
(1999) 04 BOM CK 0009
In the Bombay High Court
Case No : W. P. No. 1659 of 1998

Sarang Sham Chobe

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 29-04-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 04 BOM CK 0009

Hon'ble Judges : S. B. Mhase, J;B. B. Vagyan, J

Bench : Division Bench

Advocate : N. N. Shinde, for the Appellant; D. V. Tele, A.G.P. for respondent No. 1, Mrs. R. R. Mane holding for V. D. Salunke for respondent No. 3, S. S. Choudhari, for the Respondent

Judgement

S. B. Mhase, J.—Rule returnable forthwith with the consent of the parties.

2. The petitioner has approached this Court under Article 226 of the Constitution of India seeking transfer of his admission from Mahatma Gandhi Mission's Medical College at New Bombay to Mahatma Gandhi Mission's Medical College at Aurangabad on medical grounds. The petitioner has submitted application after passing the examination of first year M.B.B.S. held in October/November, 1997 to the Medical Council of India to allow his transfer. The said application was routed through the Dean, Mahatma Gandhi Mission's Medical Colleges, New Bombay in the month of January, 1998. The petitioner was suffering from renal failure. As the said application was not granted by the Medical Council of India, the present writ petition came to be filed. It is pertinent to note that after perusal of the record of the illness of the petitioner, this Court, by order dated 16-10-1998 directed the Medical Council of India to consider the case of the petitioner for migration from Bombay University to Dr. Babasaheb Ambedkar Marathwada University, Aurangabad seeking the admissions as stated earlier and all the documents submitted by the petitioner about his illness were submitted to the Medical Council of India. After several reminders the Medical Council of India,

by letter dated 7-1-1999 communicated to this Court that there is no evidence supporting the renal failure. It was further expected by the Medical Council that the renal function tests including the latest one, renal biopsy and creatinine clearance test should have been carried out and as these tests have not been carried out, it is not possible to know and determine the status of the kidney functions and extent of the damage. And, therefore, ultimately the prayer of the petitioner seeking migration was refused by the Medical Council of India. Thereafter, this Court, by order dated 21-1-1999 directed the petitioner to carry out the tests as expected by the Medical Council of India and for the said purpose, further directed that the said tests should be carried R.F. 10 out by the petitioner at a Civil Hospital under the supervision of the Civil Surgeon. The petitioner accordingly has carried out these tests and submitted the reports of these tests. After the reports were received by this Court, it was realized that the petitioner is suffering from illness as contended by him and, therefore, by order dated 12-2-1999 it was further directed that the Medical Council of India shall re-consider the case of the petitioner in the light of the fresh reports which were obtained by the petitioner and all the documents were submitted to the Medical Council of India. Thereafter, the Medical Council of India, by letter dated 15-4-1999, after having studied all the reports and the report of the Civil Surgeon accepted the case of the petitioner for migration, however, imposed a condition that the petitioner shall be allowed to appear for the IInd Professional M.B.B.S. university examination only after completing 18 months study in the transferee medical college from the date of migration and an affidavit to that effect on non-judicial stamp paper duly sworn before and signed by 1st class Magistrate, be obtained.

3. In view of this letter, now it can be safely stated that the Medical Council of India has allowed the migration of the petitioner from Mahatma Gandhi Mission's Medical College, New Bombay to Mahatma Gandhi Mission's Medical College, Aurangabad i.e. from Bombay University to Dr. Babasaheb Ambedkar Marathwada University, respectively. In view of the permission granted by the Medical Council of India for migration, it is not necessary to go into the question whether the migration should be granted or not and that point stands concluded so far as the petitioner is concerned. It requires to be mentioned that after receipt of the reports of the renal biopsy, when this Court realized that the petitioner is really suffering from the illness, this Court allowed a provisional transfer of the petitioner by order dated 13th January, 1999 and accordingly the petitioner has joined Mahatma Gandhi Mission's Medical College at Aurangabad. Later on, when we found that the report from the Medical Council of India considering the reports of the petitioner had not been received, this Court directed the college authorities and university authorities to accept the examination form of the petitioner if the petitioner satisfies the conditions or the requirements for appearing in the examination. Accordingly, the university has accepted the examination form. When later on it was pointed out that the examination form has been accepted but the Dean, Medical College has not

recommended him, the directions were issued by this Court on 21st April, 1999 that the Dean, Mahatma Gandhi Mission's Medical College, Aurangabad to consider the case of the petitioner for recommendation to the University for the purposes of appearing in the examination as he considers the case of the other students to be recommended to the University. In accordance with these directions, the Dean, Mahatma Gandhi Mission's Medical College, Aurangabad has forwarded with the recommendations to the University. We are not aware at present as to what are the recommendations made by the Dean, Mahatma Gandhi Mission's Medical College, Aurangabad to the University as per order dated 21st April, 1999.

