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M. Srinivas and Others Vs. State of Andhra Pradesh and ors.

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Court : Andhra Pradesh

Decided On : Oct-12-1998

Reported in : 1998(6)ALD200; 1998(6)ALT229

Judge : S.R. Nayak, J.

Acts : Constitution of India - Articles 14 and 226

Appeal No. : WP No. 22889 of 1998 and Batch

Appellant : M. Srinivas and Others

Respondent : State of Andhra Pradesh and ors.

Advocate for Def. : Government Pleader for Medical and Health and ;Mr. K.G.K. Prasad, Adv.

Advocate for Pet/Ap. : Mr. M.R.K. Choudary, Adv. for M. Srinivasa Rao

Judgement :
ORDER

1. The petitioners in all these writ petitions are the students of final year MBBS course having studied in the Medical Colleges affiliated to the second respondent, N.T.R. University of Health Sciences, Vijayawada. All the petitioners appeared for the final year MBBS examination in the subjects of Medicine, Surgery, Gynaecology and Obstetrics. The petitioners in these writ petitions have sought for

a writ in the nature of writ of mandamus declaring the action of the second respondent in not extending thebenefit to those students who have cleare4 the practical examination but could not make.it to the aggregate as arbitrary,.illegal, unjust and violativc of Article 14 of the Constitution of India and for a consequential direction to the respondents to extend the benefit of awarding grace marks upto 10 and declare the results of those students who would pass on extension of such benefits of grace-marks.

2. The undisputed facts be stated first. They are : All the petitioners entered the final MBBS course during the academic year 1997-98. In the examination held itf the month of April/May, 1998, all the petitioners appeared for the examinations. Final MBBS Part 11 examination with which the Court is concerned, consists of three subjects, namely, Medicine, carrying total maiks of 400, Surgery carrying total marks of 400 and the subject Gynaecology and Obstetrics carrying total marks of 300. Out of 400 total marks in the subjects of Medicine and Surgery, theory carries 200 marks, practical 150 marks and oral 50 marks. In the subjects of Gynaecology and Obstetrics, theory carries 200 marks, practical carries 50 and oral 50 marks. The percentage of marks one should secure in order to pass in the individual subjects of Medicine, Surgery and Gynaecology is differently prescribed for the theories and practicals. In the case of theories, the passing minimum is 40 per cent whereas in the case of practicals the passing minimum is 50 per cent. No minimum is fixed in the case of oral examination. However, in order to pass in the final year MBBS examination, a student should secure 50 per cent of the total aggregate marks. All the petitioners in these writ petitions have passed in the individual subjects in all the three forms of examinations, but they have not made up the prescribed minimum total aggregate.

3. After declaration of final MBBS Part II results, it appears, several representations were received from the students of various Medical Colleges in the State alleging that the examiners have committed irregularities in the evaluation of practical examinationsresulting in very low pass rate particularly in Osmania Medical College, Gandhi Medical College and Deccan Medical College of Medical Sciences, Hyderabad. The students, who study in another Medical College, Visakhapatnam pointed out in their representation' tliat they have secured

high marks in theory but failed in practicals. The University placed the representations before the Executive Council of the University of Health Sciences on 10-7-1998 which is the Principal Executive Body of the University. The Executive Council decided to appoint a Sub-Committee consisting of Vice-Chancellor as Chairman, and Director of Medical Education, Hyderabad and Director of Health Sciences, A.P., Hyderabad as members and Registrar of the second respondent University' as the Convenor. The said Sub-Committee after scrutinising the results and reviewing the failures, percentage of marks, case-sheets with relevant records college-wise and in comparison of theory marks obtained, recommended for addition of five marks in practicals of final MBBS, Part n subjects only for April/May, 1998 University examinations in addition to five marks of grace allowed by the Medical Council of India. The Committee approved the award of five grace marks to such of those students who failed in one subject in one practical only and the said benefit is only for the practical examination. On the basis of the recommendation of the Sub-Committee, grace marks upto 10 is universal extended to all those students who have failed only in one practical among the three practicals referred to above and they have been declared passed in the respective practical examination. Hence this writ petition by the petitioners praying for the reliefs referred to above.

4. Sri M.R.K. Chowdhary, learned senior Counsel appearing for the petitioners firstly contended that the awarding of grace marks upto 10 only in favour of those students who have failed in one practical examination excluding others amounts to an invidious discrimination and therefore violative of Article 14 of the Constitution of India.Secondly, the learned senior Counsel would contend that the Regulations framed by the Medical Council of India speaks about ., awarding grace marks upto 5 at the discretion of the University for a student who has failed only in one subject and not in one practical examination, and if that is the prescription laid down by the Apex Body, i.e., Medical Council of India, there was absolutely no good reason for the University to depart from such a course and confine the award of grace marks only to a practical examination which is a component of a subject.

5. On the other hand Mr. K.G.K. Pmsad, learned Standing Counsel for the* University would highlight that the petitioners have not alleged any mala fide

against the University Authorities; the decision taken by the University was bonafide and intended to do justice to those students who arc subjected to hostile treatment, and rigid assessment and evaluation of their performances in thepractical examinations at the hands of the examiners; there was absolutely no complaint from any quarter that there was any irregularity or malpractice in assessing the theory papers, and therefore there was absolutely no scope for extending the benefit of the measure of awarding grace marks in the case of theories. The learned Standing Counsel would maintain that the scope of judicial review of academic matters in very much circumscribed by a catena of decisions by the Courts, and the impugned measure evolved by the University could not be interfered with lightly.

