997 did not provide for the same unlike the Regulations that were earlier in force from 1979 onwards till 1997. The omission of an enabling provision in the 1997 Regulation of the MCI was understood by the University as forbidding the award of such marks. Since however the position was not very clear, the University had approached the MCI for a clarification whether grace marks could be awarded despite the omission of the earlier provision. The MCI had in turn started a process of consultation with various Universities in the Country with a view to evolving a consensus and bringing about ensuring uniformity of approach and treatment to the subject at the

National level. That process was in its very nature time consuming, unable to provide a solution for immediate application to the cases in hand. Pending a final decision at the appropriate level based on the deliberations which were in progress, the MCI took a categorical stand through its Counsel Sri Shailendra Kumar and made an emphatic statement that it had not forbidden the Universities from awarding gracemarks nor was the omission of the earlier provision meant to convey any such message. Conduct of the examinations being a matter left to the Universities, the question whether award of grace marks was necessary keeping in view the academic requirements was a matter, which the Council had left to the Universities, who could, appropriately provide for the same if considered necessary or expedient. The following passage from the order passed by me records and deals with that submission thus.-

'As noticed earlier, the MCI has initiated a consultative process with other Universities in the country obviously in an attempt to explore and evolve unanimity of opinion and uniformity of approach to the subject by Universities awarding professional Degrees in Medical Sciences. Charged with the onerous duty of bringing about a coordinated development of Medical Education in the country the apex body is entitled to undertake the exercise initiated by it. One could, looking to the initiative taken by the MCI wait for a final decision to emerge on the basis of the deliberations on the subject. The difficulty however arises on account of the fact that petitioners and others similarly situate shall have to appear in the ensuing supplementary examination if they are held disentitled to the award of grace marks. Time therefore is an important factor in the scheme of things as they are at present. It is here that the submissions made by Mr. Shailendar Kumar assume considerable importance. According to the learned Counsel, whether or not the MCI would provide for a uniform pattern for the future or re-introduce the provision that existed in the earlier rules shall have no direct bearing on the question whether the University should or should not independently provide for award of grace marks till such time the MCI expresses itself on the subject. According to Mr. Kumar, the position as on date is that MCI has not forbidden the award of grace marks and till such time a decision for the future is taken, the University is at liberty to provide for such marks if considered expedient by it'.

6. The writ petitions were accordingly disposed of reserving liberty to the University to consider the question of providing grace marks pending the formulation of a uniform policy, rule or regulation by the MCI. It was observed that any provision that the University may decide to make would be subject to the ultimate decision which the MCI may take in the matter. Rajiv Gandhi University of Health Sciences has accordingly issued an Ordinance dated 31st of August, 1999 providing for the award of grace marks to students pursuing the MBBS Course. Since all Institutions offering a recognised qualification in Health Sciences are now affiliated to the said University, the provision made in the Ordinance is available to all those who take the examinations offered by it. In the process, the provision has, unlike the past when different Universities were following different patterns and norms, brought about a uniformity of treatment insofar as the award of grace marks are concerned. What then remains to be examined is whether examinations offered by other Universities to batches of students admitted for the earlier years would also qualify for gracing of marks.

7. The Medical Council of India Regulations on Undergraduate Medical Education of 1979 make the following provision for the award of grace marks.-

'Grace marks upto a maximum of 5 may be awarded at the discretion of the University for a student who has failed only in one subject but has passed in all the other subjects'.

8. In the light of the decision of the Supreme Court in Medical Council of India v State of Karnataka and Others, the above is binding upon all the Universities offering a Degree Course in Medical Sciences. It follows as a corollary that the Regulations framed by the Universities generally providing for award of grace marks to the extent the same are contrary to what is provided in the above Regulation would be rendered inoperative. That precisely is the view expressed by this Court in Dimanth Singh's case, supra. The ratio of the subsequent three decisions in Swapna, Irshad and Lisa Ninan, is no different. The award of grace marks by the affiliating Universities must, in the light of the legal position stated in the said decisions be governed only by the Regulations framed by the MCI, which will override any other Regulation on the subject to the contrary. The Circular

issued by the respondent-University to the extent the same reiterated that position cannot therefore be found fault with.

