

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 917 of 2020**

- Nida Us Sahr D/o Shri Munawar Khursheed Aged About 19 Years Presently Pursuing MBBS, 2nd Professional Course At Late Shri L. A. M. Govt. Medical College, Raigarh, R/o Bungalow No. 15/2, Railway Officers Colony, Station Road, Bilaspur, District Bilaspur Chhattisgarh,

---- Petitioner

Versus

1. State Of Chhattisgarh Through the Secretary, Health And Family Welfare And Medical Education Department, Mahanadi Bhawan, Mantralaya, Atal Nagar Nawa Raipur District Raipur Chhattisgarh,
2. President Medical Council Of India, Pocket-14, Sector-8, Dwarka, Phase-1, New Delhi
3. Director Of Medical Education D. K. S. Bhawan, Parisar, Old Nurses Hostel, Raipur District Raipur Chhattisgarh
4. Registrar Pandit Deendayal Upadhyay Memorial Health Science And AYUSH University Of Chhattisgarh Raipur District Raipur Chhattisgarh
5. Dean Chhattisgarh Institute Of Medical Science, (CIMS), Bilaspur District Bilaspur Chhattisgarh
6. Dean Late Shri L. A. M. Govt. Medical College, Raigarh District Raigarh Chhattisgarh

---- Respondent

For Petitioner : Shri B.P. Sharma with Ms. Naushina Ali, Advocates
For Respondent No.1, 3, 5 & 6 : Shri Gagan Tiwari, Panel Lawyer.
For Respondent No.2 : Shri R.S. Marhas, Standing Counsel.
For Respondent No.4/University : Shri Ajay Kumar Dwivedi, Advocate.

Hon'ble Shri Prashant Kumar Mishra &
Hon'ble Shri Gautam Chourdiya, JJ

Order On Board By Prashant Kumar Mishra, J

13/03/2020 :

1. The petitioner, a student of 2nd year MBBS in the Government Medical College, Raigarh, (respondent No.6 herein) has approached this Court seeking migration from the said college to the Chhattisgarh Institute of Medical Science (CIMS), Bilaspur under Regulation 6 of the Medical Council of India Regulations on Graduate Medical Education, 1997 (for short 'the Regulations, 1997').
2. It is not disputed that the petitioner applied for migration in accordance with the procedure prescribed under Regulation 6 and thereafter necessary No Objection Certificate (NOC) has been issued by the Government Medical College, Raigarh and the CIMS, Bilaspur. The Director of Medical Education (DME) is required to pass necessary orders within a period of one month from the date of application, however, no order having been passed, the writ petition has been preferred.
3. Shri Gagan Tiwari, learned State Counsel would submit that the NOC issued by the CIMS, Bilaspur is a conditional NOC impliedly stating that there is no vacancy in the 2nd year MBBS Course of the concerned batch at CIMS, Bilaspur, therefore, the DME has not passed any order.
4. Countering the said objection, Shri BP Sharma, learned counsel

for the petitioner would refer to the law laid down by the Hon'ble Supreme Court in the matter of **Fraz Naseem and Others Vs. Union of India and Others** {(2016) 13 SCC 521}, particularly paras-136 to 138 thereof, to submit that if a student of previous MBBS batch has failed, he is not treated to be student for 2nd year MBBS Course for which migration is sought. Such failed student is treated as supplementary batch student and not of the main batch of the relevant year. He would refer to the result sheet of first year MBBS examination of CIMS, Bilaspur showing that one student namely, Swaraj Rai has failed in one of the subject and is thus no longer a student of 2nd year MBBS Course of CIMS, Bilaspur of the relevant batch.

5. In the matter of **Fraz Naseem** (Supra), the Hon'ble Supreme Court has held thus at paras-136 to 138:-

“**136.** On a scrutiny of the letter written by the Directorate of Medical Education, Karnataka, it is absolutely limpid that he has misconstrued Regulation 6. Regulation 6 of the Regulations, as we find, conveys imposition of certain conditions, namely, there should be vacancy in the college where migration is sought and migration has to be restricted to 5% of the sanctioned intake of the college during the year and no migration will be permitted on any ground from one medical college to another located within the same city. The disqualification which has found place in Regulation 6 does not apply to the applicant herein. The question is whether the vacancy had occurred.

137. The Directorate of Medical Sciences has noted that the students who fail to qualify 1st MBBS examination should be treated as a part of the same batch, so that the strength of the whole institution remains stable and meets the requirement of Regulation 6(2) of the Regulations.

138. On a query being made, Mr Gaurav Sharma, learned counsel for the Medical Council of India submitted that when the students fail, they do not remain as students of the same batch and, in fact, they go to the supplementary batch. Further, the learned counsel for the Medical Council of India submitted that the 5% of the total intake capacity has to be filled up with utmost seriousness and there cannot be quarrel over the same. To elaborate, if the intake capacity is 250 and 27 students fail, as submitted by the learned counsel for the applicant, 5% would come to 13. Therefore, there are 13 vacancies available for migration. Figures will be different if the intake capacity is more. The learned counsel would submit that the actual intake capacity is 250. This is basic arithmetic.”

6. It is thus apparent that if one student of CIMS, Bilaspur has failed in the first year MBBS Course for which results have been declared in October, 2019 (vide Annexure-P/18), vacancy has arisen in the 2nd year MBBS batch of the relevant year and the possible legal impediment before the concerned respondent for passing the necessary orders to the application for migration does not survive.
7. The other objection put forth by learned State Counsel is to the effect that the Government Medical College, Raigarh is not yet recognized by the MCI, therefore, migration is not permissible.

8. The above objection appears to be hyper-technical objection for the reason that the Government Medical College, Raigarh is continuously admitting students including for the present academic session also.
9. At this stage, Shri R.S. Marhas, learned Standing Counsel for the MCI, would submit that the Government Medical College, Raigarh has necessary permission to admit students, as required under Section 10-A of the Indian Medical Council Act, 1956.
10. Having examined the matter, it appears, there is no legal impediment for allowing migration, therefore, the petitioner is entitled for consideration of her case for migration from the Government Medical College, Raigarh (Late Shri Lakhiram Agrawal Memorial Government Medical College, Raigarh) to CIMS, Bilaspur under Regulation 6 of the Regulations, 1997.
11. Therefore, the Writ Petition is disposed of with a direction to the respondents, particularly, respondent No.3 (DME) to pass necessary orders allowing migration to the petitioner in the manner stated above within 2 weeks.

Certified copy as per rules.

Sd/-
(Prashant Kumar Mishra)
Judge

Sd/-
(Gautam Chourdiya)
Judge