

**THE HON'BLE ACTING CHIEF JUSTICE A.V. SESA SAI
AND
THE HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO**

WRIT APPEAL No.665 of 2023

JUDGMENT:- (per Hon'ble Sri Justice R.Raghunandan Rao)

Heard Sri G.Vijay Kumar, the learned Standing Counsel appearing for the appellants, Smt.Jyothi Eswar Gogineni, the learned counsel appearing for respondents 1 to 8, the learned Government Pleader for Medical and Health, appearing for respondent No.9 and Sri Vivek Chandrasekhar, the learned counsel, appearing for respondent No.10.

2. The facts giving rise to the present Writ Appeal are as follows:

The 1st respondent-University had conducted the main examinations for final year MBBS Part-II (Theory and Practicals) in December-2022/January-2023. Some students including the respondents 1 to 8 herein were not successful in passing the said examination. Some of these unsuccessful students, including the 1st respondent herein, had approached this Court, by way of W.P.No.6977 of 2023, with the complaint that the practical examinations conducted in the 11th respondent-College had not been conducted properly

and a very large percentage of the students had been failed, in an arbitrary manner, in the practical examinations. A learned Single Judge of this Court, after considering the submissions made by all sides, had disposed of the said Writ Petition by an order dated 03.04.2023, directing the 1stappellant and 10th respondent herein to re-conduct the practical examinations in three subjects viz., General Medicine, General Surgery and Pediatrics, within two weeks from the date of the order and to release the results as soon as practicable. Certain other directions were also issued in this order. However, the same need not detain us. Accordingly, practical examinations were re-conducted for the petitioners, in the said Writ Petition, on 12.04.2023.

3. The 1stAppellant-University had initially issued a notification stating that supplementary examinations for the 4th year MBBS Part-II for the year 2022-2023 would be conducted as per schedule from 10.05.2023 to 24.05.2023 (Theory) and Practical Examinations from 05.06.2023 onwards. While matter stood thus, the 1st respondent in compliance of the directions of this Court mentioned above, had re-conducted the practical examination on 12.04.2023

and announced the results of the said examination on 17.04.2023. The 1stAppellant also issued another notification dated 17.04.2023 stating that supplementary examinations proposed to be conducted in May, 2023 were being postponed. No fresh date was given at this stage. Subsequently, on 29.05.2023 a notification was issued by the 1stAppellant setting out the revised time table for the supplementary examinations. Under this time table, the supplementary theory examinations were to be conducted between 09.08.2023 to 23.08.2023 and the practical examinations were to be held from 26.08.2023 onwards (tentatively). By then, a representation was given by a member of the Legislative Council to the 1st respondent, on 12.05.2023, seeking preponement of the said supplementary examinations as it would affect the chances of the students appearing for the NEET P.G Entrance Examination, 2024.

4. The respondents 1 to 8 in the present Writ Appeal had moved W.P.No.13822 of 2023 before this Court, seeking a direction to the appellants herein for preponing the supplementary examinations as the conduct of the examinations in August, 2022 would be in violation of the

guidelines given by the Medical Council of India stipulating that the examinations cannot be conducted beyond six months from the primary examinations which was conducted in December-2022/January-2023. The prayer in W.P.No.13822 of 2022 is as follows:

“...to issue a writ, order or direction more particularly one in the nature of WRIT OF MANDAMUS declaring the action of the Respondents particularly 2nd and 3rd respondents in issuing the notification dated 29.05.2023, by fixing the schedule to conduct the supplementary exams for the 4th year MBBS part-2 for the year 2022-23 beyond the six months period from the primary examination which is conducted in December 2022/January 2023 is illegal, arbitrary, unconstitutional and contrary to the Regulations prescribed by the Medical Council of India and consequently direct the respondents to conduct the final MBBS part-2 supplementary exams immediately by advancing the schedule mentioned in the Notification dated 29.05.2023 and pass such other order or orders as it may deem fit and proper in the circumstances in the case.”

5. The contention of the respondents 1 to 8 was that the postponement of the supplementary examinations from 29.05.2023 to 09.08.2023 was done without giving any reasons and that the conduct of the supplementary examinations in August, 2023 would be beyond the period of six months set out in the M.C.I guidelines. The Medical Council of India Regulation, relating to University examinations as placed before this Court, prescribed the following:

“There shall be one main examination in a year and a supplementary to be held not later than 6

months after the publication of its results.
Universities Examinations shall be held as under:”

The respondents 1 to 8 also contended that the conduct of supplementary examinations on 09.08.2023 would result the respondents 1 to 8 losing one academic year for competing in other examinations and for pursuing the courses.

