

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.309 OF 2021
(Arising out of SLP(C)No.11598 of 2020)

MEDICAL COUNCIL OF INDIA

APPELLANT(S)

VERSUS

ANCHAL PARIHAR & ORS.

RESPONDENT(S)

O R D E R

Leave granted.

1. Respondent No. 1 was admitted to first MBBS Course in Ananta Institute of Medical Sciences & Research Centre, Rajsamand. She requested the Board of Governors in supersession of Medical Council of India to permit migration to Dr. S. N. Medical College, Jodhpur by a letter dated 26.08.2019. She relied upon the certificates issued by Ananta Institute of Medical Sciences & Research Centre, Rajsamand and the Principal of Dr. S. N. Medical College Jodhpur whereby they gave no objection for the migration. However, the Board of Governors in

supersession of Medical Council of India rejected the request for migration by a proceeding dated 25.10.2019 on the ground that it is not permissible under clause 6(2) of the Migration Rules.

2. The proceeding dated 25.10.2019 was communicated to the first respondent by the Director of Medical Education on 07.11.2019.

3. Respondent no.1 filed a Writ Petition in the High court of Judicature for Rajasthan at Jodhpur challenging the validity of the proceeding dated 25.10.2019 and seeking a direction to the respondent to permit a transfer from Ananta Institute to Dr. SN Medical College, Jodhpur. By a Judgment dated

09.01.2020, the learned Single Judge of the High Court allowed the Writ Petition and directed the Medical Council of India to relax the Regulations and permit migration of respondent no. 1. The rejection of the request of respondent no. 1 for migration was held to be discriminatory as the Medical Council of India extended the benefit of relaxation of the Regulations in favour of Daksh Sharma. The appeal filed by the

Medical Council of India was dismissed by a Division Bench of the High

Court by holding that the term 'Migration' referred to in sub-clause (2) of Regulation 6 of the Migration Rules is not limited to Schedule-I of the Medical Council of India Act, 1956 but it is much wider in scope. The Division Bench was of the further view that all institutions which are allowed to impart medical education should be deemed to be recognised colleges for the purpose of considering the applications for migration.

4. We have heard Mr.Gaurav Sharma, Learned counsel for the appellant, Mr. Atul Jha, Learned Counsel for the Respondent no. 1 and Dr. Manish Singhvi, Additional Advocate General for the State of Rajasthan appearing for the other respondents.

5. It is contended on behalf of the appellant that the High Court has committed an error in interpreting Regulation 6 of Graduate Medical Education Regulations, 1997. Migration of a student pursuing an undergraduate medical course is

permissible only if both the colleges are recognised by the Central Government under section 11(2) of the Indian Medical Council Act, 1956 in accordance with Regulation 6(2). The further condition stipulated in Regulation 6(3) is that an application for migration may be made by a candidate only after qualifying the first professional MBBS examination. Migration during clinical course of study shall not be allowed on any ground. It was argued on behalf of the appellant by Mr. Sharma that migration is not permitted by the Medical Council of India from a private college to the government college. He submitted that the first respondent belonging to OBC category was placed at 6,73,898 rank in the merit list as she secured only 110 marks out of total 720 marks in the NEET (UG)-2018 examination. Whereas, the cut off for admission in respect of OBC category in Dr. S. N. Medical College Jodhpur which is a Government Medical College to which the Respondent no. 1 sought migration is 560 marks out of 720 marks. It was further submitted on behalf of the appellant that the first respondent is in the 2nd MBBS (3rd year) and the clinical courses have already commenced.

6. Mr. Atul Jha, learned counsel for the first respondent referred to the Regulations to submit that Medical Council of India has the power to relax. He supported the judgment of the High Court by referring to the relaxation of the Regulations in favour of Daksh Sharma and other candidates by the Medical Council. He submitted that the decision not to grant permission for migration is discriminatory. He submitted that the father of the first respondent is suffering from cancer and the migration sought by the first respondent should be considered on humanitarian ground.
7. Dr. Manish Singhvi, learned Additional Advocate General for the State of Rajasthan submitted that the Principal of the Government Medical College to which transfer was sought had granted no objection for transfer of the first respondent as there is an existing vacancy in the College.
8. The interpretation of the Regulation 6(2) by the High Court is patently erroneous. The Regulation clearly lays down a restriction of

migration from an unrecognised college to a recognised college. Regulation 6(2) provides that migration is permissible only if both the Colleges are recognised u/s 11(2) of the Indian Medical Council Act, 1956.

