

(2011) 10 DEL CK 0112

In the Delhi High Court

Case No : Writ Petition (C) No. 8765 of 2010 and CM No's. 13016 of 2011, 6707 of 2011

Arpit Singh

APPELLANT

Vs

GGSIU and Another

RESPONDENT

Date of Decision : 13-10-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 184 DLT 119

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : Anil Goyal, for the Appellant; Mukul Talwar, Advocate for Respondent No. 1. and Mr. Laliet Kumar, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Kailash Gambhir, J.—By this petition filed under Article 226 of the Constitution of India, the petitioner seeks to set aside the order dated 16.12.2010 whereby the migration of the petitioner was cancelled by the respondent University.

2. The factual background that has led to the filing of the present petition is that the petitioner was a student of 1st year, B. Tech. in Lord Institute of Technology, Hyderabad and sought migration to respondent No. 2 Maharaja Agrasen Institute of Technology which is affiliated to Guru Gobind Singh Indraprastha University, Respondent No. 1 herein, based on the No-Objection granted by Maharaja Agrasen Institute of Technology, in the Second Year B. Tech.(Mechanical Engineering) (2nd Shift Course). The said migration of the petitioner was approved by Respondent No. 1 University but subject, however, to the completion of formalities detailed in the letter dated 27.8.2010 within a period of a fortnight from the date of the issue of the letter so as to enable the University to issue the Enrolment number. The documents that the petitioner was required to submit and the formalities which he was required to comply with within the period of a fortnight from the date of the issue of the said letter. In the said

letter, the University also made it explicitly clear that any violation on the part of the candidate with respect to depositing the fee or submission of result, as mentioned above, shall result in automatic withdrawal of the said offer for which the candidate will be responsible. The petitioner was also requested to submit the said documents at the Academic Reception Counter, Room No. 108, Administrative Block of the University for further action.

3. The petitioner, who, in fact, had failed in the subject of Engineering Drawing of Second Semester had on 14.9.2010, submitted the Mark Sheet of his First Year B. Tech. Internal & External Examination and also deposited the requisite fee of Rs. 10,060/-with respondent No. 1/University, besides depositing the requisite fee with respondent No. 2./College. That thereafter the petitioner started attending his classes in the Second Year B. Tech. Course from September, 2010 onwards and, in fact, had appeared in the Internal Examination conducted by respondent No. 2/College from 28.10.2010 to 13.11.2010 and from 29.11.2010 to 4.12.2010 wherein he scored 73.33% in aggregate. The petitioner had thereafter deposited a sum of Rs. 2,000/-on account of University dues against bank challan dated 4.12.2010 with the Union Bank of India, Maharaja Agrasen Institute of Technology Branch. The petitioner was also issued Admit Card by Respondent No. 2 University for appearing in the 3rd Semester External Examination of the University. After fulfilling all the said formalities, the petitioner was astonished to receive the letter dated 16.12.2010 issued by respondent No. 1 University, thereby directing cancellation of Migration due to non-submission of the documents by the petitioner to fulfill the eligibility criteria laid down for the migration. Feeling aggrieved by the same, the petitioner has approached this Court to seek quashing of the said order dated 16.12.2010 passed by respondent No. 1.

4. In the reply as well as additional affidavit filed by Respondent No. 1 University, the stand taken is that the migration order dated 27.08.2010 by respondent No. 1 University was subject to fulfilling certain mandatory conditions by the petitioner which he failed to comply with within the prescribed period as laid down and, therefore, the said offer of migration was rightly revoked by the respondent University. It is also the stand of respondent University that the petitioner cannot be on the rolls of two different Universities at the same time, i.e., one where he was to appear in the compartmental examination viz. Lord Institute of Technology, Hyderabad and the second where he sought his migration, i.e., respondent No. 2 college which is affiliated with the respondent No. 1 University. It is also the stand of respondent No. 1 that the migration offered by respondent No. 1 to the petitioner automatically stood revoked on the failure of the petitioner to provide the necessary proof of having passed 1st and 2nd Semesters in the said stipulated period of a fortnight. It is further the stand of the respondent No. 1 University that the petitioner had never informed respondent No. 1 University about any compartment paper and, in fact, the Rules do not permit migration of any student if he has not passed all the subjects of his 1st year. It is also the case of respondent No. 1 University that deposit of any fee

by the petitioner with the University will not confer any legal right on the petitioner to seek confirmation of his migration as the payment was made by the petitioner directly to the account of the University i.e., Punjab & Sind Bank, Kashmere Gate Branch and the receipts are not approved/counter signed by the University officials. It is also the case of respondent No. 1 that the said branch of the bank receives hundred of payments on daily basis in favour of the University and any such payment made by the petitioner, not authorized by the University, would not create any right in favour of the petitioner and the same defense was raised by respondent No. 1 University with regard to issuance of Admit Card by respondent No. 1 University in favour of the petitioner. It is thus the case of the respondent that the Admit Card issued by the respondent to the petitioner did not contain any enrolment no. as the enrolment no. is issued by the Examination branch of the University only upon due verification and confirmation by the Academic Branch of the University. It is also the stand of respondent No. 1 University that there are many other individuals who were offered migration by the University and subsequently the migration offer was revoked in respect of those students who had compartment in any of the subjects of the 1st Year. It is also the case of the respondent No. 1 University that the petitioner, in fact, had played a fraud on the Authorities by concealing the fact that he had failed in the subject of Engineering Drawing in his Second Semester which fact he did not disclose even after the offer of migration was made by the University Authority vide letter dated 27.08.2010. The University has also taken the stand that it follows a uniform policy and no exception can be made in the case of the petitioner, while other similarly placed students, who also had a compartment, were denied migration.

