

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1023 OF 2018

Pankti M. Pancholi

..Petitioner

Versus

State of Maharashtra and others

..Respondents

**Mr. R. A. Rodrigues a/w Ms. Rimi Jain i/by Yogita R. Singh, Advocate
for the Petitioner.**

Ms. Kavita N. Solunke, AGP for Respondent Nos.1 and 6.

Mr. G. K. Gole, Advocate for Respondent No.2.

Mr. Pradeep Patil, Advocate for Respondent Nos.4 and 5 – BMC.

CORAM : B. R. GAVAI &

SMT. BHARATI H. DANGRE, JJ.

DATE : 4th MAY, 2018

ORAL JUDGMENT (B. R. Gavai, J)

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

2] The Petitioner has approached this Court being aggrieved by the rejection of Petitioner's application for her transfer from Respondent No.6 – Government Medical College to any of the Government Medical College or Corporation Medical College situated in the city of Mumbai/Thane.

3] The undisputed facts giving rise to the present Petition are thus :-

The Petitioner appeared for 2016 State Common Entrance Test (CET) conducted by the State Government in the general category. After being successful in the said examination, the Petitioner came to be allocated to the Respondent No.6 Government Medical College, Miraj. The Petitioner was admitted in the said college and appeared for the first year summer examination in the month of July 2017 and also cleared the said examination. It appears that the Petitioner was suffering from Allergic Bronchitis Bronchial Asthma and as such she was desirous of being transferred to any of the Government/Corporation Medical Colleges in the city of Mumbai/Thane. The Petitioner's native place is Mumbai.

4] It is not in dispute that one seat is available in the Rajiv Gandhi Medical College & Chhatrapati Shivaji Maharaj Hospital, Kalwa, Thane ("RGMC Thane" for short) out of total intake capacity of 60 in the second year MBBS course. Only point of contest is that since the said vacancy has become available after a student from the said college has migrated to some other college, could be considered as vacant seat for accommodating the Petitioner or not.

5] It is the stand of the State Government that the vacancies arising out of migration cannot be considered to be a clear vacancy for

accommodating student seeking transfer to college. It is the stand of the State Government that only the number of students who are failed in the first year MBBS can be taken into consideration while considering the clear vacancy in accommodating a candidate who seeks migration. It is the case of the Respondent – State that though the Petitioner had No Objection Certificate (“NOC” for short) from the Respondent No.3 university, other students who are meritorious were first granted migration and as such the Petitioner could not make it on her own merits.

6] It will be relevant to refer to the Regulations issued by the Medical Council of India (“MCI” for short) – Respondent No.2 herein in exercise of powers vested in it under Section 33 of the Indian Medical Council Act, 1956.

“6(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”.

(ii) In Chapter II, clause 6, under the heading “Migration”, Sub-clause (4) shall be substituted as under :-

“6(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.”

7] Perusal of the said Regulation would thus reveal that migration of students from one medical college to another medical college can 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. The only rider is that such a migration cannot be more than 5% of the sanctioned intake of the college during the year. The further rider is no migration will be permitted on any ground from one medical college to another located within the same city. Sub clause (4) of Regulation 6 provides that for the purpose of migration, a candidate shall first obtain NOC from the college where he is studying. He is also required to obtain NOC from 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. After obtaining such NOCs, a candidate is required to apply for migration within a period of one month of passing alongwith the above

cited four NOCs to the Director of Medical Education of the State, if migration is sought from one college to another within the same State or the Medical Council of India, if the migration is sought from one college to another located outside the State.

8] The Vice Chancellor of the Respondent No.3 university has issued direction No.03/2017 in exercise of the powers vested in him under Sub Section (x) of Section 50 of the Maharashtra University of Health Sciences Act. Clause (1) of the said direction would reveal that the migration is required to be permitted as per Regulation 6 of the Regulations issued by the MCI. It will be relevant to refer to clause 6 of the directions :-

“6. The No Objection Certificate from the admitting or the receiving college or the institution, under the signature of its Dean, Director or the Principal, as the case may be, with the seal of the college or the institution, in the Annexure-'B' appended to the applicable Form, shall indicate the following details, namely :-

(6.1) the availability of clear vacancy against which the transfer or the migration is to be effected, and the clear vacancy shall mean,-

- (i) vacancy arising out of less number of admissions than the annual intake capacity for the first year course;
- ii) vacancy arising out of migration of student, after passing the first year examination;

iii) vacancy arising due to number of drop-outs during the same academic year;

iv) vacancy arising after deducting the number of the failures out of regular examinees of the first professional examination;”

9] It could thus be seen that while granting NOC from the admitting or the receiving college the facts that are required to be taken into consideration are the availability of clear vacancy which arises out of following instances :-

