

(2007) 01 PAT CK 0047
In the Patna High Court
Case No : CWJC No. 13217 of 2006

Rishabh Kumar

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 12-01-2007

Acts Referred:

Disturbed Areas (Special Courts) Act, 1976 — Section 3
Indian Medical Council Act, 1956 — Section 33

Citation : (2007) 1 PLJR 480

Hon'ble Judges : V.N. Sinha, J

Bench : Single Bench

Advocate : S.N. Jha, G.P. Singh, Subodh Kumar Jha, Sharad Kumar Sinha, Sarveshwar Tiwary and Amarendra Kumar, for the Appellant; P.K. Shahi, Nirmal Kumar, Vikash Kumar for the State, M/s R.B. Mahto and Ajay for the Respondent (M.C.I.), for the Respondent

Judgement

V.N. Sinha, J.—Heard learned counsel for the petitioners, the State and the Medical Council of India (hereinafter referred to as the "M.C.I."). Petitioner of each case, initially questioned the notice dated 31.10.2006 issued under the signature of the Joint Secretary, Government of Bihar, Department of Health, whereunder they were called upon to show cause as to why their migration from Katihar/M.G.M. Medical College, Kishanganj to Patna Medical College, Patna be not cancelled on the grounds stated in the notice.

2. This Court, under orders dated 13.11.2006, directed the authorities to even hear the petitioners in support of their show cause reply submitted in response to the notice dated 31.10.2006. The authorities having heard the petitioners have passed order dated 20.12.2006, as contained in Annexure-22 (in C.W.J.C. No. 13217 of 2006) and Annexure-10 (in C.W.J.C. No. 13368 of 2006), whereunder they have cancelled the migration of the two petitioners from Katihar/M.G.M. Medical College, Kishanganj to Patna Medical College, Patna and have also withdrawn the earlier No Objection Certificate issued by the Patna Medical College on the following three grounds stated in the order:-

(Ka). that the area in which the two Medical Colleges are situate has not been declared as a disturbed area by the State Government and those who have been allowed migration earlier belong to the disturbed State of Jammu and Kashmir and Assam and the case of the petitioners is not similar to them.

(Kha). migration from a private college to Government Medical College is not permissible, as mode of admission, fee structure and the status of the two colleges are different.

(Ga). The State Government is required to grant No Objection Certificate for transfer to a Government Medical College and appreciating such requirement, petitioners had applied for issue of No Objection Certificate from the State Government.

3. After issue of the order dated 20.12.2006 cancelling migration of the petitioners, the Principal, Patna Medical College, Patna issued office order cancelling the admission of the petitioners in the Medical College, which is dated 21.12.2006. Both the orders dated 20/21.12.2006 have been assailed in the two writ petitions by filing Interlocutory Application.

4. Learned counsel for the petitioner in C.W.J.C. No. 13217 of 2006, with reference to the report submitted by the police officers dated 29.7.2005, 17.8.2005, 8.9.2005, 13.9.2005 and 4.11.2005, Annexures-3 to 7, submitted that the office of the Director General and Inspector General of Police, Bihar, under the signature of Assistant Inspector General (Inspection), Bihar, Patna, informed the M.C.I, under Letter No. 57 dated 5th January, 2006. Annexure-10 that during enquiry it transpired that the father of petitioner Rishabh Kumar and his other family members including Rishabh Kumar felt threatened by the criminal elements and there is always a possibility of untoward incident happening with the family including petitioner Rishabh Kumar. The M.C.I., appreciating the contents of the police reports as also the No Objection Certificate, issued by the Medical Colleges/ University concerned issued instructions contained in letter No. 26539 dated 13.3.2006. Annexure-16, whereunder it allowed migration of Rishabh Kumar from Katihar Medical College, Katihar to Patna Medical College, Patna exercising the powers vested in it under the Medical Council of India Regulations on Graduate Medical Education Regulations, 1997 (hereinafter referred to as the "Regulations"). Learned counsel for the petitioner in C.W.J.C. No. 13368 of 2006, with reference to the certificate issued by the Deputy Inspector General of Police, Purnea Range, Purnea, Bihar, referred to in the instructions of the M.C.I, contained in Letter No. 11127 dated 24.8.2006. Annexure-1, submitted that the M.C.I, appreciating the threat perception of petitioner Neha Jha allowed her migration from M.G.M. Medical College, Kishanganj to Patna Medical College, Patna under aforesaid letter bearing No. 11127 dated 24.8.2006, Annexure-1. In this connection, counsel for the petitioners further submitted that perusal of the Regulations, as notified by the Government of India under notification dated 4th March, 1997 would indicate that power to permit migration from one Medical College to another is vested in

the M.C.I, as per Clause-6 of the Regulations and perusal of the Regulations would further indicate that the two petitioners have been allowed migration in terms of subclause (i) of Clause (6) of the Regulations which permits migration on extreme compassionate grounds, namely, disturbed conditions as declared by the Government in the Medical College area.