6. A learned Single Judge of this Court, after considering the respective submissions of the parties was pleased to dispose of the Writ Petition, on 14.06.2023, with a direction to the appellants herein to dispose of the representation of the respondents 1 to 8 dated 12.05.2023 with reference to the guidelines of the 10th respondent herein as well as by showing sympathy towards the respondents 1 to 8 on or before 22.06.2023.

7. The appellants herein, in compliance of the above directions, had issued a fresh notification dated 20.06.2023 preponing the examinations. Under the new time table, theory examinations were to be conducted from 20.07.2023 to 02.08.2023 with practical examinations being held from 09.08.2023 (tentatively).

8. Aggrieved by this fresh notification of 20.06.2023, the respondents 1 to 8 again approached this Court by way of W.P.No.14986 of 2023. The respondents 1 to 8 reiterated the earlier contention that conduct of the supplementary examinations in accordance with the impugned time table would mean that these examinations were being conducted, in violation of the guidelines of the Medical Council of India, more than six months after the primary examinations had been conducted in December 2022/January 2023. Apart from this, the respondents 1 to 8 also contended that they would not be eligible to appear for the NEET P.G. Examination which would be conducted in the year 2024 unless they had passed MBBS 4th year on or before 11.08.2023 and consequently completed their one year internship by 11.08.2024.

9. The respondents 1 to 8 also contended that they enquired about the reason for the dates being fixed by the 2nd Appellant and it had come to light that the said dates were fixed to accommodate 3rd year students who had not cleared all their papers to study in the 4th year and for conduct of supplementary examinations for these students. The respondents 1 to 8 contend that the appellants cannot favour the students who

have failed in the 3rd year while denying them the opportunity of appearing in the NEET P.G. 2024 Entrance Examination.

10. A learned Single Judge of this Court after considering all these submissions was pleased to pass an interim direction on 28.06.2023, to the appellants herein, “*to complete the subject supplementary examinations and practical examinations without any break as requested by the petitioners and declare the results on or before 08.08.2023 in the interest of justice.*” Aggrieved by the said order, the appellants have now moved the present Writ Appeal.

11. Sri G.Vijay Kumar, the learned counsel appearing for the appellants would submit that the supplementary examinations have to be conducted for all the students who have failed in the primary examination, in about 18 colleges, all over the State. He would submit that the schedule of examination was fixed after considering all the issues and logistics. He submits that the appellants have accommodated the request of the respondents 1 to 8 by preponing the examinations to the maximum extent possible.

12. Sri G.Vijay Kumar, the learned Standing counsel for the appellants would submit that the decision relating to the

schedule of the examinations etc., would be in the domain of the appellants and a direction to hold the examinations on a particular date would cause immense disruption in the work of the 1st appellant. He would further submit that the cut off date of 11.08.2024, cited by the respondents 1 to 8, is not based on any official proceedings and is a date which is being put forth by the respondents 1 to 8 on the basis of some private websites fixing such a date.

13. Sri Vivek Chandrasekhar, the learned counsel appearing for respondent No.10 would submit that the usual cut off dates for any NEET P.G. Entrance Examination for the past few years has been between March to April of the year and it is only in 2021 that the cutoff date was fixed in June of the year on account of the impact of the Covid pandemic. He would further rely upon regulation No.8(3) of the Medical Council of India Postgraduate Medical Education Regulations, 2000, which reads as follows:

(1)

(2)

(3) Every student, selected for admission to Post Graduate medical course in any of the medical institutions in the country, shall possess recognized

MBBS degree or equivalent qualification and should have obtained permanent registration with the Medical Council of India, or any of the State Medical Council(s) or should obtain the same within one month from the date of his admission, failing which the admission of the candidate shall be cancelled;

14. He submits that usually the NEET P.G Entrance Examinations have been conducted in the months of March/April and the candidates appearing for such examinations are permitted to join the Post Graduate Medical Courses only if they are able to obtain permanent registration with the Medical Council of India within one month of such admission. He would submit that this would require the candidates appearing for the entrance examination after to finish their internship by April or May of the year and the question of fixing a cutoff date in August would not arise.

