

CASE NO.:  
Appeal (civil) 3883 of 2006

PETITIONER:  
Maharashtra University of Health Sciences rep. by D.R

RESPONDENT:  
Paryani Mukesh Jawaharlal & Ors

DATE OF JUDGMENT: 01/06/2007

BENCH:  
R V Raveendran & Lokeshwar Singh Panta

JUDGMENT:  
J U D G M E N T

R. V. RAVEENDRAN J.

The common judgment and order dated 23.6.2006 of the Bombay High Court in Writ Petition (L) No. 887 of 2006 and connected cases is under challenge in this appeal by special leave. The appeal relate to the interpretation of Regulation 12 (2)& (4) of "Regulations on Graduate Medical Education 1997" framed by Medical Council of India (for short 'MCI Regulations'). The description of appellant is permitted to be corrected by showing the Deputy Registrar as representing the Appellant University, instead of the Deputy Registrar of the Appellant University being shown as the appellant.

2. The appellant-University (referred as 'the University') was established under the Maharashtra University of Health Sciences Act, 1998. The private respondents ('students' for short) are prosecuting MBBS course in different Medical Colleges affiliated to the University. They appeared for the III MBBS Part II examination conducted by the University in December, 2005. The subjects were General Medicine, General Surgery, Obstetrics & Gynaecology and Paediatrics. The results were published on 18.2.2006. The students were shown as having failed in one or more subjects and as a consequence, as having failed in the examination. Feeling aggrieved, they filed writ petitions before the Bombay High Court. They contended that the standards or criteria for passing adopted by the University were contrary to the MCI Regulations; that on the marks obtained by them, they ought to have been declared as having passed in the subjects; and that the University had shown them as 'failed' by applying Clauses 56(2) and 57 of the Amended University Ordinance 1/2002 which wrongly interpreted clauses (2) and (4) of Regulation 12 of the MCI Regulations. They, therefore, sought a declaration that clauses 56(2) and 57 of the University Ordinance 1 of 2002 and the consequential University Notification No.5 of 2006 dated 20.2.2006 were illegal and ultra vires the Indian Medical Council Act, 1956, that is Regulation 12 of MCI Regulations framed under section 33 of the said Act. They also sought a direction for re-determination of their results in the failed subjects by applying and adopting the procedure prescribed in regulation 12 of MCI Regulations and declare them as having passed in the subject/s and consequently the examination. In the said writ petitions, the University, the Medical Council of India ('MCI' for short) and the Medical Colleges were impleaded as respondents.

3. The High Court allowed the writ petitions by common judgment dated 23.6.2006. It held that clauses 56(2) and 57 of amended University Ordinance 1 of 2002 is illegal and void being inconsistent with and violative of MCI Regulation 12. It also held that MCI Regulation No.12(4) will have to be read and understood in the manner clarified by MCI, in its letter dated 17.9.2002. It directed the University to recalculate the marks based on the MCI's clarification of its Regulation 12(4). The said decision is challenge by

the University in this appeal.

Relevant provisions :

4. In exercise of the powers under section 33 of the Indian Medical Council Act 1956, the Medical Council of India with the previous sanction of the Central Government made the "Regulations on Graduate Medical Education 1997". Chapter IV of the Regulations relates to examinations. We extract below relevant portions of Regulation 12 dealing with examinations:

12. Examination Regulations.

Essentialities for qualifying to appear in professional examinations.

The performance in essential components of training are to be assessed, based on:

(1) Attendance :

75% of attendance in a subject for appearing in the examination is compulsory inclusive of attendance in non-lecture teaching i.e. seminars, group discussions, tutorials, demonstrations, practicals, Hospital (Tertiary, Secondary, Primary) postings and bed side clinics, etc.

(2) Internal Assessment :

(i) it shall be based on day-to-day assessment (see note), evaluation of student assignment, preparation for seminar, clinical case presentation etc;

(ii) regular periodical examinations shall be conducted throughout the course. The question of number of examinations is left to the institution;

(iii) day-to-day records should be given importance during internal assessment;

(iv) weightage for the internal assessment shall be 20% of the total marks in each subject;

(v) student must secure at least 35% marks of the total marks fixed for internal assessment in a particular subject in order to be eligible to appear in final university examination of that subject.

