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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on : 10.07.2017

Judgment delivered on : 14.07.2017

+ W.P.(C) 10055/2016

RAVI SINGHAL

..... Petitioner

Through Mr. Yashish Chandra, Adv.

Versus

GURU GOBIND SINGH INDRAPRSTHA UNIVERSITY AND
ANR

..... Respondents

Through Ms.Anita Sahni, Adv for R-1.
Mr. T. Singhdev, Ms. Puja Sarkar and
Ms. Michelle Biakthan Sangi Das,
Adv for R-2.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 By way of this petition, the petitioner is seeking a quashing of the Office Order dated 04.10.2016 as also for quashing the amendment in Ordinance 7 of the Guru Gobind Singh Indraprastha University (GGSIPU-respondent No.1) in so far as it bars migration in the medical colleges of the

said respondent No. 1. The petitioner is also seeking a positive prayer of migration from his second year (3rd Semester) MBBS course (which he is pursuing at Fakhruddin Ali Ahmed Medical College, Barpeta, Assam) to the North DMC Medical College, Delhi affiliated to respondent No.1. In the alternate, it has been prayed that the Medical Council of India (respondent No.2) should independently consider the case of the petitioner in terms of Regulation 6 of its Regulations and allow the petitioner to migrate from his second year MBBS course to respondent No.1.

2 Record reveals as under:-

3 In June, 2015, the petitioner had contested the All India Medical Entrance Examination for a graduate medical course. He got admission in the first year MBBS program in Fakhruddin Ali Ahmed Medical College, Barpeta, Assam. On reaching Assam, the petitioner learnt about the communal tension in the area which was neither safe and nor a conducive environment for study. A major communal tension was reported in the year 2015 itself. The petitioner also found difficult to adapt to the cultural differences and the diet of the North Eastern region which took a toll on the mental and physical health of the petitioner. In fact on 04.11.2015, vide a Notification issued by the Ministry of Home Affairs, Government of India

the entire state of Assam had been declared as a “disturbed area”.

4 On 16.06.2016, respondent No.1 had issued notice for submission of applications for migration to various courses of respondent No.1. The petitioner submitted his application on 06.07.2016 for migration to the second year course of MBBS in the University of respondent No.1. On 10.07.2016, the petitioner was informed by respondent No.1 that respondent No.1 does not permit migration in the MBBS course.

5 On 05.09.2016, the first year result of MBBS course was declared. The petitioner had passed in the examination. On 06.09.2016, an NOC for migration to the second year course of MBBS by the North DMC Medical College, Hindu Rao Hospital was issued to the petitioner. On 16.09.2016, an NOC for migration was also granted to the petitioner by his relieving college i.e. Fakhruddin Ali Ahmed Medical College, Barpeta, Assam. The relieving University of the petitioner i.e. Srimanta Sankaradeva University of Health Science, Guwahati, Assam also granted the necessary NOC on 01.10.2016.

6 The petitioner in reply to the mail dated 10.07.2016 (sent by respondent No.1) whereby the father of the petitioner met the officials of respondent No.1 and presented his case to them. Another request was sent to respondent No.1 vide application dated 16.09.2016. A reminder was issued

on 03.10.2016. On 04.10.2016, the petitioner submitted his completed application to respondent No.2; this was minus the NOC issued by respondent No.1 who had failed to grant him the said NOC. On the same date, respondent No.1 again declined the request of the petitioner for migration. Respondent No.1 relied upon Notification No. IPU/JR(C)/Ord. 07/BM60/Amd./2015 dated March, 2015 wherein it had notified a purported amendment in Ordinance 7 of GGSIPU Act introduced by the Board of Management in its 60th meeting held on 23.02.2015. In terms of this Notification migration at medical colleges of respondent No.1 was barred. This was without rhyme or reason and carried out in an arbitrary and a whimsical manner. Present petition was accordingly filed.

