

(1993) 05 AHC CK 0010

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 14782 of 1993

Preeti Gupta

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 03-05-1993

Acts Referred:

Indian Medical Council Act, 1956 — Section 33

Uttar Pradesh State Universities Act, 1973 — Section 14, 28(5)

Citation : (1994) 1 AWC 316

Hon'ble Judges : S.K. Mookerji, J

Bench : Single Bench

Advocate : Ravi Kant, for the Appellant; Daya Shanker, for the Respondent

Judgement

S.K. Mookerji, J.—Heard learned counsel for the Petitioner Sri Ravi Kant, learned Standing Counsel and Sri Daya Shanker, appearing for the Respondents.

2 The Petitioner, Km. Preeti Gupta, has filed this writ petition for a direction that a writ of mandamus be issued commanding the Respondents to admit the Petitioner in M.B.B.S. Second professional Course in Lala Lajpat Rai Memorial Medical College, Meerut. The other prayer of the Petitioner is to issue a writ in the nature of certiorari quashing the Government Order dated 25 9-1991, Annexure-5 to the writ petition by which the admission of the students in M.B.B.S. course from other State to the State of U.P. has been completely prohibited. This prayer has become redundant in view of the latest Government Notification dated 13-4-1993 published in the U.P. Extraordinary Gazette, 13th April, 1993. A copy of this Government Notification has been filed along with the supplementary affidavit. The Government Order is being reproduced below in extention:

Uttar Pradesh Extra-ordinary Gazette, 13 April, 1993, No. 2682/section 14/ Five-174/84. Lucknow: Dated April, 13, 1993.

In exercise of the powers under sub-section (5) of section 28 of the Uttar

Pradesh State Universities Act, 1973 (President's Act No. 10 of 1973) as amended and re-enacted by Uttar Pradesh Universities (Re-enactment and Amendment) Act, 1974 (U.P. Act No. 29 of 1974) and all other powers enabling him in this behalf and in supersession of all existing orders on the subject, the Governor, with effect from the date of publication of this order in the Gazette, is pleased to make the following order with a view to providing for policy and procedure to be followed in migration or transfer of students studying i e. M B.B.S. course to and from the Government Medical Colleges and the King George's Medical College, Lucknow:

(1) Migration or transfer shall be allowed only within three months of passing the first professional examination.

(2) During any one years a maximum of five percent students of the in take capacity of any of the Government Medical Colleges or the King George's Medical College, Lucknow may be allowed to migrate or transfer to and from a recognised medical college subject to a maximum of five students in any of the Government Medical Colleges or the King George's Medical College, Lucknow in such year; provided that no additional seat shall be created in any Government Medical College or the King George's Medical College, Lucknow, as a result of migration or transfer.

(3) Migration or transfer under paragraph (2) shall be allowed in the following order.

(a) Students selected through Combined Pre-Medical Test of All India Entrance Examination for admission to under-graduate medical/dental course conducted by Central Board of Secondary Education and studying in any of the Government Medical Colleges or the King George's Medical College, Lucknow.

(b) Students selected through All India Entrance Examination for admission to under-graduate medical/dental course conducted by Central Board or Secondary Education and studying in any recognised medical college out side the State of Uttar Pradesh.

(a) Students selected through competitive examination and studying in any recognised Medical College outside the State of Uttar Pradesh.

(d) M.B.B.S. students other than those mentioned in sub-paragraph (a) to (c) studying in any recognised Medical College outside the State of Uttar Pradesh.

(4) Application for migration or transfer shall be made in writing addressed to the Director, Medical Education and Training, Uttar Pradesh, Lucknow through the principal of the concerned recognised medical college.

(5) Subject to the policy and guidelines laid down in paragraphs (1), (2) and (3) the Director, Medical Education and Training, Uttar Pradesh, Lucknow shall decide the application for migration or transfer strictly on merit to be determined on the basis of marks obtained in the first professional examination and keeping in view

the choice of the candidate. The decision of the Director shall be final and binding.

Explanation: In this order

(a) "Government Medical College" means Government Allopathic Medical College at Agra, Allahabad, Meerut, Jhansi, Kanpur and Gorakhpur.

(b) "Recognised medical college" means any University or medical institution in India, the medical qualifications granted by which are included in the First Schedule to the Indian Medical Council Act, 1956.

By order, Atul Chaturvedi, Secretary, Medical Education.

