

(2019) 02 KAR CK 0018

In the Karnataka High Court

Case No : Writ Petition No. 52998 Of 2018 (Edn-Res)

Kum. Vaishnavi I Anchateri

APPELLANT

Vs

Government Of Karnataka

RESPONDENT

Date of Decision : 18-02-2019

Acts Referred:

Citation : (2019) 02 KAR CK 0018

Hon'ble Judges : Krishna S Dixit, J

Bench : Single Bench

Advocate : M.B. Nargund, Pramodhini Kishan, N. Khetty, H.S. Suresh, N.K. Ramesh

Judgement

1. Petitioner, a medical student is before this Court invoking its jurisdiction being aggrieved by the impugned order dated 19.11.2018 issued by respondent No.3-Medical Council of India (for short 'the MCI') at Annexure-N whereby she has been denied permission to migrate from 6th respondent-college to 7th respondent-college, on the sole ground that the latter lacks Central Government Recognition.

2. After service of notice, the respondents have entered appearance through their counsel. The MCI has filed Statement of Objections resisting the grant of relief to the petitioner on the ground that both the colleges in question having recognition is a sine qua non for according permission for migration. The MCI has also filed an affidavit to the effect that in the preceding four years, no data is available wherein migration permission has been issued despite one of the two colleges lacking recognition.

3. Learned Sr. Advocate, Shri M B Nargund contends that a broad scheme as emerging from the Regulations of the Council on Graduate Medical Education (Amendment) 1997 is formulated for the benefit of the students so that, they can have their hardship mitigated by migration subject to certain conditions; Note - 2 to Regulation 6 vests discretion in the MCI Act, 1956 to permit migration

in cases which do not strictly fall within the parameters prescribed by Clauses 1 to 5 to the said Regulation; the MCI on a wrong assumption of absence of discretion has rejected request of the petitioner for migration on the sole ground that the 7th respondent - College lacks recognition. He hastens to add that the MCI on 05.02.2019 has recommended for the grant of recognition to the said college and that the formality of issuing an order of recognition by the Central Government is although pending. He banks upon two decisions of this Court one by the learned Single Judge and the other Division Bench which shall be adverted to, later.

4. Learned Sr. Panel Counsel Shri N Khetty appearing for the MCI submits that Regulation 6 has a broad scheme beneficial to the students is true, but the conditions prescribed thereunder for its invocation are mandatory in nature vide decision of the Apex Court in *Shirish Govind Prabhudesai Vs. State of Maharashtra and Others* reported in (1993) 1 SCC 211; one of the conditions is that both the colleges should have recognition but the 7th respondent - College lacking the same, the impugned order cannot be faltered.

5. I have heard the learned Sr. Counsel for the petitioner and the Sr. Panel Counsel for the respondent - MCI. Other counsel too have assisted the Court. I have perused the petition papers and the decision cited at the Bar. The short question of law that arises for consideration of this Court from the fact matrix of this case is:

"Is it open to the MCI to grant permission for migration of a medical student from one college to another when one of the colleges lacks Central Government recognition?" "

6. My answer to this question is in the affirmative for the following reasons:

(a) Regulation 6(2) reads as under:

"Migration of students from one college to another is permissible only if both the colleges are recognized by the Central Government under Section 11(2) of the IMC Act, 1956 and further subject to the condition that it shall not result in the increase in the sanctioned intake capacity for the academic year concerned in respect of the receiving medical college."

Note - 2 to Regulation 6 reads as under:

"Any request for migration not covered under the provisions of these Regulations shall be referred to the Medical Council of India for consideration on individual merits by the Director [Medical Education] of the State or the Head of Central Government Institution concerned. The decision taken by the Council on such requests shall be final."

