

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: November 15, 2016

Judgment delivered on: November 28, 2016

+ W.P.(C) 8245/2015, CM. Nos. 17317/2015 & 18579/2016

UMESH PRASAD SINGH

..... Petitioner

Through: Mr. K.C. Mittal & Ms. Ruchika Mittal, Advs.

versus

UNION OF INDIA AND ANR.

..... Respondents

Through: Mr. Abhay Prakash Sahay, CGSC with Mr. Mayur Chhabra, Adv. for R-1 & 2/IOI.
Mr.T.Singhdev and Ms.Puja Sarkar, Advs. for R-3/MCI

CORAM:

HON'BLE MR JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

W.P.(C) 8245/2015

1. The present petition has been filed by petitioner Umesh Prasad Singh for and on behalf of his daughters namely Ms. Lucy Gray and Ms. Manisha Singh with the following prayers:

- (a) *Issue appropriate writ / order / direction to set aside and quash letter No. MCI-31(1)/2015/117921 migration dated 22.06.2015 and letter no. MCI-31(1)/2015/124660 dated 30.07.2015 issued by respondent no.3;*

- (b) *Issue appropriate writ / order / direction directing respondents to allow migration and admission of the petitioner's daughters namely Lucy Gray and Manisha Singh to Government Medical College in India;*
- (c) *Issue appropriate writ / order / direction directing respondents to take all necessary steps so that the petitioner's daughters namely Lucy Gray and Manisha Singh are given migration and admission to a Government College in India;*
- (d) *Pass any order relief (s), orders or directions, as this Hon'ble Court may deem fit and proper in the nature and circumstances of the case.*

2. Some of the relevant facts as pleaded by the petitioner in his petition are that in the year 2009-2010, the petitioner's daughters applied for scholarship to study in the Republic of Yemen. On September 11, 2009, the Embassy of Republic of Yemen in India wrote to the Ministry of Higher Education, Republic of Yemen. The application for scholarship was sent to the Embassy of India in Yemen. The Embassy of India in Yemen vide its letter dated October 26, 2009 wrote to the Director General of Cultural Exchange and International Cooperation, Ministry of Higher Education and Scientific Research, Government of Republic of Yemen that they have no objection on grant scholarship by the Government of Republic of Yemen to the petitioner's daughters.

3. It is the case of the petitioner that on November 9, 2009 Vice Minister of Higher Education and Scientific Research, Republic of Yemen wrote to the Hadramout University that the daughters of the petitioner have been nominated for Indo-Yemeni Cultural Exchange Scholarship Programme in the academic year 2009-2010. While the daughters of the petitioner doing the course, the Embassy of India in Sana'a, Yemen issued a travel advisory that all Indian nationals in Yemen exit the Country through whatever commercial means available in view of the evolving situation and increasing violent incidents in Yemen.

4. It is the case of the petitioner that on August 1, 2011, the Medical Council of India wrote to the Secretary, Ministry of Health and Family Welfare, Govt. of India that the migration of the daughters of the petitioner was considered by the Board of Governors and noted that the request has not been forwarded from the Government. It is the case of the petitioner that since the situation in Yemen stabilized, his daughters continued their study in Yemen and did not pursue their migration to a Medical College in India.

5. That again on April 7, 2015, the Embassy of India in Republic of Yemen issued travel advisory that all Indian citizens leave the country immediately by whatever means in view of the precarious security situation in Yemen.

6. It is the case of the petitioner that on April 24, 2015, petitioner's daughters wrote to the Secretary, Ministry of Health and Family Welfare, Government of India that in view of

the precarious situation in Yemen, they may be allowed admission in a Govt. Medical College so as to continue their studies. It is his case that the request was forwarded to MCI for sympathetic consideration. That apart Embassy of India in Yemen wrote to the MCI that due to the situation in Yemen, the petitioner's daughters be allowed to migrate to a Govt. Medical College in India. On June 22, 2015, MCI refused the petitioner's daughters request referring to Regulation 6 of the Regulation on Graduate Medical Education (Amended), 1997 (Regulations of 1997). It is in the aforesaid background, the present petition has been filed seeking the reliefs as already been reflected above.

