

THE HON'BLE SRI JUSTICE VILAS V.AFZULPURKAR

WRIT PETITION No.35779 OF 2015

ORDER:

Heard learned counsel for the petitioner, learned Government Pleader for Medical and Health appearing for respondent Nos.1 and 5 as well as Sri A. Prabhakar Rao, learned counsel for respondent No.2.

The petitioner is presently studying II Year MBBS Course in Siddhartha Medical College and Hospital, Vijayawada, the 3rd respondent – College. She joined in the said College in I year MBBS Course for the academic year 2013-14 and has passed I year. As the petitioner was suffering from depression due to staying away from her parents and was unable to concentrate on studies, she applied for migration/transfer to the Kakatiya Medical College, Warangal, the 4th respondent – College, in terms of the Guidelines of the Medical Council of India, which provide consideration of such request for migration. The petitioner also relied on G.O.Ms.No.193, Health, Medical and Family Welfare (E1) Department, dated 09.09.2009, which also specifies the criteria for consideration of the applicants in the order of priority under Clause 4, which reads as under:

- “4. The criteria for consideration of the applicants will be in the order of priority given below:
- a) death of supporting guardian
 - b) illness of the candidate causing disability
 - c) any other good and sufficient reason”

The petitioner states that since she had complied with all other requirements of G.O.Ms.No.193, dated 09.09.2009, and her case is eligible to be considered and even as per the report of the Medical Board that she is suffering from Depressive Disorder and is in need of

regular treatment and monitoring, respondents 3 and 4 – Colleges are stated to have issued ‘No Objection Certificate’ (NOC) to her and it is stated that there are two vacancies in

II year MBBS course in the 4th respondent – College and there would be no impediment for considering the request of the petitioner. Under G.O.Ms.No.434, Health, Medical and Family Welfare (E1) Department, dated 17.12.2008, issued by the Government of Andhra Pradesh, powers are delegated to the Director of Medical Education, Hyderabad, the 5th respondent, to process such requests for migration without necessity of referring the cases to the Government. In view of the same, as the request of the petitioner made as above being not considered, she approached this Court by filing the present Writ Petition, while challenging part of Clause 6 (e) of G.O.Ms.No.284, Health, Medical and Family Welfare (E1) Department, dated 27.09.2011. The said Clause 6 (e) reads as under:

“6. The Committee constituted by the Government vide reference 3rd read above, vide their report submitted in the reference 4th read above, has reported that they have examined the rules laid down by the Medical Council of India with regard to migration of students from one medical college to another after completion of 1st year MBBS examination, and recommended the following guidelines regarding determination of vacancy.

- | | | |
|----|--|-----|
| a. | ... | ... |
| b. | ... | ... |
| c. | ... | ... |
| d. | ... | ... |
| e. | The number of failed candidates in the 1 st year cannot be considered as vacancy as the total intake remains the same.” | |

When this Writ Petition was heard by me initially on 03.11.2015, while issuing notice before admission, I issued the following direction:

“..... The petitioner, who is presently studying II Year

MBBS Course in the 3rd respondent – College, sought permission for migration to the 4th respondent – College, in terms of G.O.Ms.No.193, Health, Medical and Family Welfare (E1) Department, dated 09.09.2009, on the ground that she is suffering from depression. A Committee constituted under G.O.Ms.No.23, dated 01.02.2011, has already framed comprehensive guidelines, which are accepted to the Committee under G.O.Ms.No.284, dated 27.09.2011.

Though the Writ Petition is filed questioning Guideline 6 (e) of G.O.Ms.No.284, dated 27.09.2011, primarily on the ground that failed candidates in I Year, who could not qualify even after the supplementary examination, cannot in any case join in II Year and as such the petitioner's case can be considered for admission in such vacancy.

Learned Government Pleader for respondents 1, 4 and 5 fairly states that the Government would consider the case of the petitioner sympathetically for permitting transfer to the II Year in the 4th respondent – College.

In view of the special facts and circumstances of this case that there is no objection from respondents 2 and 3 and subject to vacancies available in the II Year Course in the 4th respondent – College, respondents 1, 4 and 5 are directed to consider the case of the petitioner and pass appropriate orders within a period of two weeks from today.”

Subsequently, when the matter was posted, this Court was informed that the 5th respondent has considered the request of the petitioner in terms of the directions aforesaid and on the ground that there is no disability with illness that there is no clear and real vacancy in the 4th respondent – College and that University had not issued NOC, the request of the petitioner was rejected by the orders communicated as per the Minutes of the Meeting, dated 26.11.2015.

Since the Writ Petition is taken up for further hearing, learned Government Pleader for Medical and Health fairly states that the orders of rejection on the ground that there are no vacancies; that NOC is not received and that there is no required disability with illness, factually

and legally do not appear correct

as the requirement under the Medical Council Act and G.O.Ms.No.193, dated 09.09.2009, shall stand complied with by the petitioner, as that is a good and sufficient reason for consideration of the petitioner's case, particularly as the

4th respondent has two vacancies and has already issued NOC for migration of the petitioner to that College and for which the

3rd respondent – College has also no objection. This Court appreciates the fairness on the part of the learned Government Pleader for Medical and Health and considers that the case of the petitioner is required to be re-considered in terms of the Policy of Medical Council and G.Os., referred to above, as good and sufficient under Clause 4 (c) of G.O.Ms.No.193, dated 09.09.2009, and the decision taken by the 5th respondent is required to be

re-considered. The decision of the 5th respondent, dated 26.11.2015, is accordingly set aside.

Keeping in view the fairness expressed by the learned Government Pleader for Medical and Health, it is not necessary to adjudicate upon the first relief sought for by the petitioner, as the petitioner's case would be considered by respondents 1 and 5 afresh and expeditious orders be passed, so that the academic year is not affected. Fresh consideration of the petitioner's case as directed above shall however be completed expeditiously, preferably before the end of December, 2015.

The Writ Petition is accordingly allowed in part. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

18.12.2015
KH

VILAS V.AFZULPURKAR, J