5. According to the learned counsel for the petitioners, police reports submitted in the case of the two petitioners indicate serious threat perception and appreciating the same the M.C.I, has passed order permitting migration from Katihar/M.G.M. Medical College, Kishanganj to Patna Medical College, Patna. It is further pointed out that the State Government, having appreciated the threat perception of the two petitioners referred to in the report issued from the office of the Director General of Police, Bihar dated 5.1.2006, Annexure-10 in C.W.J.C. No. 13217 of 2006 and Deputy Inspector General of Police, Purnea Range, Purnea, Bihar dated 3.8.2006 as also the No Objection Certificate issued by the Principal of the Patna Medical College, Patna and the order of the M.C.I, allowing migration to the two petitioners bearing No. 26539 and 11127 dated 13.3.2006 and 24.8.2006, Annexure-16 in C.W.J.C. No. 13217 of 2006 and Annexure-1 in C.W.J.C. No. 13368 of 2006, also granted permission for their transfer from Katihar/M.G.M. Medical College, Kishanganj to Patna Medical College, Patna under order bearing Nos. 805 and 806 dated 13.9.2006 as contained in Annexures 17 and 3 to the two writ petitions.

6. With reference to the aforesaid order dated 13.9.2006 it is submitted that having granted permission for transfer of the two petitioners from Katihar/M.G.M. Medical College, Kishanganj to Patna Medical College, Patna, it was highly arbitrary on the part of the State Government to have issued notice to review the order dated 13.9.2006 as also to pass the impugned order dated 20.12.2006 cancelling their transfer from Katihar/M.G.M. Medical College, Kishanganj to Patna Medical College, Patna. In this connection, it is further pointed out that in terms of the Regulations framed u/s 33 of the Indian Medical Council Act, 1956, it is the M.C.I, which is vested with the powers to consider migration and the State Government has no authority at all to intermeddle in the matter that too after having granted permission for transfer. It is also pointed out that the petitioners fulfilled all the relevant criterias which is necessary for migration from one college to another and the State Government ought not to have intervened in the matter to the detriment of the petitioners.

7. In support of the aforesaid submissions, learned counsel for the petitioners have relied on the judgment of the Hon''ble Supreme Court in the case of State of Kerala Vs. Kumari T.P. Roshana and Another, , in the case of Medical Council of India Vs. State of Karnataka and Others, and the judgment of this Court in the case of Anita Singh & Ors. vs. The State of Bihar & Ors. reported in 1999 (2) PLJR 433 and with reference to those judgments it has been submitted that in terms of the Regulations, which is statutory in nature it is the M.C.I, which is vested with the power to consider and direct migration or transfer of the

students from one recognized college to another recognized college and the State Government has no jurisdiction at all to intermeddle in the matter and the impugned order dated 20.12.2006 and the consequential order dated 21.12.2006 should be set aside with direction to the authorities of the State Government and the Patna Medical College to permit the petitioners to continue their studies in the Patna Medical College.

