

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00225/2019

DATED THIS THE 24TH DAY OF JANUARY, 2020

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI C V SANKAR, MEMBER (A)

Dr. Vijay V
S/o Venkatesh K
Aged about 37 years
Residing at No. 72, 10th C Cross,
6th Main West of chord road,
Nagapura, Bangalore 560 086

.....Applicant

(By Advocate Ms. Akkamahadevi Hiremath)

Vs.

1. Union of India,
Ministry of Labour & Employment,
Government of India, Nirmal Bhavan,
New Delhi 110 011,
Represented by its Secretary

2. Employees State Insurance Corporation,
Hqrs. Office, Panchadeep Bhavan,
C.I.G. Marg, New Delhi 110 002,
Represented by its Director General

3. Employees State Insurance Corporation,
Hqrs. Office, Panchadeep Bhavan,
C.I.G. Marg, New Delhi 110 002,
Represented by its Deputy Director (Medical Administration)

4. Employees State Insurance Corporation,
Hqrs. Office, Panchadeep Bhavan,

C.I.G. Marg, New Delhi 110 002,
Represented by its Assistant Director (Medical Administration)

5. The Employees State Insurance Corporation Model Hospital
& PGIMSR, Rajajinagar,
Bangalore 560 010
Represented by its Dean

6. Medical Council of India
Represented by its Secretary
Pocket-14, Sector-8,
Dwaraka, Phase-I
New Delhi 110077

.....Respondents

(By Shri Vishnu Bhat, Counsel for Respondents No. 1 to 5 and
Shri Vijay Kumar, Counsel for Respondent No.6)

ORDER

DR. K.B. SURESH, MEMBER (J):

*The principle “**cessante ratiōne cessat ipsa lex**”
seems to be relevant here.*

2. To quote the Hon'ble Apex Court in **State of Punjab Vs. Devans Modern Breweries Ltd**, reported in (2004) 11 SCC Page 26 *“it is not easy to It is not easy to detect when such situations occur, for as long as the traditional theory prevails that judges never make law, but only declare it, two situations need to be carefully distinguished. One is where a case is rejected as being no longer law on the ground that it is now thought never to have represented the law; the other is where a case, which is acknowledged to have been the law at the time, has ceased to have that character owing to*

altered circumstances. (See Dias Jurisprudence, 5th Edition, page 146-147)

It is the latter situation which is often of relevance. With changes that are bound to occur in an evolving society, the judiciary must also keep abreast of these changes in order that the law is considered to be good law. This is extremely pertinent especially in the current era of globalization when the entire philosophy of society, on the economic front, is undergoing vast changes.”

3. The primary situation to be considered in this respect is that the emergence and genesis of the medical colleges under the ESI horizon. The ESI was never or ever thought requisite to commence medical education. It is an organization primarily concerned with insured people and therefore medical welfare. Medical education, on the other hand, is a different cup of tea. However, they now admit that a wrong policy decision might have been taken by them to commence medical education namely at Bangalore and Gulbarga in Karnataka and in the West Bengal. Luckily, this new emergence stopped there and did not go further. Since the requisition for teaching in medicine and treatment in medicine are different, it was found difficult to harmonize both as the parameters required were different, quality of staff required to pertain to each of the

requirement was different and they say that they have now requested the concerned state government to take over these institutions as medical education has been recognized all over as a requisite extension of public interest by the governments concerned. Therefore, this issue has to be seen in the light of the emerging scenario of the ESI Corporation having decided, if possible, to reduce its burden of medical education and hand it over to the Karnataka government.

4. By common agreement, OA No. 196/2019 was agreed to be the leading case as all other matters are similar or almost similar in nature and the relief claimed for. Everything has a basis on the rationalization order and the rationalization circular which is issued by the respondents.

5. To elucidate further, applicant was appointed on 06.07.2009 as an Insurance Medical Officer. On 22.07.2016 she was confirmed as an IMO with effect from 06.07.2011. In the meanwhile, she had completed her PG course after obtaining permission through an adjudicatory process.

