

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 8TH DAY OF DECEMBER 2011

BEFORE

THE HON'BLE MR.JUSTICE S. ABDUL NAZEER

WRIT PETITION NO.38248/2011 (EDN-EX)

Between:

Miss Sabiha Mohammed Ilyas Patel,
D/o Mohammed Ilyas Patel,
Aged about 22 years,
R/o No.6, 8th Main,
1st Cross, Jayanagar 3rd Block East,
Bangalore – 560 011.

.... Petitioner.

(By Sri M.G. Kumar, Adv.)

And:

1 The Registrar (Evaluation),
Rajiv Gandhi University of Health Sciences,
4th T Block, Jayanagar,
Bangalore – 560 041.

2 The Principal,
Rajarajeswari Dental College & Hospital,
Ramohalli Cross, Kumbal Godu,
Mysore Road,
Bangalore.

3 Dr. Subhashini,
W/o Dr. Vinay,
Aged about 35 years,
Reader of Conservative Dentistry,
Rajarajeshwari Dental College,
Bangalore.

.... Respondents.

(By Sri N.K. Ramesh, Adv. for R1
Sri C.R. Goulay, Adv. for R2
Sri A. Kumarvel, Adv. for R3)

This Writ Petition is filed under Articles 226 & 227 of the Constitution of India, praying to direct R1 & R2 to conduct re-examination of University Medical Examination of the CDIE subject of the 4th year BDS Exam June, 2011 immediately under any other examiner, etc.

This Writ Petition having been heard and reserved for Orders, this day the Court pronounced the following:

ORDER

The petitioner had joined Rajarajeshwari Dental College and Hospital ('College' for short), Mysore Road, Bangalore, for the study of BDS Course for the academic session 2007-2008. The said college is affiliated to Rajiv Gandhi University of Health Sciences, Bangalore ('University' for short). It is the case of the petitioner that she had passed CBSE 10th and 12th Board Examination with distinction. She has completed her first, second and third year BDS Course in first class with registration No.07D5065, which is clear from her marks-cards at Annexures 'A', 'B' and 'C' respectively. She has appeared for the fourth year BDS Course examination during July, 2011 conducted by the University. The 4th year BDS course consists of seven subjects including 'Conservative Dentistry including Endodontics'. She has passed in all the subjects in first class except the aforesaid subject in the practical examination. In

the theory paper of the aforesaid subject, she has secured 62 out of 100, in viva-voce 16 out of 25 and in internal assessment 13 out of 25. However, in the practical examination, she was awarded 25 out of 75 marks. In the practical internal assessment, she has secured 15 out of 25. Thus, petitioner has passed in the theory part of the subject but has failed in the practical examination as she has failed to secure 50% (38 out of 75) in the practical examination.

2. The contention of the petitioner is that respondent No.3 was the internal examiner for the practical examination. She has arbitrarily awarded less marks and failed the petitioner deliberately. The third respondent is the Reader, who had conducted the practical examination for the subject on 20.7.2011. The practical examination carries maximum 75 marks, which involves three stages of the examination. The first stage is cavity preparation of the tooth (only after the clinically successful cavity preparation, the next stage can be conducted). The second stage is the base and matrix band application. The examiner after examining the second

stage one after another allows the student to proceed with the next stage. The third stage is restoration, which involves filling of the tooth. In case the candidate fails to perform the cavity preparation without exposure of pulp, only then the examiner will allow the student to proceed with the next stage. In case the cavity preparation is defective, the patient is sent to the P.G. Section for root canal treatment and the student would fail in the practical examination. One Nagaraj was the patient approved by respondent No.3 for practical examination of the petitioner. She had submitted all the instruments needed for the department of examination a day before for sterilization. On the day of the examination, she started the procedure with her sterilized instruments needed for the examination and after the completion of every step, respondent No.3 assessed it and asked her to proceed with the next step. First step involves arranging the instruments followed by cavity preparation. After successful preparation, respondent No.3 came and checked her case and asked her to proceed with the next step i.e. placement of matrix bond and application of base (dental

cement) in the tooth. Again, the petitioner called respondent No.3 and showed it to her and she asked the petitioner to do the silver amalgam filling (restoration). Petitioner did the filling, then carved it, polished it and showed the final filled cavity. After seeing every step, respondent No.3 made no notes of any clinical observation but noted down the marks. Respondent No.3 having noticed each step of the treatment to the patient Nagaraj, which completed perfectly, had permitted the petitioner to discharge him. In spite of the successful performance of the practicals, respondent No.3 without any rhyme or reason failed the petitioner.