6. Equals should be treated alike is a Constitutional creed flowing from Article 14 of the Constitution of India. This principle, in my considered opinion, does not admit any exception. Even where the Constitution makes departure from this principle in the matter of extending protective discrimination in favour of the classes, such as Scheduled Castes, Scheduled Tribes and other Backward Classes, women and children, the departure is grounded on the basis that these classes who are protected or in whose favour protective discriminationis shown are not equals to the classes left out. If the Court finds that all those students of final MDBS who have appeared for the practical examinations conducted in the month of April/May, 1998 and who have failed in one practical examination and the left out students .belong to the same class, and all of them are subjected to the some hostile treatment, rigid and strict assessment and evaluation at the hands of the examiners, it goes without saying that all of them should be treated alike, and if they are not treated alike, it would breach the equality clause enshrined under Article 14 of the Constitution of India. I have carefully perused the averments in the counter-affidavit filed by the University. Nothing is laid to satisfy the Court that the hostile treatment was meted out only to those students who have failed in the practical examinations and such hostile treatment vas never meted out to the students who have passed in the practical examinations. Therefore, it can safely be taken that the failed students and the successful students in the practicals belong to the same class, and they received the same adverse and hostile treatment at the hands of the examiners. Even then, the Court would not have

stepped in and interfered with the decision of the University in extending the benefit of grace marks upto 10 only in favour of the failed students if the Court were to find that no prejudice would cause to the successful students in the practicals. That is not to be. The injustice that may be caused to the successful students can be pointed out by giving an example. Before doing that, it is very relevant to remember tliat in practical terms, what is of utmost importance to a student is ultimate pass in final year MBBS examination. That cannot be lost sight of by the Court while considering the issue. Keeping this in mind, the Court may now cite an example. Let us say that A and B students among others have appeared for the examinations in theories, practicals and orals in the final MBBS, Part II subjects held in the month of April, 1998, and between these two students, A student has secured the minimum passing marks in eachof the theory and practical examinations. However, he does not make up prescribed minimum of 50% of the total aggregate and he is short of one mark to reach the fixed minimum aggregate. The student B lias secured minimum prescribed marks in all the three subjects, both in theories and practicals, except practical in the subject of Surgery where he lias failed by securing only 65 marks out of 150. Therefore, under the impugned measure of awarding grace marks, 10 marks have to be added to the marks obtained by him in the Surgery practical, and if it is so added, he is entitled to be declared passed not only in the subject of Surgery practical but also in the final year MBBS examination because w the process he makes up the prescribed minimum aggregate. But, A is not entitled to any mark under the impugned measure. Before adding ten marks to the credit of B as envisaged under the impugned measure, the student B was short of eight marks to reach the prescribed aggregate minimum. After addition of ten marks, he would acquire the eligibility to be declared passed in the final MBBS examination whereas more meritorious student A, before addition often marks, would not acquire the eligibility to be declared as passed in the examination. Such examples may be multiplied. If application of the measure results in such an apparent injustice to a relatively more meritorious student, the Court cannot be a silent spectator, and on the other hand it becomes the Court's duty to step in and undo the injustice caused to the petitioners-students and the similarly circumstanced other students.

7. Before concluding, suffice it to state that it is true that the Courts arc slow in interfering with the academic matters, and nonnally they do not question that wisdom of the academic bodies unless in a given case their decision is shown to be ex facie arbitrary and unreasonable and violative of Article 14 of the Constitution of India. At the same time, it is equally true that it is a solemn Constitutional obligation imposed on the High Court under Article 226 of the Constitution to step in and correct the actions of theUniversities and its Bodies where it is shown that their actions suffer from vice of irrationality and arbitrariness. If the Courts were to refuse to interfere with the impugned measure of die University, great injustice would be caused, to the relatively more meritorious students. No measure of the University which has tire effect of making previously less merited students more merited by granting grace can be sustained. Article 14 hits very hard at such element of irrationality. Perhaps, the Courts would not have interfered with the impugned action if the University were to state and prove that only those students who have failed in the practical examinations were subjected to hostile treatment or unwarranted rigidity and strictness in the matter of assessing and evaluating the performance of the students and not others who have passed in the practical examinations. Such plea is not taken in the counter-affidavit nor any material is placed before the Court to satisfy itself in that way. It is well-settled that since the High Court decides an issue on the basis of affidavits and counter-affidavits, the parties are required not only to plead the point they wish to canvass but they should also plead the facts in support of such plea as well as the evidence in support of the facts so pleaded. In the absence of such materials, the failed students and the passed students in the practical examinations should be treated alike, and they cannot be discriminated. There is no intelligible differentiation to classify them.

8. In the result, the writ petitions are allowed. A direction shall issue to the second respondcnt-N.T.R. University of Health Sciences, Vjjayawada to add grace niarks upto the maximum often to the least marks secured by the petitioners and the similarly circumstanced final year MDBS students in any of the three practical examinations, as the case may be, so as to make them reach the prescribed minimum aggregate provided the petitioners and the other similarly circumstanced students have secured the prescribed minimum marks in all the three final year

MBBS subjects, both in theoriesand practicals, and if they are short often or less marks to reach the prescribed minimum aggregate, and after this exercise, if they arc entitled to be declared passed in the final MBBS examination, to declare their results accordingly forthwith. No costs.

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