

(1997) 12 DEL CK 0019

In the Delhi High Court

Case No : CM 7491/97 and CW 3907/97, CM 8650/97 and CW 4629/97, CM 8363/97 and CW 4446/97 and CM 7184/97 and CW 3749/97

Aman Ichhpuniani

APPELLANT

Vs

The Vice Chancellor Delhi University and Others

RESPONDENT

Date of Decision : 19-12-1997

Acts Referred:

Citation : (1998) 1 AD 365 : (1998) 71 DLT 202 : (1998) 44 DRJ 52

Hon'ble Judges : R.C. Lahoti, J

Bench : Division Bench

Advocate : Mr. D.K. Garg, Adv Mr. Ashok Arora, Adv Mr. R.K. Saini, Mr. Vinod Yadav and Mr. Parveen Suri, Mr. K.K. Tyagi, for the Appellant;

Judgement

R.C. Lahoti, J.—Intra-University Migration - from one college to another within the same university - by a student is a vested right or a right merely, and if so, whether it is capable of being enforced in exercise of writ jurisdiction of High Court - is the question arising for decision in this batch of petitions.

2. The petitioners are four. Briefly we set out the factual background so as to appreciate the crux of controversy.

2.1 In CWP 3749/97, the petitioner Madhurjya Kotoky is a student of B.A. (Hon.) History Part-I in Ram Lal Anand College having passed that examination with 67% marks and merit in the university. The result was declared on 23.7.97. On 31.7.1997, he approached the Principal of the College seeking latter's "No Objection" to migration to another College. On 8.8.97, he approached Ramjas College seeking admission therein and the principal of Ramjas College has issued "No Objection" for his entry in his institution. The grievance of the petitioner is that the Principal, Ram Lal Anand College, (respondent No.1) is not issuing "No Objection" permitting his migration from his Institution. In the application dated 28.8.97 made to the respondent No.1, the only reason set out for seeking migration is - "I wish to migrate to a reputed College in the North Campus as it would be more convenient for me."

2.2 In CW 3907/97, the petitioner Aman Ichhpuniani is a student of Shaheed Bhagat Singh College (Evening) wherefrom he has passed B.Com (Hon) 1st Year Course with 66% marks in July, 1997. On 22.7.1987 he moved an application (Annexure-A) to the Principal of the College seeking "No objection" to his migration to Shaheed Bhagat Singh College (Morning). The reason stated in the application is - "this change over would also enable me to pursue computer Course (NIIT) and Chartered Accountancy (CA) Course without clash of timings with the afternoon classes."

2.3 In CW 4629/97, the petitioner Kumari Jaya Dutt is a student of B.Com (Hon.) IInd Year in Shaheed Bhagat Singh College (Evening). She has passed the 1st year examination in July, 1997 with 65.2% marks. She continued in the Second Year Classes. On 7.8.97 she moved an application to the Principal, Shaheed Bhagat Singh College (Eve.) - respondent No.3, seeking "No objection" to her migration to Shaheed Bhagat Singh College (Morning). The reason stated is - "I have joined a computer course in the First Computers Academy and my College timings clash with my computer classes which are held at 2.00-4.00 PM on Monday, Wednesday, Thursday and Friday. Due to this, I am not able to attend classes in College. I would thus like to migrate to the morning college as those timings suit me more."

2.4 In CW 4446/97 Ms.Neeru Rawal has passed B.Com 1st year as a regular student of Shaheed Bhagat Singh College (Evening), the respondent No.1, securing 55.2% marks. On 14.10.97 she moved an application seeking "No Objection" to her migration to Gargi College for prosecuting B.Com (Pass) IInd year studies. The application Annexure P-3 does not set out any reason for the proposed migration except that - "I would like to migrate". In the application (Annexure P-2) made to Gargi College, where the petitioner seeks to migrate, she has stated that she had shifted her residence near to the Gargi College and wished to migrate due to erratic bus service, but the same reason was not stated in the application Annexure P-3.