6. The applicants came to know that a rationalization circular bearing No. A-12/25/6/2012-Med.VI (Policy) (Part-II)-Col.1 dated 21.01.2019 had been issued by the 3rd respondent and sent to Respondent No. 5. They would say that this policy is based on fallacious grounds as it sought to reduce the strength of the doctors working in the 5th respondent hospital and the rationalization order dated 22.02.2019 by declaring them surplus

was challenged. The applicants would say that the irrationality of this order and policy is clear from the fact that notwithstanding an increase in the growth of insured persons being attached to the Respondent No. 5 hospital from 4 lakhs and their dependant families in 2009 to 11 lakhs and their dependant families in 2018, the actual doctors strength is sought to be reduced from 263 to 198 as against the required norms of ESI which pegged it at 358.

7. The respondents challenges the factual correctness of these figures and would say that the details of their requirements both under ESI norms and under the MCI norms had been given by them in the table attached and these have been taken care of adequately as the daily arrival of patients are roughly about 2,000 per day which are handled by a number of doctors as a doctor is expected to examine 60 patients in a day.

8. At this point, the learned counsel for the applicants submits that they are not actually on the rationalization principles but the difference between the rationalization order issued earlier and the rationalization circular which came thereafter. They would say that there is a significant difference in the number of figures shown as apparently the ESI Corporation has canvassed the view of the MCI in their guidelines and directions and fixed the pattern accordingly but according to the applicants, since the ESIC has their own norms, the new norms

prescribed by the MCI may not be applicable per se. They would say that teaching is a different function which may not be applicable to insurance hospital. They point out that the purpose of declaring all these doctors as surplus might be to increase the number of referrals to other private hospitals to benefit them. The respondents submit that in some cases referral had to be resorted to as such facilities may not be available in the Rajajinagar hospital. They would say that some among the applicants themselves had referred such persons to external care depending on their condition when it is found that the facility for treatment of such persons did not exist in their institution. They would say that, other than that, no other patient is referred to any other hospital.

9. The applicant would say that the respondents have not followed the Annexure-A6 circular whereby senior residents who were to be employed were to be treated in addition to the GDMOs/IMOs, such as the applicants, once they join service. The applicants most vehemently submit that the respondents have illogically and illegally treated two Post Graduate students as being equivalent to one IMO ignoring the fact that students have no responsibility, no legal status vis-à-vis the insured persons and artificially increase the professional medical staff actually available in the hospital. They would say that Post Graduates are learners and are students only and are not authorized to give medical services to the insured persons as the same falls under the purview of

insurance. They would say that this would totally dilute the quality of services to the IPs. They would also say that IMO's were recruited on the basis of their knowledge of Kannada and were to be utilized for Karnataka, besides the factum of a language barrier in case they are transferred outside Karnataka for a medical profession which needs proper diagnosis. They would also say that they had taken Post Graduate seats from Karnataka government quota and should therefore serve the state. The respondents in answer would say that in fact by an interim order of the Hon'ble High Court of Karnataka applicants were able to secure forwarding of their applications and, once their applications were forwarded, the Corporation had no other go other than to agree to give them permission to pursue Post Graduate studies. **But then the respondents say that some of the applicants have chosen that they may be designated as Assistant Professors and above and be held eligible for NFSG and other benefits but they would say that one feature of such posting benefits are that they become liable for an all-India transferability as local posting is available only upto the level of CMOs.** It appears that the whole problem arose because a change was made in the ESI regulations to promote medical education as well. This was clearly not the mandate of insurance for insured people and therefore the requirements of an insurance hospital and the requirements of a teaching hospital are different. In order to harmonize these two features, the ESI Corporation had to take certain

steps which were mandated by the circumstance at that point of time. Therefore it seems that conflicting orders were issued by the Corporation.