3. The petitioner lodged a complaint to the second respondent, who in turn in consultation with the Dean of the College, instructed the petitioner to lodge a complaint to the first respondent. Accordingly, on 13.9.2011, she lodged a complaint to the first respondent. On 13.9.2011, the Dean of the College had reprimanded respondent No.3 for being negligent and arbitrary in conducting the practical examination. The Dean had questioned

respondent No.3 as to how the petitioner was failed when no pulp had appeared during cavity preparation process. It was evident that pulp could not have appeared because the patient was not sent to P.G. and the filling was completed by the petitioner. Respondent No.3 has not followed or applied any parameter for awarding the marks for the practical examination. The third respondent did not record any clinical observation of the practical in the case history of the patient. The patient Nagaraj had not complained of any deficiency in the filling. In fact, the x-ray of the tooth post filling establishes the success of the practical examination. The petitioner has produced a copy of the complaint at Annexure 'E' dated 13.9.2011. On 14.9.2011, the second and third respondents were summoned to the University for enquiry on the petitioner's complaint. During the enquiry, the third respondent falsely stated that during cavity preparation, pulp had appeared. Hence, she failed the petitioner in the practical examination. The third respondent made baseless allegations that the petitioner's attendance and viva-voce was not satisfactory. The first respondent without ascertaining

the truth of the statement of the third respondent and without examining patient's case history available in the hospital records, concluded the enquiry without taking it to the logical conclusion. The first respondent failed to ascertain whether the tooth filling was completed or not which was essential to evaluate the ultimate result of the petitioner's practical examination. The first respondent ought to have noticed that in the cavity preparation if pulp had appeared, she could not have completed the cavity filling. The first respondent ought to have ascertained whether the third respondent recorded her clinical observation in the practical answer sheet and the case history of the patient. The patient was discharged only after successful filling. It is the contention of the petitioner that she has become a victim of the third respondent's arbitrary and negligent method of evaluating the practical examination on account of which she has to re-appear in the entire subject and re-write the examination and this will remain a permanent stigma in her career.

4. Respondent No.2 has filed her statement of objections stating that she being the Chief Superintendent for practical examinations was incharge of the whole examination. She has only to make over all supervision of the examination. After examination, the paper will be sealed and given to her on receipt of which she would forward to the University. She has no role to play in the assignment of marks in the practical examination. The allotment of marks by the examiner is on the basis of the Ordinance issued by the University. Accordingly, respondent No.3 and other examiner had awarded the marks. The first respondent on the basis of the complaint of the petitioner, had investigated the matter and had made attempts to ascertain the truth of the complaint. The enquiry has been concluded against the petitioner. She was given ample opportunity to explain her complaint in the presence of third respondent. The practical examination is to be assessed on the basis of the practical performance and instant appreciation and declaration of the performance. No hard and fast rule can be followed. The examiners are to be careful in assessing the

performance of the students, as after the fourth year, they would immediately interact with the patients. Their clinical skill is also to be properly assessed. The petitioner is stated to have a poor clinical skill. Therefore, the petitioner's complaint for assigning less marks for the performance she has conducted would not be a subject or an issue to be decided in a writ petition.

5. The third respondent has filed statement of objections contending that she has awarded marks as per the guidelines or parameters of the first respondent. She has denied the allegations made against her in the writ petition.

6. Learned Counsel for the petitioner would contend that petitioner is a brilliant student. She had passed CBSE 10th and 12th Board Examination with distinction. She has completed her first, second and third year BDS examination in first class. The third respondent has vindictively failed the petitioner in the practical examination although she had successfully completed all the stages

involved in the tooth restoration/filling of the patient. The first respondent without ascertaining the truth of the third respondent's statement and without examining the patient's case history available in the hospital records, has concluded the enquiry without taking it to the logical conclusion. It is argued that Nagaraj was the patient approved by the third respondent for the practical examination of the petitioner. On the day of the examination, the petitioner had started the procedure with her sterilized instruments needed for the examination and after completion of every step, respondent No.3 assessed it and asked the petitioner to proceed with the next step. Though the third respondent has observed the petitioner, she had not made any notes of any clinical observation but only noted down the marks.

7. On the other hand, learned Counsel appearing for the third respondent has submitted that the third respondent has awarded marks to the petitioner as per the guidelines and parameters of the first respondent-University. It is contended that

the allegations made by the petitioner against the third respondent is without any basis.

8. Learned Counsel appearing for the college has denied the allegations of arbitrariness and negligent method of valuing examination.

9. The University has made Revised Ordinance governing Bachelor of Dental Surgery (BDS Degree Course), 2002. As per the scheme of examination, 100 marks is allotted to theory, 25 marks is allotted to viva-voce and 50 marks to internal assessment, out of which 25 marks is for theory and 25 marks is for practicals. The practical exercise and the details of marks distribution of the practical examination as per the Regulations is as under:

“D. Practical Exercise : 75 Marks.

1. Preparation of Class II Cavity for Amalgam in a molar tooth and restoration.

OR

2. Preparation of Access Cavity for Root Canal Treatment in an Anterior Tooth followed by working length determination, biomechanical preparation and up-to the Selection of the Master cone.

Details of Marks Distribution of the Practical Examination:

Case History:- 10 Marks.

