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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 5436/2012 & CM 11067/2012

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Judgment dated 30.10.2012

TRISHA GUPTA

..... Petitioner

Through : Mr.Sanjay Poddar, Sr. Adv. with
Mr.Sandeep Bajaj, Ms.Navlin Swain and
Mr.Govind Kumar, Advs.

versus

GURU GOBIND SINGH INDRAPRASTHA
UNIVERSITY AND ANR

..... Respondents

Through : Mr.Parag Tripathi, Sr. Adv. with
Mr.Mukul Talwar, Mr.Anuj
Bhandari, Advs. for GGSIPU
Mr.Ankit Rajgarhia, Adv. for MCI.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. By the present writ petition, filed under Article 226 of the Constitution of India, the petitioner seeks a writ of mandamus directing respondent no.1 to issue a No Objection Certificate to the petitioner, as required under Clause 6 of the Medical Council of India Regulations and Graduate Medical Education, 1997. A writ of mandamus is also sought directing respondent no.2 to consider the petitioner for migration on compassionate grounds against the available vacancy at Vardhman Mahavir Medical College, Delhi.
2. Rule. With the consent of counsel for the parties present writ petition is set down for final hearing and disposal.
3. As per the petition, petitioner is a student of MBBS at the Medical College at Bharati Vidyapeeth Deemed University, Pune, Maharashtra.

Petitioner is aggrieved by the illegal action of respondent no.1, Guru Gobind Singh Indraprastha University, whereby respondent no.1 has withheld and not considered the request of the petitioner to grant No Objection Certificate to the petitioner without any basis which is a mandatory requirement for applying for migration to Vardhman Mahavir Medical College and Safdarjung Hospital as per the regulations of Medical Council of India i.e. respondent no.2 herein. As per the writ petition during the first year of education the petitioner lost her father on 11.3.2012 leaving behind the petitioner, her mother and her younger brother, who is stated to be 12 years of age. During this period of extreme hardship the petitioner continued to study and completed her first year of MBBS at the Medical College at Bharati Vidyapeeth, a Deemed University, Pune. Upon the demise of the petitioner's father the family was in complete disarray as the only earning member of the family, her mother, who is a Doctor by profession is practicing in Delhi. In the petition it has been stated that the younger brother of the petitioner is studying in a school in Delhi and he requires proper support when the mother is away for her professional duties including emergency night shifts.

4. It is the case of the petitioner that on account of compelling circumstances in the house of the petitioner it has become very difficult for her to study at Pune and, thus, she sought migration from her parent college at Pune to a Medical College at Delhi. In the petition, reliance is placed on Clause 6 of the Medical Council of India Regulations on Graduate Medical Education, 1997, to show the necessary conditions, which are required to be fulfilled, for seeking migration.
5. Learned senior counsel for the petitioner submits that since the petitioner was eligible under the Regulations she applied for No Objection Certificate on compassionate ground from her parent college i.e. Bharati

Vidyapeet Medical College, Pune, as per the Regulations framed by Medical Council of India on 7.8.2012. The No Objection Certificate was granted by the parent college on 10.8.2012. Similarly, Bhartiya Vidyapeeth, Deemed University, Pune, also issued a No Objection Certificate in favour of the petitioner on 11.8.2012. After obtaining both the No Objection Certificates the petitioner immediately applied for No Objection to Vardhaman Mahavir Medical College, Delhi, on 12.8.2012. The Vardhaman Mahavir Medical College also acceded to request of the petitioner and a No Objection Certificate was granted to the petitioner on 16.8.2012. Petitioner was also informed that a vacancy was available in the said institution due to withdrawal of one student. After the issuance of the No Objection Certificate by Vardhaman Mahavir Medical College petitioner applied for a No Objection Certificate to Guru Gobind Singh Indraprastha University on 17.8.2012 informing the University in detail the circumstances, which have forced her to seek migration and also the fact that a seat was available at the Vardhaman Mahavir Medical College.

