

...PETITIONERS

(BY SRI.PRATEEK CHANDRAMOULI, ADVOCATE)

AND:

RAJIV GANDHI UNIVERSITY OF HEALTH SCIENCES
BY ITS REGISTRAR (EVALUATION)
4TH T BLOCK EAST, PATTABHIRAMA NAGAR
JAYANAGAR, BENGALURU- 560041

...RESPONDENT

(BY SRI.SACHIN B S, ADVOCATE)

THIS WP IS FILED PRAYING TO QUASH THE VALUATION OF THE PRACTICAL ANSWER BOOKLET IN THE SUBJECT MEDICINE IN RESPECT OF THE P-1, 2 AND 3, OF THE EXAMINATIONS OF FEBRUARY 2023, VIDE ANNEX-A, A1 AND A2, AS IT IS ARBITRARY AND INN VIOLATION OF THE JUDGMENTS OF THIS HONBLE HIGH COURT AND ETC.,

THESE PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 14.06.2023 COMING ON FOR PRONOUNCEMENT OF ORDER THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The captioned writ petitions are filed by the students feeling aggrieved by the evaluation of practical examination made by the respondent-University.

2. The grievance of the petitioners herein is that they were declared unsuccessful in the practical examination conducted in the month of February, 2023. The petitioners claim that in terms of Regulation 13(2) of the Graduate Medical Education Regulations, 1997, four examiners must independently award marks and use their independent judgment and discretion to evaluate the students. The petitioners have also placed reliance on the judgment rendered in W.P.No.22474/2022, wherein the co-ordinate Bench in identical situation directed the respondents to re-conduct practical exams. Reliance is also placed on the judgment rendered by the Division Bench in W.A.No.615/2020.

3. The petitioners while questioning the manner in which evaluation is done, have contended in the captioned petitions that respondents have not conducted practical exams in a fair manner adhering to the regulations. Placing reliance on the photocopies of the answer sheets, petitioners claim that respondent-University has conspicuously omitted the column for remarks. The cause of action to approach this Court is on the ground that practical exams are conducted arbitrarily and in a very unfair manner which is found to be prejudicial to the interest of the petitioners herein and other medicine students.

4. Learned Senior Counsel reiterating the grounds urged in the writ petitions would vehemently argue and contend that all the four examiners are under bounden duty to make independent assessment and thereafter to enter their respective marks in the answer booklet. Referring to the answer sheets, he would point out that the practical answer book which is now claimed to have been withdrawn by the

respondent-University and the one newly introduced is found to be almost similar except the remarks which was earlier existing is removed, but the requisite condition that each of the examiner has to make an independent assessment of the students and has to assign marks is not dispensed under the new practical answer book. To substantiate the said contention, learned Senior Counsel has taken to the practical answer book produced by the University themselves which is evident from Annexure-R6. On these set of grounds, he would request this Court to issue necessary directions to the respondent-University to re-conduct practical exams strictly adhering to the guidelines issued by the then Medical Council of India (MCI) which is at present National Medical Commission (NMC).

5. Per contra, learned counsel appearing for the respondent-University reiterating the defence set up in the statement of objections would advance his arguments in two folds. Firstly, he would question the very maintainability of

the writ petitions. He would contend that the petitioners are found to be selective as they have not chosen to question the assessment done in respect of those subjects where petitioners have cleared the exams. Therefore, he would contend that the writ petitions are not maintainable. He would contend that the petitioners were very well conversant with the Rules and the methodology that would be adopted by the respondent-University and cannot selectively question the process of conducting examinations only in respect of practical exams on the ground that examiners have not independently assessed and assigned marks. He has also raised objection on the ground that NMC is a necessary party and therefore, there is a deliberate intent on the part of the petitioners in not impleading NMC. Even on this count, he would point out that the present writ petitions are not maintainable.