9. Section 11(2) of the Medical Council Act, 1956 is as follows:-

11. Recognition of medical qualifications granted by Universities or medical institutions in India:

Section 11(2) in The Indian Medical Council Act, 1956

2) Any University or medical institution in India which grants a medical qualification not included in the First Schedule may apply to the Central Government to have such qualification recognised, and the Central Government, after consulting the Council, may, by notification in the Official Gazette, amend the First Schedule so as to include such qualification therein, and any such notification may also direct that an entry shall be made in the last column of the First Schedule against such medical qualification declaring that it shall be a recognised medical qualification only when granted after a specified date.

The term 'Migration' cannot be read out of context without reference to the Regulation which clearly provides that both colleges should be recognised u/s 11(2) of the Act. Admittedly, the college in which the first respondent is studying is yet to be recognised u/s 11(2) of the Act. Migration cannot be

permitted contrary to the Regulations. Considering the submissions made by Mr. Atul Jha, learned counsel regarding the relaxation which can be granted by the Medical Council of India, Note 2 to Regulation 6 empowers the Medical Council of India to permit migration after considering the individual merit of the request only in respect of matters which are not covered by the Regulations.

10. The learned counsel for the appellants submitted that the reliance placed on relaxation granted to Daksh Sharma for granting relief to the first respondent is misplaced.

11. We have perused the decision taken by the Board of Governors in supersession of Medical Council of India in favour of Daksh Sharma. He sought transfer from JNU Institute of Medical Science and Research Centre, Jodhpur to Ananta Institute of Medical Sciences & Research Centre, Rajsamand. There was a delay of a month in making the application in view of his involvement in a serious accident. The delay in filing the application was condoned in his favour. It cannot be said that the first respondent is similarly situated

to Daksh Sharma as the request made by the first respondent is contrary to the Regulations. Mr. Jha submitted that there are other candidates who have been extended the benefit of the relaxation of the Regulations, whose particulars are not forthcoming.

12. For the aforementioned reasons, we set aside the judgment of the High Court and allow the appeal. Pending application(s), if any, shall stand disposed of.

.....J
(L.NAGESWARA RAO)

.....J
(INDIRA BANERJEE)

NEW DELHI;
2nd February, 2021.

ITEM NO.9 Court 8 (Video Conferencing) SECTION XV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s).11598/2020

(Arising out of impugned final judgment and order dated 10-09-2020 in DBSAW No.170/2020 passed by the High Court Of Judicature For Rajasthan At Jodhpur)

MEDICAL COUNCIL OF INDIA

Petitioner(s)

VERSUS

ANCHAL PARIHAR & ORS.

Respondent(s)

(With appls. for exemption from filing affidavit, exemption from filing c/c of the impugned judgment)

Date : 02-02-2021 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE L. NAGESWARA RAO

HON'BLE MS. JUSTICE INDIRA BANERJEE

For Petitioner(s) Mr. Gaurav Sharma, AOR
Mr. Dhawal Mohan, Adv.
Mr. Prateek Bhatia, Adv

For Respondent(s) Mr. Manish Singhvi, Sr.Adv.
Ms. Apurva Singhvi, Adv.
Mr. Sandeep Kumar Jha, AOR
Mr Atul Jha, Adv.
Mr. Arun Adlakha, Adv.
Mr. Dharmendra Kumar Sinha, AOR

Mr. Omprakash Ajit Singh Parihar, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order. Pending application(s), if any, shall stand disposed of.

(B.Parvathi)
Court Master

(Anand Prakash)
Court Master

(Signed order is placed on the file)