

CWP No.2442 of 2015 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.2442 of 2015 (O&M)
Date of decision:04.05.2015**

Kiranjot

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. R.K.Malik, Senior Advocate, with
Ms. Anju Arora, Advocate, for the petitioner.

Mr. Nilesh Bhardwaj, DAG, Punjab,
for respondents No.1 and 4.

Mr. K.S.Sandhu, Advocate,
for respondents No.2, 3 and 5.

Mr. S.S.Brar, Advocate,
for respondent No.6.

Rakesh Kumar Jain, J.

The petitioner has prayed for a writ in the nature of *mandamus*, directing the respondents to migrate her from Adesh Medical College, Bathinda to Government Medical College, Faridkot against Backward Class Government quota seat as the person lower in merit than the petitioner has got admission against the government quota seat and while converting her admission into the government quota seat, the excess fee received from the petitioner be refunded to her.

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In brief, the petitioner passed her 10+2 examination from Shah Satnam Ji Girls Sr. Sec. School, Sirsa, Haryana. She appeared in the National Eligibility-cum-Entrance Test-2013, conducted by the Central Board of Secondary Education (CBSE) on 05.05.2013 in which she scored 97.6235 percentile, her Punjab State Rank was 673 and her merit in the Backward Class Category was 19. She applied for admission in the MBBS and BDS courses under General Category and in the Backward Class category. She was held ineligible in the counselling held for admission in the MBBS course on 02.08.2013 to 05.08.2013 as she was not fulfilling the eligibility criteria mentioned in Clause 14 of the Punjab Government notification dated 05.06.2013 which was also made part of the prospectus, issued by the respondent-University for admission to the MBBS course for the session 2013. Clause 14 of the prospectus provided that a candidate would be eligible for admission if he qualifies his/her 10+2 examination or other qualifying examination in place of 10+2, from a recognized institution situated in the State of Punjab.

The petitioner filed CWP No.17432 of 2013 titled as “Kiranjot v. State of Punjab and others” in which, as per the interim order dated 19.08.2013, the University was directed to allow the petitioner to join the MBBS counselling. In compliance of the order of the Court, the petitioner was allowed to join the 2nd centralized counselling for the MBBS course conducted on 15.09.2013 and as per the choice of the petitioner, from the seats available at her turn in merit, one seat was reserved for her at Adesh Medical College, Bathinda in the General Category under the Management

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Quota. The Court further, vide its order dated 30.09.2013, passed in the writ petition filed by the petitioner, directed the University to accept the fee from the petitioner and permit her to attend the classes. Ultimately, the writ petition was allowed on 20.12.2013 and the admission granted to the petitioner in terms of the interim order dated 19.08.2013 was regularized.

The petitioner filed another CWP No.1146 of 2014 in which her representation was ordered to be decided within a period of 2 months. In her representation, the petitioner had requested for migration from Adesh Medical College, Bathinda to the Government Medical College, Amritsar, which was disposed of on 11.03.2014 by a detailed order. The relevant part of the order dated 11.03.2014 is reproduced as under:-

"4. That in compliance of the order of the Hon'ble Punjab and Haryana High Court, MBBS counseling committee allowed the petitioner to join the 2nd centralized MBBS counseling and as per the choice of petitioner from the seats available at her turn one seat was kept reserved at Adesh Medical College, Bathinda in General category under Management quota."

"7. That as per Punjab Government notification clause 24(e) no admission(s) adjustment(s) shall be made after 30th September regardless of any vacancy(ies) that might exist or might arise thereafter for any reason.

8. That even as per MCI guidelines, Migration in MBBS course is allowed only after passing the First Prof.

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Examination.

