

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.487 OF 2018

Kalyani Sanjay Joshi

..Petitioner

Versus

State of Maharashtra and others

..Respondents

Mr. A. V. Anturkar, Senior Advocate i/by M. Ajinkya M. Udane,
Advocate for the Petitioner.

Mr. S. B. Kalel, AGP for Respondent Nos.1, 2 and 5.

Mr. Kunal Nawale i/by Mr. R. V. Govilkar, Advocate for Respondent
No.3.

Mr. Ganesh Gole, Advocate for Respondent No.4 – Medical Council of
India.

Mr. Nitin Dhumal, Advocate for Respondent No.6.

Mr. Swaroop Karade i/by Mr. S. S. Shah, Advocate for Respondent
No.7.

CORAM : B. R. GAVAI &

B. P COLABAWALLA, JJ.

DATE : 15th JANUARY, 2018

PC.

1] Leave to amend. Amendment to be carried out forthwith.

2] Rule. Rule made returnable forthwith. Heard by consent.

3] The Petitioner though had initially approached this Court for
setting aside the order passed by the Respondent No.4 dated 21st
December 2017, issued by the Medical Council of India, by way of
amendment, the Petitioner has now challenged the order dated 12th
January 2018 refusing the permission to the Petitioner for transfer from

Navodaya College, Raichur to Respondent No.7 college.

4] The Petition arises out of peculiar facts and circumstances. The Petitioner who is originally resident of Pune, had got admission in Navodaya College, Raichur in the State of Karnataka for the academic year 2016-2017. The Petitioner had secured 82.51% marks in the NEET examination and in accordance with her merit, she was admitted in the said college at Raichur, Karnataka. The Petitioner appeared for first year MBBS examination in August 2017 and passed the said examination in first class on 15th September 2017.

5] However, unfortunately the Petitioner suffered an accident in washroom in ladies hostel which has caused serious damage to her knee. The Petitioner therefore, initially sought transfer from the Navodaya Medical College, Raichur to the Medical College either at Mumbai, Pune or Belagavi, wherein a specialized treatment for treating her condition was available. For that the Petitioner was required to obtain No Objection Certificates from the Navodaya Medical College at Raichur, from the Rajiv Gandhi University of Health Science, Karnataka as well as the Director of Medical Education and Research at Karnataka. Since the Petitioner could not get the necessary No Objection Certificates and since the seat was available in the BJ Medical College, Pune and Belagavi Institute of

Medical Sciences, Belagavi, the Petitioner approached the Karnataka High Court by way of Writ Petition No.49054 of 2017. The Karnataka High Court taking into consideration the peculiar facts and circumstances passed an order dated 14th November 2017 and directed the Respondents therein, to ensure that the necessary steps are taken for granting NOCs to the Petitioner so that she does not lose her attendance. However, unfortunately on account of certain circumstances, the Petitioner could not get admission in the Belagavi Medical College, Belagavi.

6] The Petitioner in the meantime, was also successful in getting the No Objection Certificate from Respondent No.5 which is a Government Medical College. The Petitioner filed a Writ Petition No.13701 of 2017, in this Court seeking a direction to the various Respondents including Respondent Nos.2, 3 and 4 herein, to complete the process for permitting transfer within a stipulated time, so that the Petitioner does not lose her academic year. This Court vide order dated 15th December 2017 passed the following order :-

“3. In the peculiar facts and circumstances of this case, we are inclined to pass the following order :-

ORDER

- (i) Respondent No.3 shall consider the application of the Petitioner for grant of 'no objection' prior to 18th

December, 2017;

- (ii) Respondent No.4 is directed to consider the application of the Petitioner for grant of 'no objection' in accordance with the relevant regulations and other provisions of law concerning the admission on or before 5.00 p.m. of 21st December, 2017."

7] In pursuance to the said order, the matter was considered by the Medical Council of India, which rejected the case of the Petitioner for transfer on the ground that a transfer from Private Medical College to Government Medical College was not permissible. Challenging the said order, the Petitioner approached this Court by way of present Petition.

8] When the matter was heard by this Court on 5th January 2018, Mr. Surel Shah who was appearing for the Respondent No.7 stated that subject to Medical Council of India granting permission, Respondent No.7 has no difficulty in accommodating the Petitioner, in as much as the vacancy is available in the second year MBBS. We therefore vide order dated 5th January 2018 permitted the Petitioner to make an application to Respondent No.4 for grant of permission to transfer the Petitioner from Navodaya College, Raichur to Respondent No.7 college. We had requested the Medical Council of India to decide the application within a period of one week from the said order.

9] Pursuance to the aforesaid orders, vide the communication

dated 12th January 2018 the Respondent No.4 has again rejected the permission. The permission is rejected on the ground that the Physiotherapy facility is available in Navodaya College, Raichur and therefore the candidate does not have a valid ground of migration. The Petitioner has amended the Petition to challenge the said order.

10] At the outset, we may state that we are considering the Petition in the peculiar facts and circumstances of the case. The Petitioner has placed various documents on record to show that the ailment suffered by her on account of unfortunate accident can be treated only in Superspeciality Hospital at Mumbai, Belagavi and Pune. It will be relevant to note that prior to grant of no objection by the Government of Karnataka, the Medical Board of Karnataka, Victoria Hospital, Bangalore had certified that taking into consideration the nature of her ailment, her request of transfer to BJ Medical College, Pune should be considered. Not only that the Lokmanya Hospital, Nigdi which was treating the Petitioner has also certified as under :-

“She has wasting of vastus medialis, on radiological examination she has patella alto and decreased trochlear inclination, tilting of patells.

She requires proximal and distal realignment procedure for treating recurrent dislocation of patella.

She will require hospitalization for about 4 days and she will require supervised physiotherapy and rehabilitation for a period of 6 months.”

The Petitioner has placed on record the photographs which show the problem suffered by her knee.

11] We do not possess expertise to go into the opinion of the medical experts, who have clearly stated that, she suffers from medical ailment which requires specialized treatment for a prolonged period of time. The reports placed on record would reveal that the claim of the Petitioner is not imaginary but based on the report of the experts in the medical field.

12] On an earlier occasion, the claim of the Petitioner has been rejected on the ground that a transfer from a Private Medical College to a Government Medical College is not permissible. However, we see no rationale in the reason given by the Respondent No.4 in referring to transfer the Petitioner from one Private Medical College to another college specifically when both the transferor and the transferee medical colleges have no objection for the same. It would have been a different matter, if one of the colleges would have opposed such a transfer. However, when both the colleges have given their no objection, we do not understand as to why the Medical Council of India should have any

objection for the same. By such a transfer, we do not see that any prejudice is likely to be caused to the high academic standards set by the Respondent No.4.

13] Rule is therefore made absolute in terms of prayer clause (a). It is held and declared that the Petitioner has made out a case for her transfer from Navodaya Medical College, Raichur, Karnataka to the Respondent No.7 – MIMER, Medical College, Talegaon Dabhade, Maharashtra. No Objection Certificate/Migration Certificate shall be issued by the Medical Council of India within a period of one week from today.

14] The Respondent No.7 college is directed to admit the Petitioner within a period of seven days, without waiting for formal no objection certificate from the Respondent No.4.

15] Parties to act on an authenticated copy of this order.

[B. P. COLABAWALLA, J.]

[B. R. GAVAI, J.]