Note :

Internal assessment shall relate to different ways in which students participation in learning process during semesters is evaluated. Some examples are as follows :

x x x x x

(3) University Examinations :

Theory papers will be prepared by the examiners as prescribed. Nature of questions will be short answer type/objective type and marks for each part indicated separately.

Practicals/clinicals will be conducted in the laboratories or hospital wards. Objective will be to assess proficiency in skills, conduct of experiment, interpretation of data and logical conclusion. Clinical cases should preferably include common diseases not esoteric

syndromes or rare disorders. Emphasis should be on candidate's capability in eliciting physical signs and their interpretation.

Viva/oral includes evaluation of management approach and handling of emergencies. Candidate's skill in interpretation of common investigative data, x-rays, identification of specimens, ECG, etc., also is to be evaluated.

The examinations are to be designed with a view to ascertain whether the candidate has acquired the necessary proficiency for knowledge, minimum skills along with clear concepts of the fundamentals which are necessary for him to carry out his professional day to day work competently. Evaluation will be carried out on an objective basis.

x x x x x

(4) Distribution of marks to various disciplines :

(A) First professional examination (Pre-clinical subjects) :

(a) Anatomy :

|                                      |           |
|--------------------------------------|-----------|
| Theory - Two papers of 50 marks each | 100 marks |
| Oral (Viva)                          | 20 marks  |

|           |          |
|-----------|----------|
| Practical | 40 marks |
|-----------|----------|

|                                                  |          |
|--------------------------------------------------|----------|
| Internal Assessment<br>(Theory-20; Practical-20) | 40 marks |
|--------------------------------------------------|----------|

|       |           |
|-------|-----------|
| TOTAL | 200 marks |
|       | =====     |

(b) xxxxxxxx

(c) xxxxxxxx

Pass : In each of the subjects, a candidate must obtain 50% in aggregate with a minimum of 50% in Theory including orals and minimum of 50% in Practicals.

Clause (4) of MCI Regulation 12 sets out the distribution of marks to various disciplines and the Heads of Passing in each subject, in respect of the examinations relating to First Professional, Second Professional, Third Professional Part-I, and Third Professional Part-II. We have extracted only a portion of clause (4) relating to the distribution of marks in regard to one subject -- "Anatomy" (which is a first MBBS subject) by way of illustration.

5. When a doubt was raised about the manner of giving effect to MCI Regulation 12(4), MCI by its letter dated 17.9.2002, addressed to a Medical College in Kerala, gave the following clarification:

"It may be observed from the above that out of the total of 200 marks for the subject of Anatomy, 40 marks i.e. 20% of the total marks have been provided for internal assessment (theory - 20 marks and practical - 20). As regards the candidate obtaining 50% in Theory including orals and minimum of 50% in practical prescribed under "distribution of marks of various disciplines", it may be pointed out that so far as Anatomy is concerned, a student has to obtain a minimum of 70 marks in theory out of a total of 140 marks (100+20+20=140) and a minimum of 30 marks out of a total of 60 marks in practical (40+20). Further, the student has also to obtain a minimum of 50% of marks in internal assessment prescribed for each subject. For example, in Anatomy, he has to obtain a minimum of 20 marks out of total 40 marks earmarked for internal assessment. Thus there is no contradiction in the percentage of marks prescribed for passing of an examination as per the regulations."

6. Ordinance 1 of 2002 (amended) of the University regulates the conduct of examinations by the University. The relevant clauses of the said Ordinance are extracted below :

"56.2 Heads of passing of various courses in their respective faculties will be as under :

56.2.1 Medical

- (i) Theory + Oral
  - (ii) Practical
  - (iii) Internal Assessment (Theory + Practical)
- xxxxxxx

56.3. The candidate to be eligible to pass in a subject shall pass in all heads of passing in the respective subject in the same attempt.

"57. The Standard of passing : A candidate to be eligible to pass the examination must have obtained not less than 50% of marks in each of the passing heads of the respective subject."

