



W.P.No.9450 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 20.09.2022	Delivered on 27.09.2022
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THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.P.No.9450 of 2022

S.Sonali Pai

.. Petitioner

Vs.

1.Bharath Institute of Higher Education and Research,
173, Agaram Main Road,
Selaiyur, Chennai – 600 073.

2.National Medical Commission,
Pocket 14, Sector 8, Dwarka Phase 1,
New Delhi – 110 077.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of Writ of Mandamus, directing the 1st respondent to consider the representations made on 05.02.2022 on behalf of the petitioner and grant a No Objection Certificate to the petitioner in terms of Regulation 6 of the Regulations on Graduate Medical Education, 1997.

For Petitioner : Mr.V.Raghavachari
for Ms.Ashwini Vaidalingam



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For Respondents : Mr.PL.Narayanan
for Mr.C.Selvakumar for R1
Ms.Shubaranjani Ananth for R2

ORDER

The petitioner seeks a writ of mandamus directing the 1st respondent to consider her representation dated 05.02.2022 and grant No Objection Certificate for migration in terms of Regulation 6 of the Regulations of Graduate Medical Education, 1997.

2. The petitioner on being successful in NEET examination held in the year 2021, joined first year MBBS in the 1st respondent College. She has also cleared her first professional MBBS examinations with a good percentage of marks. Unfortunately the petitioner's father who was a sole bread winner of the family died on 12.05.2021. Finding that she and her mother were under severe emotional stress and they require the company of each other, the petitioner on 06.06.2021 made a request to the College viz., 1st respondent for issuance of No Objection Certificate for migration / transfer on compassionate grounds to a College in Bangalore. It is the further case of the petitioner that it would be financially difficult for her to



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sustain herself at Chennai. There was no response from the 1st respondent for the said request.

3. After completion of the first year MBBS course, the petitioner again made a representation through her mother seeking No Objection Certificate on compassionate grounds. The petitioner was orally informed that No Objection Certificate would be issued subject to payment of entire course fee for the MBBS course. Upon such response, the petitioner's mother on 18.02.2022 addressed the 2nd respondent seeking its intervention in this matter.

4. The 2nd respondent on 23.03.2022 sought for the comments of the 1st respondent on the request of the petitioner. Two reminders were sent on 30.03.2022 and 06.04.2022. Since there was no response despite reminders, the petitioner has come up with the above writ petition seeking a writ of mandamus. The petitioner would also claim that there is extreme urgency since the Regulations do not permit migration after the commencement of the classes of clinical subjects.



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5. Upon notice Mr.PL.Narayanan, learned counsel appears for the 1st respondent and Ms.Shubaranjani Ananth, learned counsel appears for the 2nd respondent.

6. The learned counsel for the 2nd respondent would submit that though migration is permissible under the Regulation on the candidate satisfying the requirement of Regulation 6, the 2nd respondent viz., National Medical Commission does not play any role in either fixation or payment of the fee. It is left to the discretion of the individual College.

7. The 1st respondent has filed a counter. While conceding that migration is permissible it would contend that the Regulation itself permit the State / University/ Institution to frame appropriate guidelines for grant of No Objection Certificate for migration to the student subject to the Regulations of the National Medical Commission.



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8. Therefore, according to the 1st respondent Institution, its prospectus very clearly states that a student can withdraw from the course only on payment of the entire fees for the course duration. Reliance is placed on the MBBS admission guidelines issued by the 1st respondent to justify the demand for fee. The demand is also sought to be justified on the ground that the seat will remain vacant for the entire duration of the course and the Institution will be deprived of the income there from, apart from another meritorious student being denied opportunity.

9. Mr.V.Raghavachari, learned counsel appearing for the petitioner would vehemently contend that the claim made by the 1st respondent is unjust and when the Regulations of the National Medical Commission/ 2nd respondent provide for migration strictly on compassionate grounds, the same compassion must be extended by the Institution also. Mr.V.Raghavachari would point out that the migration is not withdrawal and therefore the claim of the 1st respondent that the student who migrates withdraws from the course is incorrect. He would also submit that the



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background in which the student seeks migration should also be considered while balancing the equities.

