

Shirish Govind Prabhudesai

Vs

State of Maharashtra and Others

Gauri Gulati

Vs

Municipal Corporation of Greater Bombay and Others

Medical Council of India

Vs

Rajendra S. Sankpal and Others

Writ Petition (Civil) No. 351 of 1992 with SLP (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

JUDGMENT

VERMA J. -

1. The common question involved for decision in these meters 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 wherefrom 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 first 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 per cent 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 and Research, Bombay refused to permit such transfer stating that no transfer can be granted to a student who has 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 Center, 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 appeal No. 3 and 4 of 1991 arise out of interim orders made by the Bombay High Court in two Writ Petition Nos. 2101 and 2102 of 1989 filed by respondents 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 1 and 2 in Civil Appeal 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 colleges 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, 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 college. 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 recommendation 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 college cannot be termed unreasonable or arbitrary. The qualitative difference between the non-recognised medical college 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 college and to prevent indirect entry into recognised medical colleges of students who had failed initially to get into 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 in 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 and 1992 are dismissed. However, in the peculiar facts and circumstances of the two students involved in Civil Appeal 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 Petition 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 disposed 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 Appeal Nos. 3 and 4 of 1991 are disposed of requiring the High Court to dispose of Writ Petition Nos. 2101 and 2102 of 1989 pending in the High Court, according No costs in all these matters.

DEATH OF SAWINDER SINGH GROVER, RE.

decided on October 21, 1992.

Re : Death of Sawinder Singh Grover

We have perused the report of the learned Additional District Judge, Delhi. In the conclusions he has summed up the report as under :

(i) Shri Nanday's deposition contained in para 8 of his affidavit filed before Hon'ble Supreme Court regarding the circumstances leading to the death of Sawinder Singh does not appear to be truthful. It was certainly not a suicidal jump by Sawinder Singh, as propounded in the affidavit of Shri Nanday.

(ii) It is not possible to say precisely what went on inside room leading to the incident. There is strong suspicion of some misfeasance including torture on the part of Shri Narang and Shri Jaswant Singh whose accounts in this regard are unworthy of credit.

(iii) The Officers of the Directorate had wrongfully confined Kanhiya Singh, Waryam Singh, Ram Saran and Surinder Singh in the office of the Directorate after the incident till their departure at about 4.15 a.m.

It is not disputed that the matter has not as yet been finally investigated. The learned Attorney-General assisting us in this case states that he does not accept the findings of the report and he reserves his right to challenge the same at the appropriate stage. We are of the view that the facts and circumstances which have now come to light create a prima facie case for investigation and prosecution. We, therefore, direct that all the persons named in the report of the learned Additional District Judge and others who are accused as a result of the investigation, be prosecuted for the appropriate offences under the law by the Central Bureau of Investigation. We direct the CBI to ensure that an FIR is registered on the facts as emanate from our order and the report of the learned Additional District Judge. A copy of the report along with all the annexures be sent to the Central Bureau of Investigation. As an interim measure by way of ex gratia payment, we direct that a sum of Rs 2,00,000 (two lakhs) shall be paid by the Union of India/Directorate of Enforcement to the widow of the deceased-Sawinder Singh. In the event a suit being filed for compensation, appropriate compensation may be determined in accordance with law after hearing the parties. The contentions of the learned Attorney-General which he wishes to place before us at this stage, should be reserved by him for an appropriate stage. In the event a decree to be passed, the sum of Rs 2,00,000 to be paid ex gratia, shall not be taken into account. The payment of rupees two lakhs shall be made within three months from today. The amount shall be deposited in the Registry of this Court and the widow of deceased-Sawinder Singh shall be at liberty to withdraw the entire amount on the identification to the satisfaction of the Registrar (Admn.). Any observation made by us in this order will not affect the investigation, prosecution and the trial. Notice is disposed of.

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