9. That 2nd Counseling in respect of admissions to MBBS/BDS courses for 2013 has been conducted on 18.9.2013.

Now keeping in view of the facts it is observed as under:-

i) That in compliance with the orders of the Hon'ble SC and as per Punjab Government Notification governing the admissions to MBBS/BDS course, admission process of MBBS/BDS courses was required to be over by 30/09/2013 and accordingly, it is over and closed.

ii) That in compliance with the Hon'ble Punjab and Haryana High Court's order dated 19.08.2013 petitioner was allowed to join the counselling and one seat was kept reserved at Adesh Medical College, Bathinda in General category under Management quota.

iii) That all 13 candidates of BC category mentioned by the applicant in her application were granted admission in MBBS during the first centralized counseling of MBBS course which was held from 02.08.2013 to 05.08.2013. Whereas, applicant was allowed to join the 2nd centralized counseling vide interim orders of Hon'ble Punjab and Haryana High

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Court dated 19.08.2013.

In view of above detailed facts and circumstances and legality of the matter, Baba Farid University of Health Sciences, Faridkot, which has now legally seized off the matter due to following directions given in Punjab Government Notification No.5/9/2009-3HB-III/2883 dated 5.06.2013 issued for admissions to MBBS/BDS course.

"In order to ensure completion of the prescribed course(s) and period of study as well as commencement of examination(s) in time, no admission(s) adjustment(s) shall be made after 30th September regardless of any vacancy(ies) that might exist or might arise thereafter for any reason".

Keeping in view of the above constrain, request of Kiranjot D/o Sh. Hakam Chand for migration/admission to Govt. Medical College, Amritsar cannot be acceded.

Ms. Kiranjot is hereby advised to move her application for migration after passing the Ist year of MBBS and subject to the fulfillment of terms and conditions of MCI/University for Migration".

She further filed another CWP No.9793 of 2014 with a prayer for issuance of a writ in the nature of *mandamus*, directing the respondents

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to grant the petitioner admission/migration from Adesh Medical College, Bathinda to Government Medical College, Amritsar in the Backward Class government quota, to refund the excess fees received from her and to set aside the order dated 11.03.2014 by which her representation was disposed of. The said writ petition was dismissed vide order dated 02.09.2014. The relevant part of the order dated 02.09.2014 is reproduced as under:-

"1. The petitioner challenged successfully a notification requiring a pass in 10+2 exams from Punjab to qualify for consideration under the Punjab resident category and obtained in the process the benefit of consideration for admission to MBBS seat in a private college under the management quota. The order passed by this Court in CWP No.17432 of 2013 initially directed consideration of the petitioner in the vacant seat at the counseling held on 15.9.2013 and the only seat which was available, being a payment seat in a private college, was granted to her. The writ petition ultimately was allowed dismissing the government notification prescribing the criteria for the residents of Punjab as a pass in 10+2. The judgment was passed on 20.12.2013. By that time, 5 persons, who were lower in merit, had gained admission in government colleges and 8 persons in government quota in private colleges. All the 13 persons who had secured lower marks but who came by

the category of lower tuition fee by gaining admission in government quota in government colleges and private colleges respectively, were impleaded as parties and the petitioner sought for a relief that she be adjusted against any government seat granted to any of the private respondents. The writ petition was filed at a time when her own plea for such consideration had been rejected by the university through its order dated 11.03.2014 (Annexure P/14). The order reasoned that as per the decision of the Supreme Court and as per the Punjab Government notification, admission to MBBS and BDS courses were to be completed by 30.9.2013 and by the time when this Court had allowed for one seat to be kept at private college in general category under the management quota, all available government seats had already been filled up. If re-adjustment was not possible, the impugned order provided that the petitioner could apply for migration after passing the 1st year of MBBS and subject to the fulfillment of terms and conditions.

2. The learned counsel for the petitioner would state that since the government had passed an illegal notification prescribing a particular criterion for Punjab resident status which was quashed by this court on 20.12.2013, the petitioner cannot be victimized by a

notification which was legally untenable and, therefore, either a student who had secured lower marks and gained admission in a free seat must be displaced and in his/her place, she must be adjusted or in the alternate the government must be made to absorb the cost of the tuition fee which she has to pay in addition to the fee payable under the seat in government quota.

