IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2018

CORAM

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

W.P.No.20880 of 2018
and
W.M.P.Nos.24519 and 24520 of 2018

Dr.Alekya Marella ... Petitioner

Vs.

1. Director of General Health Service
represented by its Secretary,
Ministry of Health and Family Welfare,
Government of India,
Nirmen Bhavan, Moulana Asath Road,
New Delhi - 110 108.

2. Director of Medical Council
represented by its Secretary,
Dwarka Phase,
New Delhi.

3. National Board of Examination
represented by its Secretary,
Medical Enclave,
Ansari Nagar, Mahatma Gandhi Marg,
Ring Road,
New Delhi - 110 029.

4. Head of the Institution
represented by its Principal,
Dr. Agarwals Eye Hospital,
No.10, South Bye-Pass Road,
Opposite to BSNL, Vannarpettai,
Thirunelveli - 627 003.

5. Head of the Institution
represented by its Principal,
Sankara Nethrayala Eye Hospital,
College Road,
Nungambakkam,Chennai - 600 006. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the third respondent in connection with the Impugned Letter dated 06.08.2018, received

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through mail and quash the same as illegal, ultra vires and contrary to the Medical Council Act, 1956 and Post Graduate Medical Education Regulation, 2000 and consequently, direct the third respondent to permit the petitioner to pursue her post MBBS Course, DNB Ophthalmology at the fifth respondent institution instead of fourth respondent institution.

For Petitioner : Mr.P.C.Harikumar

For Respondents : Mr.J.Madhanagopal Rao
Senior Counsel for R1
Mr.V.P.Raman for R2
Mr.Dhurva for R3
Mr.Krishnamoorthy for R4
R5 - No Appearance

O R D E R

This Writ Petition is filed for issuing a Writ of Certiorarified Mandamus to quash the order of the third respondent dated 06.08.2018 and to further direct the third respondent to permit the petitioner to pursue her Post MBBS Course, DNB Ophthalmology at the fifth respondent institution instead of fourth respondent institution.

2. The petitioner secured allotment for Post MBBS Course, DNB training in Ophthalmology in fourth respondent Institution. The petitioner was allotted in the first round of counselling and it is admitted that the petitioner remitted the prescribed fee by way of Demand Draft dated 05.06.2018. The petitioner further states that as per the allotment letter of the third respondent, she reported to the fourth respondent institution on 19.06.2018. It is the case of the petitioner that she travelled from Nellore to Thirunelveli along with her mother and that because of such tedious travel, the petitioner's mother got viral infection and she became seriously ill. Unfortunately, the petitioner's mother died in Appollo Hospital, Chennai on 16.07.2018.

3. It is stated by the petitioner that due to the sudden demise of her mother, she was unable to join the fourth respondent institution and that she was mentally uncomfortable because of her bad memories of her mother who died because of the viral infection she got, while accompanying the petitioner to Thirunelveli. It is due to such state of things, the petitioner states that she wanted to change the location by seeking transfer from fourth respondent institution to fifth respondent institution.

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4.Though an application was filed by the petitioner on 02.08.2018, it is stated that the request of the petitioner to transfer her from fourth respondent institution to fifth respondent institution, was declined by the impugned order on the ground that the change of institution is not permitted as per the regulations applicable for DNB admission. It is stated by the petitioner that there is one vacancy in the fifth respondent institution in Post MBBS Course, in DNB Ophthalmology. Even though there is one vacancy in fifth respondent institution, it is stated that the third respondent refused to consider the request of the petitioner without assigning any reason.

5. The learned Counsel appearing for the petitioner submitted that the refusal to transfer the petitioner on the ground that such transfer is impermissible as per the regulation is unacceptable. According to the learned Counsel appearing for the petitioner, the rejection of the petitioner's request relying upon Clause 10 of the Regulations, namely, the Medical Council of India Post Graduate Medical Education Regulations, 2000, is not applicable to the petitioner. It is submitted that as per the Regulations of the Medical Council of India, under no circumstances, transfer of a student undergoing any post graduate degree or diploma/Speciality Course can be permitted by any university or authority. Stating that the petitioner has not joined the course and that she paid the fee at the time when the counselling was not yet over and she never attended the college, it is contended that the petitioner cannot be treated as a student under going the Post Graduate Degree Course in the fourth respondent institution.

6. The learned Counsel for the petitioner further submitted that the petitioner's case should be considered sympathetically. During the course of argument, the learned Counsel appearing for the petitioner expressed the petitioner's willingness to pay the fees for all the three years to the fourth respondent institution and submitted that by transfer, no prejudice will be caused either to the fourth respondent or to the fifth respondent.