7. The university issued the following Notification No. 5 of 2006 dated 20.2.2006 regarding the standard of passing/Heads of passing for MBBS course :

"Based on Medical Council of India Notification No.164 dated 16th October, 2003 and Hon'ble High Court Ruling dated 12/12/2003, standard of passing as prescribed in Rule 57 of Ordinance 1/2002 (Amended) for passing in Internal Assessment Head with thirty five percent marks is mandatory to appear in University Level Examination (Theory, Practical & Oral) in the respective subject.

'Head of Passing' and 'Standard of Passing' will be as under :-

| Head of Passing                                                  | Standard of Passing                                 |
|------------------------------------------------------------------|-----------------------------------------------------|
| (A) THEORY + ORAL                                                | 50% MARKS.                                          |
| (B) PRACTICAL/CLINICAL                                           | 50% MARKS.                                          |
| (C) INTERNAL ASSESSMENT 35% MARKS<br>(THEORY + PRACTICAL)        | (For Eligibility)<br>(Refer Notification No.9/2006) |
| (D) AGGREGATE OF ALL THE<br>ABOVE MENTIONED HEADS<br>OF PASSING" | 50% MARKS                                           |

Stand of the University :

8. The University contends that clause (4) of MCI Regulation No. 12, is clear and unambiguous. It requires a candidate, to pass in a subject, to obtain a minimum of (a) 35% in internal assessment (for eligibility), (b) 50% in Theory including Orals, and (c) 50% in Practicals, and (d) 50% in the aggregate. According to the University, in respect of a subject where the maximum marks are 200 (break-up being Theory 100, Oral 20, Practicals 40, Internal Assessment 40 made up of 20 for Theory and 20 for Practicals), a student to pass in the subject, should after becoming eligible by securing 35% in internal assessment, appear in the University examination and secure a minimum of 60 marks out of 120 marks in Theory plus Oral, and minimum of 20 marks out of 40 marks in the Practicals. He should also secure 100 marks out of 200 marks being the aggregate of University examination

(externals) and internal assessment. It is contended that only the marks secured in the University examination (Externals) should be considered for ascertaining whether a candidate has secured the required minimum marks in Theory (plus Orals) and Practicals; and that the internal assessment marks for Theory and Practicals cannot be clubbed with the marks secured in the external examination relating to Theory (plus Orals) and Practicals to find out whether a student has passed under the head of Theory (plus Orals) and the head of Practicals. It is submitted that the internal assessment marks are relevant only for providing eligibility for University examination and for purpose of passing under the head of aggregate. It is pointed out that Rule 12(4) requires the candidate to secure 50% in "Theory including Orals" and not 50% in "Theory, including Orals and internal (Theory)". Similarly Rule 12(4) requires a minimum of 50% in "Practicals" and not "Practical plus internal (practicals)". It is contended that if the MCI Regulations had intended that the internal assessment marks should be clubbed with the external examination marks, Regulation 12(4) would have specifically stated that the candidate has to secure minimum of 50% in 'Theory including Orals and Internal (Theory)' and minimum of 50% in 'Practicals including Internal (Practicals)'. It is pointed out that where the marks were to be clubbed together, the Regulation Making Authority had specifically made a provision for such clubbing. For example, in respect of the head of passing of "Theory", the Regulation Making Authority has specifically indicated that 'Orals' marks should be clubbed with Theory marks. The submission of the University is that when MCI has deliberately omitted and excluded internal assessment marks for passing under the head of Theory (plus orals) and Practicals, it is impermissible to include them under those heads, as contended by the students and by MCI. It is submitted that clauses 56(2) and 57 of amended University Ordinance No.1/2002 merely give effect to MCI Regulation No.12(4) and the said clauses of the University Ordinance are not inconsistent with MCI Regulation No.12(4).