8. Learned Advocate General has opposed the prayer with reference to the averments made in the consolidated counter affidavit filed in the two cases on behalf of Respondent No. 2, the Secretary, Medical Education, Government of Bihar. It appears therefrom that father of petitioner Rishabh Kumar is a Lecturer in Surgery in the Patna Medical College Hospital, Patna. He is also an office bearer in the Bihar Branch of Indian Medical Association. At the time of issue of the order permitting migration, he was member of the Migration Sub-Committee of the M.C.I. Father of petitioner Neha Jha is Commissioner of income tax and he is posted in income tax Commissionerate at Patna. Both the petitioners applied for migration on their self claimed threat of security to their life and in support of their own assessment they submitted reports of local police officials and using the clout of their father obtained back door migration from the M.C.I, from Private Medical College to Patna Medical College and thereafter applied before the Secretary, Health and Medical Education, Government of Bihar for permitting their transfer from Private Medical College to Government Medical College, which was also allowed in flagrant violation of the Regulation framed by the M.C.I, which was widely publicized and the State Government considered it appropriate to examine the background and consequent decision of transfer of petitioners from Private Medical College to Government Medical College. In course of enquiry, it transpired that the Regulations permits migration from one Medical College to other Medical College only on extreme exceptional compassionate grounds, such as: Death of supporting guardian, illness of the candidate causing disability and the disturbed conditions as declared by Government in the Medical College area, and according to the learned Advocate General, case of the petitioners was not covered by any of the norms which constitute exceptional compassionate grounds. According to learned Advocate General, migration was allowed by misusing the official position of the father of both the petitioners as they managed to obtain certificate from local police officials regarding security threat to the petitioners, even though there has been absolutely no instance of any security threat to any of the petitioners while they continued their studies at Katihar/M.G.M. Medical College, Kishanganj.

9. It is further submitted by learned Advocate General that Patna Medical College is a premier Medical Institution run and administered by the State Government. Admission to State Medical Colleges is regulated by the State Government and it precedes a common entrance test conducted by the Bihar Combined Competitive Examination Board. Based on result of successful candidates, the Board conducts counselling and dependent upon merit of respective selected candidates in an institution of their choice, seat is allocated by the Board. Thereafter, admit order

is issued by the Board strictly in order of merit-cum-choice and on the basis of admit order issued by the Board, their admission is accepted by respective Medical Colleges to which they are assigned. Large number of applicants do not get admitted because of limited number of seats in State Medical Colleges and only those who qualify in order of merit are fortunate to find place in State Medical Colleges. Traditionally and based on experience it is an established position that the best amongst successful applicants are admitted in Patna Medical College, Patna as Patna Medical College is naturally the first choice of all successful candidates. As Patna Medical College is a Government institution, the scale of fee which student is required to pay is very nominal in comparison to Private Medical Colleges. There is a wide disparity in the fee structure of the two colleges. While Patna Medical College charges Rs. 8500-9000/- per annum per student, Private Medical Colleges charge a very hefty sum as fee besides capitation fee.

10. He further contended that in the State Medical Colleges, 50 per cent seats are reserved for different reserved category candidates. In private Medical Colleges, there is no such reservation. Besides admission to Private Medical Colleges they are not subjected to the kind of selection test, which is required in the State Medical Colleges. It is the prerogative of the Managing Committee of Private Medical Colleges and they admit students according to their own procedure.

11. It is also pointed out by the learned Advocate General that the area in which the two Private Medical Colleges are situated have not been declared as a disturbed area by the State Government in terms of the provisions contained in Section 3 of the Disturbed Areas (Special Courts) Act, 1976.

12. It is further submitted by learned Advocate General that instant case is a case of transfer from one University to another University as the two Private Medical Colleges are under B.N. Mandal University and Patna Medical College is under Patna University and for securing Inter-University transfer approval of the Chancellor of the Universities is essential and in the present case, no such approval was ever accorded by the Chancellor.

13. It is finally submitted by the learned Advocate General that appreciating the aforesaid illegalities in the transfer of the petitioner from Private Medical College to Patna Medical College the State Government issued notice to cancel the order dated 13.9.2006, whereunder permission for transfer/migration was granted by it and having considered the cause shown by the petitioners and not being satisfied with the cause shown passed the impugned order cancelling the order permitting the transfer of the petitioner dated 13.9.2006 and this Court should not interfere in the matter as the order permitting migration dated 13.3.2006 and 24.8.2006 is wholly arbitrary and contrary to Clause-(6) of the Regulations as from the materials on record it does not appear to be an exceptional case of extreme compassionate ground as prescribed in Note-2 of Clause-(6) of the Regulations.

14. In support of aforesaid submission, he relied on the judgment of the Hon''ble Supreme Court in the case of Maharaja Chintamani Saran Nath Shahdeo Vs. State of Bihar and Others, , paragraphs 13, 14 and 15 and in the case of Regional Officer, C.B.S.E. Vs. Ku. Sheena Peethambaran and Others, , paragraph 6 to submit that in view of the illegality in the order permitting migration dated 13.3.2006/24.8.2006 as also the fact that the order concurring migration/transfer passed by the State Government dated 13.9.2006 transfer having been recalled under the impugned order this Court should not permit the petitioners to continue their studies at the Patna Medical College, Patna.