6. Learned senior counsel for the petitioner submits that as per the requirement of MCI Regulation the application to MCI for migration is to be accompanied by all the four No Objection Certificates within a period of one month from the declaration of the result i.e. 31.7.2012. The request for a no-objection made to respondent no.1 University did not receive any response. Meanwhile, as the last date was approaching, the petitioner filed an application dated 21.8.2012 seeking migration to the Medical Council of India without annexing the No Objection Certificate from respondent no.1 University. Since no reply was received by respondent no.1 despite several requests; personal visits; and a representation dated 27.8.2012 having been made by petitioner to respondent no.1 for grant of No Objection Certificate, the petitioner was forced to knock the doors of this Court for justice.

7. Learned senior counsel for the petitioner submits that the action of respondent no.1 in not considering the request for grant of a No Objection Certificate is in violation of Articles 14 and 25 of the Constitution of India and, thus, merits interference by this Court. It is next submitted by learned senior counsel for the petitioner that no reason much less any satisfactory reason has been communicated to the petitioner by respondent no.1 for withholding the No Objection Certificate and, thus, the act of respondent no.1 for withholding and not considering the request of the petitioner for grant of No Objection Certificate is arbitrary and, thus, calls for interference by this Court.
8. Learned senior counsel for the petitioner has placed reliance on a decision rendered by this Court in the case of *Anika Jain V. University of Delhi*, W.P.(C) 6939/2008, wherein this Court had held that although a candidate has no vested right to seek migration, however, if a student is able to disclose good reasons to seek migration, the college cannot act in a whimsical manner and withhold the No Objection Certificate in an arbitrary manner. The Court had also held that the discretion vested in the college/University while considering the application for migration has to be considered objectively, the college cannot ignore the welfare of the student and the choice of the student has to be respected.
9. It is strongly urged by learned senior counsel for the petitioner before this Court that the grounds for seeking migration are not fanciful or random but on account of unforeseen and unfortunate circumstances, namely, the death of the father of the petitioner, which is not a normal circumstance. Senior counsel further contends that the petitioner has not sought migration merely out of choice of the college. It is further submitted that mere grant of No Objection Certificate to the petitioner would not guarantee migration to the petitioner, which is in any case to be considered by the Medical Council of India as per its rules.

10. Learned counsel for the respondent no.2, MCI, submits that till the No Objection Certificate is granted by respondent no.1 University the request of the petitioner cannot be considered by respondent no.2, it is only after the No Objection Certificate is granted by the petitioner would the respondent no.2 MCI exercise its discretion and consider the grounds for migration. Counsel further submits that at the time when the request of the petitioner for migration is processed and in case it is allowed the petitioner would have to give an affidavit under Rule 6(5) of Graduate Medical Education Regulations, 1997. Counsel has drawn the attention of the Court to Rule 6 (5), which reads as under:

“6. Migration

5 The applicant candidate must submit an affidavit stating that he/she will pursue 18 months of prescribed study before appearing at II professional Bachelor of Medicine and Bachelor of Surgery (MBBS) examination at the transferee medical college, which should be duly certified by the Registrar of the concerned University in which he/she is seeking transfer. The transfer will be applicable only after receipt of the affidavit.”

11. Learned counsel for respondent no.2 further submits that having regard to the nature of teaching and training in the MBBS course migration is virtually prohibited and grant of migration is in exceptional circumstances and on fulfillment of prescribed condition is not the rule but is an exception. Counsel has drawn the attention of the Court to Regulation 6, which has been reproduced in the counter affidavit, which relates to the migration of a candidate. Counsel while relying on Regulation 6 submits that a candidate desirous of migration must make an application in the prescribed manner before the expiry of one month from the date of declaration of the results of the First Professional of MBBS course. In addition to the above requirement the candidate seeking

migration must also seek no objection from one recognized medical institution to another recognized medical institution.

