

(2012) 08 BOM CK 0047

In the Bombay High Court

Case No : Writ Petition No. 3086 of 2011

Amey Prakash Kasbekar

APPELLANT

Vs

The Director and Others

RESPONDENT

Date of Decision : 31-08-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Indian Medical Council Act, 1956 — Section 11(2), 33

Citation : (2013) 2 ALLMR 716

Hon'ble Judges : D.Y. Chandrachud, J;A.A. Sayed, J

Bench : Division Bench

Advocate : Dharendra Sinha with Mr. Saketmone instructed by Vidhi Partners, for the Appellant; Sandeep K. Shinde, Government Pleader for Respondents 1 and 2, Mr. Niranjana Vaghela instructed by Y. Pandya and Co. for Respondents 4 to 7 and Mr. Ganesh K. Gole with Mr. Ritesh Ratnam, for the Respondent

Judgement

D.Y. Chandrachud, J.—The Petitioner was admitted to the Krishna Medical College at Karad, a Deemed University, in July 2009 for pursuing the MBBS degree course. The Petitioner passed his first MBBS examination on 26 July 2010. The Petitioner submitted an application for transfer from Krishna Medical College to Lokmanya Tilak Municipal Medical College, at Mumbai on or about 8 September 2010. The Petitioner obtained, before submitting the application, a no objection certificate of the relieving institution. On 14 September 2010, the Maharashtra University of Health Sciences ("MUHS") also granted its approval for the transfer/migration of the Petitioner to the Lokmanya Tilak Municipal Medical College at Mumbai. The Petitioner was informed by a letter dated 30 December 2010 of the Director, Medical Education and Research, Mumbai that his name was not listed in the transfer list because of a restriction on the number of transfers from the receiving college for the regular batch of June 2010 and reliance was placed in that regard on Guideline No. 2 of the information brochure for transfer of medical students in the State of Maharashtra for 2010-11. The Petitioner submitted representations and thereafter instituted these proceedings under Article 226 of

the Constitution. The Petitioner sought an order setting aside the communication dated 30 December 2010 issued by the First Respondent and a direction to the First Respondent to allow his application for transfer. In support of his application for transfer, the Petitioner produced a medical certificate dated 13 August 2010 of a consulting ENT Surgeon at Sterling Hospital, Navi Mumbai stating that the Petitioner was under medical care for Rt. Vestibular Neuritis.

2. The Medical Council of India ("MCI") in exercise of powers conferred by Section 33 of the Indian Medical Council Act, 1956 has framed regulations on graduate medical education. Clause-6 of the regulations on Graduate Medical Education, 1997 provided that migration from one medical college to another may be considered by the MCI "only in exceptional cases on extreme compassionate grounds" provided certain criteria are fulfilled. Among the criteria that were prescribed, were that both the colleges must be recognized by the MCI, the candidate should have passed the first professional MBBS examination and an application for migration complete in all respects, should be submitted within one month of the declaration of results of the first professional MBBS examination. Moreover, an applicant was required to submit an affidavit stating that the student would pursue 18 months of prescribed study before appearing at the second professional MBBS examination at the transferee medical college, which should be duly certified by the Registrar of the concerned University. Migration during clinical courses of study was not allowed. As originally framed, Clause-6 of the Regulation contained a note specifying compassionate grounds as:

- (i) Death of a supporting guardian;
- (ii) Illness of the candidate causing disability;
- (iii) Disturbed conditions as declared by Government in the medical college area.

3. MCI, by a notification dated 20 October 2008, amended the Regulations on Graduate Medical Education, 1997 by substituting Clause-6(1), As substituted, Sub-clauses (1), (2), (3) and (4) of Clause-6 read as follows:

(1) Migration of students from one medical college to another medical college in India shall be granted only in exceptional cases to the most deserving among the applicants for good and sufficient reasons and not on routine grounds. The number of students migrating to/from any one medical college shall be kept to the minimum which shall in any case not exceed the limit of 5% of its sanctioned intake in one academic year. There shall be no migration on any ground from one medical college to another located in the same city.

(2) Migration of students from one College to another is permissible only if both the colleges are recognised by the Central Government u/s 11(2) of the Indian Medical Council Act, 1956 and further subject to the condition that it shall not result in increase in the sanctioned intake capacity for the academic year concerned in respect of the receiving medical college.

(3) The applicant candidate shall be eligible to apply for migration only after qualifying in the first professional MBBS examination. Migration during clinical course of study shall not be allowed on any ground.