7. Respondent no.3, MCI has filed its counter-affidavit, wherein it has been averred that the petitioner has concealed relevant material inasmuch as letters dated October 28, 2011 and August 7, 2015 have been suppressed from the Court and the petition need to be dismissed on that ground. That apart it is their case that Regulation 6 of the Regulations of 1997 are applicable to cases of migration within India and provides that in appropriate cases, migration can be permitted only if both the medical colleges are recognized by the Central Government under Section 11 (2) of the Indian Medical Council Act, 1956 (IMC Act, 1956). The said Regulations further provide that the migration could be permitted in appropriate cases on the condition that the same shall not result in increase of the sanctioned intake capacity of the receiving medical college for the academic session and that an applicant has to apply for migration within one month of passing first year of MBBS

Examination. Migration during the clinical course of study is not permitted. Thus, in terms of the statutory regulation, the request of the daughters of the petitioner to migrate from the College of Yemen and be given admission in a Govt. Medical College in India has been disallowed as there is no provision in the Regulations of 1997. It is also stated that Note-2 provides, for any request for migration which might not be covered under Regulation 6 shall be referred to MCI for consideration by the Director, Medical Education of the State or Head of the Central Government Institution and the decision of the MCI shall be final. That apart, it is the case of the Council that continuity of a student in the MBBS Course in the same institution is of vital importance. Every student is required to undergo a period of certified study extending over 4 ½ academic years divided into 9 semesters, i.e., 6 months each from the date of commencement of the study. The MBBS course is divided into three parts. The clinical subjects to be taught during Phase-II and Phase-III are medicines and its allied medical specialties, surgery and its allied, obstetrics and Gynecology and Community Medicine. Keeping in mind the above division of subjects, that very stringent criterion has been laid down in the statutory regulations for obtaining permission for migration from one medical college to another medical college. With this object in mind, migration of a medical student from one medical college to another is permissible only in extreme circumstances and in any case no migration is permissible either during the Second Medical Professional or Third Medical Professional. A candidate is eligible to apply for migration only after qualifying first professional MBBS Examination and that migration during

clinical course of study is not allowed on any ground. It is also the stand of the respondent MCI that the daughters of the petitioner had proceeded to College of Medicine & Health Science, HADRAMOUTH University, Yemen in the year 2009 for the purpose of acquiring a Foreign Primary Medical qualification without obtaining an eligibility certificate from the answering respondent under the eligibility requirement for taking admission in undergraduate medical course in a Foreign Medical Institution Regulations and Screening Test Regulations and the petitioner's daughters after completing their primary medical qualification from the Foreign Medical Institute would not be eligible to appear in the Screening Test conducted by the National Board of Examinations for the purpose of obtaining registration under the IMC Act, 1956 and as such seeks the dismissal of the petition.

8. Mr. K.C. Mittal, learned counsel appearing for the petitioner would submit that the daughters of the petitioner had to come back to India because of the grave situation in Yemen. At the time of their return to India they had completed 5 years of 6 years course in Yemen. Initially in the year 2011, request for migration was made to the Ministry of Health, Govt. of India for considering the migration of the daughters of the petitioner to a Govt. Medical College in India, but the daughters of the petitioner continued as the situation in Yemen improved, but in the year 2015 when the situation became worse, they came back to India and had made a request for allowing their migration to a Govt. Medical College in

India. He states that the petitioners daughters having been given scholarship under India-Yemeni Exchange Programme, the respondents cannot deny the migration of the petitioner's daughters to a Medical College in India. He would rely on Note-2 of Regulation 6 of Regulations of 1997 which *inter alia* states that any request for migration not covered under the provisions of the regulations shall be referred to the MCI for consideration on individual merits by the state or the Central Government for a decision, which shall be final. He would also state a legal opinion was sought by the Medical Council of India, wherein it has been opined that the case of the petitioner's daughters need to be sympathetically considered. Mr. Mittal also relied upon the order dated 2nd September, 2015 passed in writ petition wherein this Court has observed that Note-2 of Regulation 6 of the Regulations of 1997 amended up to February, 2012 provides that any request of migration not covered under the provisions of Regulations shall be considered by the MCI for consideration on individual merit. But according to this Court, even if the Regulations do not permit migration from the Foreign Medical College to Indian Medical College, the MCI cannot reject the request merely on the ground that there is no provision but has to decide the request on merit. He states that Note-2 of the Regulation 6 cannot be narrowly interpreted to restrict the migration within the Country only but it gives much wide powers to the MCI to allow migration in cases which are not covered under Regulations, to include migration from foreign country. He states that the action of the MCI is rigid and totally unfair and unjust and students cannot be made to suffer because of

