
(2001) 02 KAR CK 0063
In the Karnataka High Court
Case No : Writ Petition No. 36021 of 2000

Madhu, J.

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 16-02-2001

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2002) 1 KarLJ 346

Hon'ble Judges : Tirath Singh Thakur, J

Bench : Single Bench

Advocate : H.S. Jois, for Vagdevi Associates, for the Appellant; N.K. Ramesh, A.G.A., D.S. Hosmath and S.A. Nazeer, for the Respondent

Final Decision : Allowed

Judgement

1. Transfer from one institution to another is not encouraged by either the M.C.I. or the affiliating University. The rules provide for transfer only in case of hardship and in exceptional circumstances. What distinguishes the present case from the rest is that a request even for mutual transfer has not evoked any response from the respondents. In these proceedings they oppose the prayer for transfer on the ground that the request for the same was made late no matter only by ten days. Was that really so is the only question which falls for consideration in the following circumstances.

2. The petitioner and respondent 5 were selected on the basis of a competitive examination for admission to undergo a Diploma Course in gynecology and obstetrics. While the petitioner was allotted to M.R. Medical College at Gulbarga, respondent 4, was allotted to Mysore Medical College at Mysore. Pursuant to the admission orders issued by the Directorate of Medical College, the petitioner joined a college at Gulbarga on 25th of August, 2000, while respondent 5 joined the college at Mysore a day earlier on 24th August, 2000. The course, it is not disputed, started on 1st of October, 2000, shortly, whereafter the petitioner and the 5th respondent appear to have made a joint request to the Directorate of

Medical Education, seeking a mutual transfer from the colleges mentioned above. This implied that the petitioner would be transferred to the Mysore Medical College, Mysore, whereas the 5th respondent would take her place in the M.R. Medical College at Gulbarga. Having evoked no response from the respondent-State or the . Directorate of Medical College, the petitioner has filed the present writ petition in which she was challenged the validity of notification dated 31st of August, 2000, issued by the State Government as arbitrary and violative of Article 14 of the Constitution, By the said notification the Government have prescribed 30th September, 2000 as the last date for making requests for mutual transfer by candidates, interested in the same. A mandamus directing the respondent-State Government to prescribe another date for such transfers has also been prayed for.

3. Appearing for the petitioner Mr. Subramanya Jois, learned Senior Counsel, argued that a transfer on mutual basis was not forbidden by the rules framed by the State Government and that unless there were good reasons for declining a joint request, the same ought to be allowed liberally. The request in the instant case was according to the learned Counsel made within a reasonable time from the date of the start of the training course which could not have been ignored by the respondents as they appear to have done. Transfer was, according to Mr. Jois, necessary to avoid hardship and inconvenience in the instant case without affecting the academic standards or creating any other difficulty for the institutions concerned.

4. On behalf of the respondents, it was contended by M/s. Ramesh and Nazeer, that no transfer was permissible beyond the last date fixed by the University. It was argued that the request having been made beyond the 30th of September, 2000 which was the extended date for admission of candidates there was no room for consideration thereof. Mr. Hosmath, Counsel for the respondent-MCI, placed reliance upon Regulation 10(3) according to which migration/transfer of students undergoing postgraduate course was not permissible.

5. Admission to Postgraduate Degree and Diploma Courses is regulated in this State by what are known as "Karnataka Medical Colleges and Dental Colleges (Selection for Admission to Postgraduate) Rules, 1987. These rules have been amended by a notification dated 12th of September, 1989. Rule 7 as amended provides that selection for admission to the course shall be on the basis of the merit determined in the merit list prepared under the test rules and prescribes the procedure for publication and preparation of such lists. Rule 9 with which we are concerned in the instant case, deals with admission of selected candidates and inter alia provides that candidates shall get themselves admitted to the colleges concerned within the dates notified by the Selection Committee, failing which, their selection shall stand cancelled. Sub-rule (3) of Rule 9, added by the amending notification referred to above, is for our purposes relevant and may therefore be extracted at this stage.-

"(3) No request for change of course or college shall be entertained by the

Selection Committee after the publication of the merit lists and modified lists prepared under Rule 7:

Provided that the Chairman of Selection Committee, in exceptional cases on the ground of hardship, may before the last date specified by the Universities, allow change of college on mutual basis on a joint representation made by the concerned candidates:

Provided further that the Government may before the date specified by the Universities in exceptional cases on the ground of hardship allow change of college on mutual basis on a joint representation made by inservice candidates or a inservice candidate".

6. A plain reading of the above would show that in the ordinary course no request for change of course or college can be entertained by the Selection Committee after publication of the merit list and the modified list prepared under Rule 7, Provisos 1 and 2. Sub-rule (3) however clearly reserve in favour of the Chairman of the Selection Committee and the Government the power to allow the change of college on mutual basis and "on a joint representation" made by the candidates concerned. What is important is that such a request must be made before the last date specified by the Universities and should be supported by grounds showing that denial of such a transfer may cause hardship.

