

Shirish Govind Prabhudesai

Vs

State of Maharashtra and Others

Writ Petn. (Civil) No. 351 of 1992 with Spl. Leave Petn. (Civil) No. 4902 of 1992 and Civil Appeal Nos. 3 and 4 of 1991

(J. S. Verma, Yogeshwar Dayal, N. Venkatachala JJ)

21.10.1992

JUDGEMENT

VERMA, J.:-

1. The common question involved for decision in these matters is the right of a student admitted in a medical college not recognised by the Medical Council of India to claim migration/ transfer to a medical college recognised by the Medical Council of India after passing the first MBBS examination from the medical college to which the student has been admitted. The students claiming the right to such migration/transfer assert that no discrimination can be made for this purpose between a student admitted initially to the MBBS course in a medical college not recognised by the Medical Council of India and one who has been admitted initially to a medical college recognised by the Medical Council of India. In substance the contention is that both these categories of students belong to the same class being admitted to a medical college where from they obtain the MBBS degree recognised by a university. This question arises in the context of a condition for eligibility to such migration/ transfer prescribed by medical colleges recognised by the Medical Council of India for entertaining the application from a student for migration/ transfer to the recognised medical college after passing the first MBBS examination only if the applicant had been initially admitted to and had passed the first MBBS examination from a medical college recognised by the Medical Council of India. Such a condition of eligibility for migration/ transfer to a recognised medical college is prescribed by the recognised medical colleges on the basis of one of the recommendations on Graduate Medical Education adopted by the Medical Council of India which is as under :

"V. Migration/ Transfer of students from one Medical College to another

(a) A student studying in a recognised medical college may be allowed to migrate/transfer to another recognised medical college under another/ same university.

(b) The migration/ transfer can be allowed by the University concerned within three months after passing the 1st professional examination, as a rule.

(c) Migration/transfer of students during the course of their training for the clinical subjects should be avoided.

(d) The number of students migrating, transferring from one medical college to another medical college during one year will be kept to the minimum so that the training of the regular students of that college is not adversely affected. The number of students migrating/transferring to/from any one medical college should not exceed the limit of 5% of its intake in any one medical college in one year.

(e) Cases not covered under the above regulations are to be referred to the Council for consideration on individual merits

(f) An intimation about the admission of migrated/transferred students into any medical college should be sent to the Council forthwith."

2. The material facts on which the above point is to be decided in these matters are only a few. In Writ Petition No. 351 of 1992, the petitioner Shirish Govind Prabhudesai was admitted initially to the MBBS course in Bhausaheb Hire Government Medical College, Dhule in September 1990. After passing the first MBBS examination, the petitioner applied in January 1992 for his transfer from Bhausaheb Hire Government Medical College, Dhule to B.J. Medical College, Pune. By a letter 'Annexure D' of January 18, 1992, the Director, Medical Education & Research, Bombay refused to permit such transfer stating that no transfer can be granted to a student who had passed his first MBBS examination from a non-recognised Medical College, such transfer being permitted only from one recognised medical college to another recognised medical college. In view of several matters pending in this Court involving for decision the same point, the petitioner filed this writ petition under Article 32 of the Constitution for the substantial relief of grant of permission to him for transfer to B.J. Medical College, Pune.

3. Special Leave Petition No. 4902 of 1992 is against the order dated March 18, 1992 passed by the High Court of Judicature at Bombay dismissing the Writ Petition No. 498 of 1992 wherein a similar prayer made by the petitioner, Miss Gauri Gulati for transfer from N.K.P. Salve Institute of Medical Sciences and Research Centre, Nagpur, a non-recognised college to a recognised medical college in Bombay was refused on the same ground. The Bombay High Court took the view that such a condition of eligibility for migration/ transfer prescribed by a recognised medical college for admitting students by migration/ transfer after passing the first MBBS examination was not unreasonable or arbitrary to permit any interference by the High Court. The petitioner has filed the special leave petition aggrieved by this order.

4. Civil Appeals Nos. 3 and 4 of 1991 arise out of interim orders made by the Bombay High Court in two Writ Petitions Nos. 2101 and 2102 of 1989 filed by respondents Nos. 1 and 2, namely, Rajendra S. Sankpal and Riaz Nomani for a similar relief on refusal of permission for transfer from a non-recognised medical college to a recognised medical college. By the impugned interim orders, the writ petitioners were permitted to pursue their studies on transfer in Grant Medical College, Bombay to which they had sought transfer after passing the first MBBS examination. In these appeals filed by special leave by the Medical Council of India, this Court permitted both of them, namely, Rajendra S. Sankpal and Riaz Nomani to pursue their studies for the MBBS course in Grant Medical College, Bombay in the meantime. The consequence is that both these persons, namely, Rajendra S. Sankpal and Riaz Nomani have already passed the final MBBS examination in the meantime from Grant Medical College, Bombay.