that attitude. He would rely upon the judgment in the case of ***Lalit Kumar Modi v. Board of Control of Cricket in India 2011 11 Scale page 31***. That apart he would rely upon the judgment of this Court in the case of ***Trisha Gupta v. Guru Gobind Singh Indraprastha University and Anr.*** W.P.(C) 5436/2012 decided on 30th October, 2012 to contend that the MCI is required to exercise its discretion in the case and consider the request of migration on merit in favour of the petitioners daughters. He states that this case requires equitable consideration as the petitioner's daughters have completed 5 years of study and they cannot be left high and dry otherwise, they would not be able to complete their education. According to him, State Govt. of Bihar vide its letter dated 7th April, 2016 sought permission of the MCI for permitting to admit both the students in the seats lying vacant in their Medical College. He also states that no prejudice is being caused to any person as no other student is contender for the seats for any Govt. Medical College in Bihar who would have prior right. He would rely upon the judgment of this court in the case of ***Shambhavi Sharma v. National Board of Examinations and Anr. in W.P.(C) 5055/2010*** decided on 13th December, 2010 and ***Sushil Kumar v. Medical Council of India and Anr. W.P.(C) 6126/2012*** (and connected writ petitions) decided on 13th September, 2013 wherein it was *inter alia* held that it is immaterial whether eligibility certificate is applied for and issued before admission in Foreign Medical Institution or thereafter.

9. On the other hand, Mr. T. Singh Dev, learned counsel for respondent no.3 / MCI

would submit that the admission of Indian Citizens in foreign medical institutions fall within the purview of Section 13 (4A) & 13 (4B) of the IMC Act, 1956 and are also subject to the fulfillment of conditions provided in the Eligibility Requirement for taking admission in an Undergraduate Medical Course in a Foreign Medical Institution Regulations, 2002 & the Screening Test Regulation, 2002. The eligibility requirement for taking admission in an Undergraduate Medical Course in a Foreign Medical Institution Regulations, 2002 & the Screening Test Regulation, 2002 do not provide for migration from any Foreign Medical Institute to a Medical College in India. He would state that the migration is provided under the provisions of Graduate Medical Education Regulations, 1997 exclusively for students pursuing MBBS course in India in terms of the provision of Regulation 6 of Regulations of 1997 and that the same does not provide for migration from a Foreign Medical Institute to an Indian Medical College. The Regulations of 1997 are applicable and binding upon medical colleges in India and also upon students pursuing MBBS course in the medical colleges in India.

10. The application for migration within the Country has to be made to the Director of Medical Education of the concerned State Govt. if migration is sought within the same State, i.e., intra – state and to the answering respondent if migration is sought outside the State, i.e., inter – state. According to him, Note-2 to Regulation 6 of the Regulations of 1997, provides that any request for migration which might not be covered under Regulation

6, shall be referred to the MCI for consideration, by the Director of Medical Education of the concerned State Govt. where the medical college is situate wherein the candidate seeking migration is pursuing MBBS course or the Head of the Central Govt. Institution concerned where the candidate seeking migration is undergoing the MBBS course and that the decision of MCI, in this regard, shall be final. Note-2 provides for situations not contemplated under Regulation 6 but since such requests have to be forwarded by the Director of Medical Education of the concerned State Govt. where the medical college is situated wherein the candidate seeking migration is pursuing MBBS course or the Head of the Central Govt. Institution concerned where the candidate seeking migration is undergoing the MBBS course, thus it is clear that Note-2 take within its ambit cases of migration within the country. He states that the daughters of the petitioner have admittedly, in complete contravention to the Eligibility Requirement for taking admission in an Undergraduate Medical Course in a Foreign Medical Institution Regulations, 2002 and the Screening Tests Regulations, 2002 have proceeded to College of Medicine & Health Science, HADRAMOUTH University, Yemen in the year 2009 for purpose of acquiring a foreign medical qualification without first obtaining the Eligibility Certificate from the answering respondent prior to seeking admission in the foreign medical college and thus after completing their primary medical qualification from a foreign medical college would not be eligible to appear in Screening Tests conducted by the National Board of Examination for the purpose of obtaining registration under the IMC Act, 1956. He also