12. It is next contended by learned counsel for respondent no.2 MCI that every request and/or application for migration is required to be made to the Medical Council of India if the migration is being sought to Medical College located outside the State. It is further contended that it is the Medical Council of India that decides the grant or non-grant of migration in the cases where inter-State migration is sought as in the present case. Attention of this Court is drawn to Regulation 6 of 1997, although it is submitted that these regulations stand amended, to show that as per Regulation 6 migration is to be granted only in exceptional cases on extreme compassionate grounds and routine migrations would not be allowed. As per Note 2 of Regulations the criteria for compassionate migration include death of a supporting guardian, illness of a candidate causing disability, disturbed conditions as declared by the Government in the Medical College area.
13. It is contended by learned counsel for the respondent MCI, that the MCI with the prior approval of the Government of India under Section 33 of the Medical Council of India Act has carried out amendment in its statutory Regulations being regularized on Graduate Medical Education (Amendment) Act, 2008. It is further contended that in the amended Note 2, which included grounds for compassionate migration has been deleted, however, it is not disputed that a student seeking migration is to first obtain a No Objection Certificate from the college where the student is studying; thereafter from the University to which the said college is affiliated; from the College where the migration is sought; and lastly from the University to which the said college is affiliated. The application is then to be submitted to the Medical Council of India.

14. While relying on the counter affidavit filed by respondent no.1 University, Mr.Mukul Talwar, learned counsel for respondent no.1, submits that prior to the application made by petitioner on 9.8.2012 the Vice-Chancellor of the University had constituted a committee to look into the cases of applicants seeking migration to a medical college affiliated to the respondent University. The Committee included three independent and reputed experts of medical education including Principal of Vardhaman Medical College. The expert committee upon deliberation recommended that migration of students under GGSIPU cannot be considered. It is thus contended that the decision of the University lies purely in the domain of policy making and it is trite law that this court while exercising its extra ordinarily jurisdiction under Article 226 of the Constitution of India would not normally interfere with the said policy decision. It is further submitted that the Supreme Court of India has held in a number of cases that a decision taken by a body of experts like a University cannot be substituted by the subjective opinion of the Courts. It is also the stand of the University that the migration of graduate medical students from one College/University to another are governed by Clause 6 of the Regulations on Graduate Medical Education, 1997, formulated by the Medical Council of India under the Medical Council of India Act. It is further submitted that the sole authority to allow or reject the request of a Graduate Medical student is the Medical Council of India, however, the College to which the migration is proposed to be made and the University to which that college is affiliated are *inter alia* required to give a No Objection Certificate. It is noteworthy that as per Note-1 appended to the said Clause 6, the Universities concerned are required to frame appropriate guidelines for grant of said No Objection Certificate. Note 1 reads as under:

“Note-1

The State Governments/Universities/Institutions may frame appropriate guidelines for grant of No Objection Certificate or migration, as the case may be, to the students subject to provisions of these Regulations.”

15. Mr.Talwar submits that the committee, which was appointed by the Vice-Chancellor had noticed that the University respondent no.1 has not formulated any such guidelines to govern the grant of No Objection Certificate, as contemplated by Clause 6 of Regulations on Graduate Medical Education 1997. It is further submitted that the Committee was of the opinion that in the absence of any such guidelines no request for migration of medical student could be considered by the University. The Committee also took note of the fact that as per the regulations of the Medical Council of India, the Council could grant migration on any genuine ground, however, what was considered to be genuine was not specified and had been left ambiguous. It is thus contended by Mr.Talwar that the University has taken a consistent stand not to grant migration to any of the applicants.
16. During the pendency of this matter Mr.Talwar has informed this Court that the Vice-Chancellor has now appointed a Committee to make relevant rules for grant of migration, which would be applicable from the following year.
17. I have heard learned counsel for the parties, given my thoughtful consideration to the matter and considered the rival contentions of the parties. The basic facts of the case are not in dispute that the petitioner is a student of MBBS at the Medical College at Bharati Vidyapeeth Deemed University, Pune, Maharashtra. During the first year of her education the petitioner lost her father on 11.3.2012. The family of the petitioner comprises of the petitioner; her mother, who is a Doctor; and a minor brother, who is stated to be twelve years of age. The family circumstances

of the petitioner have forced the petitioner to seek migration from Pune to Delhi. Migration is permitted under Clause 6 of the Medical Council of India Regulations on Graduate Medical Education, 1997. Regulation 6 reads as under:

