
(2010) 08 DEL CK 0066

In the Delhi High Court

Case No : Writ Petition (C) No. 5421 of 2010 and CM No. 10674 of 2010

Aarushi Jerath

APPELLANT

Vs

University of Delhi and Others

RESPONDENT

Date of Decision : 31-08-2010

Acts Referred:

Delhi University Ordinances — Ordinance 4

Citation : (2010) 119 DRJ 390

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Sanjeev Narula, for the Appellant; Amit Bansal, for R-2 and Anurag Mathur, for R-3, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—The petitioner, a student of B.A. (Hons.) Philosophy course in the respondent No. 2 Gargi College, affiliated to the respondent No. 1 University of Delhi is aggrieved from the denial of the respondent No. 2 Gargi College to issue "No Object Certificate" for migration of the petitioner in the 2nd year of the College to the respondent No. 3 Hindu College also affiliated to the University of Delhi. The petitioner by this writ petition seeks mandamus against the respondent No. 2 Gargi College to issue No Objection Certificate to enable the petitioner to migrate from respondent No. 2 Gargi College to respondent No. 3 Hindu College.

2. The petitioner, in the petition has set-out the following reasons for seeking migration:

i. that besides being a meritorious student, she is actively involved in dramatics and has been participating/acting in dramas and has also represented the respondent No. 2 Gargi College in competitions/programmes involving dramatics; she has also won several prizes/commendations for her achievements and participation in the said field. It is the case of the petitioner that the facilities in the respondent No. 2 Gargi College for the petitioner in the field of dramatics are inadequate in comparison to the facilities for the said activity at the respondent

No. 3 Hindu College; the respondent No. 3 Hindu College has a well organized and popular dramatic society. It is stated that the petitioner has better prospects of improving/honing her dramatic skills at the respondent No. 3 Hindu College than in the respondent No. 2 Gargi College;

ii. that the respondent No. 3 Hindu College is a prestigious College and students from all over, yearn to get admission in the respondent No. 3 Hindu College or St. Stephen College of the Delhi University. The petitioner claims she will have better prospects on graduating from Hindu College;

iii. that the petitioner is a resident of Noida, which has a better connectivity from the respondent No. 3 Hindu College than from the respondent No. 2 Gargi College. The petitioner by studying in the respondent No. 3 Hindu College will save considerable time in traveling to and fro the College from her residence.

iv. that the petitioner is not comfortable with the atmosphere/environment in the respondent No. 2 Gargi College.

3. The respondent No. 3 Hindu College has already given No Objection for migration of the petitioner. Both the respondent 2&3 Colleges being affiliates of the respondent No. 1 University, as per the Rules/Ordinance of the respondent No. 1 University qua migration, migration is permitted till the 2nd year, subject to both the colleges i.e. the college from which migration is sought and the college into which migration is sought giving their No Objection.

4. The petitioner has also pleaded that her teachers in the respondent No. 2 Gargi College, being fully satisfied with the reasons of the petitioner for migration are supporting the petitioner but the respondent No. 2 Gargi College, so as to dissuade the petitioner from migrating, has not issued No Objection Certificate as yet.

5. At the outset, it is stated that the respondent No. 2 Gargi College, if not inclined to issue No Objection Certificate for migration to the petitioner, as is evident from its opposition to this petition, ought to have expeditiously issued a communication rejecting the request of the petitioner and stating the reasons therefor. Had such a letter been issued with reasons, the petitioner would have known the reasons why the respondent No. 2 Gargi College was not willing to allow the petitioner to leave. The practice of frustrating an application for migration by sitting over it cannot be but deprecated.

6. The question of inter-institutional migration/inter-college migration/inter-school migration has arisen repeatedly before the Courts. The Division Bench of this Court in Aman Ichhpuniani Vs. The Vice Chancellor Delhi University and Others, has held that the Ordinance IV of the Delhi University casts a duty on the Principal of the College from which migration is sought to exercise his discretion and take a decision on prayer for migration, guided by reason, keeping in view relevant considerations and not merely by whims or caprice. It was held that the power to forward an application seeking migration is also coupled with a duty;

each prayer shall have to be dealt with on its own individual merits; if the prayer for migration be a bald prayer it may not be allowed merely for asking; on the contrary, if valid reasons are assigned and reasonable justification made out for seeking migration, the Principal on being satisfied of the same is duty bound to forward the application. It was further held that the teachers and Principal of the Institution are trustees of the students; for valid reasons the Principal may form an opinion that it would be not in the interest of the student to permit migration howsoever keen he may be to do so; the Principal may have to weigh the interest of the Institution also. The Division Bench acknowledged that sometimes the interest of the Institution and the interest of the student may conflict; in such situations the Principal will have to strike a balance and find the weighty side to which the decision shall have to swing. It was laid down that the Principal has to act objectively and if the decision of the Principal is found to be vitiated for failure to take into consideration the relevant factors and for the reasons of being influenced by irrelevant and extraneous consideration or for want of bonafides, the Courts in exercise of their power of judicial review shall intervene.