7.The learned Counsel appearing for the third respondent, however, by referring to the detailed counter affidavit submitted that in view of the specific bar in the regulation framed by the Medical Council of India, the request of the petitioner seeking transfer from one college to another cannot be entertained. The learned Counsel for the third respondent further submitted that the Writ Petition filed for issuing a Mandamus to act against the governing regulations cannot be entertained. It is also the case of the third respondent that after the process of admission is completed and commencement of

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classes, the request of the petitioner cannot be entertained.

8. The learned Counsel for the third respondent also submitted that the Writ Petition is not maintainable on merits. Denying the averments made in the affidavit filed in support of the Writ Petition, it is the specific case of the third respondent that the third respondent cannot consider the request of the petitioner by virtue of Clause 10 of the Regulations of Medical Council of India, namely, the Post Graduate Medical Education Regulations, 2000. It is further submitted that simply because the petitioner seeks transfer on the ground of convenience, the regulations of Medical Council of India or the third respondent cannot be relaxed. The bona fide of the petitioner's request was also doubted by the third respondent.

9. The fourth respondent also filed a detailed counter supporting the stand taken by the third respondent. It is also the grievance of the fourth respondent that the transfer of the petitioner from the fourth respondent institution to the fifth respondent institution is detriment to their interest. Apart from the merits on the request of the petitioner to transfer her from the fourth respondent institution, the fourth respondent institution also has submitted that a seat will be left vacant for the next three years, if the petitioner's request is conceded to and there would be huge financial loss to the fourth respondent. It is stated that the petitioner joined on 18.06.2018 and was on leave from 06.07.2018 to 30.07.2018. It is further stated that the petitioner completed Registration on 31.07.2018 and sought leave for three more days.

10. The learned Counsel for the petitioner submitted that the transfer/change of institution from one college to another is only due to the sudden demise of the petitioner's mother and that no other relative or friends are available in Tirunelveli where the fourth respondent institution is situated. The petitioner, being a girl student should be given some indulgence by treating the case of petitioner as an exceptional case. It is further stated that the vacancy in the fifth respondent institution is not yet filled up and therefore, no prejudice is likely to be caused to any one, since the petitioner has already remitted the fee payable to the fourth respondent. It is also stated that there is no loss to the fourth respondent by allowing the application of the petitioner's migration.

11. The learned Counsel for the petitioner relied upon a judgement of a Division Bench of this Court in the case of Dental Council of India represented by its Secretary, Aiwan-E-Galib Marg, Kotala Road, Temple Lane, New Delhi-2 Vs Fathima Thameema PK and five others in Writ Appeal No.1544 of 2017 reported in 2017 SCC OnLine Mad 10905. It was a case, where a student, who is undergoing the Bachelor of Dental Surgery Course

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in one college sought for migration from the college to another dental college during the second year of Bachelor of Dental Surgery Course. The request of the Writ Petitioner was turned down. Thereafter the petitioner in the Writ Petition challenged the order of the Dental Council of India and further a direction was sought for against the Dental Council of India to approve the migration. After referring to Regulation 4 of the Dental Council of India wherein migration is permitted in the beginning of the second year of the Bachelor of Dental Surgery in recognized institutions on certain compassionate grounds, the Division Bench of this Court confirmed the order of the learned Single Judge of this Court allowing the Writ Petition. While dismissing the Writ Appeal, the Division Bench has observed as follows:

> ''10.Therefore, we are of the view that the learned Single Judge has rightly observed that the governing Regulation is not an exhaustive one and the petitioner's position fits into the definition of compassionate ground and the petitioner's case has to be viewed with compassion only, in view of her health condition as evidenced by the proceedings of the Medical Board dated 13.10.2017. We do not find any reason to interfere with the said order passed by the learned Single Judge as we find that the petitioner's case in the peculiar facts and circumstances of its own and the pathetic condition of the petitioner, is an exceptional one for grant of migration. Accordingly, the order passed by the learned Single Judge is confirmed and the appellant Dental Council of India is permitted to comply with the order passed by the learned Single Judge within a period of three weeks from today so that the precious time of the student in pursuing the course shall not be wasted.''