2.5 All the above said prayers for migration have been turned down by being withheld. No speaking order has been passed. The present petitions have been filed by the several petitioners seeking writ of mandamus commanding the principals of the present educational institution where the petitioners are studying to issue "No Objection Certificate" to the proposed migration. All the educational institutions where presently the petitioners are studying have opposed the prayer made in the petitions. The details of the plea shall be noticed at an appropriate place.

3. The relevant part of Ordinance-IV of the Act, Statutes and Ordinances of the University of Delhi which is relevant for the purpose of these petitions provides as under :-

"2. Application for migration from one College of the University to another shall only be entertained by the Principal if forward- ed by the Principal of the College

from which migration is sought, and the necessary alteration in the enrollment entries shall only be made in the University Register by the Registrar after obtaining the consent in writing of both Principal."

4. All the petitioners have vehemently relied on a Division Bench decision of this Court in Sumeet Sawhney VS. The Principal Sri Aurvindo College & Ors. (CW 3089/95) decided on 19.10.95 disposing of four writ petitions filed by the students seeking migration from one college to another College in Delhi University. In that case, the prayer for migration was opposed on the ground that "No Objection" for migration was refused (i) to maintain and improve the academic standards of the College by retaining the good students; and (ii) to maintain the student-teacher ratio on the basis of which maintenance grant is given to the college by the University Grant Commission. The Division Bench held :-

"Though the anxiety of the Staff Council and the College to maintain and improve the academic standard of the College as also their anxiety to maintain the student teacher ratio, may be appreciated but at the same time, we find it difficult to accept the contention that in order to achieve the said objects, the students can be compelled against their desire and wish to continue study in a particular college. Undoubtedly no student has any vested right to seek migration but the real question in these cases is not about the vested right of the students, but it is about the legality of the stand of the College from where migration is sought. Can No Objection Certificate be refused to a student when the College to which admission is sought, is willing to give admission to that student. The answer to this question has to be in favor of the student. Where a student with a view to improve his career wants to join another college, which student feels is better and thinks that he would be able to make a better mark in another college to deny migration to such a student on the grounds stated by the College from which migration is sought, would be unjust and unreasonable. The grant of permission to migrate may be discretionary but the discretion is required to be exercised on sound legal principles and by adopting just and reasonable approach. Ordinarily this Court may not interfere in exercise of discretion in academic matters but where the career of students is involved and the approach of college is not just and reasonable, the Court has to come to the aid of aggrieved students. As already noticed above, the stand of the University and the College to which migration is sought is also that students cannot be compelled to study in a particular college. Further apart from the decision of the Staff Council, no other provision has been brought to our notice barring migration. On the other hand Ordinance-4, as noticed above, specifically permits migration. It may also be noticed that while operating aforesaid Ordinance in practice the student who is to apply for No Objection Certificate from which he seeks migration, would do so only when he has been ensured admission in any other college and, Therefore, the question of violation of Ordinance-4 does not arise."

4.1 The writ petitions were allowed directing the respondents-Colleges to issue no objection certificates.

5. The present petitions were filed in Delhi High Court and came up for hearing before a Single Judge in view of the amendment in the High Court Rules.

6. Before the learned Single Judge, the petitioners placed reliance on the Division Bench decision above said. It appears that the learned Single Judge was not inclined to allow relief to the petitioners in view of the law laid down by the Division Bench. However, sitting singly the learned Single Judge felt himself bound by the Division Bench decision and rightly so. In CW 3907/97 the learned Single Judge passed a detailed order and set out the following reasons for taking a different view :-

1. The Division Bench has held in the judgment in CW 3089/95 that no student has a vested right to seek migration from one college to the other.

2. Ordinance IV relied on by the petitioner does not cast a duty or obligation on the principal to issue no objection letter in every case.

3. The provision in the said Ordinance implies the existence of a discretion to the Principal not to permit migration in appropriate cases in order to safeguard the interest of the college or to protect academic discipline.

