
(1991) 07 MP CK 0006
In the Madhya Pradesh High Court
Case No : M.P. No. 2535 of 1990

Divya Nelson and Others	Vs	APPELLANT
State of Madhya Pradesh and Others		RESPONDENT

Date of Decision : 12-07-1991

Acts Referred:

Indian Medical Council Act, 1956 — Section 33

Citation : (1992) 37 MPLJ 26 : (1992) MPLJ 26

Hon'ble Judges : B.C. Verma, Acting C.J.; K.L. Issrani, J

Bench : Division Bench

Advocate : Anoop Choudhary, for the Appellant; P.C. Naik, D.A.G., for the Respondent

Final Decision : Allowed

Judgement

K.L. Issrani, J.

This is a petition under Articles 226 and 227 of the Constitution of India.

According to the petitioners, they are citizens of India. They are born in India at Jabalpur. Their father Dr. S. K. Nelson was employed in the M.P. State Public Health Department as Lecturer in the Department of Surgery, Medical College, Jabalpur and their mother Dr. Shobha Nelson was also working as Lecturer in Obst. and Gyn. in Medical College, Jabalpur. On 18-5-1975, both Dr. S. K. Nelson and Dr. (Mrs.) S. Nelson were sent on deputation to Tanzania (Zanzibar) as Specialists by the Government of India with the approval of the State Government. The petitioners being minors at that time also went with their parents. According to them, the petitioners passed the G.C.E. "O" level as well as "A" level examination from the University of London conducted by the Education Council of the Govt. at Dar-Es-Salam in Tanzania. There at Tanzania, petitioner No. 1 got admission in Muhimbili Medical College in the Faculty of Medicine which is affiliated to the University of Dar-Es-Salam in 1988. Petitioner No. 2 also got admission in Muhimbili Medical College in the Faculty of Medicine,

University of Dar-Es-Sakan in 1989. Petitioner No. 1 has completed two years of medical course of Doctor of Medicine which is under-graduate medical course equivalent to M.B.B.S. course of Rani Durgawati University, Jabalpur. Petitioner No. 2 has completed one year at the same college and University. Since the contract assigned to their parents with Tanzania Government has expired, they applied for seeking their transfer from Medical College at Tanzania to Medical College, Jabalpur.

According to the petitioners, the Dean of Medical College, Jabalpur has agreed to transfer and sent a D.O. letter to the Director of Medical Education, Bhopal. The Director of Medical Education, Bhopal needed "no objection" from the Indian Medical Council, New Delhi. But the Indian Medical Council objected to the transfer by letter dated 12-1-1990 Annexure P-15 on the ground that migration is allowed from one recognised Medical College to another recognised Medical College in India. Hence, the petitioners have filed the present petition seeking a writ of mandamus for issuing directions to respondents Nos. 1 to 3 to grant admission to the petitioners to the second year of M.B.B.S. degree course at Medical College, Jabalpur.

Submission of the petitioners is that the Medical Council of India is only an Advisory Body, which has no jurisdiction to refuse admission from Tanzania University which is a recognised University. The responsibility for prescribing the written course is that of the University. The course at Tanzania University being equivalent to the course at Jabalpur University, the petitioners are entitled for admission at Jabalpur especially when the Dean, Medical College, Jabalpur has no objection.

In the return filed by respondents 1 to 3, the submission of the respondents is that the prayer of the petitioner was turned down on the ground that transfer can only be from one recognised Medical College to another recognised Medical College in India. Such power vests with the State Govt. and not with the Dean, Medical College, Jabalpur and the Jabalpur University. By letter dated 12th February, 1990, the Director of Medical Education, M.P. has called for some documents from Dr. S. K. Nelson. This information was not supplied and the matter was still under consideration. According to the respondents, Muhimbili Medical College of Dar-Es-Salam in Tanzania is not a college recognised by the the Medical Council of India. That being so, the petitioners were rightly refused transfer to Medical College, Jabalpur. The respondents have also relied on the judgment of the Supreme Court dated 6-12-1990 passed in Transfer Petition Civil (S) 230-35 of 1989, Medical Council of India v. M. S. Sunita Anant Chavan and Ors., where the Supreme Court held that prayer for transfer of a student of an unrecognised Medical College to a recognised Medical College is not permissible (Annexure-R-3). The respondents have also reproduced the Mandatory Recommendations on Graduate Medical Education of the Medical Council of India which are approved u/s 33 of the Indian Medical Council Act, 1956, which are as under : -

"V. Migration/transfer of students from one Medical College to another.

