
(1990) 03 BOM CK 0093
In the Bombay High Court
Case No : Writ Petition No. 275 of 1990

Miss Nidhi Kumar

APPELLANT

Vs

The State of Maharashtra and others

RESPONDENT

Date of Decision : 30-03-1990

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : AIR 1990 Bom 390 : (1990) 3 BomCR 373

Hon'ble Judges : Sujata Manohar, J

Bench : Single Bench

Advocate : R.S. Deshpande, for the Appellant; S.M. Shah, S.C. Dharmadhikari, R.K. Deshpande, B.P. Bharucha, D.M. Trivedi, S.J. Vazifdar, Aspi Chinoy, Mr. Sarni and Ashok Mody, instructed by Chitnis Vaithy and Co., for the Respondent

Judgement

1. Petitioner Nidhi Kumar joined the Mahatma Gandhi Institute of Medical Sciences, Sevagram, Wardha in the State of Maharashtra after completing he 12th Standard Examination. The Mahatma Gandhi Institute of Medical Sciences (hereinafter referred to as "the Medical College" at Wardha) conducts a competitive examination for selecting students for admission to the First M.B.B.S. Course. The Petitioner appeared for the competitive examination and was selected.

2. She passed her first M.R.B.S. Examination from "the Medical College at Wardha sometime in December 1989. Her marks list bears the date 26th December, 1989. Thereafter she applied to the Dean of the Medical College. Wardha for "No Objection Certificate" for her transfer to Bombay in a Medical College at Bombay for the 2nd M. B.B.S. Course. Before the Medical College could take a decision on her application she has filed this petition on 30th January, 1990. This appears to be on account of the fact that the last date for submitting N.O.C. to the Medical Colleges run by the Municipal Corporation of Greater Bombay was 31st January, 1990, in the petition she has prayed that the said Institute which is run by Respondent No. 2 Society be directed to issue "No

Objection Certificate" to her. She has also challenged the validity of a rule of the said Institute that no application for migration to other Medical Colleges will be entertained from students admitted to that Institute.

3. The prospectus for M.B.B.S. 1988-1989 issued by Mahatma Gandhi Institute of Medical Sciences, Sevagram (Wardha) (Respondent No. 3) sets out that it is an institute which trains the students in a rural community setting. It is a rural medical college which serves the villagers. The institute is located at Sevagram where Mahatma Gandhi and Kasturba lived during the preindependence struggle. The Institute prescribes a Code of conduct for students which, inter alia, requires students to take vegetarian meals, wear Khadi and lead a simple life. The students are required to execute an undertaking to abide by the Code of conduct prescribed by the Institute. A student is also required to give a bond of Rs. 25,000 to serve in a rural area, if such a job is offered by the Government of India, Government of Maharashtra or Kasturba Health Society, for a minimum period of 3 years, students are also required to give a bond of Rs. 5000 to be paid in the event of withdrawing from the Institute after admission.

4. The rule relating to migration is as follows:

"No application for migration to other Medical College will be entertained from the students admitted to this Institute".

The 2nd and the 3rd Respondents in their affidavits filed in this petition have explained that they are against such migration because the capacity of the Institute to provide training and education has to be utilised to a maximum extent. They have pointed out that they conduct a competitive examination to select student for admission to the M.B.B.S. Course with an idea that the students who are admitted will complete the course in the same institute. They have tried to ensure that a seat does not fall vacant in the middle of the course. They have also set out that this is necessary so that other candidates who would have been otherwise eligible and entitled to admission on the basis of their merit, are not deprived of their legitimate claim only because a particular candidate occupies the seat only for a year with a view to migrate to another Institute. The petitioner was aware of this rule which is prominently set out in the prospectus when she took admission for the First M.B.B.S. Course of the 3rd Respondent Institute. She has challenged this rule as violative of Art. 14 of the Constitution of India.