7 Respondent No.1 has filed a counter affidavit which is in the nature of a short affidavit. Submission is that respondent No.1 has been created under the Guru Gobind Singh Indraprastha University Act, 1998 passed by the NCT of Delhi. Its focus is to facilitate and promote studies, research and extension work in emerging areas of higher education. The University functions within the frame work of the Guru Gobind Singh Indraprastha University Act, 1998 and its Rules, Regulations and Ordinances. Submission is that respondent No.1 was well within its right to formulate ordinances and to

carry out amendments in the University Act. For the reasons as discussed by the expert committee appointed by the Vice Chancellor; the sub-committee was of the view that migration of medical colleges under respondent No.1 cannot be considered. By allowing migration to students who do not qualify for admission in the first place is in fact a method to seek a back door entry in the University. It was also seen that post graduate seats in the medical colleges affiliated to the answering University being for the benefit of the internal candidates and thus any entry into the medical college by way of migration would affect the internal candidates at the time of admission in the post graduate course of medicine. The admission in the MBBS Program in the medical colleges affiliated to the University is conducted purely on the basis of merit of a common entrance test. Only graduates of MBBS from the answering University are eligible to take admission against the State quota. For the purpose of migration in terms of Regulation 6 of the Graduate Medical Education Regulation of respondent No.2, an applicant has to first obtain a “No Objection Certificate” (NOC) from the college where he is studying and the University to which that college is affiliated as also from the college to which the migration is sought and the University to which that college is affiliated. This application has to be submitted within one month

from the declaration of the first professional MBBS examination along with the four No Objection Certificates. In terms of Ordinance 7 of respondent No.1, the petitioner cannot be granted migration. The petitioner was well aware of this Ordinance at the time of admission and he is now not permitted to challenge the same. Ordinance 7 of the answering University with regard to migration is based on the recommendations of the Expert Committee. It is further pointed out that the college from where the petitioner seeks relieving i.e. Fakhruddin Ali Ahmed Medical College, Barpeta, Assam is not a recognized college in terms of the provisions of the MCI. The North DMC College of Delhi where migration has been sought by the petitioner is also not a recognized college in terms of the MCI. For this reason also, migration is not permitted. It is additionally pointed out that migration is permitted only before the clinical course starts in the second year and would not apply to the instant case as the petitioner is already in the 5th Semester and the clinical study has commenced. The State of Assam has been a disturbed area for long period of time; the petitioner in 2015 took admission knowing fully well about the conditions in the state of Assam as this was a common knowledge. Petition is liable to be dismissed.

8 Respondent No.2 has also filed a separate response by way of a reply

affidavit. At the outset, it is pointed out that the petition is barred by delay and laches. The application of the petitioner was rejected vide letter dated 10.07.2016. The petitioner has approached this Court only on 26.10.2016. The time limit is one month from the date of declaration of the result of first professional MBBS course within which an application seeking migration has to be submitted along with the 4 NOCs which has not been fulfilled by the petitioner. The petition is liable to be dismissed on this ground alone. It is pointed out that migration is permitted as per the provisions of Regulation 6 (1) of the Graduate Medical Education Regulations, 1997 on a “genuine” ground. In the instant case, it is apparent that the petitioner is seeking migration on insignificant and trivial issues. He has stated that the state of Assam is socially disturbed and there being cultural differences and the petitioner not being used to the food which is made available in the North East region would not amount to a ‘genuine’ reason within the meaning of the Regulations. The petitioner has also failed to show that he is suffering from any physical and mental ailment as is his contention. The curriculum of MBBS is taught in the English language. The petitioner would have no difficulty in pursuing this course. The petitioner had appeared in 2015-2016 entrance examination of All India Medical Entrance Examination and

depending upon the rank he obtained, he was offered admission at Fakhruddin Ali Ahmed Medical College, Barpeta, Assam which he had accepted fully well knowing the conditions in the state of Assam at that time. By way of this petition, on frivolous grounds, the petitioner is now seeking a back door entry upon his failure to get admission on merit in the college of his choice in his home state of Delhi. As per Regulations 6 (2) migration 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. In the present case, the petitioner is seeking migration from Fakhruddin Ali Ahmed Medical College, Barpeta, Assam to the North Delhi Municipal Corporation Medical College, Delhi. Both the medical colleges are yet to be recognized by the Central Government under Section 11(2). Fakhruddin Ali Ahmed Medical College, Barpeta, Assam was permitted to be established by the Central Government under Section 10-A in the year 2012-2013. Similarly, North Delhi Municipal Corporation Medical College, Delhi was also permitted to be established by the Central Government under Section 10-A in the academic year 2013-2014. As per the provisions of Regulations 6(2), the petitioner could not be granted migration as both these colleges, at the cost of repetition, are not recognized.