15. Learned counsel for the M.C.I., Sri R.B. Mahto, Senior Advocate submitted that the order permitting migration of the petitioners from Katihar/M.G.M. Medical College, Kishanganj to Patna Medical College, Patna is strictly in terms of the guidelines set forth in Regulation-6 as the M.C.I., having appreciated the police reports received from the office of the Director Gen-eral-cum-Inspector General of Police, Bihar in the case of petitioner Rishabh Kumar and from the office of Deputy Inspector General of Police, Purnea Range, Purnea, Bihar, in the case of petitioner Neha Jha, considered the matter in Migration Sub-Committee and thereafter on the basis of the recommendations of the Migration Sub-Committee, passed the order permitting migration of the two petitioners and this Court should interfere in the matter as the impugned order is only an attempt to overreach the orders of the M.C.I., which is vested with the powers to permit migration and the State Government has no business to intermeddle in the matter.

16. Learned counsel for the petitioners, in rejoinder, submitted that the father of the two petitioners never exercised any clout with the M.C.I, or the State Government and the migration/transfer was allowed by the M.C.I, and the State Government in normal course appreciating the police reports referred to in the order permitting migration/transfer and the contentions raised by the learned Advocate General is absolutely beyond the materials on record and should be ignored. In this connection, it was further pointed out by the counsel for the petitioner Rishabh Kumar with reference to letter No. 18277 dated 24.11.2006, Annexure-23 of the Assistant Secretary, M.C.I, that his father did not participate in the meeting of the Migration Sub-Committee held on 17.2.2006, which considered the request of petitioner Rishabh Kumar for migration and as his father did not participate in the deliberations of the Migration Sub-Committee, there is no likelihood of bias vitiating the proceedings of the Migration sub-Committee. To buttress the said submission, learned counsel for the petitioner Rishabh Kumar relied on the judgment of Hon''ble Supreme Court in the case of Jaswant Singh Nerwal Vs. State of Punjab and Others, .

17. Having heard counsel for the parties and having perused the pleadings filed by them and having perused the provisions of the Regulations, I am of the view that power to consider migration from one college to another is vested with the M.C.I. and the M.C.I, should consider migration only in exceptional cases of

extreme compassionate grounds as provided in Note-2 appended to Clause-6 of the Regulations which inter alia provides for three grounds, namely, death of a supporting guardian, illness of the candidate causing disability and disturbed conditions as declared by Government in the Medical College area. From the order permitting migration, it appears that the migration has been allowed in the case of petitioner Rishabh Kumar on the basis of the police reports received from the office of the Director General-cum-Inspector General of Police, Bihar and in the case of petitioner Neha Jha on the basis of the report of the Deputy Inspector General of Police, Purnea Range, Purnea, Bihar. None of the two reports relied upon for permitting migration has the approval of the State Government, as is the spirit of Sub-Note (iii) of Note-2 appended to Clause-(6) of the Regulations but the State Government itself has passed the order dated 13.9.2006, whereunder appreciating the police reports it concurred with the order of migration/transfer of the petitioners from Private Medical College to Patna Medical College, Patna and having permitted such transfer and allowed the two petitioners to continue their studies at the Patna Medical College it is highly arbitrary on the part of the State respondents to again relegate them back to their original college on the ground that the police reports have been procured exercising the clout of their parents and it is impermissible under the Regulations to transfer a student from a Private College to Government College. If the State Government is now not satisfied with the police reports and is further of the view that transfer from Private College to Government College is impermissible then it should approach the M.C.I, and request it to recall the order dated 13.3.2006 and 24.8.2006.

18. In view of the facts and circumstances of this case, as discussed above, I set aside the impugned order dated 20.12.2006 and the consequential order dated 21.12.2006 but with liberty to the State Government to move the M.C.I, for recall of the orders permitting migration of the petitioners from Private Medical College to Government Medical College. If such request is made by the State Government, it should be considered expeditiously, in any case within a period of one month from the date of its receipt. Until the order permitting migration of the petitioners, passed by the M.C.I, is not recalled by it, the petitioners shall continue their studies in the transferee. Patna Medical College, Patna, which shall be subject to further orders by the M.C.I. These writ applications are, accordingly, disposed of. No cost.