“6. Migration

- (1) Migration of students from one medical college to another medical college may be granted on any genuine ground subject to the availability of vacancy in the college where migration is sought and fulfilling the other requirements laid down in the Regulations. Migration would be restricted to 5% of the sanctioned intake of the college during the year. No migration will be permitted on any ground from one medical college to another located within the same city.
- (2) Migration of students from one college to another is permissible only if both the colleges are recognized by the Central Government under Section 11(2) of the Indian Medical Council Act, 1956 and further subject to the condition that it shall not result in increase in the sanctioned intake capacity for the academic year concerned in respect of the receiving medical college.
- (3) The applicant candidate shall be eligible to apply for migration only after qualifying in the first professional MBBS examination. Migration during clinical course of study shall not be allowed on any ground.
- (4) For the purpose of migration an applicant candidate shall first obtain **“No Objection Certificate” from the college where he is studying for the present and the university to which that college is affiliated and also from the college to which the migration is sought and the university to which that college is affiliated. He/She shall submit his application for migration within a period of 1 month of passing** (Declaration of result of the 1st Professional MBBS examination) alongwith the above cited four “No Objection Certificates” to: (a) the Director of Medical Education of the State, if migration is sought from one

college to another within the same State or (b) the Medical Council of India, if the migration is sought from one college to another located outside the State.”

18. Reading of Regulation 6 would show that migration is permitted from one medical college to another medical college on any genuine ground subject to vacancy in a college where migration is sought and fulfilling their requirements laid down in the Regulations. Regulation 6(2) requires that migration of students from one college to another is permissible only if both the colleges are recognized by the Central Government and subject to the condition that it does not result in increase in the sanctioned intake capacity. A candidate would be eligible to apply for migration only after qualifying the First Professional MBBS examination. Regulation 6 also provides that for the purpose of migration a candidate is to first obtain a No Objection Certificate – from the college where he/she is studying; from the University to which that college is affiliated; from the college to which migration is sought; and from the University to which that college is affiliated. Another condition to be fulfilled by such a candidate is that an application for migration is to be submitted within a period of one month of passing/declaration of result of the First Professional MBBS examination. The four No Objection Certificates are then to be submitted to the Medical Council of India if migration is sought from one college to another college located outside the State.
19. There is no dispute that the petitioner had made an application seeking migration within one month of declaration of her result; it is the case of the petitioner that the ground for seeking migration is genuine, it is not fanciful; the petitioner has obtained no objection certificates from both the colleges and the University to which the college of the petitioner, where she is studying at present, is affiliated. It is not a case of increase of sanctioned intake as the college to which migration is sought, as

petitioner has already been informed that one seat is available. A request made to respondent no.1 University has neither been declined nor accepted, which has led to the filing of the present writ petition.

20. The stand of respondent no.1 University, which can be culled out from the counter affidavit, is that the Vice-Chancellor of respondent no.1 University had constituted a Committee to look into the cases of such applicants seeking migration and an independent Committee comprising of three reputed experts after due deliberations opined that migration of a student under respondent no.1 University cannot be considered. Based on this decision, Mr.Talwar, learned counsel for respondent no.1 University, has contended that the decision of the University lies purely in the domain of policy making and, thus, the Court should not exercise its extra-ordinary jurisdiction to interfere with the said policy decision. The second submission of Mr.Talwar is that since the University had not framed appropriate guidelines as per Note 1 appended to Clause 6, the Committee was not in a position to consider cases of migration and, thus, it was decided not to grant migration to any of the applicants. It has also been argued before this Court by Mr.Talwar that Regulation 6 does not define as to what would be considered a genuine ground, as the earlier guidelines stand amended, which had provided that the grounds and criteria for migration on compassionate grounds.
21. During the course of hearing Mr.Talwar had informed this Court that the Vice-Chancellor has now appointed a Committee to make relevant rules for grant of migration, which would be applicable in the following year.
22. The first submission of learned counsel for the University that the University has framed a policy not to consider migrations based on the recommendations of the Committee constituted by the Vice-Chancellor and, thus, the Court should not normally interfere with such a policy decision is without any force for the reason that the policy to consider

cases for migration is already in existence as per Rule 6 and, thus, it is not a case where the Court is contemplating to issue a direction to the University to frame a policy for grant of migration.