Moreover, under Regulation 6 (3), migration of students from one medical college to another is not permitted; as the first professional MBBS examination result of the petitioner was declared on 05.09.2016; by now the clinical course of study has commenced; the petitioner cannot be granted admission. Under Regulation 6 (4) an applicant seeking inter-state migration has to submit his application to the answering respondent within one month from the declaration of result of the first professional MBBS examination along with the four No Objection Certificates which criteria the petitioner has failed to fulfill. It is pointed out that respondent No.2 is a statutory authority created and constituted by the Central Government under an Act of Parliament i.e. Indian Medical Council Act, 1956. It has the responsibility of discharging the duty of maintenance of highest standards of medical education throughout the country. The Apex Court has time and again held that these Regulations are binding and mandatory and all Rules and Regulations framed by the University relating to medicine courses in so far as they are inconsistent with the Act and the Regulations are repugnant in terms of Article 254 of the Constitution of India. This has been reaffirmed by the Apex Court in its several judgments. Petition is thus liable to be dismissed.

9 Rejoinder has been filed reiterating the averments in the petition and denying the defence set up by the respondents.

10 On behalf of the petitioner, arguments have been addressed by Mr. Yashish Chandra, Advocate. It is pointed out that the petitioner is suffering because of the whimsical and arbitrary acts of both the respondents. The amendment in Ordinance 7 which has been carried out by respondent No.1 stating that migration is not permitted from one college to another is inconsistent with the Rules and Regulations of respondent No.2; in so far as this Ordinance is inconsistent with the said Rules and Regulations of respondent No.2, it has to be struck down. Respondent No.1 cannot on its own unexplained terms make an amendment in its Ordinance 7 debarring a migration. Learned counsel for the petitioner places reliance upon a judgment of a Bench of this Court in W.P.(C) No.5436/2012 Trisha Gupta Vs. Guru Gobind singh Indraprastha University and Anr. It is pointed out that in this case a similar situation had arisen but the Court had permitted migration in a medical course from the relieving college to the recipient college of respondent No.1; submission being that such a blanket hurdle against migration is wholly arbitrary and discriminatory. It is pointed out that in 2016 (4) Scale Modern Dental College and Research Centre &

Others Vs. State of Madhya Pradesh & Others, the Supreme Court had appointed an Overseeing Committee for the functioning of respondent No.2 which would have all statutory functions under the MCI Act; this Committee is no longer functional since 15.05.2017 and the application made by the petitioner to respondent No.2 has thus not been considered. There can be no laches as the petitioner has carried out all acts within his domain within the time span. Respondent No.1 has refused to give him a NOC for which reason the application of the petitioner could not be processed by respondent No.2. It is pointed out that in communication dated 22.05.2016 (sent by respondent No.2) reference has been made to the meeting held by the Migration Sub-Committee of 09.11.2016 wherein the case of the petitioner had been rejected but this communication has been communicated to the petitioner six months later i.e. 22.05.2017 which he has led to delay and thus it does not now lie in the mouth of respondent No.2 that the clinical course has commenced. This is because of the delaying tactics of respondent No.2. The petitioner had applied in time; it was the delay at the hands of both respondent No.1 and respondent No.2 which has led to this situation for which the petitioner cannot be penalized.

11 On behalf of respondent No.1 arguments have been addressed by Ms.

Anita Sahni, Advocate. It is pointed out that respondent No.1 has an independent status working under Guru Gobind Singh Indraprastha Act, 1998. It is well within their domain to make an amendment in Ordinance 7 which has been carried out in terms of the expert advice of its Sub-Committee which does not permit migration from one college to another in medical courses. Moreover both the colleges i.e. the college from where the petitioner has sought migration and the college where the petitioner is now seeking migration are not recognized colleges by respondent No.2 and for this reason also, the petitioner cannot be granted the prayer made by him.

