



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10994 OF 2023

Millan Pradhan, aged about)
20 years, S/o-Simanchala Pradhan, Resident of)
Beguniapatana, PS-Ranpur, Dist-Nayagarh, Odisha) Petitioner.

Versus

1. Union of India, represented through the)
Secretary, Department of Health and Family)
Welfare, Nirman Bhawan, Maulana,)
Azad Road, New Delhi)
2. The Medical Council of India)
Represented through it's Chairman, Pocket-14,)
Sector-8, Dwarka Phase-1, New Delhi-110077)
3. The Controller of Examination,)
Maharashtra University of Health Sciences,)
Nashik, At Dindori Road, Mhasrul, Nashik-422004)
4. Unfair Means Inquiry Committee,)
Maharashtra University of Health Sciences;)
5. The Vice Chancellor, Maharashtra University)
of Health Sciences, Nashik-400004)
6. National Medical Commission Undergraduate)
Medical Education Board, Pocket-14,)
Sector-8, Dwarka, Phase-1, New Delhi-110077)
7. Hon. Secretary, Department of Medical Education)
and Medicine, Mumbai-400032) Respondents.

Mr. Hitesh P Mishra, Advocate for the Petitioner.

Mr. Ahutosh Mishra a/w. Mr. Sandeep Raman, Advocates for Union of India – Respondent No.1.

Mr. Sachindra B. Shetye, Advocate for Respondent Nos. 3 to 5.

Mr. B.V. Samant, Additional Government Pleader with Mr. S.P. Kamble, Assistant Government Pleader for the Respondent No. 7-State

**CORAM : A. S. CHANDURKAR &
M. M. SATHAYE, JJ.**

DATED : 27th JANUARY 2025

JUDGMENT (Per M. M. SATHAYE, J):

1. Heard the learned Counsel for the parties.
2. This Writ Petition is filed seeking declaration that Rule No. 71.12.12(b) of the Ordinance Number 1/2024 issued by Respondent No. 5 titled as “Conduct of Examinations and Use of Unfair Means at Examination” is *ultra-vires*. Further declaration is sought that Advisory dated 27/10/2021 with subject line “related to 1st MBBS Examination and promotion to 2nd MBBS” issued by Respondent No. 6, is *ultra-vires*. The Petitioner further seeks directions to the Respondents to allow the Petitioner to continue with the 3rd year course of MBBS and also to appear for his internal examination and final examination of all subjects including re-examination of subjects of 1st MBBS Course. A further prayer is made seeking permission to permit the Petitioner to be promoted to 3rd year MBBS course and further permission to attend all the classes including extra classes for the purpose of completing 2nd and 3rd year MBBS course including internal examinations, practicals, regular classes, re-examination.
3. At the outset, learned Counsel for the Petitioner, on instructions,

submitted that prayer clause (H3) of the Petition, seeking exercise of discretion in permitting the Petitioner to migrate from the present college to a college in Cuttack, is not pressed.

4. Few facts shorn of unnecessary details, necessary for disposal of the Petition, are as under. The Petitioner is pursuing his MBBS degree course from B. J. Government Medical College, Pune. The Petitioner has a 50% locomotor permanent disability. The Petitioner appeared for “1st MBBS 2019” examination conducted in Winter-2022. On 16/06/2023, the Petitioner received a letter from the Respondent No. 3, intimating a charge leveled against him of being found written mobile number on the answer sheets during Winter-2022 examination of 1st MBBS 2019, in subjects of Physiology-I and Anatomy-I. The letter required the Petitioner to appear before the Unfair Means Inquiry Committee on 26/06/2023 to show cause why the punishment as stipulated in Ordinance No. 01/2014 should not be imposed. The Petitioner appeared before the said committee, where a mistake was pointed out to him and the Petitioner gave an explanation that he has written all his answers with sincerity and honesty without any intention of cheating but was not aware of the Rules. The Petitioner contended that he was in disturbed state of mind and nervous and he already suffered from physical disability. On 28/06/2023, the statement of marks of 1st MBBS 2019 examination was issued and the Petitioner noticed that against the subjects of Anatomy and Physiology, a remark of “CC” appeared and the result was shown as “FAIL Annulment of performance of examining at Winter-2022 exam” in subjects of Anatomy and Physiology. The Petitioner thereafter made a representation to the Respondent No. 5, requesting *inter alia* to consider the Petitioner's case as an exceptional case for not giving severe punishment

because in that case, he will loose entire academic year. In these circumstances, the Petition is filed.

5. Mr. Mishra, learned Counsel appearing for the Petitioner, has urged that Rules requiring the Petitioner to clear all subjects of the 1st year MBBS before he could enter the 2nd year MBBS course, is *ultra-vires* of Article 14 of the Constitution of India. He further submitted that the applicable Rule No. 71.12.12(b) imposing harsh punishment of annulment of performance of the examinee in a particular subject, is also *ultra-vires* of Article 14 of the Constitution of India. He submitted that since the Petitioner has cleared 1st year MBBS subjects, he should be permitted to appear for 2nd year examination of MBBS course, otherwise the Petitioner will loose one academic year.