states that the petitioner has chosen to suppress and selectively place on record relevant material / facts including Central Govt. Letter dated 28.10.2011 & MCI letter 07.08.2015. The Central Government vide communication dated 28.10.2011 had communicated its decision to decline the request of the petitioner for migration of his daughters from College of Medicine & Health Science, HADRAMOUTH University, Yemen to a Govt. Medical College in India as there is no provision in the IMC Act, 1956 or the Regulations made thereunder permitting migration from a foreign medical college to a medical college in India. The daughters of the petitioner vide letter dated 20.07.2015 had requested the answering respondent to allow them to attend classes and appear in the clinical subjects in a Govt. Medical College at Patna. The answering respondent vide its letter dated 07.08.2015, had declined the request in view of the Regulations of 1997. The petitioner having deliberately suppressed the aforesaid communications does not deserve any indulgence from this Court and the present petition deserves to be rejected. He states that MCI received letter dated 05.05.2015 from the Ministry of Health and Family Welfare therewith forwarding the representation dated 24.04.2015 made to them by the daughters of the petitioner, requesting to consider the matter regarding their migration from College of Medicine & Health Science, Hadramouth University, Yemen to a Govt. Medical College, in India. The MCI after considering the request of the daughters of the petitioner, vide letter dated 22.06.2015 had informed that in view of Regulation 6 of the Regulations of 1997, migration could not be permitted from a foreign medical institute to an Indian Medical

College. The respondent thereafter had received representations dated 13.07.2015 & 20.07.2015 from the daughters of the petitioner. The respondent after considering the request, have vide its communications dated 30.07.2015 & 07.08.2015 declined the same in view of the provisions of the Regulations of 1997. The respondent had thereafter considered the letter dated 07.04.2016 issued by the Controller of Examination, Health Services, Govt. of Bihar and vide letter dated 25.05.2016, had informed that the admissions of Indian Citizens in foreign medical institutions is subject to Sections 13 (4A) & 13 (4B) of the IMC Act, 1956 and the fulfillment of conditions provided in the Eligibility Requirement in Foreign Medical Institution Regulations, 2002 & the Screening Test Regulations, 2002; which do not provide for migration from any Foreign Medical Institute to a Medical College in India. The Council has further informed that migration is provided under the provisions of Graduate Medical Education Regulations, 1997 exclusively for students pursuing MBBS course in India in terms of the provision of Regulations 6 and that the same does not provide for migration from a Foreign Medical Institute to an Indian Medical College. Thus, the Council has declined to consider the request of the Controller of Examination, Health Services, Govt. of Bihar. He states that the Supreme Court in the cases of *Shrish Govind Prabhu Desai v. State of Maharashtra & Ors.* (1993) 1 SCC 211, *MCI v. Sarang & Ors.* (2001) 8 SCC 427, *MCI Vs. Silas Nelson* (1993) 3 SCC 184 and *MCI Vs. Deepaparani P. Deshmukh* – (2000) 9 SCC 163 has also held that migration cannot be claimed as matter of right and will be governed by the Regulations of the Medical

Council of India. He states Supreme Court has directed through its various judgments that no prayer by any party which is contrary to the statutory regulations, would be maintainable. His prayer to this Court be declined in view of the clear principles of law laid down by the Hon'ble Supreme Court in number of cases including *Krishna Priya Ganguli v. University Lucknow (1984) 1 SCC, 307*; and *A.P. Christian Medical College v State of A.P. and Anr. (1986) 2 SCC 667*. In the last, he states that the present writ petition seeks a prayer which is contrary to the Statutory Regulations of the MCI and it would not deserve any indulgence by this Court under Article 226 of the Constitution and deserves to be rejected.