6. Referring to the statement of objections, learned counsel appearing for the respondents have placed reliance on the following judgments:

1) *Mr. Ramegowda Y. vs. The Registrar (Evaluation), Rajiv Gandhi University of Health Sciences & Others - W.P.No.9758/2020;*

2) *Rajiv Gandhi University of Health Sciences vs. Mr. Ramegowda Y. & Others - W.A.No.615/2020;*

3) *Sri Pradeep Sihag vs. Rajiv Gandhi University, By its Vice Chancellor & Others - W.P.No.15924/2021 & connected cases;*

4) *Sri Abhilash V.J. vs. Rajiv Gandhi University of Health Sciences - W.P.No.21063/2022 and connected cases;*

5) *NTR University of Health Sciences vs. Dr.Yerra Trinadh & Others - AIR 2022 SC 5523;*

6) *Desmond Dominic Rego vs. Rajiv Gandhi University of Health Sciences, Bangalore - AIR 1999 Kar 203;*

7) *Shreem Mittal vs. Central Board of Secondary Education - W.P.(C) No.7183/2020;*

8) *Mr. Dasari Chakradhar S/o Mr. D.G.S.V.Trinadha vs. The Registrar (Evaluation) Rajiv Gandhi University of Health Sciences, Jayanagar, Bengaluru - 2022 Supreme (Kar) 64;*

9) *Dr. B.R. Ambedkar University, Agra vs. Devarsh Nath Gupta & Ors. - Civil Appeal No.1141/2023;*

10) *Rajesh Kumar Verma vs. High Court of Delhi through Registrar General - Writ Petition (Civil) No.207/2013;*

11) *Central Board of Secondary Education and Another vs. Aditya Bandopadhyay and Others - AIR 2011 SCW 4888;*

12) Bihar Public Service Commission vs. Saiyed Hussain Abbas Rizwi & Another - 2012 0 Supreme (SC) 910.

7. The short question that arises for consideration is, as to whether the answer booklet relating to practical examination meets the requirement set down by the MCI regulations on medical education. The question that also arises for consideration is, whether four examiners are required to assign independent marks in their respective columns or can assign total marks. The said issue is given a quietus by the co-ordinate Bench judgment rendered in W.P.No.9758/2020. This Court while addressing an identical issue was not inclined to accept the contention raised by the respondent-University. This Court held that the practical exams conducted by the respondent-University should apply MCI regulations which prescribes a set of four examiners. The co-ordinate Bench placing reliance on the regulations/notifications issued by the Apex body held that regulations are mandatory in nature and their violation

renders the practical examination and consequent answer booklet invalid. The said judgment rendered by co-ordinate Bench is confirmed by Division Bench in W.A.No.615/2020. Similar view is taken by the co-ordinate Bench in batch of writ petitions. The said judgment is also placed on record by the learned counsel appearing for the respondent-University. Therefore, now it is a settled principle of law that MCI which is now known as NMC has prescribed a set of four examiners for theory and practicals. It goes without saying that every examiner has to independently assess and assign marks which is lacking in the present batch of petitions. Therefore, it is unfortunate that respondent-University and examiners in gross violation of the findings recorded by co-ordinate Bench are again repeating the same mistakes.

8. The contention of learned counsel appearing for the respondent-University that there is no need for every examiner to assign individual marks in the column in view of

withdrawal of the Circular dated 20.06.2022 is found to be totally misconceived. The contention of respondent-University that the Court has upheld withdrawal of Circular dated 20.10.2020 and therefore, there is no need for the examiners to independently assign marks is also misconceived and is not supported by any precedents.

9. The emergence and evaluation of concept of four examiners was on account of arbitral assessment by the examiners in theory as well as practical exams. The concept of having four examiners gained attention in recent years as a means to enhance accuracy, fairness and reliability of assessments. One of the primary drivers behind the emergence of concept of four examiners is the desire to address subjectivity and bias inherent in single or dual examiner assessment. Recognizing the trend and also based on statistics, the MCI has come out with an Ordinance pressing for four examiners for practical and theory. This was

brought into force to get over the issue of individual evaluators indulging in personal bias. Therefore, the concept of four examiners was introduced to explore more diverse viewpoints to minimize the impact of these biases. The inclusion of four examiners brings about a collective decision-making process, reducing the influence of individual prejudices and enhancing the overall fairness of practical and theory examinations.

