

(2012) 02 MAD CK 0226
In the Madras High Court
Case No : W.P.No. 19366 of 2011

S.S. Naveen Kumar rep. By his father and natural guardian S. Selvaraj APPELLANT

Vs

The Tamilnadu Dr.M.G.R. Medical University and Others RESPONDENT

Date of Decision : 16-02-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Indian Medical Council Act, 1956 — Section 11(2)

Citation : (2012) 02 MAD CK 0226

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Advocate : N. G. R. Prasad for M/s. Row and Reddy, for the Appellant; K.C. Srinivasan for R1, Mrs. Dakshayini Reddy for R2 and Mr. V.P. Raman for R3, for the Respondent

Judgement

Honourable Mr. Justice Vinod K. Sharma

1. The petitioner has approached this Court with a prayer for issuance of a writ in the nature of mandamus, to direct the first respondent, to consider the petitioner's representation dated 5.8.2011 and 17.8.2011 and transfer the petitioner S.S. Naveen Kumar, Registration No. 52108981 studying MBBS course in the second respondent college, to any other college for pursuing his remaining course. In support of the prayer it is pleaded by the petitioner as under: I,S.Selvaraj, Son of P.Shanmugavel, aged about 49 years, residing at No. 34, Plot No. 86, Swami Vivekananda Nagar, K.Pudur, Madurai 625 007, now temporarily come down to Chennai do hereby solemnly affirm and state as follows.

1. I am the petitioner herein and I am well acquainted with the facts of the case. I am the father and Natural Guardian of S.S.Naveen Kumar on whose behalf I am filing this case.

2. I submit based on the paper advertisement published by the second

respondent college to the effect that their college is recognised by the Medical Council of India and affiliated to the first respondent Tamilnadu Dr. MGR. Medical University, I admitted my son for the M.B.B.S Course in the second respondent college for the academic year 2010-2011 and his registration Number is 52108981.

3. The first year theory examinations for M.B.B.S. course commenced on 1.8.2011 (i.e. Monday). My son prepared for the exams well. Unfortunately till 29.7.2011 (Friday) the second respondent college did not issue the hall tickets to the 150 students studying in the second respondent college. All the students were upset. On 29.7.2011 around 7.30 p.m. when the University web-site was checked, it came to light that there was some problem and that the students studying in the second respondent college can write the exam in the University premises on 1.8.2011. On 30.7.2011 the second respondent college issued hall tickets to students. In the said Hall ticket, the second respondent college was cited as the centre for theory examination and the second respondent Chairman informed all the students that the students can write the exam in the college premises itself on 1.8.2011. Believing his words all the students including my son had been to the college on 1.8.2011 to write their exam. Unfortunately to their shock and surprise no exam was conducted on that date. When the students enquired with the Chairman of the second respondent college he promised to solve the issue. Believing the same all the students went to the college on 2.8.2011 to write the exam. But even on that date no exam was conducted.

4. Left with no other go I went to the first respondent University on 2.8.2011 and submitted a representation. It is only then we came to know that the second respondent college was de-recognised and that is why the University permitted us to write the exam in the University premises. Therefore, on 3.8.2011 my son wrote Physiology I paper (third exam) in the first respondent University campus. The Chairman of the second respondent College called us over phone and threatened for writing exam in the University campus.

5. From 4.8.2011 all other students except one wrote the remaining exams in University campus. On 5.8.2011 after writing exam when my son came out of the examination hall, it appears his colleague Akil Nayar and others at the behest of the second respondent pushed him and assaulted him stating that when the Chairman of the second respondent college was taking every efforts to protect the interest of the students, because of my son they were forced to write the exam in the University campus and because of that their future is at stake and threatened to attack him when he comes to college. Immediately my son gave a complaint to the first respondent university and requested for transfer. A police complaint in this regard was also lodged with the Guindy Police Station.

6. When the matter thus stood through news papers we came to know that considering the plight of the students this Hon'ble Court directed the respondents to conduct practical examination on 22nd, 23rd and 24th August 2011 and the written examinations of Anatomy I and II and Physiology I on

29th, 30th August and 2nd September 2011 in the college premises.

7. I submit as stated above the second respondent had threatened my son for writing the exam in the University premises on 3.8.2011 and also mislead the other students as if he and the another candidate were the cause for the entire situation and because of that their future is at stake. Because of the second respondent's action some of the students also assaulted my son. Further in the practical examination both internal and external examiners would be there. In this circumstances, it would be difficult for my son to write the examinations both theory and practical in the second respondent college premises and also pursue his education in the said college. There is a threat to his life and his future. Therefore left with no other go I submitted a representation to the first respondent University in person on 17.8.2011 and requested them to transfer my son to some other college and also permit him to write the exam (both theory and practical) in some other College. The University has not conveyed any decision so far. Now the practical examination is to be held on 22.8.2011 (i.e. Monday). Hence, this writ petition.