23. Accordingly the stand of the University is misplaced. Proceedings of the minutes of the meeting constituted to examine MBBS migration applications have been placed on record. Relevant portion reads as under:

“The following pertinent concerns emerge from the above mentioned paras:

1. Ordinance 7 of GGSIPU does not apply to migration of medical students as the clause gives the authority to Vice Chancellor, which is in contradiction to MCI regulation wherein MCI has kept that privilege to itself only.
2. As per note 1 of MCI, Chapter 2, Clause 6, MCI wants the universities to frame their own appropriate guidelines for grant of NOC. GGSIPU does not have any such guidelines.
3. As per the MCI regulation, the circumstances should be genuine. However, there are not specificities in this; only ambiguity. It would be very difficult to formulate circumstances which would be genuine for all and acceptable to all concerned.
4. Reasons on medical ground cannot be considered a justification for seeking migration because of one reason i.e. the medical colleges are attached to hospitals which are supposed to be run by experienced faculty to manage all such illnesses.

Hence, the migration of medical students under GGSIPU can not be considered.

Finally, the committee perused all the papers of the three candidates who have applied and still maintains the above mentioned stand.

The meeting ended with thanks to the Chair.”

24. A careful reading of the minutes of the meeting would show that the Committee was reluctant to consider the cases of migration *inter alia* on account of the following reasons:

- “1. The authority to grant migration lies with the MCI;
2. Clause 6 mandates the University to frame appropriate guidelines for grant of NOC and respondent no.1 does not have any guidelines;
3. As per the MCI Regulations the circumstances should be genuine, however, there are no specificities in this and there is only ambiguity and, thus, it would be very difficult to formulate circumstances, which would be genuine and acceptable to all concerned.

25. The minutes of the meeting would also show that the University is apprehensive in considering the applications for migration as they are unable to decipher as to what can be perceived as a genuine ground for migration and more so in the absence of any guidelines framed by the University. In my view since the power to issue a No Objection Certification is available as per Regulation 6, the University can for cogent reasons reject or accept a request for grant of a no objection but the University cannot choose and decide not to exercise the power whether to consider a request for a No Objection Certificate or not. I may hasten to add that it is not for this Court to regulate as to whether in the facts of each case a No Objection Certificate is to be granted or not but surely the Court can direct the University to exercise its option in view of regulation 6 and based on the facts of each case. The grant of No Objection Certificate is discretionary; a discretion, which is required to be exercised by the University on sound legal principles and cogent reasons; and by adopting a reasonable, fair and just approach. There is no bar for

the Court to issue a mandamus compelling the University to perform its duty to exercise its discretion, which duly stands vested by Regulation 6. Regulation 6 imposes a duty on the University. The University cannot ignore or fall shy of performing this duty caste upon them, especially on the ground, which find mention in the minutes of the meeting held by the experts. Merely because rules are yet to be framed or the amended Regulation 6 does not define what is a genuine ground does not mean that the University cannot exercise its discretion to reach a conclusion and to be able to decide in the facts of this case whether the request of the petitioner seeking migration is genuine or not. To say the least in the absence of any guidelines the University could have taken a cue from or relied upon or be guided by Note 2 of the unamended Regulation 6, which has considered compassionate grounds criteria. Note 2 of Regulation 6 reads as under:

“6. Migration

Note 2: Compassionate grounds criteria:

- (i) Death of a supporting guardian.
- (ii) Illness of the candidate causing disability.
- (iii) Disturbed conditions as declared by Government in the Medical College area.”

