
(2012) 01 DEL CK 0405
In the Delhi High Court
Case No : Writ Petition (C) 7437 of 2011

Apurva

APPELLANT

Vs

University of Delhi and Another

RESPONDENT

Date of Decision : 25-01-2012

Acts Referred:

Citation : (2012) 3 ILR Delhi 67

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : V.K. Sharma, for the Appellant; Mohinder Rupal, with Ms. Shawana Bari, for R-1/ D.U. Mr. Amit Bansal, for R-2, for the Respondent

Final Decision : Dismissed

Judgement

Hima Kohli, J.—The petitioner has filed the present petition praying inter alia for directions to respondent No.2/College to issue a migration certificate in her favour to enable her to migrate from respondent No.2/College to Vivekanand College, Vivek Vihar, Delhi by getting admission in the B.Com (Pass) Course in the second year(Academic Session 2011-12). Directions have also been sought to be issued to respondent No.1/University to verify from all colleges affiliated to it as to whether migration certificates are being issued to students in a timely manner.

2. Briefly stated, the facts of the present case are that the petitioner, who is a resident of Ghaziabad, U.P., completed her schooling in the year 2009-10 and thereafter in July 2010, applied to respondent No.2/College situated near Najafgarh, Delhi seeking admission in the B.Com (Pass) Course, which was duly granted to her. The petitioner continued her studies in the respondent No.2/ College and was declared as having passed the first year in July 2011. The second session (i.e. the second academic year) of the aforesaid course began on 01.08.2011. On 17.08.2011, the petitioner approached Vivekanand College, Delhi University with a request for grant of permission to migrate from respondent No.2/College to the said college. Counsel for the petitioner refers to a

copy of the aforesaid representation dated 17.08.2011 and points out that an endorsement was made thereon by Vivekanand College that the case of the petitioner had been recommended for migration in the second year.

3. Immediately, upon receiving the said consent from the proposed transferee college, the petitioner submitted a representation dated 29.08.2011 to respondent No.1/University stating inter alia that though she had obtained a no objection from the Principal of Vivekanand College for her migration to the same course in the second year, respondent No.2/college had failed to issue a migration certificate to her and therefore, intervention of respondent No.1/University was sought by the petitioner. It is the case of the petitioner that a representation dated 05.09.2011 was submitted by her to the Principal of respondent No.2/College for issuance of a migration certificate in her favour on the ground that her father was facing acute financial problems. The aforesaid representation submitted by the petitioner was received by respondent No.2/College on 07.09.2011. It is stated by the counsel for the petitioner that, in the meantime, Vivekanand College issued a circular dated 21.09.2011, confirming the migration of the petitioner from respondent No.2/College to the course of B.Com.(Pass) in the second year (Annexure P-6). But, despite the issuance of the said circular, as respondent No.2/College refused to issue a migration certificate to the petitioner, she had to approach this Court by filing the present petition on 03.10.2011.

4. It is the contention of learned counsel for the petitioner that respondent No.2/College has been arbitrarily withholding her migration certificate and it has adopted a pick and chose policy for issuing migration certificates.

5. Notice was issued on the present petition on 12.10.2011. Counsel for respondent No.1/University entered appearance on the very same date and sought time to file a counter affidavit. Thereafter, appearance was also entered on behalf of respondent No.2/college and time was sought to file a counter affidavit. Counter affidavits have been filed by the respondents.

6. Respondent No.2/College raised a preliminary objection in the counter affidavit to the effect that the petitioner has failed to implead the proposed transferee college, i.e., Vivekanand College as a co-respondent in the present proceedings and that the no objection granted by the said college to the petitioner was on 17.08.2011 and much time has passed ever since then. Therefore, it was urged that it would have been appropriate for the Court to have obtained a response from the proposed transferee college as to the status of the migration of the petitioner at such a belated stage. Counsel for respondent No.2/College submits that even otherwise, the petitioner had approached this Court quite belatedly in the month of October 2011 when three months of the academic session 2011-12 had already passed and by now only two months of the said session are left for completion, whereafter the annual examinations are to commence in the month of April 2012. It is further stated that the petitioner had also filled up her examination form on 30.09.2011 and submitted it to the respondent No.2/

College, which has in turn forwarded the same to respondent No.1/University.