10. But in spite of all these, it appears, on a consideration of crux of the problem, that **what the applicants fear is that since they are being now given the additional benefits which come along with all-India transferability, there is a possibility that the institution may transfer them to other places.** It is correct that very voluminous documentation is brought in by both the parties but the fact remains that this is **basically a challenge against transfer or possible transfer.**

11. Therefore, what about the allegation of the applicants that inadequate number of doctors will be available to service the patients. The applicant claims that 11 lakhs insured people in an year depends on the said hospital. The respondents have challenged the factual correctness of these. But they would say that a per day inflow of 2,000 patients is accepted in the hospital. That translate to 7,30,000. So, if both figures are taken and a mean arrived at also the ESI would say that by rationalization both these teaching and outpatient departments were being harmonized. The methodology of harmonizing they have adopted is to utilize the services of the PG students also as their curriculum

indicates that their classroom concern is very less whereas the component of physical presence in the hospital is much much more. Therefore we have examined this matter with the help of CGHS doctors who also affirm that PG students are routinely engaged in all the hospitals and they are also paid the same wages as a normal doctor. **Thus it appears that the stand of the ESI that some sort of a utilization of PG students in the hospital is regular and may not be open to challenge.** The ground taken by the applicants that the PG students cannot be equated with Insurance Medical Officer seems to be incorrect as a PG student is also an MBBS graduate and therefore could be seen as equivalent to any other Insurance Medical Officer. Therefore, the adjustment of two Post Graduate students into one slot of Insurance Medical Officer may not be held to be that improper, is the view of the respondent corporation.

12. There cannot be any doubt that the policy factum of any governmental authority is to be viewed as correct unless acute malafides are brought out. The respondents have stated that they are in discussion with the State Government concerned to take over the medical college as they now find that they have ventured into an unwelcome territory, it is not part of their function to have a medical college at all, therefore, they are reluctant to accept more people into their fold with additional responsibility which it entails. It seems to be a rational and logical

approach. So, it cannot be said that a lack of vision has marred the rationalization policy and the circular. **It is to be noted in this concern that it is the general public interest that matters in assessment of policy and its analysis.** The benefit to an employee in that institution which is there to provide benefit to the employees who are insured persons must always be in favour of the insured persons than the employees. The right of the employees in this connection is only for their reasonable perquisites like wages and other circumstances which are normally resident in it. **If the employees have to decide on the policy of the institution then they substitute the management which may not be called for under the relevant statutes as well as the policy of the Constitution of India.**

13. In **State of Madhya Pradesh and Another vs. S.S. Kaurav and Others, 1995 (1) S.C. Services Law Judgements 350**, Hon'ble Supreme Court held:

“The court or Tribunals are not appellate forums to decide on transfer of officers on administrative grounds. The wheels of administration should be allowed to run smoothly and the courts or Tribunals are not expected to interdict the working of the administration system by transferring the officers to proper places. It is for the administration to take appropriate decision and such decision shall stand unless they are vitiated either by malafides or by extraneous consideration without factual background.”

14. Hon'ble Apex Court in the case of **National Hydroelectric Power Corporation Ltd. vs. Shri Bhagwanand Shiv Prakash, 2001 (2) S.C Services Law Judgements 396**, held :

"No Government servant or employee of Public Undertaking has any right to be posted forever at any one particular place. Transfer of an employee appointed against a transferrable post is not only an incident of an order of transfer unless such an order is shown to be an outcome of malafide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer. In fact High Court was not right in quashing the transfer order on the ground that it is against the seniority rules."

15. In the case of **Rajendra Singh and Others vs. State of Uttar Pradesh and Others, (2010) 1 SCC (L&S) 503**, Hon'ble Apex Court relying on the earlier judgement in **Shilpi Bose vs. State of Bihar, 1991 Supp (2) SCC 659**, held:

" In our opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department. If the courts continue to interfere with day-to- day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders."

16. In **Shri N.K. Singh vs. Union of India**, (1994) 6 SCC 98, the Hon'ble Apex Court stated that :

“6. The scope of judicial review in matters of transfer of a government servant to an equivalent post without any adverse consequence on the service or career prospects is very limited being confined only to the grounds of malafides and violation of any specific provision...”

17. In **Government of Andhra Pradesh vs. G. Venkata Ratnam**, (2008) 2 SCC (L&S) 900, Hon'ble Apex Court held:

“The Hon'ble High Court was guided by its own notion of what would be in the Department's overall interest, and where respondent would be more suited. This was not accepted by the Hon'ble Supreme Court. It held that respondents could not be allowed to choose his own place of posting. The Hon'ble Supreme Court allowing the appeal held that "the High Court judgment is wholly untenable and rather unusual and strange. The judgment was apparently delivered in anger which might have been caused by the Government Pleader or the Director (the second respondent before the High Court). The Court not only lost judicial poise and restraint but also arrived at completely unfounded conclusions. The High court seems to have been completely taken in by ipse dixit of the respondent and his tall claims about his own ability, and virtually allowed him to choose his own place of posting. It is surprising that High Court castigated the respondent's transfer as lacking bona fides on flimsy and fanciful pleas. The High Court's finding is unfounded and untenable. The legal position regarding interference by court in the matter of transfer is too well established. The respondent's transfer neither suffers from violation of any statutory rules nor can it be described as mala fide”.