10. Drawing support from the averments in the affidavit of the petitioner, which are largely un-controverted, the learned counsel would contend that it is because of the unfortunate incident the family has been plunged into financial crisis, therefore all concerned should come forward to lend helping hand to the petitioner and there should be no attempt to penalise the petitioner who is already facing severe financial and mental stress. The learned counsel would also place reliance on the judgment of the Calcutta High Court in *Soumyadeep Nandi Vs. State of West Bengal* in **WPA.No.9992 of 2022** dated **23.06.2022** and the judgment of the Punjab and Haryana High Court in *Deepak Ravidatt Vs. State of Haryana* in **Civil Writ Petition No.21444 of 2016**.

11. Ms.Shubaranjani Ananth, learned counsel for the National Medical Commission would submit that the payment of fee is internal matter between the College and the petitioner and the same would depend



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upon the Regulations of the Institution. According to her, the Graduate Medical Education Regulations, 1997 only lays down the broad procedure for migration and the National Medical Commission cannot interfere with the criteria fixed by any Institution or University particularly with reference to fees.

12. Mr.PL.Narayanan, learned counsel appearing for the 1st respondent College would submit that it is a settled law that prospectus is a contract between the student and the Institution and the High Court under Article 226 of the Constitution of India will not interfere in matters of contract. In support of his submissions regarding interference in matters of contract, the learned counsel would rely upon the judgment of the Hon'ble Supreme Court in ***Orissa State Financial Corporation Vs. Narsingh CH. Nayak and others*** reported in ***(2003) 10 SCC 261***. He would also point out that in a similar case the Karnataka High Court in ***Sanjat Suman Lenka Vs. Medical Council of India*** reported in ***2017 SCC Online Kar 1275***, had balanced equities by directing student to pay 50% of the fee payable for the entire course duration.



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13. I have considered the submissions of the counsel on either side. The entitlement of the petitioner for migration is not in doubt. The fact that the petitioner has complied with the requirement of Regulation 6 of the Graduate Medical Education Regulations, 1997 in terms of obtaining No Objection Certificate from the Institution at Bangalore is also not in dispute. All that is required for the petitioner is to obtain a No Objection Certificate from the 1st respondent Institution. The Regulations of National Medical Commission do not provide for the situation that had arisen in the case on hand. Regulation 6 states that it will be open to the College to frame appropriate Regulations. The prospectus of the 1st respondent provides as follows:

“If any candidate withdraws from the course of study in which he/she was admitted, after the expiry of the cut-off date prescribed for admission to that course of study or in mid-term and the seat is rendered vacant, the first year fee paid will be forfeited and the student will also be required to remit the 'entire course fee' for the remaining years of the course period. “



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16. A perusal of Regulation 6 of the Regulations of Graduate Medical Education, 1997 would show that migration is permissible only on compassionate grounds and no migration is permissible to a College which is situate within same city or place. Therefore, migration itself is allowed only under exceptional circumstances and the case of migration cannot be treated as a simple case of withdrawal of student from a course of study.

17. The Black's Law Dictionary defines 'Migration' as a movement of people or animal from one County or Region to another. The word 'Withdraw' is assigned the following meaning “to take back or to retract”. From the meanings assigned to the two words viz., Migration and withdrawal, it is clear that both are distinct actions and they cannot be put in one basket. In fact in ***Soumyadeep Nandi Vs. State of West Bengal*** the Calcutta High Court had considered the very same Regulation number 6 and the clause in the bond furnished by the candidate / petitioner in the writ petition before the Calcutta High Court which reads as follows:

Alternatively, in case, for any reason whatsoever, the



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obligator/ student quits or does not or can not or is unable to pursue or complete the said course, then the obligator/ Student shall be obliged to make payment of the fees for all the remaining semesters and upon the Obligator/ Student makes payment thereof, this bond shall be void, otherwise the same shall be and remain in full force and virtue.