4. However, as a result of the resolution passed by the Medical Council of India, which was communicated to this Court by letter dated 15-4-1999, the controversy arises in respect of completing 18 months prescribed study at the transferee medical college before appearing for the IInd M.B.B.S. examination. The said letter states that the Committee decided that the candidate shall be allowed to appear for the IInd Professional M.B.B.S. university examination only after completing 18 months study in the transferee medical college from the date of migration and an affidavit to that effect on non-judicial stamp paper duly sworn before and signed by 1st Class Magistrate, be obtained from the candidate. As a result of this condition, Mr. Shinde, learned Counsel for the petitioner states that the petitioner cannot appear for examination. Mr. Shinde further states that this condition is arbitrary one and it is against the Regulation of the Medical Council of India pertaining to the migration. Mr. S. S. Choudhari, learned Counsel who appears for the Medical Council of India pointed out us the Regulations on Graduate Medical Education, 1997 and he invited our attention to Regulation No. 6 and more specifically to sub-regulation No. 5. He states relying upon the sub-regulation No. 5, that the petitioner shall have completed 18 months study in the transferee college before appearing for the examination and should have submitted the affidavit accordingly and such is the interpretation of sub-regulation No. 5 as understood by the Medical Council of India.

5. The sub-regulation No. 5 of regulation No. 6 is as follows :

"The applicant candidate must submit an affidavit stating that he/she will pursue 18 months of prescribed study before appearing at IInd professional Bachelor of Medicine and Bachelor of Surgery (M.B.B.S.) examination at the transferee medical college, which should be duly certified by the Registrar of the concerned University in which he/she is seeking transfer. The transfer will be applicable only after receipt of the affidavit."

It is pertinent to note that every student even though he has not sought any transfer or migration has to complete 18 months study in the concerned Medical College before he appears for the IInd year M.B.B.S. examination after having passed the first year M.B.B.S. examination. Thus, what is requirement of the Medical Council of India is that the student should have completed 18 months study prior to appearing in examination of the IInd, year M.B.B.S. However, in

case of a transfer, it is likely that the student may not complete 18 months study either in one college or in both the colleges and, therefore, the same regulation has been incorporated in sub-regulation No. 5 of the regulation No. 6. On a proper reading of sub-regulation No. 5, the said regulation can be read as follows :

"The applicant candidate must submit an affidavit at the transferee medical college stating that he/she will pursue 18 months of prescribed study before appearing for the IInd professional Bachelor of Medicine and Bachelor of Surgery (M.B.B.S.) examination, which should be duly certified by the Registrar of the concerned university in which he/she is seeking a transfer. The transfer will be applicable only after the receipt of the affidavit."

In short, the proper construction of this regulation is that a student who has migrated from one university to another university should have completed 18 months study in both the colleges i.e. from the college or the university he is migrated to the transferee college or university and thus if he completes 18 months study, he will be eligible to appear for the examination. However, instead of putting such type of a proper construction, the Medical Council of India has erroneously interpreted the sub-regulation No. 5 to mean that in the transferee college the student should have completed 18 months study. Such interpretation is unjust because, after passing of the examination of the first year M.B.B.S. the candidate has to submit the application through the college to the Medical Council of India seeking migration under regulation No. 6 and unless and until the migration is permitted under regulation No. 6, the said candidate cannot give up the study where he is already admitted and he cannot join the transferee college located in other university area where the migration has been sought and if the Medical Council of India takes a month's period in taking decision, in that eventuality if the interpretation made by the Medical Council of India is accepted, then the student will have to lose one academic year of the M.B.B.S. course and ultimately he will be put to the loss as a result of migration being sought by him and such anomalous and absurd interpretation cannot be allowed to be made of sub-regulation No. 5 of regulation No. 6. Therefore, we are satisfied that the interpretation of sub-regulation No. 5 of regulation No. 6 made by the Medical Council of India is absolutely bad and illegal and the condition incorporated in the letter dated 15-4-1999, based on such an interpretation, is absolutely bad and illegal and we struck down that portion of the resolution, seeking study of 18 months at the transferee Medical College before appearing at IInd Professional Bachelor of Medicine and Bachelor of Surgery (M.B.B.S.) examination. Ultimate result is that we direct the Dean, Mahatma Gandhi Mission's Medical College at Aurangabad to consider the case of the petitioner's attendance on the basis of his attendance in both the colleges i.e. Mahatma Gandhi Mission's Medical College at New Bombay and Mahatma Gandhi Mission's Medical College at Aurangabad and the affidavit submitted by the petitioner to that effect shall be accepted as a due compliance for the purposes of migration and for appearing in the examination to be conducted by Dr. Babasaheb Ambedkar Marathwada

University, Aurangabad. We make it clear that after having calculated the attendance in both the colleges, if the petitioner does not satisfy the condition of 18 months study, then in that eventuality he will not be entitled to appear for IInd year M.B.B.S. examination unless he completes the attendance of 18 months.

6. We express our dissatisfaction that in spite of directions given by this Court, the matter was handled in most negligent manner which resulted into belated order of transfer of petitioner. We hope that Council will look after such cases urgently without prejudicing the rights of students.

7. In view of this matter, all the Civil Applications filed in the instant writ petition do not survive and they are disposed of accordingly.

Rule is made absolute in the above terms.