
(1997) 01 DEL CK 0060

In the Delhi High Court

Case No : Letters Patent Appeal No. 274 of 1996

Hanspal Singh Bhinder

APPELLANT

Vs

University of Delhi

RESPONDENT

Date of Decision : 31-01-1997

Acts Referred:

Delhi University Act, 1922 — Section 29, 30, 31
Indian Medical Council Act, 1956 — Section 33

Citation : AIR 1997 Delhi 235 : (1997) 40 DRJ 769

Hon'ble Judges : M. Jagannadha Rao, C.J; Manmohan Sarin, J

Bench : Division Bench

Advocate : V.K. Makhija, Maninder Kaur and Radha Chawla, for the Appellant;

Judgement

M. Jagannadha Rao, C.J.

(1) This is an appeal by Mr. Hanspal Singh Bhinder against the judgment of the learned Single Judge in C.W.P. 1654/96 dated 15.11.1996. The 1st respondent is the University of Delhi and the 2nd respondent is the Medical Council of India, Delhi.

(2) The case relates to the plea of the appellant for permission to migrate from the Kasturba Medical College, at Manipal, Karnataka to the Maulana Azad Medical College at Delhi, or any other college at Delhi.

(3) The appellant belongs to Delhi and his parents are settled at Delhi. He had all his education up to 10 plus 2 at Delhi. Admittedly, appellant appeared for the Pre-medical Entrance Test (DPMT) at Delhi for admission to MBBS BDS courses of Delhi University and he did not pass the same and he was not placed in the merit list.

(4) Appellant had, however, appeared for the Mbbs entrance test conducted by the Manipal Academy of Higher Education (MAHE) and passed the same, secured rank No. 232 as per Communication dated 18.10.1994 and joined there. Thereafter, he passed the first professional examination with 55% marks in IInd

class. Then, appellant applied for transfer to Medical Colleges under the Delhi University. This was rejected on 9.4.1996 stating that

"MIGRATION to MBBS BDS courses in this University have been stopped from January, 1991 onwards."

THE write petition was filed in April, 1996 and was dismissed on 15.11.1996.

(5) The learned single Judge held that the contention of the appellant that the Delhi University had no jurisdiction to refuse migration was not correct. There was also no merit in the contention that notification dated 17.8.1995 amending clause 3 of Ordinance IV by the Delhi University was bad. We may here refer to the terms of the amendment dated 17.8.1995 which had stopped migration altogether in Technology and Medicine, It is to the following effect:

"CLAUSE 3 : Migration of a student to the University in a course of study to the Degree Examination under the Faculty of Technology and Faculty of Medical Sciences shall not be permitted."

RELIANCE was placed before the learned Single Judge on the recommendation of the Medical Council of India on Undergraduate Medical Education to the effect that migration from one college or University to another college or University not exceeding 5% of the intake may be permitted. The same was accepted by the Central Government on 30.11.1997 u/s 33 of the Indian Medical Council Act, 1956 (Vide Government of India, Ministry of Health and Family Welfare, Letter No. V-I1917/4-77-ME(O) dated 30.11.1977). Appellant contended before the learned Single Judge that the University of Delhi could not have amended Clause 3 of Ordinance IV contrary to the above notification and that this amendment was even otherwise, not in accordance with Sections 29 to 31 of the Delhi University Act, 1922 and that the reasons for issuing the amendment were arbitrary.

(6) The learned Single Judge rejected these contentions holding that the word "may" used in the recommendation of the Medical Council of India was not a mandatory direction to medical colleges and that the Delhi University had barred migration for Technology and Medical courses on the basis of a detailed review of the matter by a Committee of Experts called "Medical Courses Admission Committee" on 19.12.1989. An extract of the report of this Committee of the University has been given in the Judgment under appeal. He held that the amendment to Clause 3 of Ordinance IV did not also offend Sections 29, 30 and 31, much less Section 29(3) or Section 31(1) and (4). The University clarified before the learned Single Judge that the amendment was submitted to the "Court" and to the "Visitor" of the University, as required by the above sub-clause of Sections 29 and 31 and even otherwise, it would only be a procedural irregularity which has since been cured. The case in *Shirish Govind Prabhu Desai Vs. State of Maharashtra* 1993 S.C. 1736 was referred to by the learned Single Judge. There the question was whether the restrictions on migration were arbitrary or unreasonable. On the facts of that case, migration from a non

recognised college to another recognised medical college was held not permissible. It was also accepted that a medical college cannot be compelled to accept the recommendation of the Medical Council of India in relation to migration. Learned Judge also held that as appellant had not passed the Delhi University entrance test, he could not be permitted to get in through the back door from Manipal. The writ petition was dismissed.

(7) We have heard the appellant's counsel and also counsel for the University. We are in entire agreement with the learned Single Judge. We may also point out that in *Shirish Govind Prabhudesai Vs. State of Maharashtra and others*, though the matter related to a transfer sought from a non-recognised college, the Supreme Court observed that no general absolute right for migration inheres in any student and also that no medical college can be compelled to receive a student from another medical college on migration. It held (para 6): @SUBPARA = "Learned counsel were unable to show that a right of migration/transfer of student from one medical college to another inheres to a student dehors the conditions subject to which the migration/transfer is permitted. It is also not disputed that in case a recognised medical college chooses not to take any student by migration/transfer from another medical college, it cannot be compelled to do so." @BTINDENT = It also held: @SUBPARA = "It follows that unless the recognised medical college offers to admit by migration/transfer some students from another medical college, no student can claim as of right admission by migration/transfer to that medical college." @BTINDENT = In that case, the same recommendations of the Medical Council of India as accepted by Government of India on 30.11.1977 which are relied upon in this case were considered.

(8) Following the above said Judgment of the Supreme Court, we reject, appellant's contention. Even otherwise, the recommendation as approved by Government merely uses the word "may" and is not mandatory in nature. The amended clause 3 of the Ordinance Iv is, Therefore, within the jurisdiction and powers of the University and is not, for the detailed reasons given in the Report of the Committee of the Delhi University - arbitrary. So far as the procedural requirements of Sections 29 to 31 are concerned, as stated by the University before the learned Single Judge, they have been complied with.

(9) The appeal is, Therefore, dismissed.