4. While considering the request for migration it is open to the Principal to consider relevant aspects like the genuineness and sufficiency of the reasons stated by the student for migration, the possible impact of such migration on the academic and administrative functioning of the college from which migration is sought and the period already completed and remaining to be completed in the course of study.

5. The impression of the student that another college is a better institution or the expectation of the student that study in another college will improve his career cannot be the sole basis for permitting migration.

6. Before joining the course in the present college the student had the option and choice to join any other college considered better. Having joined the course and having successfully completed one year of the three year course the student is seeking migration to another college during the middle of the course. In my view this need not be allowed except in extreme cases where it is difficult for the student to continue in the present college due to intervening circumstances. There is no such situation in this case.

7. One can understand a student, not being sure of getting admission in the College of his preference, taking admission in another college and later seeking migration to the college of his preference when the admission is offered there. But it should be at the beginning of the course in the first year and not after successfully completing one year in the first college. It is significant that in this case the decision of the Staff Council and the Principal was to deny migration of

students of second year and third year classes only.

8. In my view the difficulties and problems pointed out in paragraphs 11, 12 and 13 of the affidavit of respondent No.2 deserve serious consideration while deciding the necessity and desirability of interfering with the decision of the Principal of the College. On a consideration of the problems and difficulties stated by the Principal, I am not persuaded to interfere with the decision of the Principal.

7. The Learned Single Judge further opined that some of the aspects referred to above were not considered in the judgment by the Division Bench. In his opinion the Division Bench decision required reconsideration. He referred the matters to Hon'ble the Chief Justice for being placed before a D.B. This is how all these matters have come up before us and have been heard on merits.

8. At the time of hearing, the learned counsel for the respondent-colleges where the petitioners are presently studying have submitted that the Division Bench decision in Sumeet Sawhney's case (supra) needs reconsideration for four reasons : firstly, the decision runs counter to the law laid down by the Supreme Court in the case of State of U.P. & Anr. Vs. Praveen Kumar Sharma & Ors., 1994 (5) SLR 563 ; secondly, the decision is contrary to the Ordinance; thirdly, the decision is self-contradictory; and lastly all the contentions on which the prayer for migration is opposed have not been taken note of and considered by the Division Bench. It was also submitted that the petitions are liable to be dismissed in limine in as much as migration is not a vested right of the petitioners and hence no mandamus can issue for enforcing such an assumed right. Reliance was placed on Dhiraj Sarwal and another Vs. The State of Punjab and others, , a Single Bench decision.

9. Before we may enter into testing the validity of the submissions made on behalf of the learned counsel for the respondents, we propose to deal with the issue in hand independently of the Division Bench decision in Sumeet Sawhney's case (supra).

10. According to the respondent-Colleges who are opposing migration, migration is a discretionary benefit available to the student to remove extreme hardship in any given case. It is not meant to be resorted to on a routine basis i.e. it is not to be necessarily granted merely because it is asked for. It is a matter of discretion with the principal of the College concerned. It is also pointed out that a large number of students were seeking migration. The norms laid down by the UGC provide the teacher- student ratio of 1:12 in Honours courses and 1:20 in Pass courses. If large scale migration to another college is permitted the college may be placed in a situation where it would not have grants for payment of salary to teachers and their services will have to be terminated. It is submitted that in the interest of justice, the hardship of the teachers and teaching institutions who exert hard to train students is also a relevant material consideration.

11. The first contention of the learned counsel for the respondents has been that

migration is not an enforceable right vesting in the petitioners and Therefore no writ seeking mandamus would lie before this Court. It was further submitted that the statutory provision vests a discretion in the principal of the institution to forward or not to forward the application for migration and such a discretion cannot be interfered with by a writ of mandamus more so when it vest in an educational authority.

12. We are conscious of our limitation on jurisdiction to judicially review a decision taken in the field of academics. In Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, their Lordships have held :-

"The Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them."

