

(2010) 07 DEL CK 0339

Delhi High Court

Case No: Writ Petition (C) 70 of 2010

Prateek Singh Patel

APPELLANT

Vs

Medical Council of India and
Another

RESPONDENT

Date of Decision: July 8, 2010

Acts Referred:

- Indian Medical Council Act, 1956 - Section 33

Hon'ble Judges: Rajiv Sahai Endlaw, J

Bench: Single Bench

Advocate: Vivek Madhok and J.P. Gupta, for the Appellant; A. Sharan and Amit Kumar, for R-1, D.P. Chaturvedi, for R-2, for the Respondent

Final Decision: Dismissed

Judgement

Rajiv Sahai Endlaw, J.

The petitioner, a student of MBBS of S. Nijalingappa Medical College, Navanagar, Karnataka (which has not been made party to the petition) affiliated to respondent No. 2 Rajiv Gandhi University of Health Sciences, Karnataka, has filed this writ petition impugning the order dated 15th December, 2009 of the respondent No. 1 Medical Council of India rejecting the application of the petitioner for migration to B.R.D. Medical College, Gorakhpur, Uttar Pradesh affiliated to Deen Dayal Upadhyay Gorakhpur University (both of which have also not been impleaded as a party). The petitioner also seeks a mandamus commanding the respondent No. 2 University to issue NOC for migration aforesaid of the petitioner.

2. The results of the first professional examination of the petitioner were declared on 29th August, 2008. As per the Regulations on Graduate Medical Education (Amendment) 2008 framed by the Medical Council of India with the previous approval of the Central Government and in exercise of powers conferred by Section 33 of the Indian Medical Council Act, 1956, migration of students from one Medical

College to another Medical College in India is to be granted only in exceptional cases to the most deserving among the applicants for good and sufficient reasons and not on routine grounds. Such migration is permissible only if both the colleges i.e. the College from as well as the College to which migration is sought and the Universities to which both the Colleges are affiliated consent to the same. The procedural Rule in this regard is as under:

(4) For the purpose of migration, an applicant candidate shall first obtain "No Objection Certificates" from the college where he is studying for the present, the University to which it is affiliated to, the college to which migration is sought and the University to which that college is affiliated to. He shall submit his application for migration within a period of one month of passing (declaration of results) of the first professional MBBS examination along with the said "No Objection Certificates" to the Director, Medical Education of the State where the College/Institutions including Deemed Universities to which migration is sought is situated or to the Head of the Institution in case migration is sought to a Central Government institution. The Director, Medical Education of the State concerned or the Head of the Central Government institution, as the case may be, shall take a final decision in the matter as to whether or not to allow migration in accordance with the provisions of these Regulations and communicate the same to the applicant student within a period of one month from the date of receipt of the request for migration.

3. The Regulations further provide that migration during clinical course of study shall not be allowed on any ground.

4. It is the case of the petitioner that he immediately after declaration of his result of first professional examination, on 29th August, 2008 applied to his College for NOC for migration and which was issued. It is further his case that he again immediately applied to the respondent No. 2 University but the respondent No. 2 University did not respond to his request and finally on 16th February, 2009 refused issuance of NOC for the reason that the request for migration could have been made by the petitioner to the respondent No. 1 MCI within one month of declaration of results only and which period has elapsed. The counsel for the petitioner states that the College and the University to which the petitioner intended to migrate has also issued the NOC and there is still one seat vacant in that college in which the petitioner can be accommodated.

5. The petitioner, notwithstanding the refusal of the respondent No. 2 University to issue the NOC, on 2nd March, 2009 applied to the respondent No. 1 MCI for migration and which application was rejected by the respondent No. 1 MCI as incomplete.

6. Aggrieved therefrom the petitioner preferred WP(C) No. 8168/2009 in this Court which was disposed of vide order dated 27th November, 2009 with direction to the respondent No. 1 MCI to consider the application of the petitioner and to pass a

reasoned order thereon.

7. It was in compliance of the aforesaid order of this Court that the respondent No. 1 MCI has now made the order dated 15th December, 2009 impugned in this petition.

8. The respondent No. 1 MCI has rejected the application for the reason of having been preferred beyond the prescribed time and also for the reason of being not accompanied with the NOC of the respondent No. 2 University. It appears that the petitioner had sought migration on medical grounds. The respondent No. 1 MCI in the order dated 15th December, 2009 has held that application for migration on medical grounds has to be accompanied with a certificate of the State Medical Board of the State in which he/she is currently studying; that the application of the petitioner was not accompanied with any such certificate but with the certificate of a private medical practitioner. The counsel for the petitioner points out that the same is counter signed by the Chief Medical Officer, Lucknow. However, in the opinion of this Court, the same would not make any difference inasmuch as the Chief Medical Officer cannot be equated with the State Medical Board.

9. The senior counsel for the respondent No. 1 MCI also informs that the clinical course starts immediately after the first professional examination and the petitioner now must be undergoing a clinical course and contends that he now cannot be allowed migration in accordance with the Regulations aforesaid.

10. The counsel for the petitioner on the contrary contends that the delay was on the part of the respondent No. 2 University and the petitioner ought not to suffer for the same. It is also contended that the Regulation aforesaid requires the petitioner to ♦first obtain♦ No Objection Certificate aforesaid and once the petitioner is found to have applied for No Objection Certificate earnestly and the delay is not attributable to the petitioner, the petitioner ought not to be made to suffer for the same.

11. The counsel for the respondent No. 2 University states t hat the application for migration was made to it only on 29th January, 2009 i.e. after about five months of the declaration of the result of the first professional examination. The counsel for the petitioner also does not dispute the same but contends that the application to the respondent No. 2 University was made only after obtaining NOC from the College where the petitioner is studying and the delay is on the part of that College. However, that college has not been made a party to the present petition and the petitioner has in the petition also neither made any grievance with respect to the delay of that College nor sought any relief with respect to that College.

12. While correcting the order dictated in the Court it is found that the petitioner has in the Writ Petition also taken a ground that the Rule set out in para 2 above was amended after the declaration of results and would thus not apply to the petitioner. Though this point was not urged and arguments addressed on the basis of Rule as set out in para 2 but I may mention that the requirement of submitting application

for migration within one month existed in the old Rule also. Thus the change in Rule will not make any difference.

13. In all the aforesaid circumstances, now when the clinical training/course has begun, no indulgence can be shown to the petitioner. The Regulations with respect to migration have the force of law and are not under challenge. The case of the petitioner is admittedly not covered by the said Regulations. In these circumstances, no interference is called for.

The writ petition is dismissed. No order as to costs.