

(1995) 03 RAJ CK 0039

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 5099 of 1993 and 772 of 1994

Anand Kumar and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 22-03-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1995 Raj 281 : (1995) 1 RLW 560 : (1995) 3 WLC 183 : (1995) 1 WLN 477

Hon'ble Judges : N.K. Jain, J

Bench : Single Bench

Advocate : Manindra Singh, for M.C.I, for the Appellant;

Final Decision : Dismissed

Judgement

N.K. Jain, J.—Since both the writ petitions raise common question of fact and law, they are being disposed of by this common order.

2. In both the writ petitions, petitioners seek directions to give admission in IInd Year Professional Course of M.B.B.S. at J.L.N. Medical College, Ajmer arid S.P. Medical College, Bikaner respectively, and no N.O.C. is required from M.C.I. for such transfer.

3. On the statement of counsel for the petitioner that petitioner passed 1st Year M.D. "Physician" from Kalinin Medical Institute, U.S.S.R. whose changed name is Tver State Medical Institute, is a recognised institute by Medical Council of India, Delhi and in identical matter S.B. Civil Writ Petition No; 5099/93 notice has been issued and stay has been granted, this court in the writ petition No. 772/94 also issued show cause notice on 17-2-1994.

4. In reply to show cause notice, respondents Nos. 1 to 3 filed their reply with Annex. R. 1 and R. 2 stating that question of international migration from one Medical College to another Medical College is to be executed by the Central Government or Medical Council of India. In this respect, Medical Council of India

issued policy guidelines whereby acceptance of two students per medical college on migration from Russia is given. It was further replied that M.C.I. is only competent body to determine equivalence of course and there is limit of 5% of students intaking in one Medical College in one year and cases are not covered under the regulation (exceeding 5% of students). It was further replied that as per provisions of admission 10 students have already been granted admission and they were sponsored by the Medical Council of India and in each Medical College except Kota two students have already been admitted and there is no room for any other students.

5. Respondent No. 4 M.C.I. has also filed reply to writ petition along with Annx. R.A. to R.D. and placed reliance on the decision of the Supreme Court rendered in *Shirish Govind Prabhudesai Vs. State of Maharashtra and others*, whereby it was held that there is no inherent right in a student to seek a migration and the same is subject to the restrictions for migration imposed by the Medical Council of India. It was also averred in the reply that those students who were sponsored by private agencies, some of them approached the Hon"ble Supreme Court by filing a writ petition under Article 32 of the Constitution for granting no objection for migration which was dismissed and the case was remanded back to M.C.I. with a direction to decide afresh and in pursuance thereof the Council considered her case but the same was rejected. It was further averred that as per policy decision of M.C.I. no objection for migration shall be given to only M.C.I. sponsored candidates is just, proper and is based on a rational criteria. It was further averred that identical matter Civil Writ Petition No. 630/93 *Deepti Chouhan v. U.O.I.*) was also dismissed by the Hon"ble Supreme Court on 28-12-1994 : (reported in AIR 1994 SCW 1946, and in pursuance thereof, they did not considered the incumbents because other persons will be affected.

6. Mr. Manindra Singh, Counsel for M.C.I. submits that in view of the reply and the decision of the Supreme Court, petitioner is not entitled for any relief as he was not admitted in Medical College of Russia through M.C.I. or through channels other than M.C.I, or Central Government, therefore, decision of this Court rendered in *Tarun Vyasv. State* (S.B.C.W. Petn. No. 5100/93) decided on 15-7-1994 is not helpful in the present case.

7. On the last occasion dated 3-2-1995, Mr. S.G. Ojha appeared for the State and submitted that this case is squarely covered by the decision of the Apex Court rendered in *Medical Council of India Vs. Silas Nelson and others*, and *State of Uttar Pradesh and others Vs. Km. Ramona Perhar*, and Mr. Sudhir Sharma sought time to go through the said judgments and matter was fixed on 22-3-1995. Today, counsel for the petitioner is not present but as the controversy has been decided by the Supreme Court, I proceed to hear the case on merits.

8. I have perused the entire material on record carefully as well as the decisions cited by the counsel for the respondents and arguments of Mr. Manindra Singh, Counsel for M.C.I. were heard.

