

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 3 OF 2008**

1. Ms. Priyanka P. Natekar,
37, Aishwarya,
GOMECO Co-operation Housing
Society, Bambolim, Goa.
2. Mr. Gautam Singbal Manik Mahal,
Near Abhinav Housing Society,
Alto-Betim, Porvorim, Goa.
3. Mr. Sudin Naik,
H. No.448/2, Karai,
Shiroda, Ponda, Goa.
4. Mr. Prashasta Mishra,
GMC Boys Hostel,
Bambolim, Goa.
5. Ms. Swida Gaonkar,
Panjarconnim, Cuncolim,
Salcete, Goa.
6. Ms. Soniya Naik,
Balve Tisca,
Usgao, Ponda, Goa.
7. Ms. Myvilia Dias Sapeco
Kenkre Estate,
Building No.1, Flat No.B/10,
Santa Cruz, Goa.

... Petitioners

versus

1. The Dean,
Goa Dental College,
Government of Goa,
Bambolim – Goa.
2. The Goa University,
through its Registrar,
having office at Taleigao
Plateau, Bambolim-Goa.

3. State of Goa,
through its Chief Secretary,
having office at Secretariat,
Porvorim, Bardez-Goa.

... Respondents

Mr. A. N. S. Nadkarni and Mr. H. D. Naik, Advocates for the Petitioners.

Mr. S. S. Kantak, Advocate General with Ms. L. Dharwadkar, Additional Government Advocate for Respondent Nos.1 and 3.

Mrs. A. Agni, Advocate for Respondent No.2.

**CORAM : D. B. BHOSALE &
N. A. BRITTO, JJ.**

DATE : 16TH JANUARY, 2008.

ORDER(Per N. A. BRITTO, J.)

The Petitioners aspire to appear for the Fourth BDS(Bachelor of Dental Surgery Examination) to be held today. The Petitioners are not allowed to appear because they have failed in the subject of Oral Pathology and Microbiology of regular third year BDS Examination held in July, 2007 and again in supplementary examination held in October/November, 2007. In this petition filed under Article 226 of the Constitution, the main grievance of the Petitioners is that they were deprived of 5 marks, they having been provided only with 7 slides against 8 which were required to be provided to them. They also allege that the Respondent-Goa Dental College and Hospital did not strictly conduct the examination in terms of the Ordinance and therefore non conducting of practical examination of Oral Pathology and Microbiology in accordance with the Goa University Ordinance is arbitrary and illegal. Since the Respondent-

University's Ordinance OA-5.15(v) prohibits re-valuation of answer books in practical examinations/term work Sessional project, etc., the Petitioners have filed the present petition. The Petitioners, except for failing in oral Pathology and Microbiology, by not securing 50% of the marks have otherwise passed in other subjects. The Petitioners for all purposes are repeaters.

2. The Practical Examination in Oral Pathology and Microbiology terms of Ordinance SOC-5.11.3 provides that Oral Pathology and Microbiology practicals shall consist of:

- (i) One paper of 3 hours duration carrying 60 marks and viva-voce carrying 15 marks.
- (ii) Practicals of 3 hours duration carrying 75 marks.
 - (a) Identification of Slides 8 Nos. - 40 marks.
 - (b) Identification of Specimens 7 Nos. - 35 marks.
- (iii) Sessional work carrying 25 marks for Theory and 25 marks for practical work is to be added to the marks of papers and practicals respectively.

In case of a candidate who has failed previously in the examination a new credit list should be prepared on the basis of the previous sessional work as well as on the basis of the performance in the term preceding reappearance in the examination.

3. The guidelines for award of sessional marks provide that maximum

25 marks are to be allotted for theory and 25 marks for each practical in the subject to be split in 15 and 10 marks. 15 marks are to be allotted for College tests enumerated therein and 10 marks are to be allotted for day to day performance and attendance, as specified therein.