11. Having heard the learned counsel for the parties, the only issue which falls for consideration in the facts of this case is whether the daughters of the petitioner are eligible and entitled to migration and admission in a Government College in India. There is no dispute that the daughters of the petitioner were pursuing a medical course in Hadramouth University in Yemen. They were granted scholarship under the Indo-Yemeni Cultural Exchange Programme. There is also no dispute that the migration has been sought by the petitioner / his daughters as they intend to move out of Yemen because of the precarious security situation.

12. Before coming to the issue which has been framed above, it is necessary to decide an issue raised by Mr. Mittal that the scholarship having been granted to the daughters of the

petitioner under the Indo-Yemeni Exchange Programme, which has been approved by the Embassy of India in Yemen, the daughters of the petitioner are entitled to migration to a Medical College in India. In this regard I may reproduce the relevant part of the communication dated 26th October, 2009 of the Embassy of India in Republic of Yemen as under:

“2. The Embassy of India does not have any objection to grant of scholarships by the Govt. of Republic of Yemen to these female Indian students.

3. This letter is being issued at the request of the father of these two female Indian students, Dr. Umesh Prasad Singh, Professor of English at the College of Education in Socotra”.

13. Suffice to state that the Embassy of India has given its no objection for the grant of scholarship by the Government of Yemen to daughters of the petitioner. The letter also reveals that the scholarship was being given by the Government of Republic of Yemen. It is also necessary to state that the Govt. of India had no role to play as the admission in the said University was secured by the daughters of the petitioner themselves. Even otherwise, nothing has been placed to show that the Govt. of India has any role to play in the daughters of the petitioner securing admission in the University. That apart, since the petitioner required a letter from the Indian Embassy, the Indian Embassy obliged the petitioner in that regard. That apart, there is nothing on record to suggest, the grant of scholarship would entitle, the daughters of the petitioner migration to a medical college in India as a right. The plea of the Mr. Mittal is not tenable and liable to be rejected.

14. For considering the issue as framed above, it is necessary to see whether the IMC Act, 1956 and the regulations made there under provides for migration of students pursuing medical course in a foreign University to a Govt. Medical College in India.

15. Before I answer the aforesaid issue which arises for consideration, the plea of Mr. Singhdev that the admission of an Indian citizen in a foreign medical institution is subject to Section 13(4A) and 13(4B) of the IMC Act, 1956 and as per the Regulations of undergraduate medical course in a Foreign Medical Institution Regulations, 2002 requires Indian citizen desirous of joining undergraduate medical course in any foreign medical institution on or after 15th March, 2002, has to approach the MCI for issuance of eligibility certificate for the said purpose, is concerned, the same is misconceived and would be of no relevance in view of the judgments of this Court in the case of *Sushil Kumar (Supra)* and *Shambhavi Sharma (Supra)*, wherein this Court has held the requirement of seeking a certificate for pursuing a course abroad would not be mandatory.

16. Mr. T.Singhdev, who relied upon Regulation 6 of the Regulations of 1997, I reproduce the same 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 it 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.

17. A reading of Regulation 6 would reveal that the migration is only contemplated of

students from one medical college to another medical college if the colleges are recognized by the Central Government under Section 11 (2) of the IMC Act, 1956 and which would not have a bearing on the sanctioned intake capacity for the academic year concerned. That apart, migration can be allowed only after qualifying in the first professional MBBS Examination. Sub-regulation 3 of Regulation 6 clearly stipulates that migration during clinical course of study shall not be allowed on any ground. It is not the case of the petitioner, that, the college in Yemen is a recognized college. But the reliance placed by Mr. Mittal on Note-2 to contend that any request for migration not covered under the provisions of 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 Central Government Institution and the MCI was required to consider the cases on merit and could not have rejected the request of the petitioner / his daughters on the ground that the Regulation 6 does not contemplate migration from a college abroad is appealing. It is also matter of record that the Medical Council of India in their impugned communications has not rejected the matter on merits, but still the daughters of the petitioner shall not be entitled to migration automatically. I note, neither in the representations nor in the writ petition the petitioner or his daughters averred that during the 5 years of medical course undertaken by his daughters/them in the medical college in Yemen, they have not undertaken a clinical course of study and it was confined to professional MBBS Examination. That apart, it should have been averred in the petition that the course of study in the medical college in