9. The University also contends that the intention of the Regulation Making Authority is to give the dominant and pre-eminent position to the University examination, because the students are assessed by external examiners in an objective manner. On the other hand, as the internal assessment is done by the faculty of the Medical College where the candidates are students, an element of subjectivity is likely to creep in. Therefore, the weightage for internal assessment has been restricted to only 20% of the total marks under MCI Regulation 12(2)(iv). It is pointed out that if MCI Regulation 12(4) is interpreted in the manner suggested by the students, instead of maintaining the ratio of 4:1 (that is 80:20), the ratio between external examination marks and internal assessment marks would become 2:1 (that is 40:20) in regard to Practicals, which is not intended. It is submitted that any process or method which dilutes the external assessment result by addition of internal assessment marks, is to be avoided. It is further submitted that Regulation 12(4) contemplates and requires a candidate should pass under distinct heads firstly by securing 35% in internal assessment, then by securing minimum of 50% in the external examinations, that is Theory (plus Orals) and Practicals, and lastly by securing 50% of the aggregate (of externals and internals). This means that internal assessment marks are to be clubbed with the examination marks only under the head of aggregate; and for finding out whether the student has passed in Theory (plus Orals) and Practicals, only the University examination (external) marks are to be considered. It is contended that a candidate who fails in the external examination (either Theory or Practicals) by not securing the minimum of 50%, cannot be permitted to pass the subject by borrowing from the internal assessment marks when there is a likely chance of internal assessment marks being liberally granted by the college faculty. The high marks that is normally associated with internal assessment, if given undue prominence in assessing the overall performance, may defeat and dilute the very examination process by enabling failed students to pass the examination. It is submitted that the students (the writ petitioners) having failed on being assessed in the manner provided under Regulation 12(4) made explicit under clauses 56(2) and 57 of amended University Ordinance 1/2002 cannot be permitted to contend that they have passed the subject by putting forth a

wrong interpretation of MCI Regulation 12(4).

10. It is submitted that the clarification relating to MCI Regulation 12(4), in the letter dated 17.9.2002 by some official of MCI, cannot be treated as a clarification by MCI as the Regulation Making Authority. It is further submitted that such clarification cannot be used to defeat the purpose and intent of the Regulation 12(4). Lastly, it is submitted that where the MCI Regulation is capable of more than one interpretation, the interpretation that is chosen by the University for formulating its examination Ordinance should prevail, as University has an equal stake in determining the quality and content of its examination.

Stand of the students (supported by MCI):

11. Respondents submit that each subject has a Theory segment and a Practicals segment and each of those segments is subjected to two types of assessment: an external assessment (by way of University examination) and an internal assessment (by the college faculty). Regulation 12(4) requires a candidate to obtain minimum of 50% in Theory, which means 'Theory (external and internal)' and not merely 'Theory (external)'. Similarly, when Regulation 12(4) requires minimum of 50% marks in 'Practicals', it means 'Practicals (external and internal)' and not merely 'Practicals (external)'. While interpreting the words 'Theory' and 'Practicals', the internal assessment part cannot be omitted or ignored. As Theory (internal) forms part of 'Theory' and 'Practicals (internal)' forms part of 'Practicals', they were not specifically mentioned in the criteria for passing stated in MCI Regulation 12(4). Only when something which did not form part of 'Theory' had to be included, as for example - 'Orals', it was necessary to mention it as an item to be included. It is, therefore, contended that for ascertaining whether a student has passed in a subject by securing the minimum of 50% in 'Theory including Orals', the assessment should be with reference to 'Theory - both external and internal as also Orals', and similarly, for Practicals, the assessment should be with reference to 'Practicals -- both external and internal.

12. Learned counsel for MCI supported the interpretation put forth by the students. He contended that in Medical education, internal assessment is an important feature. Therefore MCI Regulations made final assessment of performance of a student, a blend of external assessment and internal assessment, by providing a weightage for internal assessment at 20% of the total marks in each subject. Consequently such weightage should be incorporated under all three heads of passing, namely (i) aggregate, (ii) Theory including orals, and (iii) Practicals. If internal assessment is to be excluded and only the performance in the University examination is to be considered for passing in Theory or in Practicals, it would amount to denying the weightage for internal assessment provided in MCI Regulation 12(2)(iv). It is submitted that the University's interpretation of Regulation 12(4) as manifested in Rule 56(2) and 57 of the amended University Ordinance 1/2002, violates Regulation 12(2)(iv) and 12(4) of the MCI Regulations.

