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IN THE HIGH COURT OF DELHI AT NEW DELHI

DECIDED ON: 04.01.2018

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LPA 46/2017, CM APPL.2120 & 2121/2017

UMESH PRASAD SINGH

..... Appellant

Through: Mr. Amit Kumar with Mr. Avijit
Mani Tripathi and Mr. Kumar Abhishek,
Advocates.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Vikas Singh, Sr. Advocate
with Mr. T. Singhdev and Ms. Amandeep
Ahuja, Advocates for MCI.

Mr. Abhay Prakash Sahay, CGSC for UOI
with Mr. R.L. Sinha, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A.K. CHAWLA

S.RAVINDRA BHAT, J. (ORAL)

1. The unsuccessful writ petitioner pleads to this Court complaining of erroneous rejection of his claim for direction to the respondent/MCI to pass orders to facilitate his daughters' admission to the medical college in India.

2. The petitioner's daughters Lucy Gray and Manisha Singh were offered scholarships by the Republic of Yemen in 2009-2010. This was under the aegis of the Indo-Yemeni Cultural Exchange Programme by the Director General of Cultural Exchange and

International Cooperation, Ministry of Higher Education and Scientific Research, Government of Republic of Yemen. As was necessary for obtaining the scholarship, the students applied and were granted No Objection by the Indian Government. Sometime in 2011, on account of internal unrest and disturbances, the petitioner had sought for suitable relief towards migration of his daughters to colleges in India. During that time, the correspondences ensued between the Medical Council of India (MCI) and the Central Government ultimately culminated in the rejection of the request for migration on 28.10.2011. As events transpire, the request was unnecessary because the law and order situation improved and the two candidates underwent their medical courses. Eventually with the spurt in violence and the widespread breakdown of law and order, the Indian Mission in Sana had to, on emergency basis, evacuate the two students on 07.04.2015. It is a matter of record that the students were airlifted. Upon reaching India, the petitioner on their behalf represented to the Central Government for continuation of their education and requested for their accommodation and migration through college in Bihar. The petitioner relied upon Regulation 6 of the MCI Regulations on Graduate Medical Education, 1997, especially Note-2 to say that the eventuality and contingencies which arise authorizes MCI to exercise discretion and grant suitable relief. He also later relied upon the letter written by the Controller of Examination, Health Services, Government of Bihar dated 07.04.2016. Since the petitioner's request was rejected, he approached this Court under Article 226 of the Constitution of India. During the pendency

of the writ petition, the Court had first noticed Note-2 and was *prima facie* of the opinion that it was expressed in sufficiently broad terms to factor in the contingency that the petitioner's daughters were faced with. Later, the learned Single Judge required the MCI to examine the representations by order dated 31.05.2016. The Single Judge required the MCI to consider the entire matter including the course content undertaken by the students concerned. The representation made by the petitioner detailed the content of the medical course undertaken by the petitioner's daughters. On 27.09.2016, the MCI made its rejection order in the following terms: -

“Subject: - Migration of Ms. Lucy Gray and Ms. Manisha Singh from Government Medical College, Yemen to Government Medical College (Bihar).

In pursuance of the Court order dated 31.05.2016 of the Hon'ble Delhi High Court in W.P.(C) No.8245/2015 & C.M. Appl.18579/2016, the matter with regard to migration of Ms. Lucy Gray and Ms. Manisha Singh from Government Medical College, Yemen to Government Medical College (Bihar) was considered by the Migration Sub-Committee at its meeting held on 30.06.2016 and the Committee decided as under: -

“The Migration Sub-Committee sympathetically considered the representations dated 10.06.2016 and 16.06.2016 received from Ms. Lucy Gray and Ms. Manisha Singh in pursuance of the court order dated 31.05.2016 of the Hon'ble Delhi High Court in W.P.(C)No.8245/2015 & C.M. Appl.18579/2016. The Committee also perused the regulations of the Council on Graduate Medical Education, 1997 with regard to Migration and noted that as per the said regulations, there is no provision for Migration of a candidate from a

foreign medical institute to a medical college/institution in India.

Therefore, the Committee unanimously recommended not to grant migration from Government Medical College, Yemen to a government medical college in Bihar as there is no provision for said migration in the Regulations of the Council.”

The above recommendation of the Migration Sub-Committee is duly approved by the Executive Committee meeting held on 30.06.2016.”

3. The learned Single Judge after noticing all the relevant facts and the development which occur during the pendency of the proceedings firstly was of the opinion that Note-2 relied upon by the petitioner was sufficiently broad to arm the Medical Council with discretion; at the same time, it was felt in the facts and circumstances that the MCI's refusal to grant relief was not arbitrary.