18. After considering the effect of the Clause in the bond which is akin to the Clause in prospectus in the case on hand, the Caluctta High Court has concluded that migration and withdrawal are two different concepts and a student who migrates on a compassionate ground cannot be treated as a student who deserts or withdraws from the course. While doing so, it was held that the rights and obligations of a student seeking migration will have to be adjudged on the basis of the Regulation 6(1) of the Graduate Medical Education Regulations, 1997 which reads as follows:-

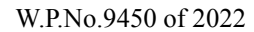
6(1) Migration of students from one medical college to another medical college may be granted on any genuine ground subject to the availability of vacancy in the college where migration is sought and fulfilling the other requirements laid down in the Regulations. Migration would be restricted to 5% of 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.

19. The Punjab and Haryana High Court also in ***Deepak Ravidatt Vs. State of Haryana*** had in fact substantially agreed with the conclusions of the Calcutta High Court. In doing so the Punjab and Haryana High Court has observed as follows:-

Even otherwise a perusal of the above said Regulations would go on to show that the College/ University where the petitioner is studying is only to process the case for the migration as per Regulation 6(1). Since it is a case of inter-State migration 5% restriction has been imposed on the sanctioned intake of the college during the year. The decision is to be taken by the Medical Council of India and the college only had to issue the NOC by keeping in mind Regulation 6(2) which provides that it would not result in increase in the sanctioned intake capacity for the academic year concerned. As noticed vacancies of two seats have been duly admitted as per the record. Thus, the University had no jurisdiction as such to reject the case on its end for migration as decision making lay with the respondent-council and therefore, the



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contract, it can interfere. After all, shackles that are placed under Article 226 are only self-imposed and they cannot render this Court helpless or mute spectator when an unreasonable or a demand outside the scope of the contract is made.

22. I am therefore of the opinion that the prohibition or self-imposed restriction on the exercise of power under Article 226 in cases of this nature will definitely have to take the back seat and the Court must lean in favour of the weaker section viz., the student who has suffered a unfortunate pre-mature death of her father.

23. No doubt in *Sanjat Suman Lenka Vs. Medical Council of India* reported in *2017 SCC Online Kar 1275*, the Karnataka High Court has attempted to strike the balance by directing the student to pay 50% of the course fee. When there is a Regulation which enables the College to collect the entire course fee upon migration, this Court or any other Court, on compassionate grounds, exercise the discretion and require the Institution to issue No Objection Certificate on receipt of part of that



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amount. When this Court records a finding that the Institution has no right to receive the fees for the remainder of the course, there is no question of balancing equities.

24. I therefore conclude that the Clause in the prospectus would not apply to a case of migration and even as per Regulation 6 of the Graduate Medical Education Regulations, 1997 migration being granted on compassionate ground, there should not be another burden imposed upon the student by way of requiring him or her to pay the remaining course fee. I am in complete agreement with the views expressed by the Punjab and Haryana High Court and Calcutta High Court referred to *supra*.

25. In fine, this writ petition is allowed and a writ of mandamus will issue directing the 1st respondent to issue No Objection Certificate without insisting on payment of future course fee within a period of two weeks from today. I am informed that the petitioner is still pursuing her education in the 1st respondent Institution. It is made clear that she shall pay the tuition fees as well as the hostel fees that are payable till the date she



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leaves the Institution. The Institution shall not demand future fee from the candidate. Considering the facts and circumstances, I make no order as to costs.

27.09.2022

dsa

Index :Yes

Internet :Yes

Speaking order

To:-

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173, Agaram Main Road,
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2.National Medical Commission,
Pocket 14, Sector 8, Dwarka Phase 1,
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R.SUBRAMANIAN, J.

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**PRE-DELIVERY ORDER IN
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