

NAFR

HIGH COURT OF CHHATTISGARH, BILASPURWPC No. 2498 of 2020

1. Shishir Dani S/o Shri Sharad Kumar Dani Aged About 20 Years Presently Pursuing MBBS, 2nd Professional Course At Late Shri L.A.M. Govt. Medical College Raigarh R/o Plot No. 182/4, Street 20-C, Near Shiv Mandir Pragati Nagar, Bhilai District Durg, Chhattisgarh.

---- Petitioner

Versus

1. State of Chhattisgarh Through The Secretary, Health & Family Welfare And Medical Education Department, Mahanadi Bhawan, Mantralaya, Atal Nagar, Nava Raipur, District Raipur, Chhattisgarh.
2. Director of Medical Education D.K.S. Bhawan Parisar, Old Nurses Hostel, Raipur, District Raipur, Chhattisgarh.
3. Dean, Pt. Jawaharlal Nehru Medical College Raipur, District Raipur, Chhattisgarh.
4. Dean, Late Shri L.A.M. Govt. Medical College Raigarh District Raigarh, Chhattisgarh.
5. Registrar, Pandit Deendayal Upadhyaya Memorial Health Sciences and AYUSH University of Chhattisgarh Raipur, District Raipur, Chhattisgarh.
6. National Medical Commission Through its Secretary General, Ministry of Health And Family Welfare, Government Of India, C/o Pocket-14 Sector-8, Dwarka, Phase 1, New Delhi.

---- Respondent

For Petitioners Ms Naushina Ali, Advocate

For Respondent /State Mr. Vikram Sharma, Dy. Govt. Adv.

For Respondent No.5/ Mr. Ajay Dwivedi, Advocate
AYUSH University

Proceedings through Video Conferencing
Hon'ble Mr. Justice Prashant Kumar Mishra
Hon'ble Mr. Justice Gautam Chourdiya
Order On Board

2/11/2020

1. The petitioner, a second year MBBS student in the Late Shri Lakhi Ram Agrawal Memorial Government Medical College (for brevity 'the Raigarh College'), has approached this Court seeking migration from the Raigarh College to Pt. Jawahar Lal Nehru Memorial Medical College, Raipur (for brevity 'the Raipur College') under Regulation 6 of the Medical Council of India Regulations on Graduate Medical Education, 1997 (for brevity 'the Regulations, 1997').
2. Ms Naushina Ali, learned counsel appearing for the petitioner, would contend that under Regulation 6 of the Regulations, 1997 migration from one college to another college is permissible, however, despite the petitioner having moved application on 5-11-2019 and thereafter, by his father on 29-9-2020 & 30-9-2020, no action was taken even though other candidates namely; Nida Us Sahr, Arshad Raza Sheikh & Vishwaja Jaulkar, whose writ petitions bearing WPC Nos.917, 1130 & 1644 of 2020,

respectively have been allowed by this Court, have been granted migration and in addition other students namely; Ms Khushi Jain & Ms Amrita Gupta have been allowed migration even without Court's intervention.

3. Learned counsel would further contend that petitioner's case is identical to the cases of Nida Us Sahr, Arshad Raza Sheikh & Vishwaja Jaulkar whose writ petitions have been allowed inasmuch as vacancy exists in the Raipur College for migration/transfer on account of many students having failed not only in the University examination, but also in the supplementary examination.
4. Referring to the law laid down by the Supreme Court in ***Fraz Naseem and Others v Union of India and Others*** reported in (2016) 13 SCC 521, learned counsel would argue that a failed student is not part of the same batch as he/she belongs to the supplementary batch, therefore, clear vacancy is available at the Raipur College. Learned counsel would also argue that 5% of the total seats are reserved for migration related admissions which figure shall not exceed if the petitioner is allowed migration to the Raipur College.
5. Mr. Vikram Sharma, learned Dy. Govt. Advocate, appearing for the State, would refer to his application raising preliminary objection to putforth his submission that petitioner's case is not similar to the cases earlier decided by this Court. According to him, the petitioner student had not applied before the Directorate of Medical Education

(for brevity 'the DME'), which is a pre-requisite under Regulation 6 of the Regulations, 1997. Learned counsel would also contend that the No Objection Certificate (for brevity 'the NOC') has not been issued by the Raigarh College and moreover the general NOC relied by the petitioner vide Annexure – P/4 would not work in his favour because in cases decided by this Court individual NOCs were issued.

6. We have heard learned counsel appearing for the parties at length and perused the papers.
7. In *Vishwaja Jaulkar v State of Chhattisgarh and Others* (WPC No.1644 of 2020 decided on 7-8-2020) while noting submission of learned counsel for the petitioner it has been specifically observed by a coordinate Bench of this Court, as noted in para 3, that NOC has not been issued by the 6th respondent therein i.e. Raigarh College. In the said case State's objection to the prayer for migration has been noted and rejected in para 6 by branding it as hyper technical.
8. Referring to the pleadings made by the petitioner *Vishwaja Jaulkar* (supra), learned counsel for the petitioner draws attention of the Court to paras 8.4 & 8.7 therein to argue that the said petitioner had never moved any application after declaration of result, as all her applications were before declaration of the result and further individual NOCs were not issued by the concerned Colleges.
9. The documents filed by the State along with preliminary objection would reveal that the documents which are

treated by the State as individual NOCs are, in fact, letters issued by the DME directing the concerned Colleges to issue NOC. The document by itself is not the NOC by the said Colleges.

10. Interestingly, the State treats the letter dated 9-10-2019 of the DME available at page 9 of the objection to be individual NOC in favour of Vishwaja Jaulkar whereas the writ petition itself was decided much later i.e. 7-8-2020. It is, thus, apparent that despite DME having directed the concerned Colleges to issue NOC no such NOC was issued as has been pleaded by the candidate herself at para 8.7 of the petition. Thus, firstly letter dated 9-10-2019 of the DME is not individual NOC and secondly there was no individual NOC in favour of Vishwaja Jaulkar by the respective Colleges yet this Court has allowed the writ petition.
11. It is also to be noted that in the two earlier writ petitions i.e. in *Nida Us Sahr v State of Chhattisgarh & Others* (WPC No.917 of 2020 decided on 13-3-2020) & *Arshad Raza Sheikh v State of Chhattisgarh & Others* (WPC No.1130 of 2020 decided on 9-6-2020) this Court has allowed migration upon finding that vacancy exists in the respective Medical Colleges where migration is sought.
12. In the three previous cases such technical objection regarding belated submission of application was not agitated and as a matter of fact Vishwaja Jaulkar had never moved any application after declaration of result and yet

neither the objection was raised nor the matter has been agitated further by preferring SLP before the Supreme Court.

13. In view of foregoing, we have found that case of the petitioner is at parity with the cases of *Nida Us Sahr* (supra), *Arshad Raza Sheikh* (supra) & *Vishwaja Jaulkar* (supra), therefore, the petitioner also deserves to be allowed migration from the Raigarh College to the Raipur College.
14. In the said circumstance, the respondent DME is directed to process the application of the petitioner and pass necessary orders for granting migration/transfer, in accordance with law, as expeditiously as possible, at any rate, within a period of two weeks from the date of receipt of a copy of this order. The petitioner is required to produce a copy of this order along with a full text of the writ petition before the DME for further steps.
15. As a result, the writ petition is allowed to the extent indicated above.

Sd/-

(Prashant Kumar Mishra)
Judge

Sd/-

(Gautam Chourdiya)
Judge

Gowri