

Shirish Govind Prabhudesai vs State Of Maharashtra And Ors on 21 October, 1992

Equivalent citations: AIR 1993 SUPREME COURT 1736, 1993 (1) SCC 211, 1993 AIR SCW 1519, 1993 (1) UJ (SC) 170, (1993) 3 JT 722 (SC), 1993 UJ(SC) 1 170, (1992) 5 SERVLR 625, (1993) 1 SCT 259, (1993) 22 ALL LR 512, (1995) 1 BOM CR 215

Author: J.S Verma

Bench: J.S Verma

PETITIONER:
SHIRISH GOVIND PRABHUDESAI

Vs.

RESPONDENT:
STATE OF MAHARASHTRA AND ORS.

DATE OF JUDGMENT 21/10/1992

BENCH:
[J.S VERMA, YOGESHWAR DAYAL AND N. VENKATACHALA, JJ.]

ACT:
Education-Professional Colleges:
Migration/transfer of student from one Medical college to another - condition of eligibility-student of non-recognised Medical college refused transfer to recognised Medical colleges-Validity of.
Constitution of India 1950:
Art.14 Migration-transfer of students from one Medical College to another-Eligibility condition-Refused of transfer to students of non-Recognised Medical College-Whether arbitrary and unreasonable.

HEADNOTE:
The present Writ petitions, special Leave Petitions and Civil Appeals relate to the right of a student admitted in a medical college not recognised by the Medical Council of India to claim migration/transfer to a medical College recognised by the Medical council of India after Passing the first MBBS Examination. The condition of eligibility for

migration/transfer to a recognised medical college has been prescribed by the colleges on the basis of one of the recommendations one of the recommendation on Graduate Medical Education adopted by the Medical Council of India. This condition relates to migration medical college to another recognised medical college.

It was contended on behalf of the aggrieved student that differentiation between student of non- recognised medical colleges and recognised medical colleges for purpose of migration/transfer when the degree of MBBS awarded to students of both the categories of medical colleges stood recognised by the University to which the colleges were affiliated, was discriminatory and arbitrary.

Disposing of the matters, this court,

HELD : 1.1. Unless a recognised medical college offers to admit by migration/ transfer some students from another medical college no student can claim as of right admission by migration/transfer to that medical college. A recognised medical college when it decides to admit by migration/transfer some student after passing the first MBBS examination from another medical colleges, can restrict its choice only to students who were admitted to and have passed the first MBBS examination from a recognised medical colleges. Undoubtedly, it is one of the recommendations on Graduated Medical Education adopted by the Medical Council of India which is being acted upon by recognised medical colleges while taking student by migration/transfer. [106-E,F,G]

1.2. The recommendation on Graduate Medical Education are by an expert body of the Medical Council of India which is entrusted with certain statutory functions relating to medical education by the Indian Medical Council Act, 1956. The Medical Council of India having chosen to accept these recommendation s, such a condition of eligibility for migration /transfer from one medical college to another adopted by the recognised medical colleges cannot be termed unreasonable or arbitrary. The qualitative difference between the non-recognised medical colleges generally as compared to the medical colleges recognised by the Medical Council of India, the recognition being based on certain objective standards relating to medical education, and the competitive merit forming the basis for admission to a recognised medical college justify as reasonable such a restriction for grant of permission for migration/transfer from one medical college to another. One of the purposes served by such a restriction is to permit this inter-college movement of students after passing the first MBBS examination only between student of recognised medical colleges of students and to prevent indirect entry into recognised medical colleges of students who had failed initially to secure entry into secure entry into recognised medical colleges. Movement of students between recognised medical colleges only is quite often to facilitate the

students therefore in certain circumstances without conferring on them any additional benefit after the initial entry to a medical colleges duly recognised. [106-H
JUDGMENT:

1.3. There being no inherent right in student admitted to a non-recognised medical college to claim such migration/transfer, this restriction for migration/transfer being imposed by the recognised medical college on the basis of the recommendations adopted by the Medical Council of India, there is no foundation for the claim for such migration/transfer made by the students of non-recognised medical colleges. [107-E] & ORIGINAL JURISDICTION : Writ Petition (c) NO.351 of 1992 (under Article 32 of the Constitution of India) WITH H.N. Salve, V.A Bobde, V.N. Ganpule, D.N. Mishra, A.S. Bhasme, Mrs K. Hingorani, Vikas Singh, L.R. Singh, Dhurv Mehta and S.K. Mehta (NP) for the appearing parties.