A plain reading of Note - 2 leaves no manner of doubt as to the discretion vested in the MCI for consideration of request of the students on individual merits even when a case does not strictly comply with provisions of this Regulation. It is so

because, the Note begins with the expression "Any request for migration not covered under the provisions of these Regulations-----". The Note requires the Director of Medical Education or the Head of the Central Government Institution not to take the decision in relation to migration but refer it to the MCI which is a statutory pivotal body, constituted by the Central government under the provisions of Indian Medical Council of India Act, 1956. The said body comprises of high functionaries and therefore, the Regulation vests such a discretion in it. An argument to the contrary, cannot be countenanced except by man-handling of this Note.

(b) Learned Sr. Panel Counsel's reliance on the decision of the Apex Court in *Shirish Govind Prabhudesai Vs. State of Maharashtra and Others* (1993) 1 SCC 211, in support of his contention may not be much of assistance to the stand of the MCI that the provisions of the said Regulation are all mandatory. Mandatory they are, is not in doubt because, the text of Note-2 to Regulation 6 as amended in 1997 was there as Clause (e) to Regulation V, as it existed before amendment. But in the said case, this Clause vesting the discretion in the MCI was not invoked. Contra is not pointed out. In fact, the first sentence in Paragraph No.6 of the said judgment reads

"Learned counsel were unable to show that a right of migration/transfer of a student from one medical college to another inheres to a student de hors the conditions subject to which the migration/transfer is permitted."

(c) In more or less a similar situation, a learned Single Judge of this Court vide judgment dated 19.12.2013 in W.P. No. 49609/2013 (EDN-RES) has granted relief to a medical student who was denied permission to migrate. Paragraph No.7 of the said judgment reads as under:

"7. By a letter dated 28/10/2013 to the MCI, the Directorate of Medical Education had sought clarification from the MCI as to whether migration or transfer of students from institutions, yet to be recognized by MCI, could be considered for migration or transfer. If that was the only reason for the Directorate of Medical Education to have, any misgivings of whether or not candidates such as the petitioner's daughter could not be accommodated, that having been taken away by virtue of the recognition having been extended to her present institution, there is no impediment for the Directorate of Medical Education to accommodate the petitioner's daughter.

In the present case, there is no denial of the fact that the MCI has recommended for grant of permission in favour of the 7th respondent - College on 05.02.2019. A formal order of recognition is to be issued by the Central Government, which normally accepts such recommendations of the high level statutory bodies like the MCI. This development also needs to be kept in view by the MCI while exercising discretion vested in it vide Note-2.

(d) A Division Bench of this Court in the case of *Dental Council of India vs. Ms. Trishanthi M N and another* in W.A. No.1435/2018 (EDN-RES) has rendered a

judgment dated 09.07.2018 granting relief to a dental student liberally construing almost pari materia provisions of BDS Regulations of 2007, of course, in a bit different fact matrix. At page 15 the Bench observed " The appellant (Dental Council of India) undoubtedly, carries the right not to entertain any such application but inheres in such a right that the same would be exercised in a reasonable manner; and, it is not laid down as a rule of thumb that every such application which does not fall strictly under the enumerated grounds as to meet with denial alone, irrespective of the nature of ground for seeking migration.----"

(f) The only ground on which migration permission is denied is that the 7th respondent - College lacks recognition. No other reason is stated in the impugned order. The Apex Court in the case of Mohinder Singh Gill vs. Chief Election Commissioner, AIR 1978 SC 851 has ruled that the validity of an order made by a statutory authority has to be adjudged only on the grounds stated therein and that the grounds cannot be supplemented de hors. Now, the only ground having been found fault with, this Court itself would have directed grant of permission. However, since it is a matter that falls within the domain of the MCI, the matter requires remittance for consideration afresh hoping that the poor student would be granted redressal for her grievance.

7. In the above circumstances, this writ petition succeeds; a Writ of Certiorari issues quashing the impugned order dated 19.11.2018 issued by the respondent-MCI at Annexure-N; the matter is remitted to the MCI for consideration afresh, keeping in view the above observations, within a period of three weeks.

It is open to the petitioner to furnish to the MCI any precedent/instance wherein, the MCI has accorded permission for migration even when one of the colleges lacked recognition. However, this is only to strengthen the case of the petitioner, if she so chooses.

No costs.