Yemen is equivalent to the medical course imparted by a medical college in India as the same would determine the equivalence of the courses in both the countries, which could have made this Court to direct reconsideration of the issue by MCI. This I say so in view of judgment of the Supreme Court in *Medical Council of India (supra)*. In the said case, one Dr. S.K. Nelson, father of respondent no.1 was serving in Madhya Pradesh State Public Health in the Department of Surgery in the Medical College at Jabalpur and his wife Dr. (Mrs.) Shobha Nelson was working as a Lecturer in the Department of Obstetrics and Gynecology in Medical College in a purely temporary capacity. Dr. Nelson applied for foreign assignment. He was selected for the same and a request was made by the Government of India vide its letter dated 2nd January, 1975 requesting the State Government to spare the services of Dr. S.K. Nelson for foreign assignment with Zanzibar Government, but the Health Department of the State Government declined the request. However, Dr. Nelson proceeded on two months vacation with effect from 1st May, 1975. He wrote a letter to the Dean of Medical College, Jabalpur that he was proceeding on long leave owing to unavoidable family circumstances. Even after the expiry of the period of leave he did not rejoin the post. His request for further extension of leave was rejected. Notwithstanding the same, Dr. Nelson and his wife proceeded to Tanzania and the first respondent, Silas Nelson, also accompanied them. It appears that the first respondent Silas Nelson claimed to have passed G.C.E. 'O' level as well as 'A' level examinations from the University of London. On this basis, he claimed that he was entitled to admission in any medical college in India.

According to him, these examinations are considered to be the equivalent qualifying examination and pre-requisite for admission to any medical college. It was also stated that Rani Durgawati University of Jabalpur had given an equivalence certificate. He obtained admission in Muhmbili Medical College in the Faculty of Medicine, which was affiliated to the University of Dar-es-Salam, in the year 1989 and had completed one year in the same college and University. Therefore according to him, he possesses the eligibility criterion for admission to the MBBS degree course in Jabalpur. A request was made by the father of the first respondent to nominate the first respondent to MBBS Course directly under Central Government quota. This request related not only to the first respondent but also to his sister. However, the Central Government advised Dr. Nelson to approach the Medical Council of India and the concerned University of Jabalpur seeking their concurrence to the migration of his two children from the University of Dar-es-Salam, Tanzania to Medical College in Jabalpur. The request of Dr. Nelson was turned down by the Medical Council of India as migration was not permissible under the rules. Aggrieved by this, the first respondent and his sister filed a writ petition before the Madhya Pradesh High Court at Jabalpur. The prayer was for a writ of mandamus to direct the respondents to grant admission to them in the 2nd year MBBS Degree Course at Medical College Jabalpur. The High Court vide its judgment dated 12th July, 1991 allowed the writ petition and directed the Medical Council of India and other authorities to consider the case of the respondent no.1 and his sister within a period of 2 months for their admission in a medical college in

Jabalpur in the light of clause 'E' of the Mandatory Regulations approved under Section 33 of the Indian Medical Council Act, 1956. In compliance of the above directions, the Executive Committee of the Medical Council of India reconsidered the case on 20th August, 1991. The question was whether the migration of the respondent no.1 on individual merit to Medical College, Jabalpur under clause V 'e' of the Migration Rules was permissible. It was concluded that the migration could not be allowed since the ground were not sufficient for such migration. It was also of the view that the facts stated for considering the individual case on merits were not relevant. It was observed that the candidates seeking their migration had not brought any material to make comparison with the study being conducted in Medical College, Jabalpur. For these reasons request for migration was rejected. It was also noted that the respondent no.1 filed Misc. Petition No. 4420 of 1991 seeking admission in the 2nd year of the 1st professional M.B.B.S. Course at Medical College, Jabalpur on the same grounds as were alleged previously. The direction was issued on 23rd December, 1991 to give provisional admission. After admission of the writ petition the same order was continued. Though an application was preferred by the respondent nos. 2 to 4 to have the order vacated on the ground that migration from an unrecognized Medical College to a recognized Medical College was not permissible, the same was dismissed. Against the order directing the provisional admission, SLP (Civil) No. 10498/1992 was preferred. The writ petition was allowed on 5th March, 1993. The resolution dated 20th August, 1991 refusing to accede to the request of the writ petitioner (respondent no.1) for

migration was quashed holding that there was no application of mind by the Council. The Supreme Court in Para 17, 19, 20, 27, 28, 30 and 34 has held as under:

“17. The High Court misread Regulation V. Under that Regulation migration is allowed from a recognised medical college to another recognized college and that too within three months after passing of the first professional examination. In so far as the first respondent has neither undergone study in a medical college recognised by the Council nor has he passed the first professional examination, he could not be admitted to the second year.