(4) For the purpose of migration, an applicant candidate shall first obtain "No Objection Certificate" from the college where he is studying for the present, the University to which it is affiliated to, the college to which migration is sought and the University to which that college is affiliated to. He shall submit his application for migration within a period of one month of passing (declaration of results) of the first professional MBBS examination along with the said "No Objection Certificate" to the Director, Medical Education of the State where the College/ Institutions including Deemed Universities to which migration is sought is situated or to the Head of the Institution in case migration is sought to a Central Government institution. The Director, Medical Education of the State concerned or the Head of the Central Government institution, as the case may be, shall take a final decision in the matter as to whether or not to allow migration in accordance with the provisions of these Regulations and communicate the same to the applicant student within a period of one month from the date of receipt of the request of migration.

Under Note-1, State Governments/Universities/Institutions were permitted to frame appropriate guidelines for grant of NOC for migration, as the case may be, to students subject to the provisions of the regulations. Under Note-2, a request for migration not covered by the provisions of the regulations was required to be referred by the Director of Medical Education of the State Government or the Head of the Central Government Institution, as the case may be, to MCI for consideration of individual merits. Subsequently, on 22 December 2008 there was a further amendment to the Regulations and Clause-6(1), as modified, 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.

Moreover, Clause-6(4) was modified in the following terms:

6(4) For the purposes of migration an applicant candidate shall first obtain "No Objection Certificate" from the college where he is studying for the present and the university to which that college is affiliated and also from the college to which the migration is sought and the university to it that college is affiliated. He/She shall submit his application for migration within a period of 1 month of passing (Declaration of result of the 1st Professional MBBS examination) along with the above cited four "No Objection Certificates" to: (a) the Director of Medical Education of the State, if migration is sought from one college to another within

the same State or (b) the Medical Council of India, if the migration is sought from one college to another located outside the State.

4. The Government of Maharashtra initially framed guidelines for the transfer of medical students. Guideline-14 provided thus:

14. The transfer shall be considered on any genuine grounds like-

(i) Death of supporting parent/guardian

OR

(ii) Illness of the applicant causing disability;

OR

(iii) Disturbed conditions declared by Govt. in the concerned geographic area etc.

5. This would seem to be broadly in accord with what was initially stipulated as compassionate grounds in MCI's Regulations of 1997. Subsequently, as noticed earlier, MCI provided for migration only in exceptional cases to the most deserving among the students for good and sufficient reasons in the amendment notified on 20 October 2008. In the further amendment of 22 December 2008, the migration was contemplated on any genuine ground, subject to the availability of a vacancy in the college where the migration is sought. Migration is subject to a restriction of 5% of the intake capacity. Clause-16 of the Guidelines of the State Government provided that a transfer shall be permitted subject to the fulfillment of conditions mentioned earlier and on any genuine ground and only in accordance with merit.

6. Subsequently, the Government of Maharashtra formulated revised guidelines. This time, in Clause-13(A), it was stipulated that transfers "shall be considered strictly on merits". In Clause-15, it was provided that a transfer shall be permitted subject to fulfillment of the conditions stipulated, on any genuine ground and only in accordance with merit.

7. In the affidavit filed by the Joint Director, Medical Education and Research, it has been stated that for transfers/migrations in the year 2011-12, the Director of Medical Education and Research, Mumbai ("DMER") only applied the criteria of "strict merit" and the application form for transfers did not provide for any column mentioning the reason for transfer. The affidavit states that it was not possible for the DMER to apply the norm of genuineness of transfer, as this would expose the Directorate "to various pulls and pressures from various quarters." Moreover, it has been stated that the decision of the DMER would also have been open to challenge on the ground of favouritism and arbitrariness. Hence, it has been stated that only one uniform criterion was applied for selection of students for migration namely merit. Consequently, during 2011-12, 61 transfers were effected on the basis of the merit criterion.

8. In the affidavit filed by the MCI a reference has been made to the Regulations

framed in 1997 and as amended u/s 33 of the Act of 1956. The affidavit states that the continuity of a student in the MBBS course in the same institution is of vital importance since every student is required to undergo a period of certified study extending to four and a half years divided into nine semesters each of six months. According to MCI, migration from one medical college to another affects the regulation and maintenance of standards of medical education, as subjects in the curriculum of the second and third professional course vary from college to college. Consequently, unregulated migrations may result in a student missing some part of the education which may already have been completed in the transferee college. The view of MCI is that migration from one medical college to another is "highly unavoidable". Moreover, it has been stated that students apply for migration sometimes on frivolous grounds and allowing such applications amounts to a back door entry despite the failure of the student to get admission on merit in a college of his or her choice. Hence, it has been submitted that migration is contemplated only as a matter of exception and subject to compliance with the regulations.