High Court's view

13. The High Court has accepted the interpretation put forth by the students, as the clarification given in MCI's letter dated 17.9.2002 (extracted in para 5 above) supports the said interpretation. The High Court felt that when the Authority which made the sub-ordinate legislation clarified the meaning of a Rule or Regulation made by it, it should be accepted by the courts unless the resulting interpretation is absurd or contrary to the language of the regulation. The High Court therefore neither examined the purpose of the regulation or the wording of the regulation.

14. The High Court had on an earlier occasion considered the very issue relating to the validity of clauses 56(2) and 57 of amended University Ordinance 1 of 2002 in *Sheetal A. Abhyankar vs. Maharashtra University of Health Sciences* [WP No. 5725 of 2003 and connected cases decided on 12.12.2003]. There also the MCI had supported the contention of the students. The High Court had negatived the said contention and held that clauses 56 and 57 were in consonance with MCI Regulation 12. The High Court held :

"Apart from the fact that there is no inconsistency with Regulation 12, it will be seen that wherever the Medical Council of India or University desired to club certain assessment, have specifically provided for the same. Regulation 12 specifically provides while dealing with the final examination that in order to pass in each subject the candidate must obtain 50% in aggregate with minimum of 50% in theory including orals and minimum of 50% in practical/clinical. The council wherever intended to include something it specifically provided for it \005\005."

It proceeded to hold that a student must obtain 50% in theory including orals and 50% in practicals/clinicals and inclusion of internal assessment marks was impermissible. Unfortunately, the earlier decision in *Sheetal A. Abhyankar* was not followed by a co-ordinate Bench in the judgment under appeal. Two reasons are given for not following the earlier decision. The first is that the minimum internal assessment marks required for becoming eligible to take the final examination had been reduced from 50% to 35% by amendment to MCI Regulation 12(2)(v) vide Notification dated 15.10.2003. The second is that MCI had given a clarification regarding the manner of giving effect to Regulation 12(4) on 17.9.2002 which permitted clubbing of internal assessment marks with the external examination marks, for the passing head of 'Theory with Orals' and 'Practicals', and the said clarification by MCI had been accepted by the Kerala High Court in *K. Fahad Mohamed vs. Calicut University* [WA No. 1777 of 2002 decided on 25.9.2002] and other cases. We find that neither of the two reasons given by the High Court in the judgment under appeal for not following its earlier decision in *Sheetal A. Abhyankar* is valid. The amendment to Regulation 12(2)(v), reducing the eligibility marks in internal assessment from 50% to 35%, was specifically noticed in para 16 of the earlier judgment. Similarly the clarification by MCI supporting the interpretation put forth by the students was also noticed, though the letter dated 17.9.2002 as such was not referred. Both the two contentions were considered and rejected. Merely because the Kerala High Court had accepted the clarification of the MCI, the Bombay High Court could not have ignored a binding precedent of a co-ordinate Bench. If it wanted to take a different view, judicial propriety required that the matter be referred to a larger Bench. Be that as it may. We find it difficult to sustain the reasoning of the High Court in the judgment under appeal.

What is the intent of MCI Regulation 12(4)?

15. MCI has been set up as an expert body to control the minimum standards of medical education and to regulate their observance. The regulations framed by the MCI with the previous sanction of the Central Government, in regard to any of the matters referred to in section 33 of the Indian Medical Council Act, 1956, will have statutory force and are mandatory. Universities must necessarily be guided by the MCI Regulations. Any regulations made by the Universities which are inconsistent with the MCI Regulations, or which dilute the criteria laid down by MCI will not be valid to the extent of inconsistency or dilution. [Vide: *State of Tamil Nadu vs. Adhiyaman Educational and Research Institute* - 1995 (4) SCC 104, *Medical Council of India vs. State of Karnataka* - 1998 (6) SCC 131, and *Dr. Preeti Srivastava vs. State of Madhya Pradesh* - 1997 (7) SCC 120]. It, therefore, follows that if clauses 56(2) and 57 of amended University Ordinance 1 of 2002 are inconsistent with MCI Regulation 12(4), they will

be void to the extent of inconsistency. On the other hand, if the said clauses merely implement, or make explicit what is implicit in MCI Regulation 12(4), then they will be valid and binding.