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19. The first year course of Dar-es-Salam University is not equivalent to the first phase of MBBS Examination in India.

20. Equivalence has to be decided by only an expert body, that too, on technical and academic matters. It is not in the domain of assessment or evaluation by the Court. The High Court should not have embarked on the determination of equivalence on the basis of sketchy materials placed before it.

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27. On the said basis migration is sought. Dar-es-Salam University is not recognised by the Medical Council of India. Therefore, from all unrecognised institution admission is sought to a recognised institution.

28. With the object of maintaining and regulating, standards of medical education in the country, the Parliament enacted "the Indian Medical Council Act, 1956". Under Section 6 of the Act, the Medical Council of India has been incorporated, which is a body corporate having a perpetual succession and a common seal. Section 12 of the Act makes provisions for recognition of

medical qualifications granted by medical institutions in countries with which there is a scheme of reciprocity. Under this section, the schedules are given providing list of recognised medical institutions & qualifications. The first schedule gives list of recognised medical qualifications granted by universities/medical institutions in India; whereas schedule second gives the list of recognised medical qualifications granted by medical institutions outside India. University of Dar-es-Salam & its medical institution is not included in the second schedule and therefore the qualifications imparted by that institution are not recognised. That apart, section 14 of the Act makes provisions for recognition of medical qualifications (granted by countries in which there is not scheme of reciprocity. The Central Government has not considered Dar-es-Salam University for such recognition.

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30. Concerning migration the rule also is to the effect that the same can be allowed by the University concerned within three months after the passing of the first professional examination.

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34. Then again, the High Court had gone wrong in concluding that the individual cases are relevant for the grant of permission for migration. In our considered view, as rightly concluded by the Council, what is material is the course of study which a student has undergone vis-a-vis the courses being taught in the Medical College in which the migration is sought. What the Council was endeavouring to point out was the materials placed before it by the present first respondent were not sufficient to decide the equivalence. (emphasis supplied by this Court). The criticism of the Council, by the High Court, is also not warranted. First of all, no certificate was produced by the first respondent that he had completed the first year course in Dar-es-Salam. Unless and until that is done the question of admission to the second year MBBS could not arise. The first respondent had

not appeared in the supplementary examination. If that is so, according to the Regulations of Dar-es-Salam University, he is deemed to have discontinued from that Course. In such a case the question of giving admission to Medical College at Jabalpur could never arise. Therefore, looked at from any point of view, the Medical Council of India which is the authority to decide the equivalence, has come to the correct conclusion, in that, there cannot be a migration from unrecognised institution to a recognized Medical College. The judgment of the High Court is wholly unsupportable.

The above-said conclusion of the Supreme Court, squarely applies, to the facts of this case.

18. No doubt, the case of the daughters of the petitioner is hard one inasmuch as they were forced to discontinue their medical course for certain unforeseen circumstances and have been left high and dry as the same has resulted in, they losing 5 precious years. This is one of a case where Indian citizens pursuing course in a foreign university were forced to return back to country without completing their studies but as the case of the daughters of the petitioner not being covered under the Regulations, and in the absence of material to show equivalence and it is not the case of the petitioner that clinical course of study has not been undertaken, this Court cannot give a direction to allow the migration of the daughters of the petitioner to a Govt. Medical College in India, even if the concerned College is ready to take them. The judgment relied upon by Mr. Mittal in the case of **Trisha Gupta (supra)** would have no applicability in the facts of this case.

19. In view of above discussion, I do not find any merit in the petition. The petition is dismissed.

CM. Nos. 17317/2015 and 18579/2016

Dismissed as infructuous.

V. KAMESWAR RAO, J

NOVEMBER 28, 2016

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