“i) Vacancy arising of less number of admissions than the annual intake capacity for the first year course ;

ii) Vacancy arising out of migration of student, after passing the first year examination;

iii) Vacancy arising due to number of drop-outs during the same academic year;

iv) Vacancy arising after deducting the number of the failures out of regular examinees of the first professional examination;”

10] Undisputedly, the Petitioner has been granted NOC by the Respondent No.3 university as is required under the regulations framed by the MCI. The Petitioner also possesses the medical certificate issued by the Medical Board of the Respondent No.6 certifying that she is suffering from Allergic Bronchitis Bronchial Asthma recommending the place of study of the Petitioner needs to be changed on medical ground. The

Petitioner has placed on record NOCs issued by Hinduhridaysamrat Balasaheb Thackeray Medical College and Dr. R. N. Cooper Municipal General Hospital, Juhu, Mumbai, L. T. Medical College, Sion, Mumbai, Rajiv Gandhi Medical College and Seth G. S. Medical College. As such, it is not in dispute that the Petitioner possesses requisite NOCs as per the Regulations of the MCI and directions issued by the Respondent No.3.

11] When the matter was listed in morning session, we had requested the learned AGP to keep responsible officer from the office of the Respondent No.1 personally present in the court. In the post lunch session, accordingly Dr. A. S. Vyas, Officer on Special Duty, Directorate of Medical Education & Research – Respondent No.1 (DMER) is personally present in the Court. The learned AGP states that it is not in dispute that one seat is available in the RGMC, Thane. However, the said seat is not a clear vacancy as per the information brochure of the State Government since it has arisen on account of migration of a student, which cannot be taken into consideration for accommodating the student seeking migration from the other institute. It is the specific contention of the State that the directions framed by the Respondent No.3 university are not binding on it.

12] We are inclined to reject the contention as advanced by the

Respondent No.1 on more than one reasons. Firstly, the final authority in these matters would be the MCI. We find that the only requirement provided under the regulations framed by MCI are thus :-

- “i) 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
- ii) It would be restricted to 5% of the sanctioned intake of the college during the year.
- iii) No migration will be permitted on any ground from one medical college to another located within the same city.
- iv) The applicant shall first obtain No Objection Certificate from from the college where he is studying and the university to which that college is affiliated.
- v) No Objection Certificate of the college to which the migration is sought.
- vi) No Objection of the university to which the college where transfer is sought should be obtained.”

13] In the present case, undoubtedly transfer is not being sought from one medical college to another in the same city. The Petitioner is having NOC from the Respondent No.6 college, where she is presently studying. The Petitioner is also having NOC from the college to which she is seeking transfer. In so far as the university is concerned, all the colleges i.e. college where the Petitioner is presently studying, so also the college

to which the Petitioner is seeking transfer, are all affiliated to Respondent No.3, which has also granted NOC. Now, the only aspect that will have to be considered is, as to whether the first requirement is satisfied or not and as to whether the contention of the Respondent No.1 that the vacancy on account of migration cannot be considered for accommodating the Petitioner is to be accepted or not.

14] Undisputedly, in so far as the RGMC, Thane is concerned, intake capacity is 60. It appears that in the said college, one vacancy has arisen since a student has been transferred to J. J. Government Medical College, Mumbai. As per the directions issued by the Vice Chancellor of the Respondent No.3, the said vacancy is also required to be taken into consideration. Since the intake capacity of the said college is 60, the maximum number of transfers that would be allowed in the said college would be three i.e. outer limit of 5%. As such, even if the Petitioner is accommodated on the said vacant seat, maximum number of transfers as imposed by the Respondent – MCI would not be violated.

15] In so far as the contention of the State relying on clause (6) of the brochure is concerned, firstly the said brochure at the most can be considered to be administrative instructions and they cannot have overriding effect over Regulations framed by the MCI, which are in the

nature of subordinate legislation and the directions issued by the Vice Chancellor of Respondent No.3 which are also in exercise of statutory powers. In any case, the purpose of clause (6) of the MCI Regulations appears only to restrict number of transfer to 5% of the intake capacity of the college for the first year. It would be clear from clause (7) of the said guidelines that the only purpose is that the number of students in the second year do not in any case exceed than the number of students who are admitted in the first year. As discussed hereinabove, even if the Petitioner is permitted to be transferred to RGMC, Thane, the intake capacity of 60 for the first year, in no case shall exceed.

16] In the result, the Petition is allowed. Rule is therefore made absolute. The Respondent No.1 is therefore directed to approve the case of the Petitioner for transfer from Respondent No.6 college to RGMC Thane and issue necessary directions. The RGMC, Thane to admit the Petitioner to the second year MBBS course.

[SMT. BHARATI H. DANGRE, J.]

[B. R. GAVAI, J.]