26. In the case of *Shriram Sugar Industries Ltd. v. State of Andhra Pradesh and Others*, reported at (1974) 1 SCC 534, the Apex Court had held as under:

“A public body endowed with a statutory discretion may legitimately adopt general rules or principles of policy to guide itself as to the manner of exercising its own discretion in individual cases, provided that such rules or principles are legally relevant to the exercise of its powers, consistent with the purpose of the enabling legislation and not arbitrary or capricious. Nevertheless, it must not disable itself from exercising a genuine discretion in a particular case directly involving individual interests, hence it must

be prepared to consider making an exception to the general rule if the circumstances of the case warrant special treatment. These propositions, evolved mainly in the contest of licensing and other regulatory powers, have been applied to other situations, for example, the award of discretionary investment grants and the allocation of pupils to different classes of schools. The amplitude of a discretionary power may, however, be so wide that the competent authority may be impliedly entitled to adopt a fixed rule never to exercise its discretion in favour of a particular class of persons; and such a power may be expressly conferred by statute.

(emphasis supplied)”

27. It would be useful to quote from ‘Administrative Law’ by Sir William Wade, Eighth Edition:

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OVER - RIGID POLICIES

Policy and precedent

An authority can fail to give its mind to a case, and thus fail to exercise its discretion lawfully, by blindly following a policy laid down in advance.¹ It is a fundamental rule for the exercise of discretionary power that discretion must be brought to bear on every case: each one must be considered on its own merits and decided as the public interest requires at the time. The Greater London Council was criticized for disregard of the principle when it proceeded to make a large subsidy to the London bus and underground services as a matter of course because the ruling party had promised to do so in their election campaign.² They regarded themselves as irrevocably committed in advance, whereas their duty was to use their discretion. Nor may a local authority lawfully refuse all applications for housing for children of families considered to be ‘intentionally homeless’,³ since the power to provide housing implies a duty to consider the different circumstances of each child.⁴ Nor, the same reason, may they

¹ For discretion see (1972) 18 McGill LJ 310 (H.L. Molot); [1976] PL 331 (D. J. Gallian).

² *Bromley LBC v. Greater London Council* [1983] 1 AC 768 (Lords Diplock and Brandon).

³ See above, pp. 78-9

⁴ *A.-G. ex rel. Tilley v. Wandsworth LBC* [1981] 1 WLR 854 (declaration that resolution was unlawful); cf. *R. v. Accrington Youth Court ex p. Flood* (1997) 10 Admin. LR 17 (over- rigid policy of sending young offenders to remand centers); *R. v. North West Lancashire Health Authority ex p. A*, The Times, 24 August 1999 (over- rigid policy of refusing medical treatment for transsexuals).

automatically proceed to recondition sub-standard houses as soon as the owner has failed to comply with an improvement notice.⁵ Nor may they refuse to repay rates overpaid if their policy is based upon advice which interprets their statutory discretionary power too narrowly.⁶ Where the secretary of the state's policy was to disallow all merely local objections to the allocation of land for gipsies, the court held it unlawful for undue rigidity.⁷ Where he made a rule that he would refuse grants to all projects already started before the grant application he fettered his discretion unlawfully.⁸ The Court of Appeal has held that a local council's resolution might be quashed if councilors voted for it in obedience to the orders of their political party, but not if they conscientiously decided to prefer the party's policy to their own opinions.⁹

In enforcing this rule the courts are underlining the difference between judicial and administrative processes. The legal rights of litigants are decided according to legal rules and precedents which are sometimes held to prevail over the court's own opinion. But if an administrative authority acts in this way its decision is *ultra vires* and void. It is not allowed to 'pursue consistency at the expense of the merits of individual cases',¹⁰. This doctrine is applied even to statutory tribunals, despite their resemblance to courts of law.¹¹ Indeed, the quotation comes from a case in which it was held that the Transport Tribunal ought not to hold itself bound by its own precedents. But that tribunal, as explained elsewhere,¹² is in effect a licensing authority which takes decisions based on administrative policy, and it is the nature of the decision that counts rather than the outward appearance of the deciding body.

Just how far they may enforce a fixed policy is often a difficult question for authorities granting licences or permits. A clear instance was where an applicant for permission to sell

⁵ *Elliott v. Brighton BC* (1980) 79 LGR 506.