The Judgment of the court was delivered by VERMA, J. The common question involved for decision in these matters is the right of student admitted in a medical college not recognised by the Medical council of India to claim migration/transfer to a medical college recognised by the Medical Council of India after passing the first MBBS examination from the medical college to which the student has been admitted. The students claiming the right to such migration/transfer assert that on discrimination can be made for this purpose between a student admitted initially to the MBBS course in a medical college not recognised by the Medical council of India and one who has been admitted initially to medical college recognised by the Medical Council of India. In substance the contention is that both these categories of students being to the same class being admitted to a medical college where from they obtain the MBBS degree recognised by a university. This question arises in the context of a condition for eligibility to such migration/transfer prescribed by medical colleges recognised by the Medical colleges recognised by the Medical council of India for entertaining the application from a student for migration/transfer to the recognised medical college after passing the first MBBS examination only if the applicant had been initially admitted to and had passed the first MBBS examination from a medical college recognised by the medical council of India. Such a conditions of eligibility for migration/transfer to a recognised medical college on the basis for one the basis of one the recommendations on Graduate Medical Education adopted by the Medical council of India which is as under:

"V. migration/transfer of student from one Medical 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 student during the course of their training for the clinical subject should be avoided.

(d) The number of students migrating/transferring from one medical college to another medical college during one year will be kept to the minimum so that the training of the regular students of that college is not adversely affected., The number of students migration/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 regulation are to be referred to the council for consideration on individual merits.

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

The material facts on which the above point is to be decided in these matters are only a few. In Writ petition No. 351 of 1992, the petitioner Shirish Govind Prabhudesai was admitted initially to the MBBS course in Bhausaheb Hire Government Medical college, Dhule in September 1990. After passing the MBBS examination, the petitioner applied in January 1992 for his transfer from Bausaheb Hire Government Medical College, Dhule to B.J. medical college, Pune. By a letter 'Annexure D' of January 18, 1992, the Director, Medical Education & Research, Bombay refused to permit such transfer stating that no transfer can be granted to a student who had passed his first MBBS examination from a non-recognised Medical college, such transfer being permitted only from one recognised medical college to another recognised medical college. IN view of several matters pending in this court involving for decision the same point, the petitioner filed this writ petition under Article 32 of the constitution for the substantial relief of grant of permission to him for transfer to B.J. Medical college, Pune.

Special Leave petition No.4902 of 1992 is against the order dated March 18, 1992 passed by the High court of Judicature at Bombay dismissing the writ Petition No.498 of 1992 wherein a similar prayer made by the petitioner, Miss Gauri Gulati for transfer from N.K.P. salve Institute of Medical sciences & Research Centre, Nagpur, a non-recognised college to a recognised medical college in Bombay was refused on the same ground. The Bombay High court took the view that such a condition of eligibility for migration/transfer prescribed by a recognised medical college for admitting students by migration/transfer after passing the first MBBS examination was not unreasonable or arbitrary to permit any interference by the High court. The petitioner has filed the special leave petition aggrieved by this order.

Civil Appeal Nos.3 and 4 of 1991 arise out of interim orders made by the Bombay High court in two writ petition Nos. 2101 and 2102 of 1989 filed by respondent Nos. 1 and 2, namely, Rajendra S. Sankpal and Riaz Nomani for a similar relief on refusal of permission for transfer from a non-recognised medical college to a recognised medical college. BY the impugned interim orders, the writ petitioners were 4912 permitted to pursue their studies on transfer in Grant Medical College, Bombay to which they had sought transfer after passing the first MBBS examination. In these appeals filed by special leave by the Medical Council of India, this court permitted both of them,

namely. Rajendra S. Sankpal and Raiz Nomani to pursue their studies for the MBBS course in Grant Medical College, Bombay in there meantime. The consequence is that both these persons, namely, Rajendra S. Sankpal and Riaz Nomani have already passed the final MBBS examination in the meantime from Grant Medical College, Bombay.