4. Notice having been given to the Respondents, the Registrar of Respondent-University has filed his affidavit and in the said affidavit it has been, inter alia, stated that the provisions of the Ordinance have been fully complied whilst conducting the examination of the Third BDS held in the month of July, 2007 and also in the month of November, 2007. It has been stated that the Dean of Goa Dental College and Hospital by his letter dated 7-1-2008 has clarified that the Ordinance SOC-5.11 of the Goa University had been implemented and with regard to identification of slides, 7 slides were given for identification, illustration and diagnosis using the microscope and one slide was given as an open spot from the personal work records/journal for discussion thereby totaling 8 slides corresponding to 40 marks and therefore it is incorrect to say that the Petitioners have been deprived of 5 marks due to which they have been declared failed in the practical examination of Oral Pathology and Microbiology. It is also stated that the Petitioners are not eligible to appear for the Fourth BDS Examination and that the total number of students who have been scheduled for final BDS Examination is 26 and the reliefs as prayed for by the Petitioners will not only prejudice the interests of the said students who will go unheard as they have not been joined as parties to this petition. It is also stated that the Petitioners cannot seek any relief

with regard to conduct of Final Examination without joining all the affected students as parties to the petition.

5. The Dean of Goa Dental College and Hospital has also filed his affidavit and in the said affidavit he has, inter alia, stated that for Practical Examination of Oral Pathology and Microbiology 100 marks are allotted out of which 75 marks are allotted for practical(70 marks for slides and specimens and 5 marks for journal diagram) and 25 marks are allotted for internal assessment i.e. average of marks scored at the midterm and preliminary exam (15) and (10) marks are assessed from timely submission, quality and completion of journal exercise. He has reiterated that every student had to identify 8 slides and 7 specimens and every student was given 7 sliders for identification, illustration and diagnosis using the microscope and one slide as an open spot based on an analysis of the diagram of slides entered in the journal, thus making total of 8 slides. He has further stated that this was entered separately under the head of “Journal” out of 5 marks and added to 70 under “Spot” thus making the total to 75. He has further reiterated that 8 slides were provided, 7 for microscopic and one for an open spot from Journal diagram of the said student. He has also stated that that is the pattern which was followed right from the inception of the College and it was also followed in the Examination held in July, 2007. He has also stated that there is no uniform basis for new sessional marks and hence the Head of the Department exercises his discretion in augmenting the marks under the head day to day work(10 marks) of the internal assessment on the basis of the performance

at remedials/self important classes/practicals. He has also stated that the examination was conducted by the internal and the external examiner, the latter being one Dr. Bastian T. S., Professor of the Department of Oral Pathology, Lucknow Dental College.

6. We have heard the learned Counsel at length. The contention that there was no external examiner has been given up on behalf of the Petitioners. We are unable to accept the Petitioners' contention that they have been deprived of 5 marks by not providing 8 slides. From the affidavits filed on behalf of the Respondents, it is quite clear that the Petitioners along with other successful candidates were examined for 75 marks. They were given 7 slides for identification, illustration and diagnosis using microscope and one slide as an open spot based on the analysis of the diagram entered on the journal, and thus were assessed for 40 marks. As rightly pointed out on behalf of the Dean, the said Ordinance nowhere provides that identification should be by microscopic slides only. It is also stated that when there is no sufficient equipment slides are shown to the students through projects and what matters in our view is the ability of the students to identify the same. The Petitioners were assessed for 40 marks. That is the method which was followed in respect of such successful candidates as well, and in that, in our view, there has been substantial compliance with SOC-5.11.ii(a) and (b). As far as sessional marks are concerned, it has been stated on behalf of the Dean and the Respondent-University that the Petitioners being repeaters were considered on the basis of their previous work and that was in consonance with

what is provided below sub-clause(iii) of clause (3) of Ordinance SOC.5.11 of the University's Ordinance. As already seen, it provides that in case of a candidate who has failed previously in the exam a new credit list should be prepared on the basis of the previous sessional work as well as on the basis of the performance in the term preceding reappearance in the examination. The Petitioners were aware that the same procedure was followed in July, 2007 and knew that the same would be followed in November, 2007 supplementary exam but did not complain and if they did not challenge the procedure then it is not open to them now to challenge the same, belatedly. Assuming there was some deviation in awarding sessional marks, we are not inclined to interfere in writ jurisdiction at this stage considering that the examinations for the Fourth BDS are scheduled for today and any interference would disturb the entire life of Fourth and final year students and the schedule of final BDS examination.

7. In the above view of the matter, we are not inclined to entertain this petition. The same, therefore, is hereby dismissed.

D. B. BHOSALE, J.

N. A. BRITTO, J.

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