

**HON'BLE SRI JUSTICE U.DURGA PRASAD RAO**

**Writ Petition No.10878 of 2021**

**ORDER:**

The petitioners pray for writ of mandamus declaring the action of respondents in awarding less marks in practicals of final year MBBS Part-II examination held during March 2021 and thereby failing the petitioners in final year MBBS Part-II as illegal, arbitrary and contrary to the guidelines for MBBS courses and syllabus prescribed by 2<sup>nd</sup> respondent University and also violative of Articles 14, 16 & 21 of Constitution of India and consequently direct the respondents 2 & 3 to award minimum qualifying marks in MBBS final Part-II practical examination and pass them.

2. The petitioners' case succinctly is thus:

The petitioners are prosecuting MBBS course in 4<sup>th</sup> respondent college. They joined 1<sup>st</sup> year MBBS during the Academic Year 2015-16 and completed all the semesters including final year MBBS Part-I.

While so, due to the COVID-19 pandemic, respondent No.3 conducted online classes to the students. However, there was no regular correspondence with the concerned faculties for better understanding and guidance. Respondent No.2 university issued notification on 30.01.2020 to conduct final year exams of MBBS. Final year MBBS Part-II theory exams were scheduled from 02.03.2021 to 12.03.2021 and practicals were scheduled to be held on 22.03.2021. As per curriculum, final year MBBS Part-II consists of four subjects viz.,

- (1) General Medicine (Medicine)
- (2) Paediatrics
- (3) General Surgery including Paediatric Surgery, Orthopaedics and Traumatology (Surgery) and
- (4) Obstetrics and Gynaecology

As per guidelines, a student should score 50% in theory and practicals and 35% as pass marks in internals and should score an aggregate of 50% for qualifying the semesters. Teaching methodology is concerned, there should be a minimum of 370 classes, out of which 1/3<sup>rd</sup> should be for theory and remaining 2/3<sup>rd</sup> should be for lectures/demonstrations/integrated teaching. However, due to COVID-19 pandemic the prescribed classes were not conducted for theory as well as practicals, but the services of students of final year were utilized for the treatment of COVID positive patients, due to which some of the petitioners were affected with COVID.

In the above backdrop, the petitioners appeared for the exams conducted by 2<sup>nd</sup> respondent University in the month of March 2021. As per guidelines, the marks in practical exams were awarded by the professors of the University or 3<sup>rd</sup> party colleges. During the practical examination the petitioners performed to their level best though practical training for the prescribed period was not conducted. The petitioners also appeared for the theory exams. In the second week of April 2021 the 2<sup>nd</sup> respondent declared the results. To their surprise, the petitioners failed on the ground that they have not scored prescribed marks in practical exams within a margin of 5 to 10 marks. However, they were all passed in theory, oral and internal assessments. It is not out of place to mention that for conducting regular classes and practical training certain conditions were imposed during the lockdown period, however, the 2<sup>nd</sup> respondent did not relax the conditions in awarding marks in practical exams. The students who are having background of medical hospital facility were passed. Due to awarding less marks in practicals, the petitioners have to again attend all the papers once

again though they secured good marks in theory papers, which is much tougher than other. As such the petitioners made representations to the respondents 2 & 3 for reassessment of practical marks which were awarded contrary to syllabus guidelines. But the respondents disinclined to reassess the marks on the ground that no guidelines were prescribed for reassessment of marks. Due to the unjustified acts of the respondents, the petitioners would lose one academic year without their fault. Though the Government extended all benefits to all the students in view of the COVID-19 pandemic, respondent No.2 University did not take into consideration the same and deprived the petitioners such benefits which amounts to violation of their fundamental rights.

Hence, the writ petition.

3. The 3<sup>rd</sup> respondent filed counter opposing the writ petition and *inter alia* contending thus:

MBBS course is governed by the regulations prescribed by the Apex body i.e., National Medical Commission (NMC)/5<sup>th</sup> respondent. Being the student of a professional course, each one shall acquire sufficient skills both in theory and practical examinations to undertake responsibilities of a physician of first contact who is capable of looking after the preventive, promotive, curative and rehabilitative aspects of medical care.