18. Therefore, two factors emerge for consideration. It has now been settled that the policy of governance must have pre-eminence unless it is found to be malafide, illegal or arbitrary. The ESI Corporation would say that the pre-absorption scenario was applicable only up to the rank of

Chief Medical Officer, beyond that and apart from that, if a person aspires for and is eligible and receives a benefit, then he or she is liable for all-India transfer as the additional qualification required and acquired by the applicants have been the result of the funding advanced by the respondents. This, according to us, seems to be correct. Therefore, we hold as follows:

- 1) All those persons who have received special benefits in terms of career advancement must therefore hold themselves to be eligible and required to be transferred on an all-India basis.
- 2) All those persons who are just CMOs or below will be considered by the respondents as eligible for continued employment at their places where they were absorbed or within the state as the case may be, but the all-India transfer liability will not rest on their shoulders until they are granted such prospects.

19. Therefore we hold that the rationalization order and the circular and the succeeding consequences, even though slightly at variance with each other, had been explained by the respondents as having been issued in the interest of institution as a harmony had to be achieved between the MCI norms and the ESI norms and the higher value had been adopted in each case. But when an accumulation is made among all medical professional, it has provided for a better benefit to the insured persons.

20. We also hold that the ground put up by the applicants that this rationalization policy is meant for benefitting the private hospitals around are not acceptable as they are devoid of any specificity particularly in view of the fact that most of the applicants themselves were absent during a large swathe of their service as they were undergoing Post Graduate education and the contention of the respondents which stands un-rebutted that only those patients who could not be treated within the capability of the institution alone were referred at the cost of the institute. It is also stipulated that many among the applicants also have recommended such referrals.

21. We also hold that there seems to be nothing illegal or arbitrary either in the rationalization order or in the circular but we see it as some sort of a last ditch attempt to reconcile the two values of a teaching institution and a treating institution together particularly in the light of the decision they had taken to let go of this institution into the hands of the Karnataka government.

22. The Hon'ble Apex Court had considered the rights of the employees to question the management policies of their employer in **All India ITDC Workers Union & Others Vs. ITDC & Others** in Transfer Case (Civil) 73 of 2002 dated 31.10.2006 which we quote:

“Supreme Court of India

CASE NO.: Transfer Case (civil) 73 of 2002

service. The statement was not disputed or denied by learned senior counsel for the petitioners. For the foregoing reasons, we hold that there is absolutely no merit or substance in the contentions raised by learned senior counsel for the petitioners. The writ petitions are, therefore, liable to be dismissed and the policy decision taken by the Government of India to transfer the Hotel Agra Ashok to M/s Mohan Singh and Yamuna View Private Limited cannot be assailed at the instance of the employees. The writ petitions are accordingly dismissed, however, there will be no order as to costs. In view of the disposal of the writ petitions, the transfer cases are also disposed off accordingly.

23. After explaining the matrix, the Court expressed a view that the policy decision taken by the Government cannot be assailed at the instance of its employees. The rationalization policy and its execution order is the result of a policy enactment of the government or the concerned governance authority. Unless malafides are alleged and proven, there cannot be any interdiction as no illegality is attributed to the rationalization order, at least it is correct that a wrong policy decision was taken by the ESI in starting the medical college. They have explained that they are doing amends to it by discussing with the Karnataka government regarding takeover of the institution. That being so and since the higher value in harmonizing the value under ESI Act and the value under MCI Act is adopted and particularly as the Post Graduate students are given the full wages of an ordinary doctor, there cannot be anything wrong in the action of the respondents.

24. The Hon'ble Apex Court had considered **Balco Employees Union (Regd.) Vs. Union of India & Others** in Transfer Case (Civil) 8 of 2001