7. The respondent No. 2 Gargi College herein, as aforesaid inspite of the teachers of the petitioner being satisfied of the reasons for which the petitioner seeks migration, did not take any decision which could be assessed by this Court on the parameters aforesaid laid down by the Division Bench. The respondent No. 2 Gargi College rather attempted to pass the time within which migration is permissible.

8. In the circumstances, notice of the petition was issued. Neither the respondent No. 1 University nor the respondent No. 3 Hindu Collage has opposed the petition. Rather, the respondent No. 3 Hindu College has till today expressed willingness to admit the petitioner in the 2nd year.

9. The respondent No. 2 Gargi College has filed counter affidavit opposing the petition on the following grounds:

a) that none of the reasons given by the petitioner for seeking migration to another College are justified;

b) that the respondent No. 2 Gargi College provides ample opportunities for expression of talents in the field of dramatics and has been achieving several laurels in various dramatic competitions. This is further demonstrated from the petitioner herself during her 1st year with the respondent No. 2 Gargi College, having participated and earned several accolades for her participation in dramatics;

c) that the contention of the petitioner of better prospects upon graduating from the respondent No. 3 Hindu College is met with reference to the judgment of this Court in Chetan Goel v. University of Delhi 2005 VIII AD (Delhi) 316 holding that if students belonging to a College which is constantly improving its academic achievements, are allowed to migrate to other colleges, the same has a demoralizing effect on the faculty which must be viewed seriously. Attention in

this regard is also placed on the passage in the judgment of the Division Bench in Aman Ichhpuniani holding that if students are allowed to leave the seat and migrate to another Institution at his sweet will or merely for whim and fancy, he is certainly depriving someone else, known or unknown, from learning by leaving the seat vacant. It is contended that owing to the endeavours of the teachers of the respondent No. 2 Gargi College the petitioner has got a good score in her 1st year examination;

d) that the reason given by the petitioner of the respondent No. 3 Hindu College being more accessible from her residence is controverted on facts;

e) It is stated that the reasons given by the petitioner for migration are arbitrary, whimsical and fanciful and if migration is allowed in a routine manner, it will adversely affect the teacher-student ratio in the respondent No. 2 Gargi College;

f) Reliance is also placed on the judgment of this Court in Shri Jatin Behl Vs. University of Delhi and Others, laying down that a student who has not been able to secure admission in a College due to less marks than the cut-off prescribed by that College, cannot be permitted to secure the same by seeking admission by way of migration.

10. The petitioner on the contrary in the petition itself has referred to and relied on the judgments of this Court in Neelam Chopra v. University of Delhi 164 (2009) DLT 301 and in Anika Jain v. University of Delhi 156 (2009) DLT 13.

11. The counsel for the respondent No. 2 Gargi College contends that the judgments relied on by the petitioner are distinguishable. It is contended that while in Neelam Chopra (supra) the Court was guided by the medical reasons, in Anika Jain (supra) the petitioner student had shifted residence and owing whereto the distance had changed. It is urged that there is no change in the residence of the petitioner herein.

12. Both the respondent No. 2 Gargi College & the respondent No. 3 Hindu College are affiliates of the respondent No. 1 Delhi University and governed by the Rules/Ordinance of the respondent No. 1 Delhi University. The said Rules/Ordinance provide for migration up to 2nd year. The present is not a case where the respondent No. 2 Gargi College is affected monetarily by the petitioner leaving the College mid-stream. Both the respondent No. 2 Gargi College & the respondent No. 3 Hindu College are financed by the University Grants Commission and are not dependant on the fee of the students for their viability. The private participation has however now been permitted in the Education Sector and most of the affiliates of Guru Gobind Singh Indraprastha University, which is new in comparison to the respondent No. 1 Delhi University, are self financing private colleges. In the case of such self financing College, it is understandable that upon a student leaving/migrating mid-stream and the seat remaining vacant, the viability of the College may go haywire. The fixed expenses on infrastructure, staff, faculty etc. are undertaken by such self financing colleges on the basis of number of students to be admitted and fee to

be realized therefrom. The College cannot possibly reduce the said fixed infrastructure, staff and faculty expenses upon students leaving mid-stream. However as aforesaid in the present case such issues do not arise.

