
(1992) 07 AHC CK 0070

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 8763 of 1992

Kumari Ishila Misra

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 10-07-1992

Acts Referred:

Constitution of India, 1950 — Article 162, 254
Indian Medical Council Act, 1956 — Section 33

Citation : (1992) 3 AWC 1793

Hon'ble Judges : S.C. Verma, J

Bench : Single Bench

Final Decision : Disposed Off

Judgement

S.C. Verma, J.—The Petitioner has prayed for necessary direction to the Respondents for admission in the Second professional M.B.B.S. Course at M.L.N. Medical College, Allahabad. Initially the Respondents were directed to file counter-affidavit but as no counter affidavit was filed directions were issued to the Principal. M.L.N. Medical College, Allahabad to provisionally admit the Petitioner to the Second Professional M.B.B.S. Course provided she had passed the First Professional M.B.B.S. course from a Medical College recognised by the Indian Medical Council and there was availability of Seats in the vacancy reserved for 5% quota. By order dated 20-5-1992, Respondents were again directed to file reply. The Respondents neither filed any counter affidavit nor gave admission to the Petitioner in accordance with the order dated 7-4-1992 upto this date.

2. The Medical Council, in accordance with the provisions of Section 33 of the Indian Medical Council Act, 1956, with the previous sanction of the Central Government made Regulations in 1981 for controlling Medical Education and the standards of qualifications of the students. The said Regulation as recommended by the Medical Council of India laid down criteria for Admission to Medical Courses, Selection of Students, Duration of Course Medical curriculum, Examination and internship etc. as also for migration/transfer from one Medical

College to another. It is quoted below:

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 Ist 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 per cent 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.

3. All the medical colleges all over the country recognised by the Medics] Council of India have been complying with the recommendations/regulations of the Medical Council

4. The State Government issued a Government Order dated 25th September, 1991 wherein it provided that no transfer shall be made from a Medical College outside the State there by prohibiting transfer of students from recognised Medical College outside the State of U.P. Although the regulations fared by the Medical Council provides for transfer from a recognised Medical College to another recognized Medical College all over the country irrespective of any state restrictions ,the impugned Government Order has completely prohibited transfer from a recognised Medical College outside the State.

5. It appears the State Government, in exercise of its executive powers under Article 162 of the Constitution, made the aforesaid order relating to matters referred in Entry 25 of the Concurrent List of the VII Schedule to the Constitution. Article 162 specifically provides that the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws. Entry 25 of the Concurrent List provides as follows:

Education, including technical education, medical education and Universities, subject to the provisions of entries 62, 65 and 66 of List I; vocational and technical training of labour.

6. The impugned order made by the State Government in pursuant to its executive powers prohibiting the transfer of students from the Medical College to another is beyond the competence of the State Government to make such order as firstly the powers exercised are subject to the provisions of Entry 66 of List 1 and secondly it encroaches upon and infringes the powers of the Central Government as well as Parliament provided in Entry 66 of List I which is in the following terms:

Coordination and determination of standards in institutions for higher education or research and scientific and technical institutions.

7. The Indian Medical Council in accordance with the provisions of Section 33 of the Indian Medical Council Act had made certain recommendations which have been embodied in the Regulation made by the Central Government laying down the criteria or standards for controlling medical education and the standards of qualifications of the students in the Medical Colleges all over the country. The impugned order is in direct conflict with the Regulations made under the Indian Medical Council Act which provides for migration/transfer of students from one recognised Medical College to another recognised Medical College after the students passes the First Professional Examination on 5% of the seats of the total number of seats in one year. The impugned order is repugnant and encroaches upon the standard prescribed by the said Regulations which have been framed under an Act of Parliament and thus infringes upon the power of the Parliament with regard to laws made under Entry 66 of List I of the Seventh Schedule of the Constitution and violates Article 254 of the Constitution.

8. For the aforesaid reasons, I am prima facie of the view that the Petitioner is entitled to seek transfer on 5 per cent seats available for this purpose.

9. I, therefore, issue directions to Respondents, 1, 2 and 5 to provisionally admit the Petitioner in Second Professional M.B.B.S. course. The said course has already started in the 1st week of July and it is necessary that the studies of the students may not suffer and their career may not be effected. Directions are issued to Respondents 1, 2 and 5 to admit the Petitioner in accordance with the order dated 7-4-1992 within 3 days of service of certified copy of this order failing which they would be required for action for non-compliance of the order of this Court.