The final MBBS part-II theory and practical examinations were conducted as per the guidelines dated 29.11.2020 of NMC and letter dated 25.11.2020. All the Principals are advised that they shall ensure strict compliance of guidelines issued by the Ministry of Health & Family Welfare and respective State/U.T. Governments about COVID-19 preventive

measures including social distancing, use of masks and sanitization measures in hostels, classrooms, laboratories, lecture theatres and common spaces etc. by following safety precautions.

Following the above guidelines the NMC, the eligible teachers were appointed under Rule 13-Appointment of examiners. The guidelines are:

1. No person shall be appointed as an examiner in any of the subjects of the professional examination including final professional examinations for awarding MBBS degree, unless he/she has taken doctorate degree of a recognized university or an equivalent qualification in the particular subject as per the recommendation of the Council on teachers' eligibility qualifications and has had at least five years of total teaching experience in the subject concerned in a college affiliated to a recognized university at a faculty position.
2. There shall be at least four examiners for 100 students, out of whom not less than 50% must be external examiners. Out of four examiners, the senior most internal examiner will act as the Chairman and coordinator of the whole examination programme, so that uniformity in the matter of assessment of candidates is maintained. Where candidates appearing are more than 100, one additional examiner for every additional 50 or part thereof candidates appearing, be appointed.
3. Non medical scientists engaged in the teaching of medical students as whole time teachers, may be appointed as examiners in their concerned subjects provided they possess requisite doctorate qualifications and five year teaching experience after obtaining their postgraduate qualifications. Provided further that the 50% of the examiners (Internal & External) are from the medical qualification stream.

4. External examiners shall not be from the same university and preferably be from outside the state. (5) The internal examiner in a subject shall not accept external examinership for a college from which external examiner is appointed in his subject.
5. A university having more than one college shall have separate sets of examiners for each college, with internal examiners from the concerned college.
6. External examiners shall rotate at an interval of 2 years.
7. There shall be a Chairman of the Board of paper-setters who shall be an internal examiner and shall moderate the questions.
8. Except Head of the department of subject concerned in a college/institution, all other with the rank of reader or equivalent and above with requisite qualifications and experience shall be appointed as internal examiners by rotation in their subjects; provided that where there are no posts of readers, then an Assistant Professor of 5 years standing may be considered for appointment as examiner.

Apart from the above regulations prescribed by NMC, the respondent university also observed the revised guidelines in appointing the suitable examiners to conduct exams not only at Narayana Medical College, Nellore, but also other colleges in the entire State as per the letters dated 25.11.2020 and 28.01.2021 of the Secretary, NMC. After taking into consideration the above guidelines of the advisory committee, the respondent university has appointed eligible examiners in the subject of Surgery with three internals and three externals, wherein one examiner is from the department of Orthopedics i.e, (2+1), two examiners of Surgery and one examiner in Orthopedics including Professor & HOD of Narayana Medical College, Nellore.

The students failed in the clinical examination need more clinical coverage as it is the professional examination and they did not acquire sufficient clinical skills to pass the examination which was assessed by six eligible examiners/teachers.

The NMC issued proceedings/Advisory dated 28.01.2021 stating that the provisions have been amended and instructed the universities including the respondent university that they adopt the above guidelines for conducting examinations of MBBS batches who were admitted prior to the Academic Year 2019-20 also. The petitioners are covered by the above amended clause and thereby they are not entitled to any relief and their prayer is contrary to the amended proceedings letter dated 28.01.2021.

The clinical examination in the subject of Surgery at Narayana Medical college, Nellore was held for a period of ten days i.e., from 23.03.2021 to 01.04.2021 by allowing a maximum of 25 students per day for the examination. Therefore, erroneous/less awarding of marks by the teachers is not at all feasible as there were sufficient number of teachers to examine on each day. There are no merits in the writ petition and hence, the same may be dismissed.

