

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (C) No. 1130 of 2020

Arshad Raza Sheikh S/o Kamal Raza Sheikh Aged About 21 Years R/o Boys Hostel, Government Medical Collage, Ambikapur, District Surguja, Chhattisgarh.

---Petitioner(s)

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 P.J.N.M. Medical College Raipur, District Raipur, Chhattisgarh.
- 6.** Dean, Government Medical College Ambikapur District Surguja, Chhattisgarh.

---Respondents

For Petitioner	:	Shri B.P. Singh, Advocate.
For State	:	Shri Vivek Ranjan Tiwari, Addl. Advocate General.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

09.06.2020

- 1.** The limited relief that the petitioner has sought for in the present writ petition is for an appropriate direction to the respondent No.3-Director Medical Education, for taking an appropriate decision in respect of the migration of the petitioner from Govt. Medical College, Ambikapur, Surguja to Pt. Jawahar Lal Nehru Memorial Medical College, Raipur, under Regulation-6 of the Medical Council of India Regulations on Graduate Medical Education, 1997 (in short, the Regulation, 1997).
- 2.** The counsel for the petitioner submits that he has all the requisite NOCs that are required from various departments and who have all granted favorable NOCs to the petitioner. That, the application of the petitioner is pending consideration before the respondent No.3 for quite sometime

now. Therefore, he makes a limited prayer that the respondent No.3 may be directed to take an early decision on his application.

3. Learned counsel appearing for the State submits he does not have any objection if the writ petition is disposed of with a direction to the respondent No.3 to take a decision at the earliest in accordance with regulations governing the field.
4. In view of the submissions made by the counsel for the petitioner, it would be appropriate at this juncture to refer to the judgment of the Supreme Court in case of **Fraz Naseem and Others Vs. Union of India & Others**, 2016(13) SCC 521, wherein dealing with an identical situation in paragraphs 136 to 138, the Supreme Court has held as under:

“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.”

5. On a query being put to the counsel for the petitioner as to whether he has inquired about the availability of the vacancy, he submits that he has received information that in the previous First Year batch there are about 19 candidates who have failed in the year and as such there is sufficient vacancy available in the Second Year wherein the petitioner can be accommodated.
6. This aspect of the vacancy arising on the failure of the candidates of the First Year has been dealt with by this High Court in case of **Nida Us Sahr Vs. State of Chhattisgarh & Others** {WPC No.917 of 2020, decided on 13.03.2020} wherein in paragraphs 6, 10 and 11 it has been held as under:

“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.

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.”

7. Considering the aforesaid facts and circumstances of the case and also taking note of the judgment of Supreme Court in case of Fraz Naseem (Supra) as also the order passed by this court in Nida Us Sahr (Supra), this court is of the opinion that the present writ petition also is one which is squarely covered by the aforesaid two judgments.
8. Therefore, the present writ petition stands disposed of directing the respondent No.3-Director Medical Education to pass appropriate orders in accordance with Regulation-6 of the Regulations, 1997 taking into consideration the NOCs that the petitioner has obtained from the other required department. Let an early decision be taken by the respondent No.3 within a period of 30 days from the date of receipt of copy of this order.
9. The writ petition accordingly stands disposed of.

Sd/-
(P. Sam Koshy)
Judge