3. I have noticed that even the time when the writ petition was taken on board and notice were issued on 20.5.2014, this court had dismissed the writ petition against the students who had been arrayed as respondents No.7 to 19. Consequently, there can be no decision taken in favour of the petitioner to the disadvantage of respondents No.7 to 19 that could allow for a consideration for accommodating the petitioner in any of the seats to which the private respondents have been considered.

4. This leads us only to a question, whether there was anything wrong about the order that could obtain judicial correction to the benefit of the petitioner. The order was issued by the University in a situation that to cope with a time schedule of completing the admission process before 30.9.2013 and the possibility of securing admission for the petitioner as per the court direction,

was only in management quota in a private college. If the court ultimately found that the government notification was to be quashed, it vindicated the petitioner's contention to the point upto which she secured the admission and beyond that, it would be difficult to look for any higher benefits. The argument of the learned counsel that the State shall absorb the cost incurred by her is too high an expectation, for, there was nothing inherently illegal about the notification issued. The requirement of a 10+2 schooling from an educational institute in Punjab was not favoured by a judicial dispensation at that time but it is invariably a matter of judicial perception of what was appropriate. What was favourable to her, I must observe, has not come by such a sure benefit for students competing this year i.e. 2004, for this court has held in the decision Shamly Jindal Versus State of Punjab and others Civil Writ Petition No.12017 of 2014 decided on 5.8.2014 that the government notification prescribing 10+2 qualification to obtain only from an institute in Punjab could be justified as advancing the State's own interest for securing a steady stream of professionals, who could be dedicated to the services within the state. I cannot, therefore, make the State to shoulder the cost for

continuing her education in MBBS.

5. The impugned order itself makes provision for scope for migration and, therefore, I make no direction in that regard.

6. The prayer sought for in the writ petition is declined but with the above direction.”

The Board of management of the respondent-University, vide its meeting held on 10.11.2009, adopted the Medical Council of India's notification No.MCI-34(41)/2008-Med/29527 dated 20.10.2008. The relevant part of the minutes of the meeting of the Board of the Management is reproduced as under:-

"14. Considered and RESOLVED: To approve the recommendations of the Academic Council in its meeting dated 5.5.2009, vide para 15, that the following Notifications issued by Medical Council of India, be adopted:

a. No.MCI-34(41)/2008-Med/29527 dated 20th October 2008 amending 'Regulations on Graduate Medical Education, 1997' (Pages 16 to 19 of Appendices)."

Clause 3 of the aforesaid notification dated 20.10.2008 regarding migration is also reproduced as under:-

"3. Clause 6(1) under heading" **Migration/Transfer**"
shall be substituted as under:-

"(1) Migration of students from one medical college to another medical college in India shall be granted only in exceptional case to the most deserving among the applicants for good and sufficient reasons and not on routine grounds. The number of students migrating to/from anyone of the medical college shall be kept to the minimum which shall in any case not exceed the limit of 5% of its sanctioned intake in one academic year. There shall be no migration on any ground from one medical college to another located in 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 course shall not be allowed on any ground.

(4) For the purpose of migration, an applicant candidate shall first obtain "No Objection Certificates"

from the college where he is studying for the present, the University to which it is affiliated to, the college to which migration is sought and the University to which that college is affiliated to. He shall submit his application for migration within a period of one month of passing (declaration of results) of the first professions MBBS examination alongwith the said "No Objections Certificates" to the Director, Medical Education of the State where the College/Institutions including Deemed Universities to which migration is sought is situated or to the Head of the Institution in case migration is sought to a Central Government Institution. The Director, Medical Education of the State concerned or the Head of the Central Government Institution, as the case may be, shall take a final decision in the matter as to whether or not to allow migration in accordance with the provisions of these Regulations and communicate the same to the applicant students within a period of one month from the date of receipt of the request of migration.

(5) A student who has joined another college on migration shall be eligible to appear in the IInd professional MBBS examination only after attaining the minimum attendance in that college in the subjects, lectures, seminars etc. required for appearing in the

examination prescribed under regulation 12(1).