4. Heard arguments of the senior counsel Sri N.Subba Rao representing Sri Soma Harinatha Reddy, counsel for petitioners, and learned Government Pleader for Medical Health & Family Welfare representing the 1<sup>st</sup> respondent, Sri G.Vijay Kumar, Standing Counsel for the respondents 2 & 3, and Sri S.Vivek Chandra Sekhar, Standing Counsel for 5<sup>th</sup> respondent.

5. The point for consideration is whether there are merits in the writ petition to allow?

6. **Point:** The fulcrum of the argument of learned senior counsel Sri N.Subba Rao is that the petitioners are final year MBBS students and final year MBBS Part-II theory examinations were scheduled from 02.03.2021 to 12.03.2021 and practicals were scheduled to be held on 22.03.2021. However, since December 2019 world was caught under the grip of COVID-19 pandemic and it spread to India in March 2020. Therefore, regular classes were held only upto March 2020 and thereafter due to lockdown imposed by the Central Government, theory and practicals could not be conducted systematically. Though virtual teaching was commenced in the colleges through online method, they were hardly competitive to impart medical knowledge to the petitioners. Moreover, practical/clinical classes were hardly conducted. Therefore, the petitioners were deprived of the valuable theoretical lectures and practical training through physical mode and thereby they could not fare well in the exams despite the fact that they are intelligents by nature. Above all, the service of the petitioners, who are final year students, were utilized for the treatment of COVID patients, due to which some of the petitioners were also affected with COVID. Learned counsel submitted, in this backdrop, the petitioners appeared for the exams and they failed in practical exams with a narrow margin of 5 to 10 marks. As such the petitioners made a representation to the respondents 2 & 3 for reassessment of the practical marks, which were awarded contrary to the syllabus guidelines, however, respondents declined to reassess the marks on the ground that there were no guidelines for reassessment as prayed for. Learned counsel argued that all other educational institutions have given concession to their students in view of the COVID-19 pandemic keeping in

view the valuable academic career of the students. However, despite the representation the 2<sup>nd</sup> respondent university did not consider the legitimate prayer of the petitioners. Hence, their fundamental right is violated. He thus prayed to allow the writ petition.

7. Severely opposing the writ petition, learned Standing Counsel for 2<sup>nd</sup> respondent Sri G.Vijay Kumar argued that the MBBS course is governed by the regulations prescribed by the Apex body i.e., National Medical Commission and all the medical universities are bound by those regulations. While so, during the COVID period, the NMC wrote a letter dated 12.11.2020 to the Ministry of Health & Family Welfare, Government of India, recommending that medical colleges across the country must be reopened on or before 01.12.2020 for the MBBS students who are already pursuing the course and with the opening of medical colleges, in order to facilitate UG training, all medical college affiliated hospitals would need to have sufficient number of beds for non-COVID patients. The NMC further recommended that the colleges shall abide with the COVID-19 reopening guidelines issued by the Competent authorities in the Central/State/UT Governments and the proposed schedule of medical training shall commence on or before 01.12.2020. The NMC requested the Central Government to issue necessary directions in that regard to all the State Governments for reopening of the medical colleges. Consequently the Central Government in its letter dated 25.11.2020 instructed the States/Union Territories to take necessary steps to open the medical colleges on or before 01.12.2020. Learned counsel thus argued that in spite of the prevalence of COVID-19 pandemic, the NMC took steps to reopen the medical colleges by 01.12.2020



and to conduct classes. Even before that, online classes were conducted. So the petitioners cannot harp that they are not provided with sufficient teaching in theory and practicals. He argued that to his information, except the present petitioners no other students in the country rushed to the Court with a prayer as made by the petitioners. He thus prayed to dismiss the writ petition.

8. Learned Standing Counsel for 5<sup>th</sup> respondent also argued in similar lines and emphasized that the regulations framed by the NMC and consequent guidelines issued by the 2<sup>nd</sup> respondent university do not permit to consider the request of the petitioners to award marks liberally in practicals in spite of the poor performance of the students like petitioners.