9. That brings me to the question whether the orders made by this Court in Swapna Lakshman and Irshad's cases, *supra*, could be understood to mean that the Universities were not entitled to award grace marks in the manner and to the extent permissible under the MCI Regulations. My answer is in the negative. The fact that the Regulations framed by the Universities had become ineffective or inoperative on account of a conflict between such Regulations and the one framed by the MCI did not mean that the benefit if any admissible to the candidates in terms of the Regulations of the MCI could also be denied to them. The purpose and the spirit underlying the observations made by this Court in Irshad's case, *supra*, was to effectuate the Regulations framed under the Central Legislation. The conflict was resolved in favour of the Regulations framed under the Central Legislation to restore their supremacy. That being so, the University while ignoring its own Regulations was required to consider whether the benefit claimed by the petitioners was admissible in terms of the Regulations made by the MCI. It could not decline any such benefit only because there was a conflict between the Regulations framed by the University and those of the MCI. To that extent therefore, the respondent-University committed a mistake in not entertaining the request for award of grace marks and dealing with the same in accordance with the Regulations of the MCI. It was at one stage feebly suggested by Mr. Shailendra Kumar that the petitioners would be governed by the Regulations framed by the MCI in the year 1997, yet that argument was not pursued further and in my view rightly so for a subsequent Regulation would not undo the effect of one which was in force during the period, the petitioners were admitted to the Course. The petitioners in these cases having been admitted prior to the academic session 1996-97, the 1979 Regulations referred to earlier alone would govern them. Those framed in the year 1997, in which the provision regarding award of grace marks has been deleted should logically apply only to admissions made subsequent to the academic session 1996-97, although according to Mr. Shailendra Kumar, the omission of the earlier provision permitting award of grace marks does not forbid the Universities from making an appropriate provision if considered necessary by them.

10. Mr. Devadas then argued that such of the petitioners as had failed in more than one subjects like those in W.P. Nos. 35622 to 35630 of 1999 were also entitled to the benefit of gracing as per the University Regulations. He submitted that the benefit admissible under the said Regulations had been extended to them from the year 1995-96 onwards till the legal position was settled by the decision of the Supreme Court in the case of Medical Council of India, supra and the decisions of this Court resolving the conflict in favour of the Central Regulations. Some of these petitioners had, according to the learned Counsel, failed only by one mark and could be declared pass if they were given upto a total of five marks in two or more subjects. I regret my inability to accept that submission. The fact that the University had continued applying the Regulations framed by it despite the MCI Regulations providing a different Scheme for the award of grace marks, is no justification for continuing any such erroneous application even after the legal position has been settled. The University Regulations governing Courses, which are regulated by any Central Legislation having become ineffective and inoperative cannot be revived or applied just because the petitioners had undeservedly enjoyed such benefit in the past in ignorance of the correct legal position. There is therefore no gainsaid that such of the petitioners including those in W.P. Nos. 35622 to 35634 of 1999 as have failed in more than one subjects do not qualify for the grant of any grace marks and would therefore be disentitled to claim the said benefit. The University as held by a Division Bench of this Court in Vasuda B. Rao v State of Karnataka and Others, to apply the MCI Regulations as they exist without subjecting the conditions under which that benefit can be claimed to any change or alteration.

11. In the result, these writ petitions are disposed of with the following directions.-

(1) The petitioners or such of them as have failed in only one subject in the immediate previous examination taken by them shall be entitled to apply for the award of grace marks to the respondent-University within 4 weeks from today.

(2) Should any such applications be received by the University along with the fee, if any, prescribed for the purpose, the same shall be considered and those found eligible for the award of grace marks in terms of the MCI Regulations of 1979

referred to above given the benefit thereof.

(3) The prayer for award of grace marks made by such of the petitioner-candidates as have failed in more than one subject or as have failed in one subject by more than five marks shall stand rejected and their writ petition dismissed.

(4) The University may suitably clarify the import of its Circular dated 15-7-1999 to bring the same in tune with the legal position as stated in the body of this order.

In the circumstances, the parties are left to bear their own costs.

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