6. Referring to the Affidavit-in-reply dated 21/10/2024 filed by Respondent Nos. 3 to 5, Mr. Shetye, learned Counsel appearing for the Respondent University of Health Sciences, submitted the Petitioner had resorted to unfair means by writing his mobile number and also making an appeal for giving him passing marks in 1st MBBS examination in subjects of Anatomy-I and Physiology-I on the answer book during Winter-22 session examination. The said act of the Petitioner amounted to revealing his identity, done with an intention to seek favour from the examiner/evaluator. He contended that when the Petitioner appeared before the Inquiry Committee on 26/06/2023 and gave his statement orally as well as in writing, the Petitioner has accepted his lapse and has tendered an apology. He submitted that as per clause 71.12.12(b) of the University Ordinance No. 1/2024, the punishment provided for this malpractice is “annulment of

performance of the examinee in the concerned subject”, which has been duly imposed. He contended that therefore, the result was declared as failed, as the Petitioner's performance was annulled for two subjects. He submitted that thereafter the Petitioner appeared in Summer 2023 examination for clearing these two subjects, as a repeater, but could pass in Physiology subject only. It is submitted that the Petitioner thereafter appeared for the subject Anatomy, in Winter-2023 examination and passed the same, thereby passing 1st MBBS examination completely. He contended that therefore, the Petitioner has passed 1st MBBS fully, only in Winter-2023 and not before that. It is submitted that under the applicable Rules and Regulations as well as the policy of the University, a medical student is not allowed to keep term (ATKT) for the 1st MBBS course. In other words, if the MBBS student fails in even one subject of the 1st year, he cannot take admission for 2nd year. He further submitted that since the Petitioner was not admitted to 2nd year course, he has not undergone the required 12 months training after passing of 1st MBBS and as such, he is not eligible to appear for the examination of the 2nd MBBS course without undergoing the course training. The necessary regulations viz. “Regulations on Graduate Medical Education (Amendment), 2019” framed by the Board of Governors (Now National Medical Commission), Circular dated 12/06/2023 and “Phasewise Training & Time distribution for professional development” are placed on record.

7. On a specific query by the Court, whether the Petitioner is interested in pressing the prayer clause H3 seeking permission to migrate to the college in Cuttack, learned Counsel for the Petitioner has specifically declined, on instructions.

8. We have considered the rival submissions and perused the records. The relevant provision of Ordinance No. 1/2014 “Conduct of Examination and Use of Unfair Means at an Examination” reads as under:

Sr. No.	Nature of Malpractice	Quantum of Punishment
71.12.12(b)	<u>Revealing identity in any form</u> in the answer-book by the student/examinee at the University or College or Institution examination i.e. writing his/her name or request/appeal for pass/help <u>or writing mobile no.</u> etc.	Annulment of the performance of the examinee at the University or College or Institution examination <u>in that particular subject.</u>

[Emphasis supplied]

9. It is, therefore, clear that if the identity is revealed by the candidate in any form in the answer book, including mobile number, the same amounts to malpractice for which quantum of punishment prescribed is annulment of performance of the candidate in the concerned examination in the concerned subject. Considering the undeniable need for maintaining the quality of education, especially in the field of medicine, where the candidate is aspiring to practice a noble profession of medicine, in our considered opinion, the punishment prescribed is appropriate and there is nothing harsh or disproportionate about it. Therefore, the challenge to the constitutional validity or *vires* of the said Rule, is only stated to be rejected.

10. So far as the challenge to the impugned Advisory dated 27/10/2021 (requiring the candidate passing 1st professional examination compulsory before proceeding to 2nd MBBS training) is concerned, a copy of the “Phase wise training and time distribution for professional development” placed on record by the Respondent–University of Health Sciences, assumes

importance. It shows that a candidate/student, who fails in 1st professional examination, was not allowed to attend the 2nd professional. We note that the Rules provide that a student who fails in 2nd professional examination is allowed to join 3rd professional Part-I training, however, he is not allowed to appear for the examination unless he has passed the 2nd professional examination. Therefore, the provision such as keeping the term (ATKT) is provided while transition from 2nd year to 3rd year. However, for the transition from 1st year to 2nd year, there is a clear bar and it is not allowed. We agree with the obvious logic behind this rule that unless a foundational first year of MBBS course is completed in all respect including passing all subjects, a student can not be permitted to undertake further training. We are dealing with medicine course here and strict quality check such as this Rule / advisory, has to be maintained. The concerned applicable rule is made by the experts. Therefore the said advisory is also appropriate in our considered view, and the challenge to the constitutional validity or *vires* of the said advisory is also rejected.

11. In that view of the matter, the stand of the Respondent - University in not allowing the Petitioner to appear for 2nd year examination is well within the bounds of the applicable rules. Since, the Petitioner is not even permitted to take course/training for the 2nd year, unless he clears the 1st year MBBS, obviously the Petitioner will be required to undergo 12 months course/training after clearing the 1st year MBBS examination fully in Winter-2023 session.

12. In the aforesaid facts and circumstances, this is not a fit case to exercise our extra-ordinary writ jurisdiction under Article 226 of the Constitution of India.

13. There is no merit in the petition and it is accordingly dismissed. No order as to costs.

14. All concerned to act on duly authenticated or digitally signed copy of this order.

(M. M. SATHAYE, J.)

(A. S. CHANDURKAR, J)