9. I gave my anxious consideration to the above respective arguments. The petitioners attribute their failure in final year MBBS practicals examinations to the awarding of less marks by the respondent authorities despite the fact that no proper teaching in theory and practicals was conducted owing to COVID-19 pandemic. However, the contention of the respondents is that in spite of the prevalence of COVID-19 pandemic, online theory and practical classes were conducted and further, steps were taken to reopen the medical colleges from 01.12.2020 to impart regular teaching and clinical training and therefore, the petitioners cannot harp that no training was provided to them. It is also their contention that the Regulations do not provide any leeway to award marks in practicals despite poor performance by the students.

10. I find force in the contention of the respondents. It is true that due to COVID-19 pandemic there was some disruption in conducting theory classes and practicals due to total lockdown. However, the recommendations made by the NMC to the Ministry of Healthy & Family Welfare, Government of India, vide its letter dated 12.11.2020, a copy of which is filed along with counter affidavit, would show that the NMC has strongly recommended that medical colleges across the country should be reopened on or before 01.12.2020 for MBBS students who are already pursuing their course. It is further recommended that with the opening of the medical colleges, in order to facilitate UG training, all hospitals affiliated to medical colleges would need to have sufficient number of beds for non-COVID patients. Those recommendations were communicated by the Central Government to the State/UT Governments vide its letter dated 25.11.2020. Thus, as rightly argued by the learned counsel for respondents, the NMC and the Central and State Governments have taken steps for reopening of the medical colleges by 01.12.2020 to impart teaching and training. Besides, online teaching was already going on by that time. Therefore, the petitioners cannot harp that they were deprived of valuable teaching and training and that was the sole reason for their failure in the practicals. It is pertinent to point out that no students throughout the country including the petitioners challenged the holding of exams on the ground that through virtual teaching methodology, they could not understand the subjects and thereby they were not in a position to write the exams. On the other hand, all the students, including the petitioners, appeared in the annual examinations, in which some students got through and some others including the petitioners failed. So, at the outset, the petitioners cannot now clamour that online teaching

system had had adverse impact on their grasping power and thereby they failed in the examination. When holding of examinations is not challenged, the petitioners cannot attribute virtual teaching method as the cause for their failure and on that ground they cannot seek for awarding marks liberally to get through the practical exams.

Added to the above, the regulations i.e., “Regulation on Graduate Medical Education (Amendment) 2019” framed by the NMC do not contain any provision to award marks liberally in some contingencies. On the other hand, the regulations would project that the aim of the medical profession is “help for all” and in that view, the sub-standard students cannot somehow be elevated to higher classes which would degenerate the medical profession.

Above all, this Court while exercising the plenary jurisdiction under Article 226, cannot direct the statutory authorities like 2<sup>nd</sup> respondent university and 5<sup>th</sup> respondent-NMC to award marks to the petitioners when seemingly there was no violation of any fundamental right or other statutory rights. In similar circumstances, the Hon’ble Apex Court, vide order dated 18.06.2021 in W.P.(Civil) No.631/2021, while declining the prayer of the petitioners therein, who were final Post Graduate medical students, to waive their examinations and to promote them as Senior Residents and to the Post Doctoral level, held thus:

“3. The petitioners have also questioned advisories regarding post graduate courses/examinations issued by the National Medical Commission being Annexures P3 and P4 to the writ petition and in effect sought orders of this Court directing the Respondent authorities to make relaxations in norms and criteria fixed as per policy decision in relation to medical education at the post graduate stage. It is impermissible for Courts exercising powers under Article 32 and/or Article 226 of the Constitution of India to interfere with or regulate policy matters or to sit in appeal therefrom.”

**11.** So, at the outset this writ petition itself is not maintainable.

Accordingly, this Writ Petition is dismissed. No costs.

As a sequel, interlocutory applications, if any pending, shall stand closed.

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**U. DURGA PRASAD RAO, J**

05.08.2021

MVA