⁶ *R. v. Rochdale MBC ex p. Cromer Ring Mill Ltd.* [1982] 3 All ER 761. See also the *Tower Hamlets* case, below, p. 782.

⁷ *R. v. Secretary of State for the Environment ex p. Hatton BC* (1983) 82 LGR 662; and see *R. v. Home Secretary ex p. Bennett*, *The Times*, 18 August 1986 (Home Office circular set unduly rigid criteria for approval of police rent allowance applications).

⁸ *R. v. Secretary of State for Transport ex p. Sherriff & Sons Ltd.*, *The Times*, 18 December 1986.

⁹ *R. v. Waltham Forest LBC ex p. Baxter* [1988] QB 419 (no unlawful fettering of discretion found).

¹⁰ *Merchandise Transport Ltd. v. British Transport Commission* [1962] 2 QB 173 at 193.

¹¹ See *R. v. Greater Birmingham Appeal Tribunal ex p. Simper* [1974] QB 543 (tribunal applied rule of thumb instead of exercising discretion: decision quashed); *R. v. Criminal Injuries Compensation Board ex p. RJC*, *The Times*, 21 January 1978 (discretion fettered by policy statement).

¹² Below, p. 889.

pamphlets in public parks for the benefit of the blind was told that the Council had decided to grant no such permits, and could make no exception even in the most deserving case. The court regarded that ‘not as the adoption of a policy in the exercise of a discretion but as a refusal to exercise any discretion’,¹³ and granted mandamus to compel the council to consider the application.¹⁴ It did not follow that they must give permission, or that they might not follow a policy: their duty was merely to exercise their discretion in each case, and not to shut the door indiscriminately either on all applicants or on applicants who did not conform to some particular requirement. This duty may well have some connection with the duty to give a fair hearing before refusing a license. One member of the court said: that the ‘prima facie right to be heard’ was ‘one of those public safeguards which we should always struggle to preserve’.¹⁵

Consequently a local education authority may follow its own rules in allotting pupils to schools, provided that its motives are not unreasonable, capricious or irrelevant, and provided that it is ready to consider exceptional cases.¹⁶ Where it is at liberty to make a choice between conflicting policies, it may decide to make no exceptions, as where it adopts a policy of making all schools in its area into comprehensive schools and abolishing all grammar schools.¹⁷ But even then it is in a stronger position if it has listened fairly to the objections of parents and others concerned.”

28. This court cannot lose track of the fact that even Ordinance 7 of Guru Gobind Singh Indraprastha University provides for grant of migration. Ordinance 7 reads as under:

“1. No migration shall be allowed from other universities/colleges to the university schools of studies. University maintained colleges or affiliated institutions i.e. no inter-university migration shall be allowed in normal circumstances. It can be allowed in special circumstances by the Vice-Chancellor, on the

¹³ Quoted from Bankes LJ in *R. v. Port of London Authority ex p. Kynoch Ltd.* [1919] 1 KB 176 at 185.

¹⁴ *R. v. London County Council ex p. Corrie* [1919] 1 KB 68. Cf. *Sagnata Investments Ltd. v. Norwich Cpn.* [1971] 1 QB 614 (rigid policy against amusement arcades: no exercise of discretion. This was decided on appeal, not on judicial review). For a case of statutory permission to adopt a rigid policy of refusal see *R. v. Herrod ex p. Leeds City District Council* [1976] QB 540.

¹⁵ Sankey J (at 75).

¹⁶ *Canning v. Birkenhead Cpn.* [1972] Ch. 12, where Lord Denning MR expounds the rules as to policy.

¹⁷ *Smith v Inner London Education Authority* [1978] 1 All ER 411.

recommendations of Sub-Committee, comprising of three members of Academic Council constituted by Vice Chancellor.”