16. The point in controversy in regard to interpretation of MCI Regulation 12(4) can be understood with reference to the following illustration:

Subject

Total Marks

Candidates'

Marks

I. Theory (two papers of 50 mark each)

100

47

II. Orals (Viva)

20

12

III. Practicals

40

17

IV. Internal Assessment :

(a) Theory

(b) Practical

20

20

16

15

TOTAL

200

107

Regulation 12(4) provides that to pass in a subject, a candidate should obtain 50% in the aggregate with a minimum of 50% in Theory including orals and minimum of 50% in practical. The marks secured by the candidate (in the illustration), when assessed as per the interpretation of the University, results in the candidate failing in the subject. The very same marks when assessed as per the interpretation of the students (and MCI), results in the candidates passing in the subject. The calculations are given below :

University interpretation (candidate fails in the subject) :

1. Aggregate (I+II+III+IV) : 107 marks out of 200 marks
2. Theory plus oral (I + II) : 59 marks (out of 120)  
(47 and 12 out of 100 and 20 marks)
3. Practicals (III) : 17 (out of 40)

As the candidate secured less than 50% in Theory including Orals (that is 59 out of 120) and less than 50% in practicals (that is 17 out of 40), he failed under the heads of Theory (plus Orals) and Practicals. As a consequence, though he secured more than 50% in the aggregate, he failed in the subject.

Interpretation of MCI/students (candidate passes in the subject) :

1. Aggregate [I+II+III+IV] : 107 marks out of 200 marks
2. Theory plus Oral [I+II+IV(a)] : 75 marks out of 140  
(47, 12 and 16 out of 100, 20 and 20)
3. Practicals [III+IV(b)] : 32 Marks out of 60

(17 and 15 out of 40 and 20)

As the candidate secured more than the minimum of 50% under all the Heads of Passing, that is, in the aggregate, in Theory (plus orals), and Practicals, he passed in the subject.

17. MCI Regulation 12 is divided into four parts namely (i) attendance, (ii) internal assessment, (iii) university examination, and (iv) distribution of marks to various disciplines. Clause (1) makes it clear that unless a student has the minimum attendance (75%) he cannot appear in the University examination (external evaluation). Similarly, clause (2) makes it clear that unless a student secures 35% of the total marks fixed for internal assessment in a particular subject, he will not be eligible to appear in the University examination of that subject. Thus, the requirement relating to attendance and requirement relating to internal assessment act as eligibility requirements to participate in the university examination.

18. The scheme of MCI Regulation 12 also makes it clear that there will be internal assessment as well as the external assessment (university examination) in regard to theory as well as practicals. Clause (2) of MCI Regulation 12 makes it clear that in addition to providing the eligibility to appear in the university examination, the internal assessment also provides a weightage to an extent of 20% of the total marks in each subject. Clause (4) of MCI Regulation 12 makes it clear for passing in each subject, a candidate must obtain 50% of marks in the aggregate. There is no controversy in regard to what is meant by aggregate. It is the aggregate external examination marks and internal assessment marks. Where the maximum of 100 marks are for theory papers, 20 marks are for oral, 40 marks are for practicals, in all 160 for externals and 40 marks are for internal assessment, the aggregate is 200. A candidate should secure in all a minimum of 100 marks out of 200. The requirement relating to passing in aggregate complies with sub-clause (iv) of clause (2) of Regulation 12, as internal assessment marks (secured out of 40 Marks, which is 20% of total marks) are also counted.

19. The controversy is in regard to the method of calculating the passing marks for the other two heads of passing, namely 'theory including orals' and 'Practicals'. The scheme of MCI Regulations require the student to pass the university examination (externals) with 50% in Theory (including oral) and 50% in Practicals, and also secure 50% of marks in the aggregate of the total marks for external examination and total marks for internal assessment.

