

(2013) 09 DEL CK 0182
In the Delhi High Court
Case No : Writ Petition (C) 5956 of 2013

Antariksh Anand

APPELLANT

Vs

Guru Gobind Singh Indraprastha University and Others

RESPONDENT

Date of Decision : 27-09-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 204 DLT 319

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Maninder Acharya and Mr. Yashish Chandra, for the Appellant; Ravi Sikri and Ms. Neha Bhatnagar, for R-1, Mr. Sudhir Nandrajog and Mr. Ankit Jain, for R-2, for the Respondent

Final Decision : Disposed Off

Judgement

V.K. Jain, J.—The petitioner before this Court is a student of the second year of B.Tech. course of respondent No. 2-HMR Institute of Technology and Management, which is affiliated to respondent No. 1-Guru Gobind Singh Indraprastha University. On 28.05.2013, the petitioner applied to the respondent No. 2-Institute for grant of No Objection Certificate (NOC), for the purpose of migrating to another institute affiliated to the same University. Vide order dated 03.06.2013, the Director of respondent No. 2-Institute rejected the application of the petitioner for grant of NOC, on the ground that though the petitioner had sought migration on the ground of distance, though he was residing at the very same place, where he took admission with the said institute. Another reason given was that institute has buses available from all parts of Delhi. Thereafter, the petitioner obtained NOC from respondent No. 3-Maharaja Surajmal Institute of Technology for grant of admission to him in the said institute and vide application dated 25.07.2013 again applied to respondent No. 2-Institute for grant of NOC. Along with the said application, he submitted a copy of the NOC which respondent No. 3-Institute had granted to him. Since no response from

the respondent No. 2-Institute was forthcoming, the petitioner also approached the Vice Chancellor of the respondent No. 1-University seeking his intervention in the matter. The petitioner made yet another representation to respondent No. 2-Institute on 06.09.2013, seeking grant of NOC on medical grounds. The said application was accompanied by a medical certificate. However, the NOC sought by him has not been granted to the petitioner. Feeling aggrieved, the petitioner is before this Court seeking grant of NOC for migrating from respondent No. 2-HMR Institute of Technology and Management to respondent No. 3-Maharaja Surajmal Institute of Technology. The learned counsel for respondent No. 2, who appears on advance notice, wants some time to file his counter-affidavit. The learned counsel representing the University, however, states that 30.09.2013 is the last date for granting migration from one institute affiliated to the University to another institute affiliated to it and they need at least two days time to take a decision in the matter. In these circumstances, it is not possible to adjourn the matter for the purpose of enabling respondent No. 2 to file its reply. I have, however, heard the learned senior counsel for respondent No. 2 on merits of the case.

2. In *Sumeet Sawhney VS. The Principal Sri Aurvindo College & Ors.*, CWP 3089/95, decided on 19.10.95, the writ petitions filed by the students, seeking migration from one college to another college in Delhi University was opposed on the ground that the NOC 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. A Division Bench of this Court, *inter alia*, 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 favour 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, fair 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.

In *Aman Ichhpuniani Vs. The Vice Chancellor Delhi University and Others*, the petitioners before this Court, approached the colleges in which they were studying at that time for issue of NOC for the purpose of migration to another college affiliated to Delhi University. In the first writ petition before this Court, NOC was sought on the ground that the petitioner wished to migrate to reputed college in North Campus, which would be more convenient to him and in the second writ petition, NOC was sought so as to enable the petitioner to pursue a computer course and Chartered Accountancy, without clash of timings with the afternoon classes, the petitioner being a student of Bhagat Singh College (Evening). In the third case, NOC was sought on the ground that the classes in the college clashed with the computer classes of the petitioner in the afternoon and, therefore, she wanted to migrate to a morning college. In the 4th case, no reason was given for the proposed migration. However, in the application to the college where the petitioner was seeking migration, she had claimed that the said college was near to her residence and considering the erratic bus service, she wanted to migrate to the said college. In all these cases, the application seeking migration was turned down, without passing a speaking order.

Disposing of the writ petitions, this Court held as under:-

- (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.