5. Having heard learned counsel, we have no hesitation in taking the view that the argument advanced to support the claim for such a right of migration/ transfer is tenuous and cannot be

accepted. Learned counsel appearing for the petitioners in Writ Petition No. 351 of 1992 and Special Leave Petition No. 4902 of 1992 and for respondents Nos. 1 and 2 in Civil Appeals Nos. 3 and 4 of 1991 were unable to show the foundation for such a claim on which the relief of migration/transfer was claimed. The only argument advanced was that differentiation between students of a non-recognised medical college and a recognised medical college for the purpose of migration/transfer when the degree of MBBS awarded to students of both the categories of medical college is recognised by the universities to which they are affiliated, is discriminatory and arbitrary. It was urged that for this reason the above-quoted recommendation of the Medical Council of India which has been accepted and forms the basis of refusal of permission for migration/ transfer of students of a non-recognised medical college to a recognised medical college is discriminatory.

6. Learned counsel were unable to show that a right of migration/ transfer of a student from one medical college to another inheres to a student de hors the conditions subject to which the migration/ transfer is permitted. It is also not disputed that in case a recognised medical college chooses not to take any student by migration/transfer from another medical college, it cannot be compelled to do so. It follows that unless a recognised medical college offers to admit by migration transfer some students from another medical college no student can claim as of right admission by migration/transfer to that medical college. The limited question, therefore, is whether a recognised medical college when it decides to admit by migration/transfer some students after passing the first MBBS examination from another medical college, it can restrict its choice only to students who were admitted to and have passed the first MBBS examination from a recognised medical college only, excluding from consideration such students from non-recognised medical colleges. Undoubtedly, it is one of the recommendations on Graduate Medical Education adopted by the Medical Council of India which is being acted upon by recognised medical colleges while taking students by migration/ transfer.

7. The recommendations on Graduate Medical Education are by an expert body of the Medical Council of India which is entrusted with certain statutory functions relating to medical education by the Indian Medical Council Act, 1956. The Medical Council of India having chosen to accept these recommendations, such a condition of eligibility for migration/ transfer from one medical college to another adopted by the recognised medical colleges cannot be termed unreasonable or arbitrary. The qualitative difference between the non-recognised medical colleges generally as compared to the medical colleges recognised by the Medical Council of India, the recognition being based on certain objective standards relating to medical education, and the competitive merit forming the basis for admission to a recognised medical college justify as reasonable such a restriction for grant of permission for migration/ transfer from one medical college to another. One of the purposes served by such a restriction is to permit this inter-college movement of students after passing the first MBBS examination only between students of recognised medical colleges and to prevent indirect entry into recognised medical colleges of students who had failed initially to secure entry into a recognised medical college. Movement of students between recognised medical colleges only is quite often to facilitate the students thereof in certain circumstances without conferring on them any additional benefit after the initial entry to a medical college duly recognised. Viewed in this manner, such a condition of eligibility for migration/ transfer to a recognised medical college permitting only students of recognised medical colleges is neither arbitrary nor unreasonable. There being no inherent right in a student admitted to a non-recognised medical college to claim such migration/transfer, this restriction for migration/ transfer imposed by the recognised medical colleges on the basis of the recommendations adopted by the Medical Council of India, there is no foundation for the claim for such migration/ transfer made by the students of non-recognised medical colleges.

8. Consequently, Writ Petition No. 351 of 1992 and Special Leave Petition No. 4902 of 1992 are dismissed. However, in the peculiar facts and circumstances of the two students involved in Civil Appeals Nos. 3 and 4 of 1991, a different order of the kind we have made in similar situations is called for. These two students, namely, Rajendra S. Sankpal and Riaz Nomani have both passed the final MBBS examination from the Grant Medical College, Bombay to which they were transferred as a result of the interim orders made by the High Court in their Writ Petitions Nos. 2101 and 2102 of 1989 and then by this Court, In view of the fact that both of them have already obtained the MBBS degree from the college to which they were transferred, setting aside their transfer would not benefit any other student while it would deprive them of the benefit they have already gained as a result of the interim orders made by the High Court and this Court. In this situation, we consider it appropriate not to interfere with the impugned interim orders made by the High Court and direct the High Court to dispose of the pending writ petitions making the final order in terms of the interim order for these reasons, which shall not be treated as a precedent. Civil Appeals Nos. 3 and 4 of 1991 are disposed of requiring the High Court to dispose of Writ Petitions Nos. 2101 and 2102 of 1989 pending in the High Court, accordingly. No costs in all these matters. Order accordingly.

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