7. Counsel for respondent No.2/College submits that while filing the present petition, the petitioner has also withheld material information from the Court. He states that initially, the petitioner had approached the Principal of respondent No.2/College with a representation that was received on 18.08.2011, wherein she had requested for issuance of a migration certificate to Vivekanand College on the ground that she was a resident of Ghaziabad and Vivekanand College was closer to her residence. However, in her second representation dated 24.08.2011 addressed to the Dean, Students Welfare, Delhi University, the petitioner did not furnish any reason whatsoever for seeking migration from respondent No.2/College. In her third representation dated 5.9.2011 addressed to respondent No.2/College, the reason given by the petitioner for seeking migration from respondent No.2/college was that her father had been facing financial problems.

8. Learned counsel for respondent No.2/College submits that in the academic session 2011-12, the Department of Commerce of respondent No.2/College had received 26 applications from different students seeking migration to other colleges. Confronted with such a slew of applications seeking migration, the Staff Council of the respondent No.2/College took a decision in its meeting dated 13.09.2011 that it would not allow migration to any student solely on the ground of distance. The aforesaid decision was taken in view of the fact that respondent No.2/College found that many students had been taking admission in the college with the intention to migrate to colleges of their choice in the second year which had resulted in adversely affecting the working of the College and a marked reduction of the workload of the college/Department. The other consequence of such migration was that it was resulting in denying admission to genuine students who wanted to take admission in B.Com (Pass) course, but, were denied such an opportunity at that stage.

9. In support of the aforesaid submission, counsel for respondent No.2/College draws the attention of this Court to the minutes of the meeting dated 13.09.2011 held by the Department of Commerce in respondent no.2/College (Annexure P-3) wherein the Department observed that the respondent No.1/University had opened respondent No.2/College in a rural area so as to address the socio-economic hardship faced by students living in such areas, who were keen to take admission at college level for undertaking higher studies, but were unable to do so as they could not get admission in other premier colleges affiliated to respondent No.1/University. It was also observed in the said meeting that apart from the petitioner herein, there were many other students who had submitted applications seeking migration on the ground of "distance from college to home" but their requests made on this basis were denied in view of an earlier decision of the Staff Council. The minutes of the meeting record the fact that later on, applications for migration were received from students giving different grounds including medical grounds of their parents and the economic problems being faced by their families, but only two such students who had applied for migration

on economic grounds and were consistent on the said ground taken by them, were allowed migration on compassionate grounds. However, all the other applications, including that of the petitioner were turned down for the reason that the said students had changed the initial ground taken for migration to other grounds on an assumption that the same would be found to be more suitable/ acceptable for respondent No.2/College to grant them a migration certificate.

10. The aforesaid decision taken by the Department of Commerce of respondent No.2/College was reiterated in the meeting of the Staff Council held on 17.10.2011(Annexure R-6) which stand was echoed by respondent No.2/College in its reply dated 19.09.2011 addressed to respondent No.1/University on the same issue.(Annexure R-5).

11. Counsel for respondent No.2/College states that the decision taken by respondent No.2/College to decline the request of the petitioner for issuance of a migration certificate is neither arbitrary nor whimsical for the reason that as is apparent from the records, the petitioner had earlier applied for migration solely on the ground of "distance from college" but, later on, she sought to improve upon her case by taking an additional ground of economic hardship in order to overcome the aforesaid decision of the Staff Council. It is further stated that the decision of the Staff Council has been uniformly applied to all the students including the petitioner and the respondent No.2/College has not adopted a pick and chose policy as alleged by the petitioner. To buttress his argument that a student does not have a vested right to claim migration from one college to another within the same University, learned counsel for respondent No.2/College relied on the following judgments:

i. Aman Ichhpuniani Vs. The Vice Chancellor, Delhi University & Ors. 71 (1998) DLT 202 (DB).

ii. Shri Jatin Behl Vs. University of Delhi and Others, .

iii. Chetan Goel & Ors. Vs. University of Delhi & Anr. 2005 8 AD (Del) 316.

12. In the course of arguments, counsel for respondent No.2/College hands over a copy of a recent Notification dated 22.11.2011 issued by the Deputy Registrar(Academic), University of Delhi, wherein it was informed that the last date for migration of students from the School of Open Learning to Regular Colleges or between Regular Colleges had been extended till 30.11.2011 for the academic year 2011-12. The said Notification dated 22.11.2011 is taken on record. It is stated that in view of the aforesaid Notification dated 22.11.2011, the petitioner's request for issuance of migration certificate cannot be entertained any longer when only two months are left for completion of the academic year.