3. The above Government Order has been issued with a view to providing for policy and procedure to be followed in migration or transfer of students studying in M.B.B.S. course to and from the Government Medical Colleges and the King George's Medical College, Lucknow. Thus, complete embargo on the question of migration and transfer imposed by the earlier Government Order dated 25-9-1991 has been superseded by the Government Order dated April 13, 1993. It is alleged that the Petitioner has passed her First Professional (Non-clinical; M.B.B.S. Examination, copy whereof is Annexure-2 to the writ petition. In fact, annexure-2 to the writ petition is the mark-sheet dated 4-1-1993. It is not clear, in fact, on which date the Petitioner had passed her First Professional (Non-clinical; M.B.B.S. Examination. In other words, it is not clear on what date the result of the First Professional (Non-clinical) M.B.B.S. Examination was declared. However, after passing the aforesaid examination the Principal of the institution in which the Petitioner was studying also issued a no objection certificate for seeking transfer to some other institution in some other State. The Petitioner sought her transfer from Madurai Medical College, Tamil Nadu to Lala Lajpat Rai Memorial Medical College, Meerut. The application made by the Petitioner is dated 6-4-1993. It was addressed to the Principal, Lala Lajpat Rai Memorial Medical College, Meerut, U.P. It is also averred that prior to the above application petitioner's father also has moved application seeking transfer of the Petitioner to the aforesaid Medical College at Meerut. But those applications are not part of the record of this writ petition. The Petitioner has stated that there are three vacancies in the C.B.S.E. quota in the aforesaid Medical College at Meerut. It is also averred that the Petitioner was not admitted on the basis of the Government Order dated 25-9-1991, for the reasons already stated above that the order dated 25-9-1991, no more, exists. Learned counsel for the Petitioner further submitted that some recommendations were made by the Medical Council of India u/s 33 of the Medical Council of India Act as has been quoted in extention in the case decided by Hon'ble Supreme Court in Shirish Govind Prabhudesai Vs. State of Maharashtra and others, . It is also averred that Hon'ble Supreme Court has relied upon those recommendations, which are as under:

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 first 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 counsel forthwith.

4. In paragraph 7 of the above case it has been held that the recommendations on Graduate Medical Education are by an expert body of the Medical Council of India, which is entrusted with certain functions relating to the medical education by India Medical Council Act, 1956. The Medical Council of India having chosen to accept these recommendations, such a condition of eligibility for migration/transfer from one medical college to another adopted by recognised medical college cannot be termed unreasonable or arbitrary. Relying upon the aforesaid recommendations Hon'ble Supreme Court decided the case before them. It will be relevant to mention here that it is not disputed that in case a recognised medical college chooses not to take any student by migration/transfer from another medical college it cannot be compelled to do so.

5. In Writ Petition No. 9837 of 1993 filed by Priti Gupta this Court passed a conditional order dated 9-4-1993, copy whereof is Annexure-6 to the writ petition. In the above case after granting time to the learned counsel for the parties I had directed to consider and admit the Petitioner in case she was eligible and satisfies the conditions laid down by me in that order. This order dated 9-4-1993 was passed notwithstanding the Government Order dated 25-9-1991. Since the above order of the State Government no more exists and the Petitioner in the present case, has already brought on record the present Government Order dated 13-4-1993 superseding the previous Government Order by means of a supplementary affidavit it is no more justified for this Court to pass similar order dated 9-4-1993. On perusal of the latest Government Order dated 13-4-1993 I find that all the conditions imposed in my aforesaid order dated 9-4-1993 are already existing in the Government Order dated 13-4-1993. The Petitioner has filed this Government Order dated 13-4-1993 and relied upon

the same order dated 13-4-1993. Under the circumstances departing from the order passed by me in Writ Petition No. 9837 of 1993, Km. Priti Gupta v. State of U.P. and Ors. dated 9-4-1993. I direct the Petitioner to make a, fresh application before the respondeat no 2, Director, Medical Education and Training, U.P. Lucknow, within ten days from today, as prayed, along with certified copy of the order passed by this Court today praying therein to consider the case of ransferring/admitting the Petitioner III Lala Lajpat Rai Memorial Medical College, Meerut from Madurai Medical" College, Madurai, Tamil Nadu, on the basis of the aforesaid Government Order dated 13-4-1993 in accordance with law including the Government Order dated 13-4-1993 expeditiously.

6. With the above observations/directions, this writ petition is finally disposed of.

A certified copy of the order be issued to the learned counsel for the Petitioner on payment of usual charges within 48 hours.