29. Reading of ordinance 7 clearly suggests that migration in inter university is allowed in “Special Circumstances” by Vice Chancellor on the recommendations of a sub-committee. Thus it cannot be said that rules do not permit migration. In fact, migration is allowed in special circumstances as considered by the Vice Chancellor and the sub-committee. Thus a duty is cast upon these authorities to consider the request for migration in a given cases as per their individual merits.
30. Another factor, which this Court cannot lose track, is that as per the counter affidavit neither the University nor the Expert Committee has considered the application of the petitioner for grant of a No Objection Certificate. As per Ordinance 7 of respondent no.1 University and Regulation 6, respondent no.1 University was duty bound to consider the request of the petitioner and within the time allowed, so as not to make the application seeking No Objection Certificate futile and redundant. There is no explanation in the counter affidavit as to why the application of the petitioner for grant of no objection was not considered by the University or the Expert Committee appointed. Once an application was made by the petitioner or any candidate the University was duty bound to consider the request. I am fortified by the view expressed by a Division Bench of this Court.
31. In the case of *Aman Icchpuniani v. Vice Chancellor, Delhi University*, reported at 1998 (71) DLT 202, a Division Bench of this Court had held as under:

“15 the existence of Ordinance-IV does contemplate migration. The provision also casts a duty on the principal of the college from which migration is sought to exercise his discretion and take a decision on prayer for migration guided by reason keeping in view

the relevant considerations and not merely by whim and caprice. Like all other discretionary powers vesting in public authorities, the power to forward an application seeking migration is also coupled with a duty. Each prayer shall have to be dealt with on its own individual merits. If the prayer for migration be a bald prayer it may not be allowed merely for asking. On the contrary if there are valid reasons assigned providing reasonable justification for such demand, the principal on being satisfied of the availability of just grounds for migration, is duty bound to forward the application. Else the exercise of discretionary power would stand vitiated for unreasonableness or arbitrariness.

22. Whenever it is said that something has to be done within the discretion of the authority then that something has to be done according to the rules of reason and justice and not according to private opinion, according to law and not humour. It is to be not arbitrary, vague and fanciful but legal and regular and it must be exercised within the limit to which an honest man to the discharge of his office ought to find himself. Discretion means sound discretion guided by law.”

(Emphasis supplied)”

32. In the case of ***Lalit Kumar Modi v. BCCI***, reported at 2011 (10) SCC 106, the Supreme Court of India had recognized the doctrine of necessary necessity, which in my opinion is applicable to the facts of this case. Relevant portion of the judgment reads as under:

“The doctrine of necessity is a common law doctrine, and is applied to tide over the situations where there are difficulties. Law does not contemplate a vacuum, and a solution has to be found out rather than allowing the problem to boil over.”

33. In view of Regulation 6 of the Medical Council of India and Ordinance 7 of the University, the decision of the University not to consider any request for migration is a perfect example of an over rigid policy. The University has failed to exercise its discretion lawfully but with a closed mind did not even consider the request of the petitioner. The University was duty bound to exercise its discretion in each case and consider the

request of migration of each applicant on its own merit and not shut the door indiscriminately on all the applicants. By the act of refusing to consider the request for migration the University has decided the fate of the petitioner for seeking migration, whereas this decision is finally to be taken by the Medical Council of India.

34. Once the application for migration had been received by respondent no.1, even in the absence of guidelines having been formulated, it was for respondent no.1 to view each case on its own merit and decide whether a No Objection Certificate is to be granted or not, especially, in view of the fact that the final say in granting migration does not lie with respondent no.1 but with the BCCI.
35. Respondent no.1 has scuttled the application of the petitioner, as in the absence of a No Objection Certificate from respondent no.1, the request of the petitioner could not have been considered by the MCI.
36. Accordingly, present writ petition and application are allowed. Respondent no.1 is directed to consider the request of the petitioner for grant of No Objection Certificate expeditiously and within a period of three days from the date of receipt of the order having regard to the urgency in the matter. It is expected that respondent no.1 will consider and forward the request of the petitioner for grant of No Objection Certificate to the petitioner to the Medical Council of India to enable the Council to consider the matter expeditiously. No costs.
37. Dasti under the signature of Court Master to counsel for the parties.

G.S.SISTANI, J

OCTOBER 30, 2012

msr