13. However, that does not amount to saying that the decisions taken by the administrative authorities in the field of academics and education are immune from judicial review and no writ can issue for securing performance of statutory duty cast on such authorities. In Lekhraj Satramdas, Lalvani Vs. Deputy Custodian-cum-managing Officer and Others, their Lordships have held that a writ of mandamus may be granted where there is a statutory duty imposed upon the officer concerned and there is a failure of that officer to discharge that statutory obligation. The chief function of the writ is to compel the performance of public duties prescribed by statute and to keep the subordinate tribunals and officers exercising public functions within the limits of their jurisdiction.

14. A writ of mandamus may issue not only for enforcement of a right but also for compelling performance of a duty. The very provision for migration from one College to another within the University enacted by Ordinance IV contemplates the existence of a right to migrate. We will not go on to the extent of saying that such a right is a vested or unbridled right. Nobody can be permitted to migrate just for whim and fancy. Good education is a scarce commodity and good institutions displaying pieces of good education on their selling counters are equally scarce. The seats are invariably limited because the number of seats depends on very many considerations including administrative and financial. Once a student has been allowed admission in a particular institution in a particular course of study he occupies that seat excluding others in waiting from entering the course by necessary implication. If such a student is 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.

15. On the other hand, if an educational institution is maintaining high standards and rendering real service in the field of education it is bound to enjoy good

reputation which would spread like fragrance in academic world. A student having secured admission in such an educational institution would feel lucky and would be least inclined to leave it. He would like to pursue the studies in such an institution inspite of other difficulties. Even if a student is forced to migrate away from such an institution the vacancy so created would be filled up soon by others flocking thereat.

16. Nevertheless, the existence of Ordinance-IV does contemplate migration. The provision also 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 the relevant considerations and not merely by whim and caprice. Like all other discretionary powers vesting in public authorities, 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 there are valid reasons assigned providing reasonable justification for such demand, the principal on being satisfied of the availability of just grounds for migration, is duty bound to forward the application. Else the exercise of discretionary power would stand vitiated for unreasonableness or arbitrariness.

17. To illustrate, the concept of neighborhood schools is gaining ground amongst the students and parents/guardians as a school in neighborhood available to cater to the educational needs of the students avoids the necessity of commuting and thereby saving time, also saving from the hazards of traffic. Distance between the place of residence and the place of institution is a relevant consideration when the student may find another institution available to cater to his needs and situated in closer proximity.

18. Every student aspires to have the best education and for that purpose searches for the best institution accessible to him and within his means. Having opted for an educational institution and having been successful in securing admission therein ordinarily he would not opt out of it unless there be reasons for doing so. Students in schools and even up to initial years of the College are invariably advised by their parents and guardians in choosing course of study and the institution. While seeking migration they will ordinarily have the counsel of their parents and guardians with- out which they would not decide to migrate. In appropriate cases the principal would do well to have a dialogue with the parents or guardians of the student before taking a decision on the students request for migration. Applications made by the students to their teachers and principal are not drafted on legal advise. They have to be dealt with in an atmosphere full of affection and harmony. An interview or dialogue between the principal and the student, accompanied by parents or guardian if need be, would bring out the real reason for the prayer for migration enabling a just decision thereon by the Principal.

19. No institution can afford to retain good students with it by forcing them to do

so. They have to be persuaded and made to feel convinced. A good student leaving a good institution is a contradiction in terms. It is equally true that a student cannot be allowed to migrate if institutional discipline would suffer in permitting him to do so. To illustrate, student facing disciplinary proceedings in an educational institution cannot be allowed to migrate if motivated by the idea of getting rid of such proceedings.