(a) A student studying in a recognised Medical College may be allowed to migrate/transfer to another recognised medical college under another/same University.

(b) The migration/transfer can be allowed by the University concerned within three months after passing the 1st professional examination, as a rule.

(c) Migration/transfer of students during the course of their training for the clinical subjects should be avoided.

(d) The number of students migrating/transferring from one medical college to another medical college during one year will be kept to the minimum so that the training of the regular students of that college is not adversely affected. The number of students migrating/transferring to/from any one medical college should not exceed the limit of 5% of its intake in any one medical college, in one year.

(e) Cases not covered under the above regulations are to be referred to the Council for consideration on individual merits.

(f) An intimation about the admission of migrated/transferred students into any medical college should be sent to the Council forthwith."

According to the respondents, the case of the petitioners does not find place within the aforesaid recommendations and, as such, the petitioners have no right to claim transfer to Medical College, Jabalpur.

Having heard the learned counsel for the petitioners and respondents, we are of the opinion that this petition deserves to be allowed, because the letter of the Medical Council of India is not a speaking order. It does not show the application of mind.

Learned counsel for the respondent-State has produced before us a copy of the rules of transfer of students and has stressed upon Rule No. 2 thereof, which reads as under : -

"2. Applications of those students who have cleared the 1st M.B.B.S. examination of the University in Anatomy and Physiology (including Biochemistry) and are studying in higher classes will be considered provided the College in which he was studying was a Medical Council of India approved College."

It seems that these rules do not include the consideration of the candidates seeking transfer from the Universities outside India so also the recommendations reproduced above do not take note of such cases. That being so, clause (e) of the above recommendations covers the case of the petitioners, which clause says that the cases not covered under the above regulations are to be referred to the Council for consideration on individual merits. No doubt the Council has considered the case of the petitioners, but has not looked into the individual

merits of the petitioners viz, their eligibility for being transferred to Medical College, Jabalpur, which is affiliated to Rani Durgawati Vishwavidyalaya, Jabalpur. From the plain reading of the letter dated 12-1-1990 issued by the Secretary, Medical Council of India to Dr. S. K. Nelson shows that since migration is allowed from one recognised Medical College to another recognised Medical College in India, migration of the petitioners from foreign Medical College is not permissible as per rules. But this consideration is not as per clause (e) of the recommendations shown above. This letter does not show that the cases of the petitioners falling in clause (e) category were considered on those basis. Moreover the order is cryptic. It does not give reasons for not recognising the cases of the petitioners. It does not show the application of the mind. In *Meenakshi Malik Vs. University of Delhi and Others*, the Apex Court had considered the cases of candidates leaving for foreign country on transfer of their parents and coming back seeking readmission in India on the basis of transfer. Crux of the case is that the candidate so seeking admission in one of the Medical Colleges in Delhi, who was compelled to leave India for a foreign country by reason of posting of the parents by the Government to such foreign country, the admission was denied to her for not fulfilling the condition that she should have received last two years of education in a school in Delhi. The condition was held to be unreasonable. The present case is also similar to the facts of the above Supreme Court case and deserves reconsideration under clause (e) of the mandatory recommendations stated above.

Though the respondents have denied that the parents of the petitioners were not sent on deputation to foreign, country by the Government, but the documents filed along with the rejoinder go to show that the parents of the petitioners were in Tanzania with the permission of the Government and they have not left the Govt. service. They are still in Govt. service in India. Even otherwise the fact remains that because the parents of the petitioners had been to Zanzibar (Tanzania), the petitioners were also required to come with their parents and have now come back. They desire to continue their studies in India.

In view of the above facts and circumstances, the petition is allowed. It is directed that the respondents should consider the cases of the petitioners within a period of two months from today for their admission in Medical College, Jabalpur in the light of clause (e) of the mandatory recommendations, which are said to be approved u/s 33 of the Indian Medical Council Act, 1956 and the above decision of the Supreme Court. However, there shall be no order as to costs.