5. In my view, there is no substance in this challenge. In the case of *S. Azeez Basha and Another Vs. Union of India (UOI)*, the Supreme Court was required to consider the constitutional validity of Aligarh Muslim University (Amendment) Act, 1951. One of the challenges to this Act was that it was different from other University Acts and hence Art. 14 was violated. The Supreme Court observed : "We do not think that Art. 14 requires that the provisions in every University Act must always be the same. Each University has problems of its own..... There can be no question of discrimination on the ground that some other University Acts

provide for some different set up. Each University must be taken to be a class by itself and the legislature has a right to make such provision for its constitution as it thinks fit subject always to the provisions of the Constitution...." The same reasoning would apply to the rules for admission and migration which are framed by an Institute like Respondent No. 3 which is, in many ways, a special Institute catering to the needs of the rural community. It is entitled to frame a rule prohibiting migration in the middle of the course to another medical college: as it has a reasonable nexus with the objective sought to be achieved.

6. In my view, Art, 14 is not violated in any manner by having such a rule prohibiting migration. Other Institutes may permit such migration. But that does not compel the 3rd Respondent-Institute also to permit migration. There is no violation of Art. 14 here.

7. It is submitted by the petitioner that the rule against migration is contrary to the guidelines of the Medical Council of India. It is, therefore, bad in law. The guidelines issued by the Medical Council of India allow such migration. The guidelines of the Medical Council of India state that:

- 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 in-take subject to maximum of 5 students in any one medical college in one year.
- e) Cases not covered under the above regulations, may 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.

These are, however, only guidelines issued by the Medical Council of India and they do not have any statutory force. In the case of Diploma in Medical Practice Association Vs. The Medical Council of India, , a Division Bench of this Court considered the status of a resolution passed by the Medical Council of India. It has observed in the course of its judgment that the resolutions passed from time to time by the Medical Council of India are merely advisory in character and they cannot replace the force or authority of regulations which the Council is empowered to frame if it wants to lay down standard etc under the Medical

Council of India Act, 1956. The present guidelines are not such statutory regulations. They are merely guidelines. Therefore they are only recommendatory in nature. Respondents Nos. 2 and 3 have set out valid reasons for not following these guidelines in the case of students admitted to the 3rd Respondent-Institute. These guidelines, therefore, cannot override the rules framed by Respondents Nos. 2 and 3. The petitioner took admission to the 3rd Respondent-Institute on the basis of these rules. The same are, therefore, binding on her. (See also in this connection, Government of Andhra Pradesh and Another Vs. Dr. R. Murali Babu Rao and Another, where also the Supreme Court has reiterated that the Indian Medical Council is only a recommendatory body.)

8. It is next submitted by the petitioner that in some cases the 3rd Respondent-Institute has in fact granted N.O.C. to some of its students who desired to migrate to another medical college. Respondent Nos. 2 and 3 accept this position. They have in fact stated that ordinarily they do not depart from the rule prohibiting migration. But in a suitable case, if a student makes out a genuine good reason why he should be permitted to migrate to another medical college, Respondents Nos. 2 and 3, after being satisfied about the genuineness of the case, grant such a certificate. Respondents Nos. 2 and 3, however, submit that in the present case they have not been satisfied that the case of the petitioner is such as to warrant granting her a N.O.C.

9. The petitioner applied on 1-1-1990 to the Dean of Respondent No. 3 for a migration certificate. In her application, which is at Ex. D, she has stated that she would like to apply for transfer to a Medical College at Bombay because since her arrival at Wardha she has had frequent attacks of allergic bronchial asthma. She has stated that the doctors were of the view that this may be due to an allergy from Congress Grass prevalent in Wardha. The second ground which she set out is that her mother was suffering from very bad health for the last few years. Her disease was diagnosed as interstitial Pulmonary Granulomatous, a disease of undertermined origin and she has to take oxygen from cylinders daily. Hence her presence was required at home. The medical certificate from one Dr. Panjwani dated 31-12-1989 which accompanied this application however, stated that the petitioner had an allergy to major common allergens and she had been advised immunotherapy. Respondents Nos. 2 and 3 have pointed out in their affidavit that during the course of her stay at Wardha, while she was completing her First M.B.B.S. Course, the petitioner had merely taken occasional treatment for Bronchial asthma as an out-door patient. She had not made any complaint to any of the college authorities or her Hostel Warden about her asthma. Nor was there any material to show that these attacks were on account of Congress Grass. Respondent Nos. 2 and 3 have in fact expressed some doubt about the existence of such Congress Grass in the vicinity of the college or hostel where the petitioner is residing.