10. In practical examinations also, the MCI thought of having four examiners so as to evaluate students the real world skills and competencies. The Apex body was also of the view that single or dual examiner assessment may not capture the full spectrum of a student's performance. By involving four examiners with diverse expertise, a more comprehensive evaluation was sought to be achieved. Each examiner brings his unique knowledge and experience, allowing for a broader assessment that encompasses different dimensions of practical

proficiency. By having four examiners, the Apex body thought that the students abilities are thoroughly evaluated and recognized.

11. The concept of four examiners fosters collaboration among professionals in the field. The inclusion of multiple experts in the evaluation process encourages the exchange of ideas, methodologies, and best practices. The collaboration stimulates professional growth and development among the examiners themselves, as they learn from one another and gain insights into different approaches to practical assessments. This continuous improvement contributes to the evolution and refinement of the concept itself.

12. On meticulous examination of the mark sheet of practicals in all these batch of petitions, this Court has noticed a very disturbed trend, more particularly, the manner in which the respondent-University is conducting theory and practical exams without adhering to the standards prescribed by the

MCI which is the Apex body. The instructions to the examiners appointed for the conduction of practicals/clinical and the directions issued by this Court are blatantly violated by the respondent-University. If the guidelines of the Apex body clearly prescribes four set of examiners, then the respondent-University and its examiners have to follow the directions with all vigor and spirit. The examiners appointed for the conduct of practical exams have to ensure that marks are awarded in the answer scripts and the marks have to be entered in the freeze sheet and answer scripts in the column provided. Each of the examiner has to assign marks independently which clearly gives an indication that each examiner has evaluated the performance from their own perspective, highlighting different strengths and areas for improvement. This multidimensional feedback enables students to gain a more holistic understanding of their performance, allowing them to identify their strengths and work on any weaknesses effectively. If each of the examiner

assigns independent marks, this increases reliability as well as confidence in the assessment outcomes and ensures that students performances are accurately represented.

13. In W.P.No.8655/2023, the examiners have not even assigned marks and a dash mark (-) is used. The very purpose for which four examiners are prescribed and its objects are blatantly violated by the examiners and even by the respondent-University. Though the respondent-University claims that Circular dated 20.10.2020 which mandates examiners to award independent marks and also marks for short case and long case is withdrawn, the withdrawal of the Circular dated 20.10.2020 is of no consequence and will not come to the aid of the respondent-University.

14. The Indian Medical Council Act which is found to be relatable to Entry 66 of List I admittedly prevails over any State enactment regulations framed by the Apex body with previous sanction of the Central Government are statutory.

These regulations are framed to carry out the purposes of Apex body i.e., MCI Act now known as NMC. Therefore, the Universities and examiners are bound by the regulations and theory and practical exams are to be conducted by the University in strict adherence to these regulations. Therefore, the writ petitions are bound to succeed and the practical exams conducted by the respondent-University not being strictly in consonance with the procedure prescribed by the MCI, interference is warranted at the hands of this Court.

15. For the foregoing reasons, I pass the following:

ORDER

- (i) The writ petitions are allowed;
- (ii) The marks awarded to the petitioners in the practical exam vide 'Practical Answer Booklet' issued by the respondent-University is declared as null and void and is hereby quashed;
- (iii) The respondent-University is hereby directed to re-conduct practical/clinical exam in respect of daughter of the petitioner in

W.P.No.7019/2023 and in respect of other petitioners in terms of Regulation 13 of the Graduate Medical Education Regulations, 1997, notified by the Medical Council of India irrespective of ensuing supplementary exams.

(iv) The respondent-University is also directed to fix the schedule for practical exams before the ensuing supplementary exams;

(v) It is needless to say that, in the event, the petitioners succeed in the practical exams, results relating to theory appear has to be announced afresh before the ensuing supplementary exams;

(vi) The pending interlocutory application, if any, does not survive for consideration and stands disposed of.

Sd/-
JUDGE