20. The mind of a student is immature. In an educational institution it is in the process of being trained. The teachers and the principal of the institution are trustees of the students and their parents, who repose faith and confidence in them for training the mind of the students and shaping them so as to be fit to face the world and bear the burden of life. For valid reasons the principal may form an opinion that it would not be in the interest of the student to permit migration howsoever keen he may be to do so. He may have to weigh the interest of the institution also. Sometimes the interest of the institution and the interest of the student may conflict. He shall have to strike a balance and find the weighty side to which the decision shall have to swing. The whole process shall have to be objective. If the decision making process be vitiated or the decision itself be vitiated for failure to take into consideration the relevant ones and/or for having been influenced by the irrelevant and extraneous consideration or want of bonafide, the decision will be open to judicial review. Of course, as held in *The Vice-chancellor, Utkal University and Others Vs. S.K. Ghosh and Others*, it is not the function of the courts of law to substitute their wisdom and discretion for that of the persons to whose judgment the matter in question is entrusted by the law.

21. Here we may usefully quote from the *S.G. Jaisinghani Vs. Union of India (UOI) and Others*, where their Lordships have made observation :-

"In this context it is important to emphasize that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and in general such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law. - (See Dicey - "Law of the Constitution" - Tenth Edn. Introduction. cx) "Law has reached its finest moments." stated Douglas, J in *United States V. Wunderlich* (1951) 342 U.S.98 "when it has freed man from the unlimited discretion of some rulerwhere discretion is absolute, man has always suffered." It is in this sense that the rule of law may be said to be the sworn enemy of caprice. Discretion, as Lord Mansfield stated it in classic terms in the case of *Rex Vs. John Wilkes* (1770) 4 Burr 2528 means sound discretion guided by law. It must be governed by rule not by humour; it must not be arbitrary, vague and fanciful."

22. Whenever it is said that something has to be done within the discretion of the authority then that something has to be done according to the rules of reason and justice and not according to private opinion, according to law and not humour. It is to be not arbitrary, vague and fanciful but legal and regular and it must be exercised within the limit to which an honest man to the discharge of his office ought to find himself. Discretion means sound discretion guided by law. { Sant Raj and Another Vs. O.P. Singla and Another, }.

23. To sum up, in our opinion :-

(i) To migrate from one college of the University to another is not a vested right of student. A student may seek migration from one College to another, if there be reasons for doing so. Ordinance-IV confers discretionary power on the principal of the College from which migration is sought to forward or not to forward a prayer by a student seeking migration. The power is coupled with a duty to act reasonably guided by relevant consideration not by whim or caprice. The welfare of the student and the institution have both to be kept in view and weighed - if there be conflict between the two;

(ii) A student has a right to choose an educational institution of his choice while seeking an admission, but such right cannot be exercised with the same vigour and vitality while seeking migration;

(iii) A request by student seeking migration for reasons relevant and germane to such prayer may not be denied unless the principal be satisfied of the non-availability of the grounds or be of the opinion that the migration will not be in the interest of the student or the interest of the institution outweighs the interest of the student. The choice of the student has to be respected by giving due weight; for no sensible student would ordinarily like to leave the institution which he had chosen to join.

24. In the light of what we have stated hereinabove, we may deal with the challenges laid by the learned counsel for the respondents to the soundness of the view taken by the Division Bench in Sumeet Sawhney's case (supra).

24.1 We have carefully read the judgment of their Lordships in the case of State of U.P. Vs. Parveen Kumar Sharma (supra) 1994 (5) SLR 563. We are unhesitatingly of the opinion that the Division Bench decision does not in any manner run counter to anything what their Lordships have said in the case of Parveen Kumar Sharma. We may place on record that even during the course of hearing the learned counsel for the petitioners could not substantiate challenge to the validity of the Division Bench decision as being contrary to the law laid down by the Supreme Court.

24.2 We are also not at all impressed by the submission that the Division Bench decision is self-contradictory. A judgment is not a piece of legislative enactment. It has to be read as a whole to find out its ratio decidendi. We cannot pick up sentences, read them in isolation and then develop the plea of self-contradiction.

