

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 12-06-2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI

AND

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

W.A.No.117 of 2019

Dr.Alekya Marella

Appellant

-vs-

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

2.Director of Medical Council,
rep.by its Secretary,
Dwaraka Phase,
New Delhi.

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

4.Head of the Institution,
rep.by its Principal,
Dr.Agarwals Eye Hospital,
No.10, South Bypass Road,
Opp. to BSNL, Vannarpettai,
Tirunelveli - 627 003.

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

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Respondents

Appeal under Clause 15 of the Letters Patent against the Order, dated 31.10.2018, passed in W.P.No.20880 of 2018 on the file of this Court.

Prayer in W.P.No.20880 of 2018:

Writ Petition filed under Article 226 of the Constitution of India Praying for issuance of a Writ of Certiorari Mandamus, to call for the records of the 3rd respondent in connection with the impugned letter dated 6.8.2018 received through email 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 3rd respondent to permit the petitioner to pursue her post MBBS Course of DNE ophthalmology at the 5th respondent institution instead of 4th respondent institution.

For Appellant : Mr.P.C.Harikumar and Associates

For Respondent 2 : Mr.E.Manoharan,
Addl.Govt.Pleader.

For Respondent 3 : Mr.Dhruva

JUDGMENT

(By Dr.Vineet Kothari,J.)

Appellant, Dr.Alekya Marella, has filed this Intra Court Appeal, aggrieved by the order passed by a learned Single Judge of this Court, dated 31.10.2018, dismissing the Writ Petition, by which the writ petitioner, Appellant herein, had sought for a mandamus to direct the respondents to allow her to pursue her Post MBBS Course, DNB Ophthalmology, at the fifth respondent institution, namely, Sankara Nethrayala Eye Hospital, Chennai, instead of the fourth respondent institution, namely, Dr.Agarwals Eye Hospital, Tirunelveli.

2. The learned Single Judge dismissed the Writ Petition mainly on the ground that as per Regulation 10 of the Medical Council of India Post-Graduate Medical Education Regulations, 2000, in short, 'Regulations', under no circumstance, can migration of students from one college to another college in Post Graduate Course or Super-Speciality Course be permitted by the public authorities.

3. Mr.P.C.Harikumar, learned counsel for the appellant, urged before us that the appellant was admitted only provisionally in the fourth respondent institution at Tirunelveli on 13.06.2018 and had paid the requisite fees there. However, unfortunately, due to the supervening circumstance of her mother expiring on 16.07.2018, just after a month of the aforesaid provisional admission in the fourth respondent institution, she immediately applied for transfer on 02.08.2018 seeking transfer to the fifth respondent institution - Sankara Nethralaya Eye Hospital, Chennai, to meet such overriding family circumstances. She also produced a letter from the fifth respondent institution to the effect that there is a vacant seat available for admitting her in the fifth respondent institution. A copy of the e-mail, dated 07.08.2018, of the fifth respondent institution is produced on record, which clearly stipulates that they have one vacant seat of Post MBBS (DNB Ophthalmology) after final round of selection and thus no prejudice could be caused to any one by such transfer.

4. Learned counsel for the appellant Mr.P.C.Harikumar, therefore, submitted that the third respondent ought to have considered the request of the appellant in the light of the peculiar facts of the case and ought to have granted the request for transfer, as the said transfer would not have caused any prejudice to the third respondent, which is the competent body under the Regulations, to permit the same.

5. Mr.Dhuva, learned counsel for third respondent, however, vehemently opposed the said submissions of the learned counsel for the appellant and submitted that in Regulation 10, it is stipulated that under no circumstances, any migration or transfer will be allowed because it has ripple effect, including affecting the gradation of the institution in question and even though fifth respondent has indicated that there is a vacant seat for admitting the appellant, the third respondent could not allow any such migration or transfer of the appellant in view of the clear Regulations applicable to the facts of the present case. He also drew our attention to Regulation 13.5 of the Information Bulletin & Handbook for Admission to Diplomate of National Board Post Graduate Courses (Post MBBS) January 2018 Admission Session, which stipulated that 'the allotment made shall be firm and final. Change of Institute/College from one place to another is not permitted under any circumstances. Requests for the same shall not be entertained by the NBE after the allotment process is completed.'

6. According to the learned counsel for third

respondent, once the appellant was granted admission at Tirunelveli and once she had deposited the fees there, under no circumstance, can change in admission to another place be allowed.

7. Having heard the learned counsel for the parties, we are inclined to allow this Writ Appeal, in view of the peculiar facts and circumstances of the case.

8. It is the overriding reason of death on 16.07.2018 of the mother of the appellant just after she took the provisional admission away from her residence at Chennai in Tirunelveli in the fourth respondent institution, namely, Dr. Agarwals Eye Hospital on 13.06.2018. The appellant prayed for a change of place or institution from the fourth respondent to the fifth respondent and had also obtained a certificate or proof from the fifth respondent that a seat in the said stream was available with them. We are of the opinion that a smooth transfer or transition of the appellant could have been permitted by the third respondent from the fourth respondent to the fifth respondent, without affecting the rights of any other party. As far as the third respondent is concerned, it is only a public body administering the admission process of the said course.

9. It is true that the Regulations do not permit such transfer or migration. But, we find that Regulation 10 pertains to 'period of training'. The said Regulation also provides for prohibition of transfer or migration only once the student is ''undergoing'' the said course. It is obviously the period after the admission and after the commencement of the course that mid-session transfer may not be allowed. But, in the present case, the request for transfer was made immediately after the appellant was provisionally admitted in the fourth respondent institution at Tirunelveli. It is because of the supervening circumstance stated earlier, that the appellant was compelled to make a request for such a change. However, the said request was turned down by third respondent by a short and cryptic order, dated 06.08.2018, which said that ''change of institute is not permitted as per NBE Guidelines''. This order neither reflects the consideration of the peculiar facts of the case of the appellant nor assigns any reasons as to what prejudice could have been caused to any other student or institution by such a change.

