

(1992) 09 SHI CK 0002

In the High Court Of Himachal Pradesh

Case No : C.W.P. No's. 423, 508 and 524 of 1992

Rahul Bhargava and Others

APPELLANT

Vs

H.P. University and Others

RESPONDENT

Date of Decision : 29-09-1992

Acts Referred:

Constitution of India, 1950 — Article 14
Himachal Pradesh University Act, 1970 — Section 22, 41
Indian Medical Council Act, 1956 — Section 19A, 19A(1), 33

Citation : (1993) 2 ShimLC 45

Hon'ble Judges : V.K. Mehrotra, J; Lokeshwar Singh Panta, J

Bench : Division Bench

Advocate : K.D. Sood, in C.W.P. No. 423 of 1992, A.K. Goel, in C.W.P. No. 508 of 1992 and Hem Chand Sharma, in C.W.P. No. 524 of 1992, for the Appellant; B.P. Sharma, in C.W.P. Nos. 423 and 508 of 1992 and for Respondent No. 2 in C.W.P. No. 524 of 1992, K.S. Patyal, A.A.G. for Respondent No. 2 in C.W.P. Nos. 423 and 508 of 1992 and for Respondent Nos. 1 and 3 in C.W.P. No. 524 of 1992, P.A. Sharma, Respondent No. 3 in C.W.P. Nos. 423 and 508 of 1992 and for Respondent No. 4 in C.W.P. No. 524 of 1992 and N.K. Thakur, in C.W.P. No. 423 of 1992 and for Respondent No. 9 in C.W.P. No. 508 of 1992, for the Respondent

Judgement

V.K. Mehrotra, J.—These three writ petitions relate to migration of some students who had obtained admission to Medical Colleges outside Himachal Pradesh to Indira Gandhi Medical College, Shimla (Himachal Pradesh).

2. Under the Indian Medical Council Act, 1956, the Council is empowered to prescribe the minimum standards of medical education required for granting recognised medical qualifications (other than postgraduate medical qualifications) by Universities or medical institutions in India u/s 19-A. Section 33 empowers the Medical Council to make regulations generally "to carry out the purpose of this Act", and, without prejudice to the generality of this power, providing for:

(j) the courses and period of study and of practical training to be undertaken, the subjects of examination and the standards of proficiency therein to be obtained,

in Universities or medical institutions for grant of recognised medical qualifications;

The scope of powers exercisable by the Medical Council under this provision has been considered by the Courts from time to time. One such decision is by the Supreme Court in State of Madhya Pradesh and Another Vs. Kumari Nivedita Jain and Others, The decision in Nivedita Jain, after taking into account several earlier decisions of the Courts, is, in para 17, that:

...The scheme of the Act appears to be that the Medical Council of India....will prescribe minimum standards of medical education required for granting recognised medical qualifications.... The Act also empowers the Council to take various measures to enable the Council to judge whether proper medical standard is being maintained in any particular institution or not.

3. Relying upon the aforesaid decision, amongst Ors. , of the Supreme Court, a Division Bench of the Allahabad High Court ruled in Kumari Darsha Ahuja Vs. University of Agra and Another, that:

The decisions cited above clearly point to the conclusion that in regard to the examination conducted by any University or Medical Institutions, the function of the Council is to ensure a certain minimum degree of proficiency in the medical graduates coming out of these Medical Institutions, and with that end in view, to see that the norms set for examinations by these Medical Institutions do not fall below the Council's prescribed minimum standards of medical education....

Also, (in para 6 of the judgment) that:

From a combined reading of the provisions mentioned above it seems clear...that the regulations under consideration were framed expressly to give effect to Section 19-A(1) in particular, read with Section 33(j) for the purpose of prescribing "the minimum standards" of medical education required for granting recognised degree of M.B.B.S. by Universities or Medical Institutions in India. The regulations have statutory force as a piece of subordinate legislation, and are mandatory....The mandate, however, extends only to conforming to the minimum standards.

4. What was being considered by the Allahabad High Court in the case aforesaid were that regulations framed by the Medical Council of India u/s 33 of the Act laying down the scheme of examination for the various professional examinations including the third and final professional examinations for the degree of M.B.B.S.

5. The Indira Gandhi Medical College is attached to the Himachal Pradesh University. The First Ordinances of the Himachal Pradesh University, 1973, contemplate in para 3.11 of Chapter III (of the First Ordinances) that:

3.11. Migration:-The admission of students migrating from Anr. University...shall be governed by the Regulations framed by the Executive Council in this behalf from time to time;....