The Division Bench allowed the writ petitions filed by the students who wanted migration since their timings in Bhagat Singh College (Evening) clashed with other courses they were seeking to pursue. The other two writ petitions were rejected on the ground that no specific reasons had been assigned in the application seeking migration.

In W.P.(C) No. 4467/2013, Shashank Shandilya versus Guru Govind Singh Indraprastha University decided on 19.8.2013, this Court deduced the following legal proposition from the above referred Division Bench Judgment of this Court:

(i) Though a student has no vested right to seek migration from one college to other or for that matter from one university to another, his desire to study in an educational institution of his choice needs to be examined and appreciated in a right perspective.

(ii) If a student seeks migration certificate/NOC for the purpose of migrating from one college to another in the same university or from one university to another, such a request should be examined by the institution, taking into consideration the interest of the student as well as the institution in which he is studying and the decision so taken should be just, reasonable and fair, to both, the institution as well as the student.

(iii) The request of a student for grant of NOC/Migration Certificate can be rejected only for the reasons which are cogent, objective, fair, transparent and reasonable.

(iv) If the decision taken by the institution to refuse the migration certificate/NOC is found on reasons which are not legal or germane or are arbitrary and illogical, it would be open to the Court to interfere with the decision of the institution, in exercise of its jurisdiction under Article 226 of the Constitution.

3. In view of the legal proposition as deduced by this Court in Shashank Shandilya (supra), the request of the petitioner for grant of NOC should have been considered by the Principal/Director of the institute taking into consideration the interest not only of the institute, but also of the petitioner. Such consideration was required to be followed by a decision which is just, reasonable and fair to the institution as well as to the student.

4. A perusal of the application dated 28.05.2013 submitted by the petitioner would show that he had sought migration on account of some personal circumstances. The circumstances, however, were not disclosed in the letter. The NOC was refused observing that the petitioner was seeking it on the ground of distance from the Institute which was already known to him at the time he took

admission. However, the learned counsel for the petitioner submits that the distance between the institute and the residence of the petitioner was not the sole ground as would be evident from further communications sent by him to the Institute. Vide letter dated 25.07.2013, the petitioner informed the respondent No. 2-Institute that he was under a lot of stress and tension since first year due to the problem he had already discussed with the Director of the Institute. He also stated that migration to respondent No. 3-Institute would give him time to pursue NCC, GATE Coaching, etc. The aforesaid request was followed by the request dated 19.08.2013 and 06.09.2013. The petitioner had also enclosed a Medical Certificate dated 03.09.2013, issued to him by Dr. M.N. Lal Mathur of Mata Chanan Devi Hospital, certifying therein that the petitioner was suffering from Generalized Anxiety Disorder with Sadness and migration would help him to attain emotional stability and overcome his sickness. The doctor had subjected the petitioner to psycho diagnostic test before giving the aforesaid advice. However, no attempt was made by the respondent No.-2-Institute to consider the request of the petitioner afresh in the light of the grounds pleaded in the subsequent applications and the medical certificate issued by his doctor. The respondent No. 2-Institute, in my view, was required to consider the fresh applications of the petitioner for grant of NOC, particularly the application which was accompanied by a medical certificate, issued by a qualified doctor, highlighting the psychological problems being faced by the petitioner. The institute for the reasons best known to it, adopted an obstinate attitude in the matter by not making an attempt to re-consider the request of the petitioner even in the light of medical advice. The interest of the petitioner thereby was entirely overlooked by the institute. The approach of respondent No. 2-Institute, in my view, was not in conformity with the decisions of the Division Bench of this Court in Aman Ichhpuniani (supra) and Sumeet Sawhney (supra). I also find that the decision rejecting the request of the petitioner for grant of NOC did not indicate how and in what manner the respondent No. 2-Institute would be prejudicially affected if NOC sought by the petitioner is given to him.