4. Mr. Amit Kumar, Advocate argues that the “migration” is not defined either in the Act or Rules. He relied upon the definition of “medical institution” and referred to Section 2 (e) of the Indian Medical Council Act, 1956 to say that the expression covers both Indian and foreign institutions. It is submitted that Note-2 to Regulation 6 in fact authorizes the MCI's discretion to enable students who faced extreme situations which are beyond their control and ensure their continued education. Learned counsel emphasized the fact that the Central Government was sympathetic to the cause of the petitioner's daughters and recognized their plight firstly enabling their

airlifting from Yemen and thereafter requiring MCI to consider their request for suitable adjustment and accommodations in the Indian college. Furthermore, the State of Bihar too was accommodative and had indicated that it had no objection if the two students were to join medical college in Bihar. The Central Government had even committed itself to the extent of saying that two seats could be ceded from the central quota. Having regard to these circumstances, the refusal of the MCI to exercise its discretion under Note-2 is arbitrary having regard to the entirety of the circumstances.

5. Learned senior counsel for the MCI Mr. Vikas Singh contends that though the learned Single Judge had interpreted Note-2 in a broad manner but refused the relief in the circumstances nevertheless that provision has to be construed in the context and in the light of the main provision. It was contended that Regulation-6 pre-supposes the migration, i.e., transfer of a student from one recognized medical college in India to another medical college. This, it was highlighted, is apparent from reading of Regulation 6 (2) which expressly states that both medical colleges, i.e., the one where the student is currently undertaking the course on the one hand and the second which is to receive the concerned students are to be recognized by the Central Government. In Section 11 (2), the conditions or contingencies under which migration is permitted are spelt out. Regulation 6 (2) and 6 (3) are that the *inter se* transfer or migration should not increase the sanctioned intake capacity for the concerned academic year; the candidate has to apply for migration within one month of passing first

year of MBBS and that the migration during the clinical course would not be allowed.

6. It is contended that Note-2 applies to circumstances and contingencies where Regulation 6 (1) to 6 (3) are in the first place applicable. It is submitted that in any event migration is permissible only between two recognized colleges in India and that in all other circumstances, where one of the colleges is located elsewhere, the applicable regime and eligibility requirement for taking admission in an undergraduate foreign course would be governed by MCI (Screening Test) Regulations, 2002. It is submitted that together these regulations require completion of a medical course by the students concerned in the foreign institutions after which he or she can appear in screening test to be eligible to apply for registration and license under the Act and the Rules. It is submitted that in these circumstances, the denial of relief was justified.

Regulation 6 which is relevant in this case reads as follows: -

“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 recognised 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.

(5) A student who has joined another college on migration shall be eligible to appear in the IInd professional MBBS examination only after attaining the minimum attendance in that college in the subjects, lectures, seminars etc. required for appearing in the examination prescribed under Regulation 12(1)

Note-1: The State Governments/Universities/Institutions may frame appropriate guidelines for grant of No Objection Certificate or migration, as the case may be, to the students subject to provisions of these regulations.

Note-2: Any request for migration not covered under the provisions of these Regulations shall be referred to the Medical Council of India for consideration on individual merits by the

Director (Medical Education) of the State or the Head of Central Government Institution concerned. The decision taken by the Council on such requests shall be final.

Note-3: The College/Institutions shall send intimation to the Medical Council of India about the number of students admitted by them on migration within one month of their joining. It shall be open to the Council to undertake verification of the compliance of the provisions of the regulations governing migration by the Colleges at any point of time.”

The appellant's contentions based upon the concept of medical institutions being both domestic and foreign institutions, in the opinion of the Court, cannot be accepted. What is provided for by way of migration is between two recognised Indian medical colleges in India. No other kind of transfer or migration is contemplated. As far as foreign institutions are concerned, it is not medical education, but rather the medical profession which is sought to be regulated by ensuring through the Regulations of 2002 that relevant levels of proficiency or competence in the medical field are tested through the screening tests. Those regulations also presuppose that the concerned students should have completed medical courses in the foreign institution or college concerned. Barring such eventuality there is no other provision of law which enables students undergoing a medical course abroad, midstream as it were, to apply for migration to a recognised medical institution, in India.

7. The Court is of the opinion that the MCI's interpretation and its decision based on such interpretation that migration could not have been granted is justified and also reasonable. The other interpretation

which the appellant relies on in the opinion of the Court can result in unknown consequences. For instance, a student who is unable to secure an admission in any Indian college may well choose to apply and secure admission in a course abroad in any country. Mid-stream for good and valid reasons - or even otherwise - he or she may apply to the MCI stating that the contingencies provided for in Note-2 to Regulation 6 apply and he or she should necessarily be accommodated in a recognised Indian medical college. If the Court were to accept the interpretation which the appellant is urging in the present case, there would be no justification to deny relief, in the eventuality of such unsuccessful students approaching foreign universities and medical colleges but also seeking similar relief through migration to the Indian recognised medical courses mid-stream as it were. Therefore, the Court is of the opinion that denial of relief cannot be held to be unreasonable nor can the conclusions of the Single Judge be held to be erroneous. The appeal fails and is accordingly dismissed along with pending applications.

S. RAVINDRA BHAT
(JUDGE)

A.K. CHAWLA
(JUDGE)

JANUARY 4, 2018
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