12. In the case that was considered by the Division Bench of this Court, the rules specifically permitted migration during the beginning of the second year Bachelor of Dental Surgery Course. Of course, the regulation prescribed a condition that applications for migration should be referred to Dental Council of India by the college authorities and that no institution or university can allow an application for migration directly without the approval of the Council. The Council also has given a discretion not to entertain any application which is not under the prescribed compassionate grounds. It is not argued before the Division Bench by citing any specific bar under the regulations of the Dental Council of India. Hence, the judgement has no application to the facts and circumstances of the present case where there is a specific bar under Clause 10 of the Medical Council of India Post Graduate Medical Education regulations, 2000. It has been specifically

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prescribed as follows:

(a) Under no circumstance, migration/transfer or student under going any Post Graduate Degree/Diploma/Super Speciality Course shall be permitted by any University/Authority.

13. The learned Counsel for the Petitioner has not brought to the notice of this Court any Clause or Regulation which empowers the third respondent or the Medical Council of India to relax the regulations so as to accommodate the migration during the mid-stream.

14. In this case, it is seen that the petitioner secured the allotment on 13.06.2018. As per the Allotment Letter issued by the third respondent, the petitioner is supposed to report to the fourth respondent institution by 19.06.2018. It is admitted that the petitioner's mother died only on 16.07.2018. Though it is stated that the petitioner's mother died due to Septic Shock with Multi Organ Disfunction, no materials were produced before this Court to show that the death of the petitioner's mother was occurred due to the reason stated by the petitioner in this case. Assuming that the petitioner's mother died due to some infection she could get at the time, when the petitioner got admission in the fourth respondent college, the petitioner admitted that she decided to get transfer to the fifth respondent institution only after her mother's death. By that time, the petitioner got admission and joined her course in the fourth respondent institution. It is also admitted that the petitioner applied for leave for some time after the death of her mother. These facts would clearly show that the petitioner's claim that she did not join the course, when she filed an application for migration and that therefore clause (10) of the regulation is not applicable to the petitioner, cannot be countenanced. Since the regulations specifically provide an embargo for entertaining application for migration on any ground, the judgment of Division Bench of this Court, in the case of Dental Council of India cited supra based on different sets of facts and on the basis of the regulations framed by the Dental Council of India while the claim of the writ petitioner therein cannot be applied. The position is different in the present case while the regulation of Medical Council of India clearly bars such migration being allowed for students, who are admitted in Post Graduate Course.

15. The learned Counsel for the petitioner also relied upon another judgement of a Division Bench of Bombay High Court in Pankti M. Pancholi v. State of Maharashtra and others reported in 2018 SCC OnLine Bom 1178. It was a case, where the stand of the State was that the vacancy arising out of migration cannot be considered to be mere vacancy for accommodating a

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student seeking transfer to some other college. The regulation of Medical Council of India was referred to by the Division Bench of Bombay High Court wherein the migration of students from one medical college to another medical college was permissible on any genuine ground subject to the availability of vacancy in the college.

16. It was further stated in the regulation that such migration should be limited to 5% of the sanctioned intake of the college in the year. It is on the interpretation of the rules that were applicable in the given case, a decision has been taken by the Bombay High Court in favour of the candidate who is seeking migration. That cannot be taken as precedent in the present case, having regard to the admitted facts as discussed in the present case. When the petitioner seeks admission in a Post Graduate Course and gets admission as per the norms and regulations of Medical Council of India, she is bound by the regulations, till she completes the course. Since the Medical Council of India is empowered to frame rules, it cannot be ignored. As per the Regulations, no discretion is given to third respondent to consider an application for migration.

17. When the petitioner's application was rejected by the third respondent on the ground that the application is not in conformity with the regulations applicable to the third respondent, the regulations of the Medical Council of India cannot be ignored and the decision of the third respondent being in conformity with the regulations of the Medical Council of India cannot be challenged in a Writ Petition. As a result, this Court find no merit in the Writ Petition. Hence, this writ petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition Nos.24519 and 24520 of 2018 are closed.

Sd/-
Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

arb/tsi

To

1. Director of General Health Service,
   Represented by its Secretary,
   Ministry of Health and Family Welfare,
   Government of India,

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Nirmen Bhavan, Moulana Asath Road,
New Delhi - 110 108.

2. Director of Medical Council,
Represented by its Secretary,
Dwarka Phase,
New Delhi.

3. National Board of Examination,
Represented by its Secretary,
Medical Enclave,
Ansari Nagar, Mahatma Gandhi Marg,
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5. Head of the Institution,
Represented by its Principal,
Sankara Nethrayala Eye Hospital,
College Road,
Nungambakkam, Chennai - 600 006.

+1cc to M/s.P.C.Hari Kumar & Associates, Advocate SR.No.74673

+1cc to Mr.Anand Samy, Advocate SR.No.74743

+1cc to Mr.V.P.Raman, Advocate SR.No.75489

+1cc to Mr.J.Madanagopal Rao, Advocate SR.No.75481

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