Having heard learned counsel, we have no hesitation in t akin g the view that the argument advanced to support there claim for such a right of appearing for the petitioners in writ petition No.351 of 1992 and special Leave petition No.4902 of 1992 and for respondent No. 1 and 2 in civil Appeal Nos. 3 and 4 of 1991 were unable to show the foundation for such a claim on which the relief of migration/transfer was claimed. The only a claim on which the relief of migration/transfer was claimed. The only argument advanced for that differentiation between students of a non-recognised medical college and a recognised medical college for there purpose for migration/transfer when the degree of MBBS awarded to students of both the categories of medical college is recognised by the universities to which they are affiliated, is discriminatory and discriminatory and arbitrary. It was urged that for this reason the above- quoted recommendation of the Medical council of India which has been accepted and forms the basis of refusal of permission for migration/transfer of students of a non- recognised medical college to a recognised medical college, is discriminatory.

Learned counsel were unable to show that a right of migration/transfer of a student from one medical college to another inheres to a student de hors the conditions subject to which the migration/transfer is permitted. It is also not disputed that in case a recognised medical college chooses not to take any student by migration/transfer from another medical college no student can claim as of right admission by migration/transfer to that medical college, it can restrict its choice only to students who were admitted to and had passed the first MBBS examination form a recognised medical college, it can restrict its choice only to students who were admitted to and have passed the first MBBS examination from a recognised medical adopted by the medical Council of India which is being acted upon by recognised medical colleges while taking student by migration/transfer.

The recommendation on Graduated Medical Education are by an expert body of the Medical council of India which is entrusted with certain statutory relating to medical education by the Indian Medical council Act, 1956. The Medical Council of India having chosen to accept these recommendations such a condition of eligibility for migration/transfer from one medical college to another adopted by the recognised medical college cannot be termed unreasonable or unreasonable or arbitrary. The qualitative difference between the non-recognised medical colleges recognised by the Medical Council of India, the recognition being based on certain object standards relating to medical education, and the competitive merit forming the basis for admission to a recognised medical college justify as reasonable such a restriction for grant of permission for migration/transfer from one medical college to another, One of the purposes served by such a restriction is to permit this inter-college movement of students after passing the first MBBS examination only between students of recognised medical colleges and to permit this inter-college movement of students after passing the first MBBS examination only between students of recognised medical colleges and to prevent indirect entry into recognised medical colleges of students who had failed initially to secure entry into a recognised medical college. Movement of

students between recognised medical colleges on only is quit often to facilitate the students therefore in certain circumstances without conferring on the any additional benefit after the initial entry to a medical colleges duly recognised. Viewed in this manner, such a condition of eligibility for migration/transfer to a recognised medical college permitting only students of recognised medical colleges is neither arbitrary nor unreasonable. There being no inherent right in a student admitted to a non-recognised medical college to claim such migration /transfer, this restriction for migration /transfer imposed by the recognised medical Council of India there is no foundation for the claim for such migration/transfer made by the students of non-recognised medical colleges.

Consequently, writ petition No.351 of 1992 and Special Leave petition No.4902 of 1992 are dismissed. However, In the peculiar facts and circumstance of the two students involved in civil Appeal Nos. 3 and 4 of 1991, a different order of the kind we have made in similar situations is called for. These two students, namely, Rajendra S. Sankpal and Riaz Nomani have both passed the final MBBS examination from the Grant Medical College, Bombay to which they were transferred as a result of the interim orders made by the High court in their writ petition Nos. 2101 and 2102 of 1989 and then by this Court. In view of the fact that both of them have already obtained the MBBS degree from the college to which they were transferred, setting aside their transfer would not benefit any other student while it would deprive them of the benefit they have already gained as a result of the interim orders made by the High court and this Court, In this situation, we consider it appropriate not to interfere with the impugned interim orders made by the High court and direct the High court to dispose of the pending writ petitions making the final order in terms of the in terms of the interim order for these reasons. which shall not be treated as a precedent. Civil Appeal Nos. 3 and 4 of 1991 are disposed of required as a High court to disposed of writ petition Nos.2101 and 2102 of 1989 pending in the High court, accordingly. No costs in all these matters. G.N. Matters disposed of.