20. What is to be noticed is that Clause (4) of Regulation 12 requires that a minimum of 50% in theory including orals, should be obtained by a student. It does not say 50% in theory including orals and internal assessment (theory). It should be remembered that the marks are distributed as 100 for theory (external), 20 for oral (external), 40 for practical (external) plus 20 for theory (internal) and 20 for Practicals (internal). If the intention was to club the marks for internal assessment with the marks secured in external examination, the marks would have been distributed in the following manner : -

|    |                                  |           |
|----|----------------------------------|-----------|
| a) | Theory :                         |           |
|    | (i). Two papers of 50 marks each | 100 marks |
|    | (ii). Internal Assessment        | 20 marks  |
| b) | Oral (Viva)                      | 20 marks  |
| c) | Practical/Clinical               |           |
|    | (i). External Assessment         | 40 marks  |
|    | (ii). Internal Assessment        | 20 marks  |
|    |                                  | -----     |
|    | TOTAL                            | 200 marks |
|    |                                  | =====     |

But the distribution of marks under Regulation 12(4) is as under :

|    |                        |    |           |
|----|------------------------|----|-----------|
| a) | External :             |    |           |
|    | (i). Theory - 2 papers |    | 100 marks |
|    | (ii). Oral (viva)      |    | 20 marks  |
| b) | Practicals             |    | 40 marks  |
| c) | Internal               |    |           |
|    | (i). Theory            | 20 |           |
|    | (ii). Practical        | 20 | 40 marks  |
|    |                        |    | -----     |
|    | TOTAL                  |    | 200 marks |
|    |                        |    | =====     |

The scheme of distribution of marks makes it clear that University examination (external assessment) is kept separate and distinct from the internal assessment. Regulation 12(4) when read in its normal and natural sense, does not contemplate for clubbing of internal assessment with external examination. When the provisions of Regulation 12 are clear and unambiguous, it is impermissible to add words into it. When the Regulation requires that a candidate must obtain a minimum of 50% of marks in "theory including orals", it is not possible to read it as 50% marks in "theory including orals and internal (theory)". Similarly, when the Regulation provides that a candidate must obtain a minimum of 50% of marks "in practicals", it is not possible to read them as "in practicals and internal (practicals)". Therefore, when the Regulation provides that a minimum of 50% of marks in theory including orals, it excludes internal assessment and it means that the candidate should secure a minimum of 50% marks out of 120 marks (that is 100 marks for theory and 20 marks for orals). Similarly, when the regulation provides that a candidate must obtain a minimum of 50% of marks in practicals, it means he should secure 20 out of 40 marks in practicals.

21. We may examine the issue from another angle. MCI Regulation 12(2)(iv) provides that a weightage for the internal assessment shall be 20% of the total marks in each subject. Thus, the weightage for internal assessment would arise when the total marks (or aggregate) in each subject are considered and not otherwise. That is, where the total marks are 200, internal assessment marks would be 40 marks. Therefore, Regulation 12(4) rightly provides that the total of 200 marks consist of 160 marks for externals (university examination) and 40 marks for internals (college assessment) maintaining the ratio of 80:20, thereby implementing the requirement of MCI Regulation 12(2)(iv). But if internal assessment marks are also to be clubbed with theory (external) marks or Practical (external) marks, it leads to absurd and incongruous results. For example, for practicals, if internal assessment marks are clubbed with examination marks, then the minimum of 50% would be 30 out of 60 (that is 40 plus 20). This results in the weightage for internal assessment becoming 33.33% (20 out of 60) thereby violating the Regulation 12(2)(iv). Similarly, if a minimum of 50% of marks in theory including orals, is read as 50% of marks in theory including orals and internal (theory), then a candidate should secure 70 out of 140 marks. This means the weightage for internal assessment becoming 14.28% (20 out of 140). This demonstrates that internal assessment marks were never intended to be clubbed with marks of university examination (externals) to ascertain whether a student has passed in Theory including Orals, and Practical.

