

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.892 OF 2017

Mr. Kiran Kudalkar,
son of Dyaneshwar Kudalkar,
student, aged 28 years,
resident of Flat No.704,
Devashri Darshan, Mangor Hill,
Vasco da Gama, Goa.

..... Petitioner.

Versus

1. State of Goa,
through its Chief Secretary,
having office at Secretariat,
Alto Porvorim, Bardez, Goa.
2. Goa University,
through its Registrar,
Talegao Plateau,
Tiswadi, Goa.
3. The Vice Chancellor,
Goa University,
Talegao Plateau,
Tiswadi, Goa.
4. Controller of Examinations
Goa University,
Talegao Plateau,
Tiswadi, Goa.
5. Goa Medical College,
through Dean of Goa Medical College,
Bambolim, Goa.

6. Medical Council of India,
Having its office at Sector 8,
Pocket 14, Phase-1,
Dwarka, New Delhi, Delhi 110077 Respondents.

Mr. Suresh T. Mane, Advocate for the Petitioner.

Ms. Neha U. Kholkar, Addl. Govt. Advocate for Respondents No.1
and 5.

Ms. A. A. Agni, Senior Advocate with Ms. J. Sawaikar, Advocate for
Respondents No.2, 3 and 4.

Mr. P. Sawant, Advocate for Respondent No.6.

***Coram : S.C. Gupte &
Nutan D. Sardesai, JJ.***

Date : 6th June, 2019.

ORAL JUDGMENT : (Per S.C. Gupte, J.)

1. This Petition is filed by a student of Goa Medical College, who is awaiting completion of his medical course. The circumstances which have led the Petitioner to approach this Court, are rather unfortunate.

2. The Petitioner was originally a student of K.M.C. Mangalore College where he was admitted to the First Year MBBS Course in 2004-05. He passed the First Year with distinction, securing 75% marks. In the following year, i.e. 2005, he met with a near fatal road accident, causing serious injuries to his skull and frontal part of head, as also his left eye, leading to physical and vision

disability and was under medical care between the years 2005 and 2008. He naturally could not continue his MBBS Course during this period. In 2008-09, by the time the Petitioner recovered, his family shifted to Goa and he got himself admitted to the Goa Medical College under the University of Goa for Second Year MBBS Course.

3. The Petitioner passed the Second Year MBBS in a second attempt sometime in July, 2011. He then got admitted to the Third Year MBBS Course and appeared for Part I examination of Third Year MBBS in July, 2012. He, however, failed to clear the examination in the first attempt. In July, 2013, the Petitioner cleared Part I of Third Year MBBS. He then appeared for Part II of Third Year MBBS, but despite a few attempts, could clear only one out of four papers of Part II Third Year MBBS. (The Petitioner has passed in the subject of Pediatrics, but has failed to clear the subjects of General Medicine, General Surgery and Obste-Gynac.)

4. Sometime in 2016, the University of Goa wrote to the Petitioner that the Petitioner had already exhausted the available period for completion of the MBBS Course. This was on the basis of “Double Duration principle” contained in the Ordinance of the University, namely, OA 16.11. Under this Ordinance, the total duration available for a student to complete any University course is

twice the actual duration prescribed for the course “unless otherwise specified”. In case of courses having guidelines prescribed by regulatory bodies such as MCI, DCI, CCH, CCIM, AICTE, the duration for completion is such as may be prescribed by these regulatory bodies. The Ordinance requires the students, who do not complete their course/pass all examinations prescribed for the course within the available duration, to discontinue the course. In exceptional cases, the Academic Council is empowered to permit candidates to answer the examination beyond twice the actual duration prescribed, but they are not eligible to award of a class. This rule is relaxed in case of differently-abled candidates who are eligible for award of class, but are not considered for award of medal/prize/scholarship.

5. The bone of contention in the matter, so far as the University is concerned, appears to be that whilst the University is bound to go by the specification of the MCI, the medical course having guidelines prescribed by the MCI as a regulatory body, so far as duration for completion of the medical course is concerned, there is no such prescription or specification by the MCI, either generally or in this particular case; in the premises, the ordinary rule of the University of maximum available duration of double the prescribed duration ought to apply.

6. The University Ordinance makes it very clear that the rule of twice the actual duration is a rule in default. The rule applies unless there is a specification otherwise. Particularly, for courses which have guidelines prescribed by regulatory bodies such as MCI, the duration for completion of the course is undoubtedly as prescribed by these regulatory bodies. In our case, it does appear that there is no general specification by the MCI one way or the other, though the MCI has taken a stand that there is no duration for completion of medical course. It is also clear that the expression “unless otherwise prescribed” used in OA 16.11 of the University need not be construed in all cases as a general specification; it may even be a special specification in a given case.

7. In the premises and particularly considering its avowed stand in the present petition, it is in the interest of justice that the MCI, which is Respondent No.6 in the present Petition, may be directed to consider the Petitioner's case and specify whether or not the Petitioner can complete his MBBS Course beyond the duration generally prescribed by the University for all its courses. The facts of the Petitioner's case are already before the MCI, since they do form part of the pleadings filed by the respective parties in the Petition. The MCI shall, accordingly, take a final decision in this behalf and communicate the same to the University within four weeks from today. The University, on its part, has made it clear that it will abide

by the decision that is conveyed by the MCI in this behalf. In fact, Ms. Agni, learned Senior Advocate appearing for Respondents No.2,3 and 4, states that the University has expressly sought direction in this behalf from the MCI.

8. The Petition is, accordingly, disposed of in terms of the above order.

9. In the meantime, till the MCI takes a decision in the matter, as required above, the Petitioner shall be permitted to appear for the Third Year MBBS Part II examination scheduled to be held in the month of July, 2019. The University shall accept the examination form of the Petitioner and process the same, and allow the Petitioner to appear at the examination. The University shall also assess his papers, but shall not declare his result and shall keep the same in abeyance till the decision of the MCI is conveyed to the Petitioner one way or the other. His appearance at the examination and the result will accordingly be subject to the decision to be taken by the MCI as noted above.

Nutan D. Sardesai, J.

S.C. Gupte, J.