Having laid down the principles independently for ourselves, we have re-read the view of the law taken in Sumeet Sawhney's case (supra). We are reassuringly convinced of the soundness of the view taken therein. It does not suffer from infirmity, much less any self-contradiction.

24.3 The decision in Sumeet Sawhney case (supra) cannot for a moment be called contrary to the Statute (i.e. Ordinance-IV).

24.4 Sumeet Sawhney's case (supra) takes care of all the contentions advanced before the Division Bench. We are also of the opinion that the contentions advanced before us are noted by the learned Single Judge in his order referred to in para above, would not make any change in the view taken by us reaffirming the view taken in Sumeet Sawhney's case (supra).

24.5 For the foregoing reasons we are of the opinion that Sumeet Sawhney's case (supra) does not call for any reconsideration.

25. Dhiraj Sarwal and another Vs. The State of Punjab and others, is a case in which migration was sought for from one Medical College to another. Decision was taken by the competent authority who had a discretion in the matter after taking into consideration facts and circumstances of each student. No malafide of any kind was alleged and the decision was a collective one. In that context the learned Single Judge observed that there was no legal and vested right with the students seeking migration. So far as the cases at hand are concerned, we are of the opinion that Ordinance-IV confers a statutory discretion on the principal coupled with a duty and to that extent confers a right in the students to seek enforcement of such duty. A mandamus can issue not only for enforcement of a right, but also for enforcement of a duty. When there is a failure to perform a duty as has been in the present cases or when such duty is not performed in accordance with the settled principles governing the performance of such discretionary power coupled with duty as we have already discussed, the person aggrieved would have a right to invoke writ jurisdiction of the High Court seeking a writ of mandamus.

26. Having so stated the law we would now proceed to deal with each individual case before us.

27. In the case of Kumari Jaya Dutt (CWP 4629/97) as also in the case of Aman Ichhpuniani (CWP 3907/97), each petitioner has assigned valid reasons for seeking migration. They have joined other courses of study which is permissible to do and the timings of the institution imparting such instructions clashes with the timings of Shaheed Bhagat Singh College (Evening). In order to prosecute their regular studies Along with additional courses of study, the two students want to shift to morning colleges. It is not the case of the respondents that the reasons assigned are false and non-existent. In our opinion these applications could not have been re- refused. These two petitions Therefore deserve to be allowed with a direction to the Principal of Shaheed Bhagat Singh College (Eve.) to forward their applications for migration to the institutions of their choice which

as per averments made in the petition have already consented to take them.

28. The petitioners Madhurjya Kotoky and Kumari Neeru Rawal CW 3749/97 and 4446/97 respectively have not in their respective applications assigned any reason for seeking migration. They have each made a bald prayer for migration solely because they "wish to do so". The principals of the respective institutions in which these petitioners are studying would have been better advised to call for each of the two petitioners, accompanied by their parents and guardians, if necessary, and counseled them in the matter of migration. That was not done. However, as these petitioners have failed to put forth their reasons for migration before the principals of the institutions for their consideration, we cannot find fault with the respondents withholding the prayers. No relief can, Therefore, be allowed to these petitioners in exercise of our writ jurisdiction. They should be left free to make an appropriate prayer to the principals concerned.

29. For the foregoing reasons, CWP 3907/97 and CWP 4629/97 are allowed. The principal of Shaheed Bhagat Singh College (Eve.) is directed to forward the applications filed by Aman Ichhapunian and Kumari Jaya Dutt, seeking migration to the institutions of their choice or else to issue "no objection certificate" for migration to each of them within one week from the date of this order.

30. CW 3749/97 and CW 4446/97 are dismissed affording liberty to each of the two petitioners to make an appropriate application (if they be so advised) setting out reasons for migration to the principals of the institutions where they are presently taking education. Such an application if made shall be considered and disposed of by the principal within a period of three days from the date of making the application, as no migration is permissible after 31.12.97. Needless to say if the decision be adverse to the applicant, the reasons thereof shall be assigned and also communicated.

31. No order as to costs.