5. In Shashank Shandilya (supra), this Court had upheld refusal of NOC primarily on the ground that the institution from which the migration was sought was getting no financial support either from the Government or from the University and had to meet its expenses only from the fee it charges from the students and if NOC was granted, there was likelihood of one seat in the said Institute remaining vacant for as many as three years. It was noted that the expenses of the Institute for all infrastructure required to maintain and run the institute were fixed and so was the number of teachers and employees working there and therefore, in case the seat occupied by the petitioner remained unfilled for three years, that would be detrimental to the institute which cannot reduce its expenses, infrastructure, faculty or employees. It was noted that the petitioner before the Court had not come out with an offer to pay the remaining fee of the course to the Institute. It was specifically observed that had such an offer been made to the petitioner, it would not have been possible for the institute to take

the plea of financial hardship, in case the petitioner was allowed to migrate to another institute. However, in the present case, the learned counsel for the petitioner stated, on instructions, that in case NOC is granted to the petitioner by respondent No. 2-Institute and as a result thereof the seat vacated by the petitioner remains vacant, the petitioner would be willing to pay the tuition fee which he would otherwise be liable to pay to the said institute during the rest of the course. In view of the aforesaid offer made by the petitioner, no financial hardship in the event of NOC being granted can be claimed by respondent No. 2-Institute.

6. The learned counsel for respondent No. 2-Institute relied upon the decision in *Chetal Goel Ors. vs. University of Delhi & Anr.* 2005 VIII AD (Del.) 316, where this Court in the context of migration from one college affiliated to Delhi University to another college affiliated to the same University observed that the faculty would be adversely affected if the students who had achieved excellence in the examination are secreted away by other colleges and depleted number of students in the course would not only cause financial strain on the college, but also have a demoralizing effect on the faculty. However, in para 3 of the judgment, the Court took the view that in such cases cogent reasons must be given by the students for seeking migration and the decision taken by the college should not be capricious, arbitrary or unreasonable. However, in the present case, the petitioner is seeking migration on medical and other grounds and the respondent No. 2-Institute has not even applied its mind to the grounds on which the subsequent applications were submitted by the petitioner for grant of NOC. This clearly indicates that the Institute was not inclined even to consider the request in an objective manner and wanted to somehow stick to the decision initially taken by it even though the distance between the institute and the residence of the petitioner was not a ground given in the subsequent applications seeking grant of NOC. On the other hand, the learned counsel for the petitioner referred to *Anika Jain vs. University of Delhi* and Anr. 156 (2009) DLT 13, where the petitioner had sought migration on the ground of residential problem and considering that she was a young girl who had to commute from Shahdara to Rohini, it was held that the decision of the Principal not to allow migration could not be sustained being arbitrary and coloured by perceived welfare of the college alone. However, one fact which distinguishes that case from the case before this Court is that in the aforesaid case, there was a change in the residence of the petitioner, who at the time of taking admission was residing near the college, but had later on shifted to a distant locality. In *Neelam Chopra vs. University of Delhi* 164 (2009) DLT 301, another judgment relied upon by the learned counsel for the petitioner, the petitioner had sought migration on the ground that her college was situated at a distance of more than 15 kilometres from her residence and since she was suffering from allergic rhinitis, travelling long distance aggravated her health problem. Allowing the writ petition, it was held by the Court that grave injustice would be caused to the petitioner if she would not be granted the "NOC". For the reasons stated hereinabove, the writ petition is allowed and the

respondent No. 2-HMR Institute of Technology and Management is directed to issue the requisite NOC for migration of the petitioner from the said institute to respondent No. 3-Maharaja Surajmal Institute of Technology subject to the petitioner depositing either with respondent No. 2 or with the Registrar General of this Court, within a week, the entire tuition fee and other charges, she would have paid to the respondent No. 2-HMR Institute of Technology and Management for the rest of the course. If the amount is deposited in the Registry, the respondent No. 2-Institute shall be entitled to withdraw the aforesaid amount from the Registry, on furnishing undertaking that the seat vacated by the petitioner shall not be filled by it. In case the amount is deposited directly with the Institute, the seat vacated by the petitioner shall be kept vacant, for the rest of the course. The writ petition stands disposed of. No order as to costs.

Dasti under the signature of Court Master.