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**(2013) 09 RAJ CK 0229**  
**In the Rajasthan High Court**  
**Case No : Civil Writ Petition No. 5319/2013**

Nadeem Liyakat

APPELLANT

Vs

State of Rajasthan

RESPONDENT

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**Date of Decision :** 09-09-2013

**Acts Referred:**

**Citation :** (2014) 2 WLN 48

**Hon'ble Judges :** Govind Mathur, J

**Bench :** Single Bench

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## Judgement

Govind Mathur, J.—After qualifying Pre-Medical Test, the petitioner was admitted to the course of M.B.B.S. and was allotted to Jawahar Lal Nehru Medical College, Ajmer. After qualifying M.B.B.S. First Year Examination from the College aforesaid, the petitioner submitted an application for his migration from Jawahar Lal Nehru Medical College, Ajmer to Sardar Patel Medical College, Bikaner. A no Objection Certificate in this regard was issued on 18.09.2012 by the Principal, Jawahar Lal Nehru Medical College, Ajmer. A no Objection Certificate was also issued by the Principal, Sardar Patel Medical College, Bikaner with assertion that "No objection if Mr. Nadeem Liyakat S/o Dr. Liyakat Ali Gauri who has passed his First M.B.B.S. Examination held in July, 2012 from J.L.N. Medical College, Ajmer is transferred to this College provided State Government, Rajasthan University of Health Sciences, Jaipur and Principal, J.L.N. Medical College, Ajmer have no objection under the provisions of Medical Council of India, New Delhi regulations " The Rajasthan University of Health Sciences also certified that it has no objection if the petitioner is transferred to Sardar Patel Medical College, Bikaner from Jawahar Lal Nehru Medical College, Ajmer. In spite of no Objection Certificates availed from Jawahar Lal Nehru Medical College, Ajmer, Sardar Patel Medical College, Bikaner and the Rajasthan University of Health Sciences, the petitioner has not been migrated as desired. To have a direction for such transfer, this petition for writ is preferred. It is submitted that the petitioner has sought transfer from one Medical College to another Medical College as he is suffering from a serious ailment as diagnosed and certified by a Medical Board consisting

of 3 senior faculty members of Medical College, Ajmer including the Superintendent, Associated Group of Hospitals, Ajmer, A certificate issued by the Medical Board is placed on record as Annex. 9 and according to that the petitioner is suffering from Seizure disorder and he is on multiple antiepileptic drugs. He is yet having episodes of absent seizure and he requires long treatment and regular follow up. It is also certified that he requires supervision by his close relatives According to learned counsel, there is no just and valid reason for not effecting transfer as desired in view of the fact that the petitioner is suffering from serious ailment and necessary no Objection Certificates have already been issued by the Competent Authorities.

2. Per contra, as per learned counsel for the respondents, transfer from one Medical College to another Medical College can be made only in accordance with the Regulations on Graduate Medical Education, 1997 framed by the Medical Council of India in exercise of the powers conferred by Section 35 of the Indian Medical Council Act, 1956. As per Clause 6(1) of the Regulations aforesaid, migration, of students from one Medical College to another Medical College may be granted on any genuine, ground, subject to the availability of vacancy in the College where migration is sought and fulfilling the other requirements laid down in the regulations Migration would be restricted to 5% of the sanctioned intake of the College during the year. No migration will be permitted on any ground from one Medical College to another Medical College located within the same city As per Clause 6 (4) of the aforesaid Regulations, for the purpose of migration, an applicant candidate is required to have no Objection Certificate from the College where he is presently studying, the University to which the College is affiliated and also from the College to which the migration is sought. In the instant case, though no Objection Certificates from both the Colleges and the University are available, but no vacancy is available at Sardar Patel Medical College, Bikaner, therefore, transfer of the petitioner to that College is not permissible.

3. On asking, it is submitted by Mr. Yashpal Khileree, learned counsel for the respondents, that in the batch of the petitioner, 150 students were admitted to M.B.B.S. First Year at Sardar Patel Medical College, Bikaner and out of those 150 students, 6 students failed to qualify the first Year Examination, as such, presently 144 students are undergoing Second Year M.B.B.S. course at the College aforesaid. According to learned counsel, the 6 students who failed to qualify the First Year Examination of M.B.B.S. course are also required to be treated as part of the same batch and by including them the strength remains the same, as such, no vacancy is available. It is further pointed out that whether these vacancies are to be treated vacant or not is within the jurisdiction of Medical Council of India.

4. Heard learned counsel for the parties.

5. The migration from one Medical College to another Medical College situated in the same State or otherwise is governed by the Regulations on Graduate Medical Education, 1997. As per Clause 6 (1) of the Regulations, migration of students

from one Medical College to another Medical College may be granted on any genuine ground, subject to availability of vacancy at the College where migration is sought and fulfilling the other requirements laid down in the regulations.

6. So far as the present case is concerned, genuineness to have transfer from one Medical College to another Medical College is not in dispute. Looking to the ailment of the petitioner, Jawahar Lal Nehru Medical College, Ajmer and Sardar Patel Medical College, Bikaner and the Rajasthan University of Health Sciences also accorded No Objection Certificates. The only impediment in transfer of the petitioner from one Medical College to another Medical College is that as per the respondents, no vacancy is presently available.

7. As already stated in preceding paras, the strength for First Year M.B.B.S. course at Sardar Patel Medical College, Bikaner at the relevant time was of 150 students and the complete strength was satisfied. However, out of 150 students, 6 students failed to qualify the M.B.B.S. First Year Examination and as such, presently 144 students are undertaking M.B.B.S. Second Year studies. Whether these 6 seats are required to be treated vacant or not, as per learned counsel for the respondents, is within the domain of the Medical Council of India. However, he failed to point out any provision for putting such authority with the Medical Council of India. Be that as it may, it is not in dispute that the petitioner is suffering from a serious ailment and he is having a genuine cause for his transfer from one Medical College to another Medical College. The transferring as well as the borrowing Medical College is having no objection in such transfer and the University concerned too has granted no Objection Certificate. Admittedly, 6 students failed to qualify M.B.B.S. First Year Examination and as such, presently only 144 students are undertaking Second Year M.B.B.S. studies at Sardar Patel Medical College, Bikaner. The admission to the petitioner at Sardar Patel Medical College, Bikaner in no manner shall cause any Administrative or infrastructural injury to that College, as the College has shown its willingness to accept the transferee student by issuing no Objection Certificate. In these circumstances and factual background, the equity demands for transfer of the petitioner from Jawahar Lal Nehru Medical College, Ajmer to Sardar Patel Medical College, Bikaner. As such, this petition for writ deserves acceptance. Accordingly, the same is allowed. The respondents are directed to transfer the petitioner from Second Year M.B.B.S. course at Jawahar Lal Nehru Medical College, Ajmer to Second Year M.B.B.S. course at Sardar Patel Medical College, Bikaner. Necessary order of transfer is required to be issued by the authority competent at the earliest, as far as possible on or before 30.09.2013.