9. The Petitioner has impleaded to these proceedings four students (Respondents 4 to 7) who were admitted to Lokmanya Tilak Municipal Medical College, Mumbai upon migration, by following the procedure which has been explained in the affidavit of the State Government. All the four students have filed affidavits-in-reply, which are similar. The students have sought to submit that they sought their transfers also on medical reasons and that pursuant to the approval granted to their migration, they are pursuing their education at Lokmanya Tilak Municipal Medical College, Mumbai.

10. The regulations which have been framed by the MCI are in exercise of the power conferred by section 33 of the Act of 1966. These regulations have been framed in pursuance of the overriding statutory power of MCI to supervise medical education and prescribe standards of education. The regulations framed by MCI have statutory force and are binding. In the regulations, as originally framed, MCI had sought to define compassionate criteria. Subsequently in the first amendment of 20 October 2008, MCI made it clear that migration should be granted only in exceptional cases to the most deserving among the applicants for good and sufficient reasons and not on routine grounds. By the subsequent amendment of 22 December 2008, it has been provided that a migration from one medical college to another may be granted on genuine grounds subject to the availability of the vacancies. A ceiling on migrations has been imposed of 5% of the intake capacity of the receiving college. The State Government is permitted by the regulations, as amended in 2008, to frame appropriate guidelines for the grant of no objection certificates for migration but those guidelines have to be consistent with the guidelines framed by MCI.

11. During the academic year 2010-11, the State Government purported to grant migrations from one medical college to another purely on the basis of merit, disregarding the genuineness of the grounds on which a transfer was sought.

According to the State Government in its reply, this was because it would be exposed to "pulls and pressures" exerted at the behest of students and that the decision of the DMER would be open to challenge on the ground of favouritism and arbitrariness. This is an unfortunate, but perhaps a candid admission on the part of a public authority. But, when a discretionary power is conferred in the area of public governance, it has to be exercised on the basis of objective principles which must be known in advance to those who will be affected by the exercise of discretion. Unguided discretion is contrary to the principles of equality and fairness under Article 14 of the Constitution. But here the authority of the State Government abdicated the exercise of its discretion altogether, though the Regulations of MCI contemplate migrations on genuine grounds. Whether a case has been made out on genuine grounds has to be determined under MCI regulations by the DMER on objective criteria, following a transparent decision making process.

12. The regulations framed by the MCI do recognize an element of discretion but none the less that discretion is structured by the requirement that a transfer can be granted only on genuine grounds. The State Government could not have disabled itself from considering the genuineness of the grounds set up for transfer/migration. DMER considered requests for transfer/migration only on the basis of marks obtained by applying a merit criterion. This was not permissible. Undoubtedly, where more than one candidate is found to have a genuine ground of transfer, it may arguably be open to the State Government to follow the norm of inter-se merit. However, for Government to disregard the genuineness of the grounds for transfer and instead proceed only on the basis of merit determined by the marks obtained, would not be in consonance with the regulations framed by MCI. We must emphasis at the cost of repetition that where a discretion has been conferred, steps have to be taken to ensure that the exercise of discretion is carried out in an objective manner and that the grant of migration is not based on extraneous considerations.

13. The affidavit of the State Government contains a candid acknowledgement that pulls and pressures are exerted at the behest of medical students. As the MCI has correctly pointed out, such transfers/migrations should not become a source for back door entry to students who have not been admitted to a medical college, in the first place on merits. If that were allowed, only those who have connections in the "right" places, would be able to secure migrations. Such practices must be weeded out firmly. As the MCI has correctly stated in its affidavit-in-reply, migration from one medical college to another should not become a means for back door entry for students on frivolous and flimsy grounds. The genuineness of the ground for transfer has to be considered. MCI has, therefore, regulated the modalities for transfers by requiring candidates to obtain a no objection certificate from the college where the student is studying, the university to which it is affiliated, the college to which migration is sought and the university to which that college is affiliated. The no objection certificates have to be submitted within one month of the declaration of the results to the

Directorate of Medical Education of the State where the college, including a deemed university, to which a migration is sought, is situated. The Directorate of Medical Education has to take a final decision in the matter on whether or not a migration should be granted. If the procedure which has been laid down by the MCI is followed objectively, that would obviate an allegation of favouritism or arbitrariness in the selection process.

