

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

Civil Writ Petition No.21444 of 2016

Date of decision: 16.12.2016

Deepak Ravidatt

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr. Ram Darshan Yadav, Advocate for the petitioner.

Mr. Gaurav Jindal, Addl. Advocate General, Haryana

Mr. Amit Rao, Advocate for

Mr. Anurag Goyal, Advocate for respondents no.2 and 3.

Mr. M.S.Longia, Advocate for respondent no.4.

G.S.SANDHAWALIA, J.

The petitioner seeks direction against respondent no.2 and 3 University for issuance of No Objection Certificate and for further direction to respondent no.4-MCI to accept his application form for migration from Swami Ramanand Teerth Rural Government Medical College, Ambajogai (Beed), Maharashtra to respondent no.3-institute in the MBBS 2nd Year Course.

The petitioner was admitted in the said college at Maharashtra in September, 2015 and passed his MBBS Ist Year Course in 2016 (Annexure P/1). On account of the petitioner suffering from Allergic Rhinitis and the fact that his mother had suffered a brain stroke and the fact that his father is serving in the Indian Army and presently posted in Jammu and Kashmir, he applied for the migration on the strength of medical certificates (Annexures P/2 and P/3). The necessary No Objection

Certificates (Annexures P/4 and P/5) were issued in favour of the petitioner by the Maharashtra college on 14.9.2016 and the University on 21.9.2016 (Annexures P/4 and P/5). Resultantly, the petitioner submitted an application dated 27.9.2016 (Annexure P/6) to respondents no.3-institute and thereafter approached this Court on 7.10.2016.

In the meantime, on 4.10.2016 (Annexure R-2/1), case of the petitioner was rejected by the respondent-University on the ground that medical certificate (Annexure P/3) qua his mother was not good enough as it should be certified by a Medical Board of Civil Surgeon. It was further noticed that as per Graduate Medical Education Regulations, 1997 only provided migration in case of death of supporting guardian, illness of candidate carrying disability and disturbed conditions as declared by the Government in the Medical College area. The factum of vacancy of two seats was also noticed.

Counsel for the petitioner has brought to the notice of the Court that vide amendment the grounds for migration have been varied and the decision was based on the unamended provisions.

The said argument has not been countered as such rather counsel for the respondent no.4-MCI has pointed out the relevant clauses of the Regulations. As per amended Regulations migration can now be allowed on any genuine ground and NOC is to be taken from the college in which the candidate is studying and from the college to which the migration was sought and also from both Universities of the concerned colleges. Relevant amended regulations read 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 recognised 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."

(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 or 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/Institutions 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.

A perusal of the above said amended Regulations would go on to show that on a genuine ground as such would bring the case of an applicant into the zone of consideration. Even though the petitioner's disease as such if considered might not be a sufficient ground to grant him migration since it is only an "Allergic Rhinitis" but the petitioner however has a prima facie reasonable genuine ground on account of the fact that his mother has suffered from a brain stroke and his father is serving in the Army. Medical Certificate (Annexure P/3) also prima facie shows that she is physically disabled.

Even otherwise a perusal of the above said Regulations would go on to show that the College/University where the petitioner is studying is only to process the case for the migration as per Regulation 6(1). Since it

is a case of inter-State migration 5% restriction has been imposed on the sanctioned intake of the college during the year. The decision is to be taken by the Medical Council of India and the college only had to issue the NOC by keeping in mind Regulation 6(2) which provides that it would not result in increase in the sanctioned intake capacity for the academic year concerned. As noticed vacancies of two seats have been duly admitted as per the record. Thus, the University had no jurisdiction as such to reject the case on its end for migration as decision making lay with the respondent-council and therefore, the order dated 4.10.2016 (Annexure R-2/1) is patently without jurisdiction.

Resultantly, the respondent-University shall issue NOC as per the above mentioned Regulations and forward the same to the Medical Council of India for processing of the application within one month thereafter the MCI shall take a decision on the same on merits within a period of two months from its receipt.

In case any adverse order is to be passed then a reasoned order be passed by the respondents and be conveyed to the petitioner.

December 16, 2016
Pka

(G.S.SANDHAWALIA)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No