Note-1: The State Governments/Universities/ Institutions may frame appropriate guidelines for grant of No Objection Certificate of Migration, as the case may be, to the students subject to provisions of these regulations.

Note-2: Any request for migration not covered under the provisions of these regulations shall be referred to the Medical Council of India for consideration on individual merits by the Director (Medical Education) of the State or the Head of Central Government Institution concerned. The decision taken by the Council on such requests shall be final.

Note-3: The college/Institution shall send intimation to the Medical Council of India about the number of students admitted by them on migration within one month of their joining. It shall be open to the Council to undertake verification of the compliance of the provisions of the regulations governing migration by the Colleges at any point of time."

The Medical Council of India, vide notification No.MCI-34 (41)/2008-Med./38099 dated 22.12.2008, substituted the following clauses of the earlier notification dated 20.10.2008:-

"3(i) In Chapter II, clause 6, under the headline

"Migration", Sub-Clause 6(1) shall be substituted as under:-

"6(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 regulation. Migration would be restricted to 5% of the sanctioned intake of the college during this year. No migration will be permitted on any ground from one medical college to another located within the same city".

(ii) In Chapter II, clause 6, under the heading "Migration", sub-clause 6(4) shall be substituted as under:-

"6(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 it is affiliated to, the college to which migration is sought and the University to which that college is affiliated. He/she shall submit his application for migration within a period of one month of passing (declaration of results of the first professions

MBBS examination) alongwith 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".

Learned counsel for the petitioner has submitted that in their order dated 11.03.2014, the respondents have themselves observed that the petitioner may move her application for migration after passing the 1st year of MBBS and subject to fulfillment of terms and conditions of the MCI/University for migration. It is also submitted that the petitioner is ready to pay the fee of one more year provided she is allowed migration.

In reply, counsel for the respondents has referred to the notification dated 05.06.2013 in which it has been provided that "*in order to ensure completion of the prescribed course(s) and period of study as well as commencement of examination(s) in time, no admission(s) adjustment(s) shall be made after 30th September regarding any vacancy(ies) that might exist or might arise thereafter for any reason*". He has also referred to Clause 23(e) of the notification dated 05.06.2013, which reads thus:-

"23(e) The fee will be payable on annual basis and the institutes shall not insist on the candidate to deposit fee of the entire course in advance. At the most candidates can be asked to furnish a surety bond/bank guarantee

that they will be liable to pay the balance fee for the whole course even if they leave the institute/course midway course.”

Counsel for the petitioner has argued that though the NOC has been given by the college where the petitioner is seeking migration but since the college in which she is presently studying has not given the NOC, therefore, it is prayed that the college in which she is presently studying may be directed to issue NOC for the purpose of her migration, whereas counsel appearing on behalf of the Adesh Medical College, Bathinda has submitted that with the migration of the petitioner, they would be losing a seat, therefore, NOC cannot be granted.

I have heard learned counsel for the parties and examined the record especially Clause 6(4) of the notification dated 22.12.2008, governing the migration, in which it is provided that for the purpose of migration, the candidate has to first obtain “No Objection Certificate” from the college where she is studying at 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 and then to submit her application for migration alongwith all the four “No Objection Certificates” to the Director of Medical Education of the State if migration is sought from one college to another within the same State or to the Medical Council of India if the migration is sought from one college to another located outside the State.

In the present case, the NOC though alleged to have been given

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by the college to which the migration is being sought but the college where the petitioner is presently studying has refused to give the NOC for the reason that with the migration of the petitioner, a seat in that discipline would be vacated, whereas the petitioner has prayed for *mandamus* for a direction to the college where she is presently studying to migrate her in the college where she wanted to go and refund the fee paid by her, whereas Clause 23(e) of the notification dated 05.06.2013 clearly stipulates that in such a case, the candidate has to pay the entire balance fee for the whole of the course.

In view of these facts and circumstances, the prayer made by the petitioner cannot be allowed and hence, the present writ petition is hereby dismissed.

May 04, 2015
vinod*

(**Rakesh Kumar Jain**)
Judge