13. Though the counter affidavit of respondent No.1/University is not on record, learned counsel states that he had filed the same in the Registry yesterday with advance copies to counsel for the petitioner and respondent No.2. He hands over

a copy of the said counter affidavit which is taken on record. In the said counter affidavit, respondent No.1/University has also confirmed the fact that the petitioner had changed the ground for seeking migration from the one she had taken initially, i.e., from the ground of "distance from home to college" to "financial hardships". He states that clause 2 of Ordinance IV of the Ordinances of the University of Delhi which deals with the provision of migration clarifies that it is a permissive permission and cannot be claimed as a matter of right and, therefore, a No Objection Certificate is required not only from the proposed transferee college but also from the transferor college.

14. This Court has considered the submissions made by counsels for the parties, perused the documents placed on record and examined the decisions relied upon by the counsels.

15. The law on the issue of right of a student to claim migration from one college to the other was examined and settled in the case of Aman Ichhpuniani (supra) wherein a Division Bench of this Court when confronted with a question as to whether a student has a "vested right" to claim migration from one college to the other or merely "a right" and if so, whether the said right is capable of being enforced and exercised in writ jurisdiction of the High Court, held as below:

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.

17-19. xxx

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. Some times 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. xxx

22. xxx

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.

(emphasis added)

16. Following the aforesaid decision in the case of *Jatin Behl (Supra)*, a Single Judge of this Court took into consideration the legal position with regard to permitting migration of students and observed as below:-

15. The reason as subsequently disclosed by the petitioner is that with a view to advance his career his wishes to join the coaching classes for the entrance examination for Chartered Accountancy. These classes are said to be available only near his residence in the evening. As noted in *Aman Ichhpuniani (Supra)* a student has no vested right to claim migration. What has to be considered is whether the consent was being unreasonably withheld by respondent No. 3 college. In the instant case petitioner was not entitled to admission in the

morning college based on the results of his 12th Class Board Examination. He had accordingly obtained and secured admission in the evening College based on the marks obtained. This was not a case either of extreme hardship or any other supervening circumstance like the transfer of the parents of the petitioner resulting in change of residence or such other reasons for which migration has become inevitable. All that is claimed is that transfer to the morning college would enable the petitioner to take coaching classes, which would help him in preparation for the Entrance Examination. It is not as if morning classes are not at all available. They are available at an inconvenient distance from the petitioner's house. The respondent in their counter affidavit have brought out that the petitioner did not even seek the consent of respondent No. 3 initially. It is claimed by respondent No. 3 that the cut off marks at which admission had been closed by respondent No. 4 was 80% The petitioner having got 69.75% in his qualifying 12th Class Examination could not have secured admission in respondent No. 4 college. He cannot now be permitted to secure the same through the back door, by-passing the claims of a large number of students, who had got higher marks than him in order of merits by seeking admission by way of migration. A further factor, which is pointed out is that while respondent No. 3 evening college, is having less students than the sanctioned strength, the morning college is having 150 students as against the sanctioned strength of 120.

16. In these circumstances respondent No. 4 college could not have given its no objection as the same would be contrary to the UGC Guide-lines which required the colleges not to accede its sanctioned strength and adhere to the permitted sanctioned strength. The respondent No. 4 college against a sanctioned student strength of 400 was having 2000 students. Relevant part of ordinance 4 which governs the case of migration is as under:-

Applications for migrations from one college of the University to another shall only be entertained by the Principal, if forwarded by the Principal of the college from which migration is sought, and the necessary alteration in the enrolment entries shall only be made in the University register by the Registrar after obtaining the consent in writ of both Principals.

17. The initial application also did not disclose any reason for seeking migration. The plea of pursuing the coaching classes for chartered Accountancy Entrance Examination and computer course was subsequently taken.