1. Conservative Exercise:

Class II Cavity Preparation	30 Marks
Lining and matrix-	10 Marks
Filling and Carving-	25 Marks

Total -----
65 Marks

OR

2. Endodontic Exercise:

Access Cavity	25 Marks
Working Length Determination-	15 Marks
BIO-mechanical Preparation and Master cone Selection.	25 Marks

Total -----
65 Marks
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10. Sri N.K. Ramesh, learned Counsel appearing for the respondent-University has produced the practical answer book of the petitioner in the subject 'Conservative Dentistry including Endodontics'. The first page of the practical answer book contains the marks awarded and the remarks by the examiners. A perusal of the said answer book would show that the examiners have not entered the marks as provided in the practical answer book except entering the total marks of 25. The other columns are blank. However, in the remarks column, they have noted the skill of the petitioner as poor.

11. It is not in dispute that whenever a patient is admitted to the Dental College and Hospital, the medical history, examination, provisional diagnosis, investigation and treatment plan will be entered in the patient's case history. Despite the repeated directions, neither the college nor the third respondent has produced the patient's case history. The case history would have disclosed the treatment given by the petitioner to the patient at

different stages. The answer sheet produced by the learned Counsel for the University would disclose that the petitioner has recorded the chief complaint, dental history, personal history, diet, tobacco, etc., in the answer book.

12. The contention of the petitioner is that the third respondent has deliberately failed the petitioner. No doubt the said allegations have been denied by the third respondent. The petitioner has in fact lodged a complaint to the first respondent-University. It appears that the first respondent has not conducted an enquiry. As noticed above, the petitioner is a brilliant student and she had passed 10th and 12th of CBSE Board examination in distinction and she has also passed first year BDS to third year BDS course in first class. Even the marks card of the fourth year BDS course at Annexure 'D' would disclose that she has scored good marks in all other subjects both in theory and practicals. Even in the theory examination of the subject 'Conservative Dentistry including Endodontics', she has scored 62

marks out of 100, in viva-voce 16 marks out of 25, and in internal assessment 13 marks out of 25. Thus, she has scored 91 marks out of 150 in the theory component. The contention of the petitioner has to be examined in this background. It appears that the petitioner was failed in practical examination without proper assessment of her performance.

13. The Apex Court in *SAHITI & OTHERS VS. CHANCELLOR, DR.N.T.R.UNIVERSITY OF HEALTH SCIENCES & OTHERS – 2008 AIR SCW 8194* has held that the Vice Chancellor is the conscious keeper of the University. He is the principal executive and academic officer of the University. He is entrusted with responsibility of over all administration of academic as well as non-academic affairs. For these purposes, the Act confers both express and implied powers on the Vice Chancellor. The Vice Chancellor has power to take appropriate action relating to the affairs of the University, which includes conduct of examination also. The Vice Chancellor has right to regulate the

work and conduct of officers and other employees of the University. He has also emergency powers to deal with any untoward situation. If the Vice Chancellor believes that a situation calls for immediate action, he can take such action as he thinks necessary though in the normal course he is not competent to take that action.

14. In *KARTHIKEYAN GOKULA CHANDRAN VS. RAJIV GANDHI UNIVERSITY OF HEALTH SCIENCES AND OTHERS – W.P.NO.276/9/2009* disposed of on *16.9.2009*, this Court was considering a similar case of a BDS student, who had failed in practical examination. The petitioner gave a complaint to the Chancellor requesting for holding an enquiry and to set right the injustice done to him. The University constituted a committee of three experts to go into the matter. The committee after holding the enquiry opined that fair assessment of performance has not been done by the examiners. On the basis of the said report, the University once again conducted practical examination. However,

the marks were not declared as there is no provision for the same.

After considering the rival contentions of the parties, the Court held as under:

“7. It is true, normally in the absence of statutory provisions, direction for reassessment is not resorted to. However, in the facts and circumstances of this case, where an enquiry is initiated by the Chancellor and the Enquiry Committee has reported that the evaluation made was not fair and reassessment is made by an Expert Committee constituted in this regard, the petitioner cannot be denied of the logical result of the enquiry and the announcement of the result based on the same. If the petitioner had in fact performed well in the practical examination but has been met with a raw deal, the injustice done requires to be remedied.”

15. Having regard to the facts and circumstances of the case, I am of the view that this is a fit case where the Vice-Chancellor of Rajiv Gandhi University of Health Sciences, has to take a decision as to whether practical examination in the subject ‘Conservative

Dentistry including Endodontics' should be held afresh in so far as the petitioner is concerned keeping in mind the observations made in this order. The petitioner is directed to file a detailed representation to the Vice-Chancellor of the University in this regard. The Vice-Chancellor is permitted to secure the relevant records from the college. He may also hear the petitioner before taking a decision. It is hereby clarified that this order has been passed on the peculiar facts and circumstances of the case and it should not be treated as a precedent in any other case. Writ petition is disposed of accordingly. No costs.

**Sd/-
JUDGE**

BMM/-