12 On behalf of respondent No.2, arguments have been addressed by Mr. T. Singhdevi, Advocate. The averments made in the counter affidavit have been reiterated. It is pointed out that the Apex Court has time and again held that the criteria laid down by respondent No.2 of migration/transfer from one recognized medical college to another is neither arbitrary and nor discriminatory; there is no inherent right in the students permitting to claim such a migration/transfer and these conditions imposed by the recognized medical colleges for the purpose of recommendations adopted by respondent No.2 has been up-held. Moreover this exercise has to be taken at best within 1 month after passing of the first year professional examination; migration

cannot be permitted once the clinical course of study has started and for this proposition, reliance has been placed upon (1993) 3 SCC 184 Medical Council of India Vs. Silas Nelson & Others. The grounds provided in Regulation 6 have to be adhered to; under the unamended Regulation 6, the words ‘compassionate grounds’ had been the subject matter of debate by the Apex Court in (2000) 9 SCC 163 Medical Council of India Vs. Diparani P. Deshmukh & Another. It is pointed out that the words “compassionate ground” in Regulation 6 have now been replaced by “genuine grounds”. The petitioner has not made out a case falling within “genuine grounds”. Reliance has been placed upon a Division Bench judgment of the Gujarat High Court in LPA No.1029/2015 dated 25.06.2015 in Bhaveshgiri Surajgiri Goswami Vs. State of Gujarat & Others to point out that where in that case the petitioner was suffering from an allergic problem and there being no medical documents available, the Court had rightly held that the petitioner has failed to make out a case for transfer/migration on the basis of “genuine grounds”. Migration is not a matter of right.

13 Arguments have been heard. Record has been perused.

14 The petitioner is an MBBS student. As on date, he is in the third Semester having cleared the first year of MBBS from Fakhruddin Ali Ahmed

Medical College, Barpeta, Assam. The petitioner had joined his college in the year 2015. His result for the first year of MBBS was declared on 05.09.2016. Even before that date i.e. on 06.07.2016, the petitioner had applied for migration to the second year course of MBBS in the university of respondent No.1. He had received a response on 10.07.2016 from respondent No.1 informing him that no migration is permitted in the MBBS course. This was in view of the amended Ordinance 7 of respondent No.1 which had been issued by respondent No.1 in terms of the Guru Gobind Singh Indrapratha University Act, 1998. This permitted respondent No.1 to formulate Ordinances and to carry out amendments in the Act. Migration of medical colleges under respondent No.1 was thus prohibited. The submission of respondent No.1 all along being that this Ordinance was in terms of the recommendations of the expert committee of respondent No.1 who was of the view that such a back door entry in the University is not permitted as admittedly candidates who did not qualify for admission in the first place were the ones who seek migration. Respondent No.1 had also sought support from Regulation 6 of the Graduate Medical Education Regulations (hereinafter referred to as the 'said Regulations'). Respondent No.2 had also relied upon the same regulations i.e. the said Regulations.

Submission being that a “genuine” case has not been made out by the petitioner.

15 In this context, the averments made in the petition would be relevant. The petitioner in his petition has stated that after he had joined his medical college in Barpeta, Assam which was in the year 2015, he learnt about the disturbed state of affairs in the said State; he has heard about the Notification having been issued by the Government of India in that year itself declaring Assam to be a ‘disturbed State’. Moreover the cultural background of the said State was also not adaptive to the life style of the petitioner; food habits in the North East did not match with the petitioner palette; these were the reasons made out in the petition which according to the petitioner made out a “genuine” ground for the purpose of migration under Regulation 6.

16 Before dealing with these submissions and counter submissions, it would be necessary to reproduce Ordinance 7 of the Guru Gobind Singh Indrapratha University which reads herein as under:-

*“ No migration shall be allowed from other universities/colleges to the university schools of studied. University maintained colleges or affiliated institutions i.e. no inter-university migration shall be allowed in normal circumstances. It can be allowed **in special circumstances** by the Vice-*

Chancellor, on the recommendations of Sub-Committee, comprising of three members of academic Council constituted by the Vice-Chancellor.”

17 Ordinance 7 clearly states that migration in inter-university is allowed only in a special circumstance. The Ordinance is otherwise couched in the negative language and starts with a non-obstante clause; if a “special circumstance” is made out by the party, the same may be considered by the Vice-Chancellor and the Sub-Committee. Thus a duty is cast upon the petitioner to make out a case of a special circumstance.

18 It would also be relevant to reproduce Regulation 6. It reads herein 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 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 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.”