(emphasis added)

17. In the case of Chetan Goel (Supra) while relying on a series of decisions on the same issue, namely, "Hanspal Singh Bhinder Vs. University of Delhi?", 1997 II AD (Del) 270, "Aman Ichhpuniani (Supra), and CWP No.3089/1995 entitled "Sumeet Sawhney Vs. The Principal, Sri Aurobindo College, Malviya Nagar" decided on 19.12.1997, a Single Judge of this Court held that a student does not have a vested right to demand migration from one college to another. It was further explained that the aforesaid uniform view had been taken by the Courts

that a cogent reason must be given by the student for seeking migration and the decision taken by the College should not be found to be capricious, arbitrary or unreasonable. The learned Single Judge also referred to the decisions of a co-ordinate Bench of this Court in the case of Anant Madan Vs. University of Delhi, 1999 I AD (Del) 249, W.P.(C) No.5504/1998 entitled G. Girish Vs. PGDAV College decided on 11.12.1998 and W.P.(C) No.15651/2004 entitled Vineeta Sharma Vs. Satyawati Co-Ed College (Day) decided on 02.05.2005 and while rejecting the case of the petitioner therein as being devoid of merits, reiterated that a student must give cogent reasons for seeking migration and observed as under:-.

4. The interests of the College have to be balanced with the interests of the student. It has been contended on behalf of the College that its high and constantly improving academic achievements are obvious in the acceptance of the Petitioners in other Colleges. The Faculty would be adversely affected, for no fault ascribable to it, if students who have achieved excellence in the Examinations are secreted away by other Colleges. This practice has been experienced even at the school level. Depleted number of students in a course would not only cause financial strain on the College concerned but would also have a demoralizing effect on the Faculty. One should also not lose sight of the fact that for every student who is granted admission in a College there may be many who have been disappointed. The unsuccessful students cannot get admission in the second year. The question of migration is, therefore, not a trivial matter and must be viewed with seriousness. Had the Petitioners obtained higher marks in their 12th Class Examination they may have gained admittance to the College to which migration is now sought.

(emphasis added)

18. In the present case also, the facts brought on record reveal that the petitioner had been shifting her stand from time to time with regard to the reasons given by her for seeking migration respondent No.2/College and further, that she had not placed on record her first representation made to respondent No.2/College for seeking migration. The said representation has been filed by respondent No.2/College alongwith its counter affidavit which reveals that while initially, the petitioner took a plea of "distance from college to home" as a ground for seeking migration from respondent No.2/College to Vivekanand College, Vivek Vihar, but subsequently, she took the plea of financial hardship of her father as a ground for seeking migration. The plea of financial hardship taken by the petitioner later on to seek migration ought to have been substantiated by her by placing relevant documents in support thereof.

19. Pertinently, the medical records of the petitioner's father enclosed with the writ petition to support the plea of financial hardship being faced by the petitioner's family, only reveal that he had undergone a surgery for Hernioplasty (ventral) in a hospital on 30.06.2011 and was discharged on 02.07.2011. Apart from the aforesaid medical documents, which noted that the post operative recovery of the petitioner's father was uneventful and he was being discharged

in a satisfactory condition, there is no other document placed on record by the petitioner to show that her father had remained so unwell/sick and was thus in such a financial strait that she was compelled to seek migration from respondent No.2/College.

20. Even otherwise, having perused the decisions taken in the meetings held by the Staff Council of the College, wherein a policy was formulated for dealing with the representations received from students seeking migration from the said college and having noticed that the said policy has been consistently followed by respondent No.2/College, this Court is of the opinion that the petitioner has not been able to point out any such discrimination, arbitrariness or capriciousness on the part of respondent No.2/College for this Court to interfere by invoking its powers of judicial review. The Principal of respondent No.2/College has had to strike a balance between the interests of the students and that of the Institution and rightly so. The minutes of the meeting of the Staff Council dated 17.10.2011 is a telling remark on how the incessant requests of students in the second year of the college, seeking migration to other colleges without any cogent reasons has demoralized the teaching faculty and adversely affected the financial health of the institution. In the absence of any valid reasons provided by the petitioner to seek migration from respondent no.2/college, there is no compulsion on the Principal of the college to accede to such a request just for the asking. The shifting stand of the petitioner is itself a pointer to the absence of valid reasons in her case for seeking migration.

21. It is also relevant to note that in view of the latest Notification dated 22.11.2011 issued by respondent No.1/University wherein the last date for migration of students between regular colleges had been extended till 30.11.2011 for the academic year 2011-12, this Court is not in favour of granting any such relaxation to the petitioner at this belated stage. It is pertinent to note that the academic year 2011-12 is at its fag end with only two months left for the examinations of the said academic year to commence in April 2012. In such circumstances, there is no justification to accede to the request of the petitioner for permitting her to migrate from respondent No.2/college at this belated stage.

22. For all the aforesaid reasons, this Court declines to grant the relief as sought by the petitioner in the present petition. The petition is accordingly dismissed while leaving the parties to bear their own costs.