8. I submit the second respondent has been threatening my son because he wrote the exam on 3.8.2011 in the University premises. Not stopping with that they have spread the message to my sons Colleagues as if he and another student who wrote the exam in the University premises along with him are the root cause for the entire situation it is only because of that their future is at stake. Under these circumstances, it is impossible for my son to pursue his studies in the second respondent college and it is just and necessary to shift him to some other College by the first respondent University. In the meanwhile, the practical and left out theory exams are to be held from 22.8.2011. It is therefore, just and necessary to issue appropriate directions to the respondents to protect the interest of my son otherwise his entire future and life is at stake.

It is submitted that the second respondent threatened the Medical Council of India Officials to grant permission for admission in his college as the matter is pending in the Honourable Supreme Court.

2. Learned counsel appearing on behalf of the Medical Council of India, opposes the writ petition on the ground that it is not within the jurisdiction of the Medical Council of India to permit the transfer of any candidate from one Medical College to another college before passing the first professional MBBS examination. It is not disputed that the petitioner has not appeared for first professional MBBS examination.

3. The Regulation of the Medical Council of India read as follows:

6. Migration

(1) 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 located within the same city.

(2) Migration of students from one college to another is permissible only if both the colleges are recognised by the Central Government u/s 11(2) of the Indian Medical Council Act, 1956, and further subject to the condition that it shall not result in increase in the sanctioned intake capacity for the academic year concerned in respect of the receiving medical college.

(3) The applicant candidate shall be eligible to apply for migration only after qualifying in the first professional MBBS examination. Migration during clinical course of study shall not be allowed on any ground.

(4) For the purpose of migration an applicant candidate shall first obtain "No objection Certificate" from the college where he is studying for the present and the university to which that college is affiliated and also from the college to which the migration is sought and the university to which that college is affiliated. He/ She shall submit his application for migration within a period of one month of passing (Declaration of result of the first professional MBBS examination) along with the above cited four "No objection certificates" to : (a) the Director of Medical Education of the State, if migration is sought from one college to another within the same State or (b) the Medical Council of India, if the migration is sought from one college to another located outside the State.

(5) A student who has joined another college on migration shall be eligible to appear in the IInd professional MBBS examination only after attaining the minimum attendance in that college in the subjects, lectures, seminars etc. required for appearing in the examination prescribed under Regulation 12(1).

Note - 1 : The State Governments/ Universities/ Institutions may frame appropriate guidelines for grant of No Objection Certificate or migration, as the case may be, to the students subject to provisions of these regulations.

Note - 2 : Any request for migration not covered under the provisions of these Regulations shall be referred to the Medical Council of India for consideration on individual merits by the Director (Medical Education) of the State or the Head of Central Government Institution concerned. The decision taken by the Council on such requests shall be final.

Note - 3 : The College/ Institutions shall send intimation to the Medical Council of India about the number of students admitted by them on migration within one month of their joining. It shall be open to the Council to undertake verification of the compliance of the provisions of the regulations governing migration by the colleges at any point of time.

The above clause 6(1) and 6(4) have been further substituted in terms of notification published on 22.12.2008 in Gazette of India and the same is annexed as Annexure - VI as under:

6(1) 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 located within the same city.

6(4) For the purpose of migration an applicant candidate shall first obtain "No objection certificate" from the college where he is studying for the present and the university to which that college is affiliated and also from the college to which the migration is sought and the university to which that college is affiliated. He/ She shall submit his application for migration within a period of one month of passing (Declaration of result of the first professional MBBS examination) along with the above cited four "No objection certificates" to : (a) the Director of Medical Education of the State, if migration is sought from one college to another within the same State or (b) the Medical Council of India, if the migration is sought from one college to another located outside the State.

4. A reading of the Medical Council Regulation show that the pre-requisite for migration is passing of first professional MBBS examination.

5. The Regulation of the Medical Council is a statutory force of law, therefore, in the absence of any Regulation or provisions, permitting the relaxation of rule, it is not open to the Medical Council of India to grant permission for migration before passing of first professional MBBS examination.

6. Learned counsel for the petitioner contended that this Court in exercise of jurisdiction under Article 226 of the Constitution of India can grant the necessary permission in view of the peculiar circumstances disclosed in the affidavit.

7. The doctrine of necessity is a common law doctrine and is applied to tide over the situation, where there are difficulties, as the Law does not contemplate a vacuum and a solution has to be found out, but this doctrine can not be applied to bypass the statutory bar.

8. The contention of the learned counsel for the petitioner therefore is totally misconceived.

9. The High Court in exercise of extraordinary jurisdiction cannot issue direction contrary to the statutory provisions of law even under doctrine of necessity, when the statutory regulation did not permit the transfer without passing of the first professional MBBS examination. No merit. Dismissed. No costs.