22. We will now refer to the stand of the MCI. We are surprised to find that MCI has put forward different interpretations at different points of time. We have already referred to one interpretation by MCI put forth in its letter dated 17.9.2002 (extracted in para 5 above). But in the reply affidavit filed

by MCI before the Bombay High Court in this case, the stand of MCI was different (vide Para 9):

"It is submitted that even though internal assessment are separately marked on a 50-50 basis for theory and practical respectively, it is clubbed with the performance in the Practical/clinical examination, whereas the viva- voce performance is clubbed with the performance in the Theory examination. \005.. It is submitted that the internal assessment marks are to be clubbed with the Practical/clinical performance. They do not form a separate or independent passing head."

The above stand is reiterated by MCI in the reply affidavit filed before this Court (in para 14 of its reply in the connected W.P. 122/2007). The difference between the two contentions of MCI is as follows :

Passing Head

Effect of interpretation in the letter dated 17.9.2002

Effect of interpretation in the reply affidavit filed in this case

i) Aggregate

50% of 200

(100+20+40+40)

50% of 200

(100+20+40+40)

ii) Theory including Orals

50% of 140 (100+20+20)

50% of 120 (100+20)

iii) Practicals

50% of 60 (40+20)

50% of 80 (40+40)

However during arguments, the learned counsel for MCI gave a go by to the stand taken in the reply affidavit of MCI in this case and reverted back to the stand taken in the letter dated 17.9.2002. While in the interpretation given in the letter dated 17.9.2002, the internal assessment marks for theory and practicals have to be added to the respective theory and practical marks of externals, as per the interpretation given in the reply affidavit, the entire internal assessment marks are to be added to the practical marks of externals. The share or proportion of internal assessment in practicals becomes 33.33% as per the stand in the letter dated 17.9.2002 and 50% as per the stand in the reply affidavit, as against 20% provided in Regulation 12(2)(iv). Neither interpretation, as pointed out above, is in consonance with the specific and clear wording of Regulation 12(4). The very fact that MCI has been interpreting Regulation 12(4) differently at different points of time, is a ground to reject such interpretations which are contrary to the plain meaning of Regulation 12(4).

Conclusion :

23. We, therefore, accept the interpretation put forth by the University in respect of MCI Regulation 12 as correct and hold that clauses 56(2) and 57 of amended University Ordinance 1/2002 are in consonance with clauses (2) and (4) of MCI Regulation 12. We also hold that internal assessment marks cannot be clubbed with University examination (external) marks to ascertain whether a candidate has passed in Theory with orals, and Practicals. We further hold that the clarification given by MCI in its letter dated 17.9.2002 and the clarification in its reply affidavit are contrary to MCI Regulation 12(4). Consequently, a student has to secure marks as follows to pass in a subject :

(i) 35% in internal assessment (for eligibility to appear for university examination)

- (ii) 50% of the total marks for Theory with Orals (only externals)
- (ii) 50% of the marks for Practicals/Clinicals (only externals)
- (iv) 50% of the aggregate (total of externals and internals)

24. By an interim order dated 25.8.2006, this Court had directed that the evaluation of III MBBS Part II examination held in December, 2005 shall be on the basis of the norms fixed in the impugned judgment, and that in regard to other examinations, namely, I MBBS, II MBBS and III MBBS (Part I), the norms earlier followed by the University shall be followed. This Court further directed that as regards the other examinations which may take place before the final decision in this appeal, the University shall follow the existing practice. This led to students of III MBBS Part II who appeared in the November-December, 2006 examination approaching this Court in WP No. 122/2007 and WP No.125/2007 claiming reliefs similar to those claimed by the student-respondents in this appeal. We are of the view that the benefit of the interim order should be extended to all those students who appeared for the III MBBS, Part II examination held in November-December 2006 also, as the clarification dated 17.9.2002 issued by the MCI has held the field till now. Therefore in regard to the III MBBS (Part II) Examinations, this decision will be prospective in operation and effect.

25. We allow this appeal accordingly and set aside the judgment and order dated 23.6.2006 of the Bombay High Court. In view of what is stated in the earlier para, all applications for intervention/impleading are rejected, as redundant. Parties to bear their respective costs.