19 A reading of Regulation 6(1) thus evidences that migration is permitted from one medical college to another on *a genuine* ground subject to the availability of vacancy in the college where migration is sought and fulfilling other requirements laid down in the said Regulations. Regulation 6 (2) states that migration of one student is permissible only if both the colleges are recognized by the Central Government and this will not result in increase in the sanctioned intake capacity. A candidate is also eligible for migration only after qualifying in the first professional MBBS examination. This Regulation further provides that for the purpose of migration, a candidate is required to provide NOC from the college where he is studying 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. Another condition which is required to be fulfilled by such a candidate is that an application is to be submitted within one month of passing (declaration of result of the 1st professional MBBS examination). These four No Objection Certificates are then to be submitted to respondent No.2 if migration is sought from one college to another located outside the State.

20 The facts of the instant case reveal that the petitioner had applied for

migration within the stipulated period. The MBBS result of the petitioner was declared on 05.09.2016. He had submitted his application for migration to the second year course of MBBS in the University of respondent No.1 on 06.07.2016. This was well within the time period. In fact the communication dated 22.05.2017 (placed on record by respondent No.2) clearly shows that the Migration Sub-Committee had considered the case on 09.11.2016 who had rejected it on the ground that since the college from where the petitioner is seeking migration was not recognized and the college to which he seeks migration was also not recognized; in view of bar of Section 11 (2) of the Indian Medical Council Act, migration was not permitted. The minutes of this meeting dated 09.11.2016 had however been communicated to the petitioner only on 22.05.2017. This was for no fault of the petitioner. Contention of the petitioner is that the petitioner had in this interregnum entered the clinical course. In this scenario, this argument of the respondent finds no merit as it is because of the fault of the respondent that this matter had been delayed. The petitioner had applied within the time span; his case not having been considered and he having been communicated about it more than seven months (after the meeting of 09.11.2016) cannot be a reason to fault the case of the petitioner.

21 In so far as Ordinance 7 of respondent No.1 is concerned, this gives a discretion to the College in *special circumstances* to consider a case for migration even in medical colleges. These “special circumstance” as contained in Ordinance 7 have to be read in conjunction with the “genuine grounds” as has been made out in Regulation 6 (1) of the said Regulations.

22 This Court is of the view that the averments in this petition neither make out a case of “special circumstance” nor any “genuine ground” has been made out by the petitioner to come either within the framework of “special circumstances” contained in Ordinance 7 of respondent No.1 or to offbeat the “genuine grounds” as contained in Regulation 6. The averments in the petition disclose that the petitioner was well aware of the fact that he is taking admission in a college located in Assam; the fact that Assam is a disturbed State is well known fact which was a fact presumably known to the petitioner also. The fact that a Notification had been issued by the Government of India in the year 2015 declaring it to be “disturbed area” was not a new fact which had come to the knowledge of the petitioner; this fact was in the public knowhow for years. The cultural differences of the State were also well known to the petitioner. The food habits of one State may not match with another but there is nothing to show that the petitioner was

suffering on this count. His submission that he was physical and mentally ill for this reason is not accounted for either in terms of the averments in the petition or supported to by any document. This Court is not inclined to allow the petitioner migration in terms of Ordinance 7 as no “special circumstance” and no “genuine ground” has been made out in terms of Regulation 6 (1) of the said Regulations.

23 That apart the case of the petitioner must fail for another valid reason and which is that both the colleges i.e. from where the petitioner is seeking migration (Fakhruddin Ali Ahmed Medical College, Barpeta, Assam) and the recipient college (North Delhi Medical College, Delhi of respondent No.1 University) are both not recognized under Section 11(2) of the Medical Council Act, 1997. The fact that both the colleges are not recognized colleges is an admitted fact. A bald submission has been made by the petitioner that there is a deemed recognition granted to both these colleges. This submission is neither here and nor there. There is nothing to support this submission of the petitioner which is wholesomely denied by the respondents. Regulation 6 (2) specifically states that 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 and it shall not result in increase in the sanctioned intake capacity for the academic year concerned in respect of the receiving medical college. The second contention has not really to be gone into as the first clause which postulates both the relieving college as also the receiving college must be recognized has not been fulfilled. The hurdle of Regulation 6 (2) not having been crossed by the petitioner, this is a clear case where the prayer sought for by the petitioner cannot be granted.

