

(2018) 01 PAT CK 0110

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 18625 Of 2017

Taskeen Tufail

APPELLANT

Vs

State Of Bihar And Anr

RESPONDENT

Date of Decision : 10-01-2018

Acts Referred:

Graduate Medical Education Regulations, 1997 — Regulation 6, 12(1)
Indian Medical Council Act, 1956 — Section 11(2)

Citation : (2018) 2 PLJR 230

Hon'ble Judges : Chakradhari Sharan Singh, J

Bench : Single Bench

Advocate : Rajeev Kumar Singh, Ajay Bihari Sinha, Niraj Raj, Ram Chandra Sahni

Final Decision : Dismissed

Judgement

1. The petitioner is aggrieved by notification, dated 05.12.2017, issued by the Joint Secretary to the Government, Health Department, Bihar, Patna, whereby the petitioner's application for her migration from Vardhman Institute of Medical Sciences, Pawapuri, Nalanda, to Darbhanga Medical College, Laheriasarai, Darbhanga, in 2nd Professional MBBS Course, has been rejected on the ground that the petitioner's application was submitted beyond 30 days after declaration of the result of 1st Professional MBBS Examination.

2. The migration of students of MBBS from one medical college to another is governed by Clause 6 of the Regulations on Graduate Medical Education, 1997, which reads thus:-

"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 under section 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 1 month of passing (Declaration of result of the 1st Professional MBBS examination) alongwith 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."

(Emphasis is added)

3. An application for migration is evidently to be submitted within one month of declaration of result of 1st Professional MBBS Examination before the Director of

Medical Education of the State, since the petitioner was seeking migration from one medical college to another college, located within the State of Bihar.

4. This is an admitted fact that the result of 1st Professional MBBS Examination of the petitioner was declared on 27.09.2017. The petitioner thereafter applied for migration from the said Vardhman Institute of Medical Sciences, Pawapuri, Nalanda, to Darbhanga Medical College, Laheriasarai, on 09.10.2017, seeking No Objection Certificate from the college where she was studying. The No Objection Certificate was granted by the college on 15.10.2017. The petitioner thereafter applied before the Darbhanga Medical College, Laheriasarai, to which she was seeking migration on 18.10.2017, which was granted on 20.10.2017. The petitioner thereafter approached the Aryabhatta Knowledge University, Patna, i.e. the University to which the two colleges are affiliated. The Aryabhatta Knowledge University, Patna, is said to have granted No Objection Certificate on 31.10.2017.

5. Since the process of obtaining No Objection Certificates from the medical colleges and the University consumed more than one month's time, the petitioner filed an application for migration before the Director, Medical Education, Bihar, after one month, which has been refused by the impugned notification, dated 05.12.2017.

6. Learned Counsel appearing on behalf of the petitioner has submitted that the petitioner had started the exercise by making applications for grant of No Objection Certificate will within time and she cannot be blamed for the delay caused at the level of Aryabhatta Knowledge University in grant of No Objection Certificate. He has submitted that the petitioner had applied for No Objection Certificate before the Aryabhatta Knowledge University, Patna, on 20.10.2017 itself. According to him, since the University was closed from 26.10.2017 to 02.11.2017, grant of No Objection Certificate by the Aryabhatta Knowledge University got delayed and it was issued on 31.10.2017, immediately whereafter the petitioner applied before the Director, Medical Education, Bihar. He accordingly submits that since the delay is primarily because the Aryabhatta Knowledge University was closed, the petitioner should not be made to suffer. He has submitted that the Director of Medical Education, Bihar, ought to have considered all the aspects before deciding the petitioner's case for migration.

7. I have carefully examined Regulation 6 of the Regulations, which deals with the application for migration from one medical college to another. A close scrutiny of the said provisions makes it clear that the following are the requirements for migration of a student of MBBS from one medical college to another:-

(A) (i) The migration can be permitted only after declaration of result of 1st Professional MBBS Examination and the candidate, seeking migration, has been declared qualified in the said examination, and not otherwise;

(ii) An application for migration is to be submitted within one month of declaration of the result of 1st Professional MBBS Examination before the

Director of Medical Education of the State, if migration is sought from one medical college to another within the same State, or the Medical Council of India, if the migration is sought from one college to another located outside the State.

(B) An application, either before the Director, Medical Education of the State, or before the Medical Council of India, must accompany the following:-

- (a) No Objection Certificate from the college where the candidate is studying;
- (b) No Objection Certificate from the University to which the said college is affiliated;
- (c) No Objection Certificate from the college to which the migration is sought; and
- (d) No Objection Certificate from the University to which the college, to which the migration is sought, is affiliated.

8. There is no requirement in the said Regulations that a candidate is required to apply to the affiliating University after issuance of No Objection Certificate from the college where the candidate is studying or to which the migration is being sought.

9. Further, there is no requirement that the candidate should apply for No Objection Certificate from the college to which migration is being sought only after he/she obtains No Objection Certificate from the college where he/she is studying or the University to which the college where he/she is studying, is affiliated. These exercises of obtaining No Objection Certificates can be simultaneous and rather, should be simultaneous, in view of the period of one month fixed under the Regulations.

10. In the present case, as is evident from the dates, which have been mentioned above, the petitioner firstly applied for No Objection Certificate from the college where she was studying. Thereafter, to the college to which she was seeking migration. Both the colleges are, admittedly, affiliated to the same University, i. e. Aryabhatta Knowledge University, Patna. It may be out of misconception of the statutory provisions that the petitioner proceeded in the said manner. In any view of the matter, the impugned order passed by the Joint Secretary to the Government, Health Department, Bihar, Patna, on an application received after the period prescribed under the Regulations, cannot be said to be illegal; rather, the same is in conformity with the statutory provisions.

11. The requirement of submission of application for migration within one month under Regulation 6 of the Regulations, as quoted above, in my view, cannot be held to be directory in nature. I do not find any compelling reason to deviate from what has been prescribed under the statutory Regulations, as noted above.

12. No relief, as sought in the present application, in that view of the matter, can be granted.

13. This application is accordingly dismissed.