7. The request in the instant case has not been opposed on the ground that the applicants had not made out a case of hardship. It is opposed on the ground that the request was made beyond the last date specified by the University. The critical expression that falls for interpretation therefore is "the last date specified by the Universities" appearing in the provisos to Rule 9(3) supra. According to the respondent-State and the University the last date referred to in the provisos has reference to the "last date for admission" which as per notification dated 13th of June, 2000, issued by the University was 15th of September, 2000, subsequently extended to 30th September, 2000 by another notification dated 12th of September, 2000. Since the request for transfer had been made after 30th September, 2000, it was according to the Government Advocate, beyond the period prescribed under the rules. There is in my opinion no merit in that contention. The expression "before the last date specified by the Universities" cannot be read in isolation. The context in which that expression appears in the provisos to Rule 9(3) of the Rules mentioned above, has to be constantly kept in view while attempting any interpretation. Viewed thus, it is evident that the expression "last date" specified by the University has reference to the date which the University may prescribe for change of college on mutual basis. Such a date cannot be confused with the last date for admission which the University may have fixed. Indeed, the scheme of the rules, does not suggest that the last date for admissions to the institutions must necessarily coincide with the last date for making a request for change of the college. On the contrary, a request for change of college can be made only after all admission to the colleges are completed. It is only after the process of admission is complete, that the

students can explore the possibility of a mutual transfer from one college to the other. The very fact that in certain cases a request may be made even before the last date for admission would not also mean that request in all cases have to be made before the completion of admission process. What has to be kept in mind is that the rule prescribes a time frame within which the request can be made. Time so prescribed can however start running only if the admission process is first completed. The alternative interpretation suggested by the respondents would make the provision for transfer of candidates from one college to the other unworkable and nugatory. It may make it impossible for two candidates to seek mutual transfer notwithstanding acute hardship and inconvenience, if they are unable to get in touch with each other and make a joint request for transfer before the expiry of the last date for admission. The present is indeed one such case where the working of the rule could be jeopardised by reason of the distance that separated the two institutions in which the petitioner and respondent 5 have taken admission. Mysore and Gulbarga, where the two colleges are located are nearly 700 kms. apart. To say that the petitioner and respondent 5 ought to have known about each others admission in the two institutions as also the fact that both of them were agreeable to have a mutual transfer is manifestly unreasonable. I say so notwithstanding the submission of learned Counsel for the respondents that the candidates had been counseled on the same day, and could therefore have known about the colleges to which they were allotted as also their willingness to agree for a mutual transfer. There is nothing on record to support that assertion but even assuming that the candidates had an opportunity to see each other, the fact that they were both agreeable for a transfer may well have remained in the realm of speculation only till such time they really discovered that each was willing to join a request for mutual transfer. Suffice it to say, that the only meaning which the expression "last date specified by the University" can be given is the last date specified by the University for the purpose of seeking a mutual transfer. As to how the State Government could possibly prescribe a last date is not clear. Mr. Ramesh, did not therefore, make any attempt to support the impugned notification whereby the 30th of September, 2000 was prescribed by the Government as the last date for making of a joint request. The power to prescribe the last date according to the rule clearly rests with the University and not the State Government. The impugned notification therefore shall have to be ignored while considering whether the request for mutual transfer was made within the time prescribed. Since the University had not prescribed a last date the State Government or the Directorate of Medical Education could have examined the request on its merits and taken a decision. The fact that they did not do so, does not necessarily call for a remand to them. As seen earlier, the course has started on 1st of October, 2000, any further loss of time in the matter of taking a decision is bound to affect the petitioner as also the 5th respondent adversely. That apart, the fact that the proposed transfer is mutual, and induced by hardship of two candidates is not in dispute. There is therefore no reason why transfer as prayed for cannot be directed straightaway instead of the matter being sent back to the

Government for consideration.

8. Before parting I may as well deal with the contention urged by Mr. Hosmath, that the MCI Rules do not permit transfer/migration of the students. This indeed is so in view of the rule referred to by Mr. Hosmath. We are however dealing with a situation where the rules regulating admission of the students themselves permit a transfer from the college on the basis of a joint request. If the University to which the institutions are affiliated specifies a date for the making of such a request, and the rules of admission make provision for allowing such a request, the grant of the same, will not in any manner offend the regulations framed by the MCI. A distinction has to be made between transfers in the middle of the course and those that are made according to the admission rules within the specified period. The present is a case which falls in the latter category. In the instant case, the last date for admission prescribed by the University was 30th of September, 2000. No date for making a joint request for change of college was however prescribed. Even if the University had permitted only 15 days time for making of an application for mutual transfer, the same would expire only on the 15th of October, 2000. The joint request in the instant case was admittedly made within that period. The grant of any such request could not therefore possibly run.

9. In the result, this writ petition succeeds and is hereby allowed. The Director of Medical Education and the third respondent-University shall permit the mutual transfer of the petitioner and the 5th respondent as per the request made by them at Annexure-E to the writ petition. Consequential orders shall be issued by the respondents, within two weeks from today. It shall however be open to the University to direct that the transferees shall start their respective courses afresh in the colleges to which they are now transferred so that they shall be eligible for appearing in the examination only after they have undergone the full length of course prescribed in the transferee institutions. The respondent-University would do well to prescribe a last date for making a joint request for change of college to avoid any confusion in regard to such requests in future.

10. The parties are left to bear their own costs.