10. Respondent Nos. 2 and 3 have also pointed out that the petitioner did not produce any medical certificate pertaining to her mother's illness along with her

application. From her application it seems that it was submitted by her to the Dean on 12-1-1990. Respondents Nos. 2 and 3 have further stated in their affidavit that if the petitioner submits herself to examination by the Medical Board and it is found that the petitioner would require transfer to a medical college in Bombay on medical grounds, she would be granted such a certificate. Before however this could be intimated to the petitioner, the petitioner has filed the present petition. Even thereafter the petitioner has not submitted herself to examination by the Medical Board. It is suggested by the learned advocate for the petitioner that such medical examination by the Medical Board was not asked for by Respondents Nos. 2 and 3 in the case of other students and hence even this offer is discriminatory.

11. This submission also must be rejected. The students who, according to the petitioner were granted migration certificates are referred to in her application. Their cases have been dealt with in the affidavit filed by Respondents Nos. 2 and 3. The Respondents have pointed out that these students were either suffering from psychic disorders or they were required to be in Bombay on account of major illness of their parents. The details of these cases are set out in this affidavit. In one case the father of the student had suffered a major heart attack; in another case the father of the student was in the terminal stages of cancer at the Tata Memorial Hospital in Bombay.

12. Looking to the circumstances of the present case, the grounds on which the Respondents Nos. 2 and 3 have not granted migration certificate to the petitioner appears to be genuine. In any case, I do not see any mala fides on the part of Respondents Nos. 2 and 3 in not granting a migration certificate. The petitioner has no legal right to a transfer from one medical college to another. Learned advocate for the petitioner sought to rely upon a decision of the Delhi High Court in the case of *Inder Parkash Vs. Deputy Commissioner and Others*, where the Court, inter alia, observed that a right to education as a prerequisite to carrying on a profession partakes of the nature of a fundamental right. I do not see how this decision can help the petitioner in any manner. She is taking medical education in the 3rd respondent Institute. She does not have any fundamental right or even a legal right to obtain a transfer from one medical college to another. In the circumstances of the present case there is no discrimination against her either.

13. It is pointed out by Mr. Bharucha, learned Advocate, who appears for the 4th respondent, that the Bombay Municipal Corporation had issued a Press Note on 13-12-1989 setting out that 20 admissions to the 2nd M.B.B.S. Course for transferred students were proposed to be given in the Municipal Medical Colleges in Bombay for the November 1989 term of the academic year 1989-90. In the press note the last date of submitting forms duly completed was 15th January 1990. It was further decided to permit applicants to produce the following certificates up to the date of interview i.e. 31-1-1990:

1) Certificate of passing the 1st M.B.B.S. with attempt certificate.

2) Statement of marks and date of declaration of the result of first M.B.B.S.

3) No objection certificate within permitted quota of 5% of intake prescribed by the Medical Council of India from the college from where the student has passed his 1st M.B.B.S. Examination.

The petitioner had applied for a transfer to a Municipal Medical College pursuant to this Press Note. She, however, did not submit her Marks List, attempt certificate and N.O.C. from the 3rd respondent college before 31-1-1990. As a result, her application has not been considered by the Municipal Medical Colleges. Mr. Bharucha pointed out that by now all 20 seats which were kept for students transferred to Municipal Medical Colleges from other colleges have been filled. 19 seats had been filled originally and one seat had been kept unfilled on account of certain pending litigation in Court. Even the 20th seat has been filled up pursuant to the order dated 20-2-1990 in Writ Petition No. 368 of 1990. This seat has been given to respondent No. 16. Respondent No. 16 submits that he has given up his seat in the previous medical college on his being admitted to a Municipal Medical College in Bombay. It is pointed out by Mr. Bharucha as well as by respondents Nos. 14 and 16 that the petitioner has not complied with the requirements of the Press Note. She has also not kept the deadline fixed under it. Hence her application cannot now be considered because many other candidates who have been granted admission pursuant to the Press Note have altered their position as a result of the admission granted to them. There is considerable force in this argument also.

14. In these circumstances, I do not see any reason to interfere under Article 226 of the Constitution.

15. Petition is, therefore, dismissed.

16. There will be no order as to costs.

17. Petition dismissed.