15. Smt.Jyothi Eswar Gogineni, learned counsel appearing for respondents 1 to 8 relies upon the guideline of the Medical Council of India to contend that the supplementary examinations cannot be conducted beyond June/July of 2023 as the primary examinations were conducted in December-2022/January-2023. She would further submit that the contentions raised by Sri Vivek Chandra Sekhar are not tenable

for the reason that the successful candidates in the entrance examination are required to register themselves with the Medical Counsel within one month joining the course. She submits that the counseling process for admission to P.G course, on the basis of the NEET examination conducted this year, has not yet commenced and there is every possibility that the admissions would only be done by August or September of this year and consequently registration with the Medical Counsel of India would have to be completed by September or October of this year. She would point out that the situation could be the same next year.

16. Smt.Jyothi Eswar Gogineni would further submit that the conduct of supplementary examination has been postponed only for the purpose of accommodating the unsuccessful students of 3rd year MBBS and not because of any administrative difficulties being faced by the 1st appellant-University. She relies upon the pleadings in the counter affidavit filed by the 2nd appellant, in paragraph 6, which reads as follows: “The University has to accommodate the student who have passed the 3rd MBBS Examinations in the month of June with this batch”

17. The first contention of the respondents 1 to 8 is that the regulations of the Medical Council of India require the supplementary examination to be conducted within six months of the conduct of the main examination. It is contended that the said supplementary examination would have to be conducted by June/July-2023 as the main examination was conducted in December-2022/January-2023. However, the regulation states that the supplementary examination is to be held not later than six months after the publication of the results. In the present case, the results were published only in February of 2023. This would mean that the supplementary examinations can be conducted in August, 2023. In the circumstances, the contention that examinations cannot be conducted in August, 2023 would have to be rejected.

18. The contention of the respondents 1 to 8 that the examinations have to be conducted and results also declared before 11.08.2023 is based on an apprehension that the cutoff date by which the candidates should complete their internship would be fixed as 11.08.2024 which would require the respondents 1 to 8 to pass 4th year examination by 11.08.2023. This apprehension is on the basis of some private websites belonging to coaching organizations and private organizations

setting out such a cutoff date. Sri Vivek Chandrasekhar submits that the body which conducts the NEET P.G.examination is the National Board of Examinations. This organization has not notified any such cutoff date. He would further submit that the cutoff date is usually notified about one month before the conduct of the examination. He submits that the cutoff dates prescribed by this organization for the past few years has been the months of March/April except for the year 2021 when the cutoff date was fixed for June of 2021.

19. The print out produced by the respondents 1 to 8, to demonstrate that the cutoff date is 11.08.2024, is a print out from a private website. This print out cannot be treated as an authentic source of information on the basis of which this Court can accept 11.08.2024 as the cutoff date.

20. It must be held that the respondents 1 to 8 have failed to demonstrate either of the primary contentions that conduct of supplementary examinations in August, 2024 would be beyond the time stipulated by the Medical Council of India or that the cutoff date for qualifying for the NEET P.G Entrance Examination of 2024 would be 11.08.2024.

21. It is settled law that any person who approaches this Court, under Article 226 of the Constitution of India, would have to demonstrate a violation of his or her rights and an action which is arbitrary or violative of any regulations or provisions of law by the respondent authorities. In the present case, there has been no violation of any regulation by the 1st respondent in fixing the fresh schedule under the notification of 20.06.2023. Further, the petitioners do not have any right for fixation of a particular date for conduct of examination. Any such right that could have been claimed on the ground of the cutoff date being 11.08.2024 is also not available, as the respondents 1 to 8 have not produced any material before this Court to show that 11.08.2024 would be the cutoff date.

22. The contention of the Respondents No. 1 to 8, that their interests are being sacrificed for the sake of the unsuccessful students of the third year may not be sufficient to grant any relief. This issue would be available if the 1st appellant university had violated any guideline or rule, to the detriment of the respondents 1 to 8, to accommodate the unsuccessful students of the third year. The Appellants, while fixing the schedule of examination would be looking at various

requirements and this Court cannot interfere in the exercise of such administrative discretion unless such a decision is perverse or so unreasonable as to violate Article 14 of the Constitution of India. We do not find any such unreasonableness or arbitrary exercise of discretion.

23. In the circumstances, we do not find any reason to interfere with the schedule of examinations fixed by the appellants. Consequently the directions of the learned Single Judge require to be set aside.

24. Accordingly, this Writ Appeal is allowed setting aside the order of the learned single Judge, dated 28.06.2023, in W.P.No.14986 of 2023. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this case, shall stand closed.

A.V. SESA SAI, ACJ

R. RAGHUNANDAN RAO, J

10.07.2023

RJS

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