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Court : Rajasthan

Decided On : Jul-15-1994

Reported in : 1994(2)WLN401

Judge : P.K. Palli, J.

Appeal No. : S.B.C. Writ Petition No. 5100 of 1993

Appellant : Tarun Vyas

Respondent : State and ors.

Disposition : Petition allowed

Judgement :

P.K. Palli, J.

1. It is agreed that this petition be finally disposed of at this stage.

2. The petitioner joined the Dagistan Medical Institute, Russia and passed the first Professional Examination, including Anatomy, Physiology and Biochemistry which is equivalent to First Year M.B.B.S. Course of India. This admission was given under a Scheme known as Indo Soviet Cultural & Educational Foundation. It was after due selection under the Scheme, the petitioner joined the Course in Russia. The First Professional Examination was passed by him in July, 1993. Due to political changes in that country, the agreement between Indo Soviet Cultural and

Educational Foundation and the Government of India stood terminated and the petitioner had no option but to seek admission in India and for the purpose he applied for being admitted by way of transfer in S.P. Medical College, Bikaner for II Year M.B.B.S. Professional Course. It is not disputed that the College situated in U.S.S.R. now Russia and training imparted by it is duly recognised by the Medical Council of India (for short M.C.I.) as is evident from Annex. 2. S.P. Medical College, Bikaner is also a recognised Institute by the M.C.I. and the provisions for transferring students from one recognised Institution to another are contained in Clause V of the Minimum Recommendations of the Medical Council of India and are reproduced hereunder:

MIGRATION/TRANSFER OF STUDENTS FROM ONE COLLEGE TO ANOTHER:

(a) A student studying in a recognised medical college may be allowed to migrate/transfer to another recognised medical college under another/same University.

(b) The migration/transfer can be allowed by the University concerned within three months after passing the 1st Professional Examination, as a rule.

(c) Migration/transfer of students during the course of their training for the clinical subject should be avoided.

(d) The number of students migrating/transferring from the medical college to another medical college during one year will be kept to the minimum so that the training of the regular students of the college is not adversely affected. The number of students migrating/transferring to/from any one medical college should not exceed the limit of 5% of its intake in any one medical college in one year.

(e) Cases not covered under the above regulations are to be referred to the Council for consideration on individual merits.

(f) An intimation about the admission of migrated/transferred students in to any medical college should be sent to the council forthwith.

3. Since the Institution i.e. Dagistan Medical Institute is recognised by the M.C.I., the petitioner made an application to the Secretary, Medical and Health Department, Government of Rajasthan and with the said application a certificate issued from the Dagistan Medical Institute, Russia was also attached. The petitioner vide Annex. 5 was told that admission could not be granted to him in view of the letter dated 2.8.1993 issued by the Secretary, Medical Council of India to all the Deans and Principals of Medical Colleges in India. The petitioner has challenged the directions contained in this letter issued by the M.C.I. as being against the provisions of the Act, Rules and Regulations. Since the provision of transfer from one Institution to another is governed by the provisions which I have already reproduced above, it is contended that no such power stands conferred to impose such condition or restriction and the petitioner claims that he is entitled for transfer from the Institute of Russia to S.P. Medical College, Bikaner as he fulfills all the necessary qualifications and requirements necessary for it and the respondents are wrongfully denying to the petitioner his right of admission by way of transfer to the S.P. Medical College, Bikaner.

4. At the motion stage on 8.10.1993 Hon'ble Mr. Justice R. Balia handed down the order reproduced hereunder:

Issue notices of stay application.

Meanwhile, the petitioner be provisionally admitted to IInd Year M.B.B.S. at S.P. Medical College, Bikaner, provided by giving such admission the total number of intake of students migrated to the respondent College does not exceed 5 percent of intake during current session and, the petitioner is otherwise found eligible for such migrattion.

Rule is made returnable within 2 weeks.

5. This order on stay application has continued to remain in force till date. On the main petition at the motion stage, Hon'ble Mr. Justice R. Balia, on 8.10.1993 passed this order:

Heard.

Issue notices to the respondents to show cause as to why this petition be not admitted and allowed.

Rule is made returnable within 2 weeks.

6. It is an admitted case that the petitioner stands admitted to the IInd Year M.B.B.S. Course at S.P. Medical College, Bikaner. This Court vide order reproduced above on they stay application made it clear that the petitioner be admitted provided the total number of intake of students migrated to the respondent College do not exceed 5% of the quota during the current session. It was further made clear that the petitioner would be given provisional admission if otherwise he is found eligible for such migration.

7. After having heard the learned Counsel for the parties and after having careful gone through the record I am of the opinion that the directions contained in Annex. 5 which are further based on a letter of the Ministry of Health and Family Welfare, Government of India dated 23.7.1993 in no way create any impediment in the way of the petitioner. It says that not more than 2 such students may be taken in one medical college per year and the entry can only be after passing the subjects mentioned in that letter. I am further of the opinion that the petitioner on the strength of his qualification was fully: competent and eligible for being admitted to S.P. Medical College, Bikaner in the II Year M.B.B.S. Professional Course by way of transfer. It is not disputed that the College situated in U.S.S.R now in Russia and the training imparted by it has been recognised by the Medical Council of India. When provision for migration/transfer from one Medical College to another an contained in Clause V reproduced in the earlier part of this order permits such transfer then a harmonious construction has to be placed if any direction contrary to it as contained in Annex. 5 is tried to be projected. I, therefore, hold that the respondents were not justified in denying admission to the petitioner on the strength of the letter Annex. 5. Even otherwise nothing has been stated from the other side that while admitting the petitioner any condition as mentioned in Annex. 5 stands violated. The order passed by this Court at the motion stage is quite clear and the respondents were directed to admit the petitioner only if he was otherwise found eligible for such a migration. The respondents thus, having admitted the

petitioner to the Course in the light of the directions given he will be deemed to be fully qualified and eligible and nothing has been pointed out before me by the other side that the petitioner was ineligible or not qualified for being admitted to the said Course at S.P. Medical College, Bikaner.

8. In view of what has been said above, the writ petition is allowed. The respondents will regularise the admission granted by them to the petitioner.

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