Section 41 of the Himachal Pradesh University Act, 1970, says that:

... The Executive Council may, with the sanction of the Chancellor, make Regulations consistent with this Act, the Statutes and the Ordinances for all matters relating to the University....

while Section 22 of that Act provides that the Academic Council, which is the academic body of the University, shall, subject to the provisions of the Act, the Statutes and the Ordinances, have the control and general regulation, and be responsible for the maintenance of standards and methods of instruction etc. and shall exercise such other powers and perform such other duties as may be conferred or imposed upon it by the Statutes. It also says that the Academic Council shall have the right to advise the Executive Council on all academic matters.

(Emphasis ours)

6. The Medical Council of India has made some recommendations on graduate medical education. Described as "Minimum Recommendations", they were adopted by the Medical Council of India in March 1981. Of the various recommendations made by the Council are recommendations relating to medical curriculum and migration/transfer of students from one medical college to Anr. .

7. In recommendation V relating to migration/transfer of students from one Medical College to Anr. , it has been ruentioned in Clause (b) that:

The migration/transfer can be allowed by the University concerned within three months after passing the 1st professional examination, as a rule.

and, in Clause (c), that:

Migration/transfer of students during the course of their training for the clinical subjects should be avoided.

8. The recommendations also are that the cases of migration which are not covered under the Regulations are to be referred to the Council for consideration on individual merits. Intimation about the admission of migrated/transferred students into any medical college is to be sent to the Council forthwith.

9. The first phase of study in pre-clinical subjects is to cover a minimum period of 18 months at the end whereof the first professional examinations are to be held. A look at recommendation VI of the Medical Council of India would show that what is contemplated thereunder as the first phase (consisting of pre-clinical subjects for the first professional examination) has been incorporated by the Himachal Pradesh University in para 14.4 contained in Chapter XIV relating to "Bachelor of Medicine and Bachelor of Surgery" in the faculty of Medical Sciences.

10. The Prospectus of the Indira Gandhi Medical College, Shimla for graduate (M.B.B.S) Course (1992-93) deals with the question of migration in Part VIII. It reads thus:

VIII. MIGRATION

The interested student may refer the rules of the Himachal Pradesh University and the rules laid down by the Medical Council of India from time to time. Only those students can seek migration, who fulfil other eligibility conditions of the Himachal Pradesh University/M.C.I.

11. In the reply affidavit, sworn on behalf of the Indira Gandhi Medical College, Shimla, by its Principal, (In C.W.P. No. 423 of 1992, Rahul Bhargava v. H.P. University and Ors.), it has been stated that in its meeting held on August 26, 1991, the Himachal Pradesh University Academic Council, decided under item No. 30, that:

...migration to the Indira Gandhi Medical College should be allowed only from such colleges where the basis of admission is the same as in the I.G.M.C. and that too on the recommendation of the Principal. The migration will be allowed on the basis of "first come first served basis" and will be subject to 5% intake capacity of the College.

Also, that in its meeting held on November 18, 1991 it was further decided by the Executive Council of the Himachal Pradesh University, under item No. 11, sub-item No. 30 of Academic Council, that:

...migration cases from such medical colleges as approved by Medical Council of India, under 5% quota duly recommended by the Principal of Indira Gandhi Medical College are allowed.

The resolution of the Executive Council adopted on November 18, 1991 (the latest to be brought to our notice in this case) also thus clearly adopts the modality contemplated in the recommendations of the Medical Council of India in Clause (a), saying that:

(a) A student studying in a recognised medical college may be allowed to migrate/transfer to Anr. recognised medical college under Anr. /same University.

12. We may notice the further statement contained in the reply affidavit, sworn by the Principal of the Indira Gandhi Medical College, to the effect that past practice had been to allow migration in the Indira Gandhi Medical College only to bona fide students of Himachal Pradesh studying in other recognised medical colleges in India.

13. The Petitioners in these three writ petitions obtained admission in M.B.B.S. in different medical colleges outside Himachal Pradesh Rahul Bhargava was admitted to Shri Krishna Medical College, Muzaffarpur (Bihar); Amit Behal to Government Medical College, Guwahati and Dinesh Negi to North Bengal Medical College, Siliguri (West Bengal).

14. All three of them were admitted to these colleges in the first year of the M.B.B.S. examination for the year 1990-91 on the basis of an All India competition held by the Central Board of Secondary Education.