10. Regulation 10, invoked by the learned Single Judge, to deny the said relief to the appellant is not applicable to the present case, as it is not a transfer sought after the commencement of the course. Though learned counsel for

the respondent pointed out that studies had commenced in the fourth respondent institution, there is nothing on record to evidence that, but we find that the prayer for transfer was made by the appellant on 02.08.2019, soon after the death of her mother on 16.07.2018, which was immediately negated by third respondent on 06.08.2018, without assigning any cogent or proper reason for the same with due consideration of her case.

11. We cannot appreciate such a rigid attitude on the part of the public bodies. They have to be aware and conscious of the facts and circumstances arising in each case. A public authority is bound in law to assign reasons for any decision it takes in accordance with the relevant regulations and guidelines governing them to save the vice of it being hit by Article 14 of the Constitution of India. It is not as if the authorities operate as 'machines' or 'computers' and have to answer the representations of the persons with whom they deal and for whom they exist to serve only like that. The very reasons for which such representation or request arose are only owing to peculiar facts and have to be dealt with by public authorities after applying their mind and which reasons have to be reflected in the orders. Even though the Regulations provide that no such requests for transfer are to be permitted, the third respondent was expected to assign convincing reasons meeting the contingencies and circumstances and the specific facts for which such a transfer was sought for by the Doctor student concerned.

12. We are also conscious of the fact that the request is being made in the present case by a person who is seeking studies in a Super-Speciality Course. She is already a Doctor and highly qualified person. The request in question was made for very, very overriding reasons, which required an objective consideration by the authority concerned. A one liner rejection does not meet the requirements of law in such cases and is, therefore, hit by Article 14 of the Constitution of India. The decision making process in such cases by the public bodies has to be dispassionate and objective and that should be reflected in the orders passed by them. The one line of rejection by the authority concerned does not inspire any confidence much less makes out a case for reasonable 'NO' in such cases. We could not discern any prejudice caused to anybody, if the said request of transfer was allowed by the third respondent in the contemporary period. The sheer bureaucratic attitude coupled with the litigative process has cost one year of valuable education to a highly qualified person in the country. If an equally overriding prejudice or loss by such a transfer could have been pointed out by the respondents, we could appreciate the same. But, nothing of this nature is forthcoming.

13. We are informed by the learned counsel for the appellant that the said seat even now continues to be vacant and available in the fifth respondent institution at Chennai. Undoubtedly, the fifth respondent institution, a leading Eye Hospital and Institution, might have been the preferred local choice of the appellant at Chennai and particularly with the overriding circumstance of the death of her mother, the appellant chose to shift from Tirunelveli to Chennai, which would allow her to meet her requirement of education of Post Graduate Super-Speciality Course and at the same time of meeting the social and family obligations at Chennai. A fair consideration of her case could have been made and such transfer allowed.

14. In these circumstances, we hold that the cryptic rejection of the prayer of the appellant does not stand scrutiny on any sound reasoning except for technical compliance of Regulation 10, which too we find was not applicable in stricto sensu to the present case, as the course in question with the fourth respondent institution had neither commenced or even if commenced, only a very short period had passed since then. With the fact that a vacant seat was fortunately or instantly available in the same stream with fifth respondent - a leading institution in Chennai, namely, Sankara Nethralaya Eye Hospital, we fail to understand as to what prejudice could be caused to the public body or authority or anybody for that matter by permitting the appellant-student to go for her higher Super-Speciality education in another institution, moreso, when it was propelled by the circumstances beyond her control, which might have required her presence more in Chennai than in Tirunelveli.

15. The last argument of the learned counsel for third respondent that the appellant could better serve as a Trainee in rural areas if she pursues her studies in Tirunelveli does not impress us at all. If the training or discharge of duty as Interns by students during their studies at Chennai also requires them to go and serve the public in rural area, nothing prevented the authorities concerned from directing such students studying at Chennai also go to the rural areas and serve the public there. Therefore, this could hardly be a reason to deny the request of the appellant for transfer to Chennai. We may note that this reason was not at all the basis of the impugned order passed by third respondent in the present case, which we have noted above was a one line rejection of the request of the petitioner.

16. We also find that the appellant was admitted in the fourth respondent institution in the final mop-up round of counselling, as provided in Regulation 11.3. Even after

the mop-up round, if a seat was found available and vacant with the fifth respondent institution, that seat is likely to remain and go vacant throughout and, therefore, without any prejudice being caused to any other student, we hold that the said vacant seat in the fifth respondent institution could be filled up by the desired transfer of the present appellant.

17. Under the above circumstances, we allow this Writ Appeal and direct the respondent authorities to permit the appellant - Dr.Alekya Marella - to change her Post MBBS Course of DNB Optholmology from fourth respondent to fifth respondent. No costs. Consequently, the connected C.M.P.No.1145 of 2019 is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

dixit
To

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

2. Director of Medical Council,
rep.by its Secretary,
Dwaraka Phase,
New Delhi.

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

+1cc to M/s.P.C.Harikumar and Associates , Advocate SR.No. 47860

+1cc to M/s.Anand,samy,dhruva , Advocate SR.No. 48236

W.A.No.117 OF 2019

A.SK(25/06/2019)