9. The case of the petitioner set up in the writ petition is that Dagistan Medical Institute from where the petitioner has passed First Professional Examination, has been given recognition by M.C.I. but the respondents refused to give admission to the petitioner in IIInd Year Professional Course of M.B.B.S. on the strength of letter dated 2-8-1993 issued by the M.C.I. to the effect that M.C.I. is to issue N.O.C. only to those candidates who were sponsored by the M.C.I. and not to any other candidates, which is against the provisions of Medical Council Act, 1956 and Rules and Regulations of the M.C.I. 10. The Medical Council of India is a statutory authority created under the India Medical Council Act, 1956 which is an expert body in the field of medicine and u/s 33, it has been empowered to make rules. The rules are statutory in character and are binding on all the institutions in the country providing medical education. The statutory character of the Council is doubtless in view of the verdict of their Lordships given in Krishna Priya Ganguly and Others Vs. University of Lucknow and Others, : Krishna Priya Ganguly and Others Vs. University of Lucknow and Others, According to the Medical Council, no other institution or body was or is either recognised by the Medical Council of India or by the Central Government for sending the students to the erstwhile USSR. The students who were sent by the Medical Council of India were selected after a due procedure of selection which included written examination and interview. As per the Council, the private Organisations did not adopt any proper procedure for selection of students and they were sent to erstwhile USSR after charging heavy amount. 11. Admittedly, the petitioners were not sent to the erstwhile USSR by the M.C.I, and as per the letter dated 2-8-1993, the respondent State asked the petitioners to produce N.O.C. from the M.C.I. without which admission could not be granted to the petitioner but the petitioners failed to produce the required N.O.C. from the M.C.I. The petitioners have referred to Clause V of Minimum Recommendations of the Medical Council of India on Graduate Medical Education adopted by the Medical Council of India in March 1991 for graduate medical education but they cannot take advantage of the same as the petitioner's case is of international migration for which as stated above the Medical Council and Central Government are the concerned parties to sponsor candidates whereas the petitioners were sent by one Indo-Soviet Cultural and Educational Foundation and not by the M.C.I, so far as the validity of the letter dated 2-8-1993 of the M.C.I. directing that the students who were sponsored by the M.C.I. can only be granted No Objection for migration, is concerned, in view of the pronouncement of their Lordships of the Supreme Court made in Krishna Priya Ganguly and Others Vs. University of Lucknow and Others, that the "High Court under Article 226 cannot ignore the rules framed by the Admission Committee nor can it devise its own criterion for admission. It is a matter for decision of the Academic Body." I am not inclined to interfere with the same particularly when the same is based on intelligible differentia and has been upheld by the Supreme Court while considering the case of Deepti Chouhan v. U.O.I. (Civil Writ Petn. No. 630 of 1993) dated 28-2-1994 : (reported in AIR 1994 SCW 1946 , wherein it was contended that distinction between M.C.I. and non-M.C.I. sponsored candidates

is not supported by any rational criteria and is discriminatory, did not accept the contention of the incumbents and this policy decision has also been upheld by the Supreme Court. The petitioners cannot take advantage of the Single Bench decision of this Court rendered in Tarun Vyas's case (supra) as the same has been passed without considering the aforesaid Supreme Court decisions including the decision of the Apex Court given in Medical Council of India Vs. Silas Nelson and others, Under these circumstances, the petitioners cannot be granted any relief by this Court under Article 226 of the Constitution and consequently both the writ petitions are dismissed. In view of this, the petitioners cannot claim any relief on the basis of the interim orders. Reference may also be made in this regard to a decision of this Court rendered in Ashok Kumar Aseri v. University of Jodhpur (1994) 1 WLC 321. As such the ad-interim stay order dated 17-2-1994 passed in Writ Petition No. 772/94 and ad-interim stay order dated 8-10-1993 passed in Writ Petition No. 5099/93 stand discharged and application under Article 226(3) filed in Writ Petition No. 5099/93 stands disposed of, in view of the dismissal of the main petition. A copy of this order be placed in the Writ Petition No. 5099/93.