15. After the first professional examination, all the three Petitioners applied to the Indira Gandhi Medical College for migration in the current session. Rahul Bhargava made his application on June 10, 1992 which was received in the college the same day; Amit Behal made his first application before the declaration of the result of his examination on May 4, 1992 which was received in the Indira Gandhi Medical College on May 6, 1992. Dinesh Negi had made his application on January 31, 1992, which was received in the Indira Gandhi Medical College on February 7, 1992.

16. According to the supplementary affidavit in reply, sworn by the Principal of the Indira Gandhi Medical College under the direction of this Court, it has been stated that apart from the applications made by Rahul Bhargava there were applications by 18 students seeking migration "out of which five applications were found to be complete in all respects". The names of the persons have been disclosed as Ms Punam Garg, Reemanshu Goel, Rishu Rana. Ranjan Atraja and Anand Bhavana, whose applications were received on February 22, March 21, Much 25, April 4 and April 25, 1992, respectively. According to this supplementary reply affidavit, the applications of only these five persons are being treated to be those which can receive consideration at the hands of the Principal for recommendation. The Principal of the College has stated in this supplementary reply affidavit that recommendation for migration will be made by him in respect of three (out of the aforesaid five) students in the order in which their applications were received in the Medical College.

There is no material on the record of any of these three writ petitions, and in fact it has been fairly accepted by the learned Addl Advocate General, appearing for the Principal of the Indira Gandhi Medical College and Shri. B.P. Sharma, appearing for the Himachal Pradesh University, suggesting that any notice was ever issued by the Principal of the Indira Gandhi Medical College or any other authority of the College or the University indicating the last date by which applications could be made by students migration desiring to the Indira Gandhi Medical College Also, about the documents which were to accompany the applications. We may notice at this stage a further fact, stated to us by the learned Addl. Advocate General, though not appearing from the affidavits filed in these petitions. And it is this t that only those applications were treated to be complete in all respects which were accompanied by photo-stat copies of toe result of the first professional examination; marks-sheet of the first professional examination; no objection certificate issued by the Director of Medical Education of the State where the applicant for migration was studying ; certificate of recognition about the College where he was studying, issued by the Medical Council of India and certificate of being a bonafide Himachali.

17. The Petitioners have emphasised before us that the modality which was being adopted by the Principal of the Medical College as also by the Himachal Pradesh University in matter of grant of migration to the Indira Gandhi Medical College, was not only unfair but also was arbitrary in character. Their Counsel

urge, and we think rightly, that in the absence of any public notice about the last date by which applications should be made by candidates seeking migration to the Indira Gandhi Medical College, it would be unfair to adopt the criterion of "first come first served" for recommendation to be made by the Principal of the Medical College for migration to that college. Also, that in the absence of any public notice about the documents which were to accompany an application to make the application "complete in all respects", the exclusion of some applications from consideration for recommendation was equally unfair.

18. The facility of consideration for migration to the Indira Gandhi Medical College is to be extended to all those candidates who desire to do so after their first professional examination. This cannot be permitted to be done in the privacy of office by the authority competent to make a recommendation in that regard. It should be consistent with the concept of openness and fair-play so that all those students who wish to be considered for migration should have an opportunity of applying for it to the proper authority. Else, it would be an arbitrary action on the part of the authority, inconsistent with the concept of equality enshrined in Article 14 of the Constitution.

19. Admittedly, no such modality was adopted by the Principal of the Indira Gandhi Medical College, to whom the candidates desirous of seeking migration, were to apply.

20. The basis sought to be adopted by the Principal of the Indira Gandhi Medical College for making recommendation for migration of students whose applications are found to be complete in all respects, also appears to be unreasonable. The criterion of "first come first served" does not bear any nexus to the object of allowing migration in the case of medical students from one medical college to Anr. . This is only a fortuitous circumstance. A student who is studying in a college nearer to Shimla, where the Indira Gandhi Medical College is located, may have an advantage in this respect as compared to the one studying in a college located far away from Shimla. The fact that one student has been able to apply for migration earlier than the other does not afford a reasonable objective basis for determining the question of recommendation by the Principal for the purpose. The basis has to be more rational.