24 The Regulations are even otherwise not under challenge.

25 The Apex Court in AIR 1993 SC 1736 Shirish Govind Prabhudesai Vs. State of Maharashtra & Others had an occasion to deal with the migration of a student from one non-recognized college to a recognized college. Regulation 6 (2) was the hurdle which had been noted by the Apex Court even in that case. The Apex Court was of the view that such a condition of eligibility of migration/transfer from one medical college to another which is contained and encompass in Regulation 6 (2) is neither unreasonable and nor arbitrary. The question posed before this Court was answered as under:-

“The limited question, therefore, is whether a recognised medical college when it decides to admit by migration/transfer some students after passing the first MBBS examination from another medical college, it can restrict its

choice only to students who were admitted to and have passed the first MBBS examination from a recognised medical college only, excluding from consideration such students from non-recognised medical colleges. Undoubtedly, it is one of the recommendations on Graduate Medical Education adopted by the Medical Council of India which is being acted upon by recognised medical colleges while taking students by migration/transfer.

7. The recommendations on Graduate Medical Education are by an expert body of the Medical Council of India which is entrusted with certain statutory functions relating to medical education by the Indian Medical Council Act, 1956. The Medical Council of India having chosen to accept these recommendations, such a condition of eligibility for migration/transfer from one medical college to another adopted by the recognised medical colleges cannot be termed unreasonable or arbitrary. The qualitative difference between the non-recognised medical colleges generally as compared to the medical colleges recognised by the Medical Council of India, the recognition being based on certain objective standards relating to medical education, and the competitive merit forming the basis for admission to a recognised medical college justify as reasonable such a restriction for grant of permission for migration/transfer from one medical college to another. One of the purposes served by such a restriction is to permit this inter-college movement of students after passing the first MBBS examination only between students of recognised medical colleges and to prevent indirect entry into recognised medical colleges of students who had failed initially to secure entry into a recognised medical college. Movement of students between recognised medical colleges only is quite often to facilitate the

students thereof in certain circumstances without conferring on them any additional benefit after the initial entry to a medical college duly recognised. Viewed in this manner, such a condition of eligibility for migration/transfer to a recognised medical college permitting only students of recognised medical colleges is neither arbitrary nor unreasonable. There being no inherent right in a student admitted to a non-recognised medical college to claim such migration/transfer, this restriction for migration/transfer imposed by the recognised medical colleges on the basis of the recommendations adopted by the Medical Council of India, there is no foundation for the claim for such migration/transfer made by the students of non-recognised medical colleges.”

26 Regulation 6 (1) was also the subject matter of discussion in the judgment delivered by the Apex Court in (2014) 11 SCC 453 Lipika Gupta Vs. Union of India while quoting with approval the judgment delivered by the High Court of Bombay in W.P.(C) No.3086/2011 dated 31.08.2012 and interpreted all the Regulations regarding migration, the Apex Court held as under:-

“11. The regulations which have been framed by the MCI are in exercise of the power conferred by Section 33 of the Act of 1966. These regulations have been framed in pursuance of the overriding statutory power of MCI to supervise medical education and prescribe standards of education. The regulations framed by MCI have statutory force and are binding. In the regulations, as originally framed, MCI had sought to define compassionate criteria. Subsequently in the first amendment of 20 October 2008, MCI made

it clear that migration should be granted only in exceptional cases to the most deserving among the applicants for good and sufficient reasons and not on routine grounds. By the subsequent amendment of 22 December, 2008, it has been provided that a migration from one medical college to another may be granted on genuine grounds subject to the availability of the vacancies. A ceiling on migrations has been imposed of 5% of the intake capacity of the receiving college. The State Government is permitted by the regulations, as amended in 2008, to frame appropriate guidelines for the grant of no objection certificates for migration but those guidelines have to be consistent with the guidelines framed by MCI.”

27 A Bench of this Court in MANU/DE/3198/2016 Umesh Prasad Singh Vs. Union of India & others also had an occasion to deal with Regulation 6 of the said Regulations wherein the petitioner before this Court had also sought migration from a foreign medical college which was non-recognized to a recognized college in India. Quoting the text of a judgment delivered by the Apex Court in Silas Nelson (supra), this Court had quoted the relevant extracts which read herein 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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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.

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."

28 Such a permission was not granted.

29 The facts of Trisha Gupta (supra) are distinct. In that case there was no issue qua the status of the relieving college or of the recipient college. The question of their recognition was not gone into.

30 This Court is thus of the view that the petitioner is not entitled to the relief as claimed for by him. Petition is without any merit. Dismissed.

INDERMEET KAUR, J

JULY 14, 2017

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