14. For 2012-13, the State Government has now issued a brochure for medical students in the State of Maharashtra in which it has been stated in Clause-13(A) that transfers shall be considered on genuine grounds. The guidelines which have now been framed by the State Government have made provisions for the grant of no objection certificates both by the relieving and the receiving/admitting college as well as for the no objection certificate of MUHS. Clause-13 also stipulates that where a student seeks a transfer from a Government Medical College situated in Maharashtra, the medical board of the relieving college should submit a medical certificate. Where a student seeks transfer from an unaided or a private medical college or a deemed university, a medical certificate has to be submitted of the medical board of the nearest government medical college. Clause-14 provides that if there are more eligible applicants than clear vacancies, the criterion of merit would be applied to determine the selection among eligible candidates for migration. On 24 August 2012 a circular has been issued by the DMER to constitute a committee of the following persons for considering requests for transfer namely:

- (i) Director of Medical Education and Research;
- (ii) Vice Chancellor of MUHS;
- (iii) Joint Secretary, Medical Education and Drugs Department;
- (iv) Joint Director, Drugs Department, Government of Maharashtra.

15. Now, insofar as the Petitioner is concerned, it is evident from the reply filed by the State Government that his case for transfer from Krishna Medical College, Karad to Lokmanya Tilak Municipal Medical College, at Mumbai was not considered with reference to the genuineness of the reasons set out by the Petitioner. The State Government in fact has admitted that it considered all applications for transfer or migration on the basis of marks obtained. This procedure was contrary to the regulations framed by the MCI. The State Government has now set right the deficiency in its guidelines by promulgating new guidelines for 2012-13. We are not inclined at this stage to disturb the admissions which were granted to the Fourth to Seventh Respondents, since all the four students have substantially progressed in their medical studies at Lokmanya Tilak Municipal Medical College, at Mumbai upon transfer. Moreover, these four students are part of a much larger batch of students who were granted migration during the academic year. Those students are not before the Court and they would have also progressed substantially in the course of their studies over the previous two years. It would not be appropriate to unsettle a

large batch of students, including Respondents 4 to 7 at this stage.

16. We are of the view that the application that was submitted by the Petitioner should be considered afresh since the application was erroneously rejected without considering the genuineness of the grounds of transfer. In support of the application, the Petitioner had relied upon a medical certificate of Sterling Hospital, Navi Mumbai. During the course of hearing, the learned counsel appearing for MCI drew the attention of the Court to the fact that the father of the Petitioner is a Director of Sterling Hospital or is closely associated with the hospital. Counsel appearing on behalf of the Petitioner states on instructions that the father of the Petitioner was at the relevant time a Director of the Hospital. The address of the Petitioner in the application and in the petition is that of Sterling Hospital, Navi Mumbai.

17. The guidelines which have been framed by the State Government for 2012-13 require that in the case of a student seeking a transfer from a deemed university, a medical certificate should be obtained from the nearest government medical hospital. This is a salutary requirement to ensure that the medical condition of the applicant is verified by a government hospital. In the present case, it is common ground that the Government Medical College, at Miraj is the nearest government hospital. Before we direct that the application submitted by the Petitioner should be considered afresh, we are of the view that it will be necessary for the Petitioner to submit himself to a medical examination at the Government Medical Hospital, at Miraj. The Dean of the said hospital shall, upon a copy of this order being produced before him, constitute a medical board for the examination of the Petitioner. After the Medical Board evaluates the medical condition of the Petitioner, a certificate shall be transmitted in a sealed cover to the Director of Medical Education and Research. A copy of the certificate dated 13 August 2010 produced by the Petitioner from Sterling Hospital, Navi Mumbai shall also be forwarded to the Dean of Government Medical College, Miraj, by the Petitioner in advance.

18. In the circumstances, we dispose of the petition with the following directions:

(i) The application submitted by the Petitioner for transfer from Krishna Medical College, Karad to Lokmanya Tilak Municipal Medical College, Mumbai shall be reconsidered by the First Respondent in terms of the directions contained in this judgment. The application shall be reconsidered by the First Respondent only if the Petitioner, within one week from today, submits himself to an examination by a medical board to be constituted by the Dean of the Government Medical College, Miraj. A copy of the earlier medical certificate dated 30 August 2010 of Sterling Hospital, Navi Mumbai shall be forwarded to the Dean. The Dean of the Government Medical College, Miraj shall forward a copy of the medical report to the Director of Medical Education and Research preferably within a period of two weeks from today;

(ii) The application for transfer submitted by the Petitioner shall be considered

afresh in accordance with law. Nothing contained in this judgment shall be construed as amounting to a mandatory direction to the Respondents to grant the request for transfer, and it shall be considered objectively in accordance with the Regulations of the MCI and the guidelines framed by the State Government;

(iii) The application of the Petitioner shall be considered together with all other applications that may be received by DMER for migration/transfer during the ensuing academic year;

(iv) We clarify that we have kept all the issues on the merits of the entitlement of the Petitioner to a transfer open including the consequence, if any, of the Petitioner having taken admission to the second year of the MBBS Degree course at Krishna Medical College, Karad.

Rule is made absolute in the aforesaid terms. There shall be no order as to costs.