21. Both, under the recommendations of the Medical Council of India and the criterion adopted for the purpose by the Himachal Pradesh University, a prayer for migration can only be made after the first professional examination. The performance of a candidate at that examination can undoubtedly afford a proper basis for the Principal to make up his mind as to whether the application for migration should be recommended for the purpose or not. After all, the object of encouraging excellence in medical education, which should be the guiding factor in all professional pursuits, can be better achieved by inducting better students in a college than the fortuitous circumstance of students having applied earlier for migration. It was urged on behalf of some of the Petitioners that the performance of an applicant at the examination in consequence whereof he was granted

admission to a medical college in the country should be the proper criterion for deciding whether he should be recommended for migration to the Indira Gandhi Medical College or not. This submission overlooks that after induction to the first year M.B.B.S. course, whether in consequence of the position obtained in an All India competition or a competition held in a particular State or even on the basis of admission granted on payment of capitation fee, all the students who take the first professional examination come to be similarly situate. The only rational mode of judging their merit, for the purpose of deciding whether a recommendation for migration should be made in his favour or not. would be to treat them alike and form an impression on the basis of the performance at the first professional examination. The performance of a student in the competitive test through which he was inducted would result in invidious distinction not only amongst candidates who obtained admission on the basis of an All India test or a combined test for grant of admission to the medical colleges situated in a State but also those who have obtained admission to the M.B.B.S. first year course on payment of capitation fee.

22. Another aspect of the matter which was emphasised before us on behalf of some of these Petitioners was that the choice for migration to intending candidates should be confined to those who are bona fide Himachalis. We fail to see any reason for it. There may be reasons for candidates who do not fall in the category of bona fide Himachalis as defined in the prospectus for the graduate (M.B.B.S.) Course of the Indira Gandhi Medical College, Shimla, to seek migration from a college located outside Himachal Pradesh to the Indira Gandhi Medical College. It may not be fair to preclude consideration of their prayer for migration merely because they do not answer the description of a bona fide Himachali For instance, a candidate seeking admission, by migration, to the Indira Gandhi Medical College, may be the ward of a person who is a member of an All India Service, for example, the Indian Audit and Accounts Service, where people get transferred from one corner of the country to Anr. . Instances can be many and reasons myriad which may need not speculate. All that we need mention about it is that the policy implicit in the recommendations of the Medical Council of India for grant of migration to a student from one recognised medical college in the country to Anr. is not only rational but may subserve the object, with which the facility for migration has been contemplated for a student, better.

23. It was also urged on behalf of some of the Petitioners that migration should only be permitted to those students to the Indira Gandhi Medical College who come from a medical college where the mode for induction to the M.B.B.S. course in its first year is similar to that adopted by the Indira Gandhi Medical College. What was stressed in this respect was that this was the recommendation of the Academic Council in its resolution of August 26, 1991. That resolution, we have seen, was modified by the Executive Council in its later resolution adopted in the meeting of November 18, 1991. The decision of the Executive Council is clear. It is consistent with the policy disclosed by the recommendations made by the Medical Council of India. And, it is that migration cases may be considered in

respect of medical colleges as are approved by the Medical Council of India under 5% quota and should be based upon the recommendation of the Principal of the Indira Gandhi Medical College. This decision of the Executive Council will prevail over the earlier resolution of the Academic Council which can only tender advice to the Executive Council in academic matters.

24. The result of the above discussion is that a prayer for "migration" from a college outside Himachal Pradesh to the Indira Gandhi Medical College should be considered on the basis of applications made by medical students, after their first professional examination, in consequence of a public notice for the purpose wherein the contents of the application and details of the documents to accompany the application are clearly indicated alongwith the last date by which the application is to be made. The recommendation for migration is to be made by the Principal of the Indira Gandhi Medical College on the basis of the merit of the applicant therefore as disclosed by the performance in the first professional examination. The entire schedule should be so fixed as to be complete within a period of three months from the date of the professional examination as contemplated by the regulations of the Medical Council of India. The above modalities shall be followed in future. So far as the present year is concerned, we feel that, inasmuch as, the legal position was not clear, all the applications that have so far been received (19 in all, according to the learned Addl. Advocate General) shall be considered by the Principal of the Indira Gandhi Medical College and recommendation for migration made by him on the basis of the merit as disclosed by the performance at the first professional examination. This shall be done by him without loss of any further time, as far as possible, within two weeks from today. The Himachal Pradesh University shall take the follow up action on the basis of the recommendation so made forthwith. The Medical Council of India shall treat the migration as failing within the category contemplated by Clause (b) irrespective of expiry of a period of three months and take a decision in respect of the prayer for migration within a period of two weeks from the date on which the necessary information is received by it from the appropriate authority.

25. The petitions shall stand disposed of finally as aforesaid, but the parties are left to bear their own costs.