

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9289 of 2017

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Swapnil, D/o-Sri Rajesh Kumar, Resident of Mohalla-Kamla-Niwas,
Nawa-Garhi, Old Jain Temple Lane, P.S.-Bhisnu-Pad, Head Post
Office in the District of Gaya.

.... Petitioner/s

Versus

1. The State of Bihar, through Principal Secretary, Department of Health, Govt. of Bihar, Patna.
2. Deputy Secretary, Department of Health, Govt. of Bihar, Patna.
3. Registrar, Aryabhatta Knowledge University, Patna.
4. Principal, Government Medical College, Bettiah, West Champaran.
5. Principal, A.N. Magadh Medical College, Gaya, Bihar.
6. Medical Council of India, through Assistant Secretary, Pocket-14, Sector-8, Dwarka, New- Delhi-1100077.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar Keshari, Adv.

For the Respondent Nos. 1-2 : Mr. Binod kr. Yadav, SC-18

For the Respondent No. 3 : Mr. Awadhesh Kumar, Adv.

For the Respondent No. 6 : Mr. Kumar Brij Nandan, Adv.

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH**

ORAL JUDGMENT & ORDER

Date: 10-07-2017

Aggrieved by an order, dated 21.02.2017,
passed by the Health Department, Government of Bihar,



Patna, issued under the signature of its Deputy Secretary, whereby, the petitioner's request for her transfer from MBBS course, Government Medical College, Bettiah, West Champaran, to Anugrah Narayan Magadh Medical College, Gaya, has been rejected, on the ground that her application was received by the Department beyond statutory limit of one month from passing of 1st Professional MBBS Examination, this application has been filed under Article 226 of the Constitution of India.

2. The Medical Council of India (*hereinafter referred to as the 'MCI'*) has framed Regulations, called 'Regulations on Graduate Medical Education Regulations, 1997' (*hereinafter referred to as the 'Regulations'*), Clause 6(4) of which permits migration of MBBS students from one Medical College to another Medical College on any genuine ground, subject to availability of vacancy in the College, where such migration is sought and fulfilling the other conditions, as laid down in the Regulations. Regulation 6(4) of said Regulations prescribes that for the purpose of migration, an applicant shall be required to obtain 'No Objection Certificate' from:-

- (a.) The College, where he/she is studying;
- (b.) The University to which that College is affiliated;
- (c.) The College to which the migration is sought; and



(d.) The University to which that College is affiliated.

3. It further requires that he/she must submit his/her application for migration within a period of one month of passing (declaration of result of the 1st Professional MBBS Examination) along with the above cited four 'No Objection Certificates' to the Director of Medical Education Council of the State, if migration is sought from one college to another within the same State. If migration is sought for from one college to another, located outside the State, such application for migration is to be submitted to the MCI.

4. Since the college from where the petitioner sought migration and the college to which the migration is sought are within the same State, such application, by operation of Regulation 6(4) of the Regulations, was to be submitted before the Director of Medical Education Council of the State within a period of one month from the date of declaration of result. This is to be kept in mind, that both the colleges, in question, are affiliated to the same Aryabhatta Knowledge University, Patna (*hereinafter referred to as the 'University'*).

5. It is the case of the petitioner that she had applied for her transfer much in advance. Anugrah Narayan Magadh Medical College, Gaya, had given 'No Objection



Certificate for her migration to the said college in October, 2016. The Government Medical College, Bettiah, West Champaran, had granted 'No Objection Certificate' on 14.12.2016. It is her case that she approached the University on 16.12.2016 itself, but it took considerable time and "No Objection Certificate" was issued only on 09.01.2016. She applied before the State Government for transfer, as required under the Regulations, on 16.12.2016. This is not in dispute that the statutory period of one month had expired before statutory period, as prescribed under Regulation 6(4) of the Regulations, to submit her application before the State Government. Her application was received by the Department after expiry of the said period. The State Government had, thus, no option, but to reject the petitioner's application, in terms of the Regulations.

6. Learned counsel, appearing on behalf of the petitioner, while assailing the impugned order, has submitted that there being no fault on the part of the petitioner, her application ought not to have been rejected on the ground of delay as she was pursuing her case from the very beginning and the fault was on the part of the University that the delay took place. He has further submitted that there was only five days delay in making application and considering the nature of medical problem, which the petitioner is suffering from the



State Government, ought not to have rejected her case for transfer. He has also submitted that the ailment of the petitioner has been diagnosed as *Schizophrenia* and, therefore, a sympathetic view should be taken by this Court, while considering the case of the petitioner.

7. I do not find any illegality in the Government's decision to reject the application of the petitioner as the State Government did not have any option, but to follow the statutory Regulations. I tried to find a way-out to facilitate the petitioner's transfer from Government Medical College, Bettiah, West Champaran, to Anugrah Narayan Magadh Medical College, Gaya, but I have noticed that the petitioner approached this Court nearly four and half months after the impugned order was passed. I could not be convinced that in the midst of the *Session*, the petitioner could be transferred from one college to another. In such circumstances, neither the impugned decision of the State Government require any interference nor the Court can issue direction granting relief to the petitioner, in the present facts and circumstances of the case.

8. However, I find this case to be of exceptional nature, where a medical student has been found to be suffering from *Schizophrenia*. The delay in making application for transfer before the State-respondents is not as fatal as the



delay caused on her behalf in approaching this Court.

9. Considering the entire facts and circumstances, I dispose of the writ application with an observation that the Principal Secretary, Department of Health, Government of Bihar, Patna, may look into the petitioner’s case and if it is found to be permissible and there is any scope for relaxation, her case may be considered favorably and if need be, in consultation with the MCI.

10. With these observations, this application stands disposed.

(Chakradhari Sharan Singh, J.)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	15/07/2017
Transmission Date	N/A