13. The two reasons given by the respondent No. 2 Gargi College in support of the interest of the College in the petitioner continuing are, firstly that the seat vacated by the petitioner shall remain vacant for the 2nd & 3rd year and secondly that the teachers of the respondent No. 2 Gargi College who have invested in the petitioner in the 1st year and who may be expecting a good result attributable to the respondent No. 2 Gargi College upon the petitioner excelling would be demoralized. As far as the first of the aforesaid reasons is concerned, the reduction in the number of students as aforesaid would have no financial impact on the respondent No. 2 Gargi College. It is also not necessary that the seat vacated by the petitioner would remain vacant. If the respondent No. 2 Gargi College is improving its reputation every year as claimed, then there certainly would be students interested in migrating from other colleges to the respondent No. 2 Gargi College. The respondent No. 2 Gargi College by delaying its decision on the application for migration rather closed the possibility of allowing other students to migrate unto itself.

14. The argument of the seat remaining vacant even otherwise does not impress me. The very fact that the respondent No. 3 Hindu College is willing to take the petitioner now shows that there is a vacancy in the respondent No. 3 Hindu College and which may have occurred owing to some student who had initially taken admission having not joined or left. Upon the same being put to the counsel for the respondent No. 2 Gargi College he contended that the respondent No. 3 Hindu College may be creating an extra seat to accommodate the petitioner, hoping to benefit from the achievements of the petitioner attributable to the respondent No. 2 Gargi College. The counsels for the respondent No. 3 Hindu College as well as the respondent No. 1 University controverted the said position. The counsel for the respondent No. 1 University clarifies that the strength in each course in a College is determined by the respondent No. 1 University and the College at its whims and fancy is not entitled to increase the strength or to admit an extra student. The counsel for the respondent No. 3 Hindu College also states that NOC was issued to allow the petitioner to migrate only because of a vacancy in the respondent No. 3 Hindu College. The aforesaid shows that the vacancy would remain, whether it be in the respondent No. 3 Hindu College or in the respondent No. 2 Gargi College. As aforesaid the vacancy is not having any impact on the finances of either College.

15. We are today living in an age of competition. There is inter-university as well as inter-college competition. Every year various newspapers/magazines conduct surveys of Colleges/Institutions in different subjects and publish lists ranking the Colleges/Institutions. The said surveys have a large component of public perception. The surveyors ask from the concerned members of the public their perception of different Colleges/Institutions and rank the Colleges/Institutions

accordingly. If the said surveys, rank the respondent No. 3 Hindu College above the respondent No. 2 Gargi College, whether it be correct or not, the fact remains that the esteem of the petitioner amongst her friends, relatives and acquaintances would go up if the petitioner is a student of the respondent No. 3 College. A large number of future employers of students also read the said surveys carefully and form an opinion on the basis thereof while interviewing prospective employees. Campus placements are a norm today. The surveys aforesaid rank the Institutions also on the basis of the quality of the placements from the Institute/College. Thus it cannot be said that the desire of the petitioner, if perceives the respondent No. 3 Hindu College to be better for her future prospects, to migrate to the said College is unreasonable or unfounded.

16. Such choices are now also accepted in the universally accepted principle of admission through counseling. During such counselling and repeated rounds thereof, a student is given option to improve his/her College/course. I see no reason why, when the respondent No. 1 University by its Ordinance permits migration till 2nd year, to deprive a student from improving the College, if not at the time of admission to the 1st year, by migrating at least in the 2nd year. A student should not be allowed to lose in the competition at the threshold only by refusing migration for the vague reasons of demoralizing the faculty of the College from which migration is sought and/or for leaving a seat vacant. Rather such circumstances should drive the faculty and the College to perform better in the following years so as to be the best and to rather attract students from other colleges. Ordinarily a student would not leave a College if considers the same to be best which he/she can have.

17. The Single Judges of this Court, as would be apparent from the judgments cited above, all following Aman Ichhpuniani (supra) have taken different views. However the guiding principle remains as laid down by the Division Bench i.e. of balancing the conflicting interests of the student and the Institution. In the present case there is a lot for the petitioner student to lose if not allowed to migrate, while I do not find any tangible loss to the respondent No. 2 Gargi College.

18. The writ petition is therefore allowed. The respondent No. 2 Gargi College is directed to, within three days of the petitioner approaching the College, issue NOC to the petitioner for migration to the respondent No. 3 Hindu College; the respondent No. 1 University having not opposed the petition is accordingly directed to facilitate the migration of the petitioner from the respondent No. 2 Gargi College to the respondent No. 3 Hindu College and the respondent No. 3 Hindu College is directed to, upon the petitioner complying with the formalities admit the petitioner in terms of the NOC already issued by it.

19. Though the petitioner has been compelled to litigate owing to the conduct aforesaid of the respondent No. 2 Gargi College but I refrain from imposing any costs on the respondent No. 2 Gargi College.

The petition is disposed of. No order as to costs.

Dasti under signatures of court master.