5. Respondent No. 2 College, on the other hand, had taken the stand that it was for the petitioner to have fulfilled all the requirements, as was directed to him by the University vide letter dated 27.08.2010 and on the fulfillment of such requirements, it was for the University to allow migration. It is also the stand of respondent No. 2 College that the 1st Year result of the petitioner was declared in the first week of August, 2010, therefore, he could not have submitted his 1st Year result along with his application submitted in the month of July, 2010. It is also the stand of respondent No. 2 that it kept on reminding the petitioner to comply with all the conditions as intimated to him vide letter dated 27.8.2010 but the petitioner kept on evading to submit the Mark Sheet of the 1st Year. Counsel for respondent No. 2 also submitted that the petitioner was well aware that he was not entitled to seek his migration because of his failure in one of the subjects of Second Semester in the said course, and the respondent No. 2, in principle, supported the action taken by the University in cancelling his migration in the 3rd Semester of B. Tech. Programme for the Session 2010-2011.

6. Mr. Anil Goyal, learned counsel for the petitioner, vehemently contended that the petitioner is now already in the 3rd year and any direction of this Court against the petitioner will not only affect the academic career of the petitioner due to the loss of his precious year, but will also result in the wastage of one seat

which cannot be filled at this stage. Learned counsel for the petitioner also submitted that the petitioner had at no stage misrepresented the facts and had submitted his Mark Sheet along with the letter dated 14.9.2010 with the Academic Branch of respondent No. 1 University and it is only thereafter that respondent had accepted the requisite fee and then later issued the Admit Card in favour of the petitioner. Learned counsel for the petitioner also argued that even respondent No. 2 College had also accepted the fee and allowed the petitioner to attend the classes and to appear in the Internal Examination which were held from 28.10.2010 to 13.11.2010. Learned counsel for the petitioner also argued that the petitioner had ultimately passed the said examination of Engineering Drawing in which he appeared in the month of December, 2010 and, therefore, it cannot be said that the petitioner, in fact, had failed in the said subject of Second Semester. Learned counsel also argued that any compartmental/supplementary examination will be deemed to have been passed in the 1st Year only and the same cannot be treated to have been passed in a subsequent year. The contention of learned counsel for the petitioner was that the result of the compartment examination would relate back to the year in which he had appeared in the said examination at the time of the final examination along with the results. Learned counsel for the petitioner also argued that the respondents should be stopped from taking any contrary position by cancelling the migration after having accepted the Mark Sheet of the petitioner, accepting his fee, issuing an Admit Card, allowing the petitioner to attend his classes in the 2nd Year and permitting him to appear in the Internal Examination. Learned counsel for the petitioner has placed strong reliance on the Division Bench judgment of this Court in LPA No.400/2011 University of Delhi vs Varun Kapur decided on 4.5.2011. On the doctrine of promissory estoppels, being applicable to the case of the petitioner, learned counsel for the petitioner has placed reliance on the following judgments:

1. Sumit Bhatia and Others Vs. Govt. of Nct of Delhi and Others, .
2. Deep Gupta -vs-Guru Gobind Singh Indraprastha University, 2009 (1) AD (Del) 222.
3. Javed Akhtar -vs-Jamia Hamdard, 2007 (1) AD (Del) 542.
4. Radhika Garg -vs-Delhi University & Ors., 2005 (119) DLT 225.
5. Puja Lal -vs-University of Delhi, 1997 (66) DLT 217.
6. Liye Belliappa -vs-C.B.S.E., 2002 (3) AD (Del) 81.
7. Kanishka Aggarwal Vs. University of Delhi and others, .
8. Sanatan Gauda Vs. Berhampur University and others, .
9. Ashok Chand Singhvi Vs. University of Jodhpur and Others, .
10. A. Sudha Vs. University of Mysore and Another, .

11. Charles K. Skaria & Ors. -vs-Dr. C. Mathew & Ors., AIR 1980 SC 1230.
12. Oil and Natural Gas Commission and Others Vs. Dr. Md. S. Iskender Ali,
13. Rajendra Prasad Mathur Ors. Vs. Karnataka University and Another, .
14. Prashant Srivastava -vs-C.B.S.E., 2000 (88) DLT 538.
15. Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, .
16. Aditya N. Prasad -vs-The University of Delhi & Ors. decided on 23.11.2010 in WP(C) No. 12475/2009.
17. Deepika Chaudhary -vs-University of Delhi, 1996 (5) AD (Delhi) 148.
18. Randhir Singh Vs. State of Rajasthan and Others, .

7. I have heard learned counsel for the parties and gone through the records.

8. It is not in dispute between the parties that the petitioner was a student of Lord Institute of Technology, Hyderabad which is affiliated to Jawaharlal Nehru Technological University, Hyderabad in B. Tech(Computer Sciences) 1st year and sought his migration vide letter dated 16.7.2010 in B. Tech (Mechanical and Automation) 2nd shift to respondent No. 2 Maharaja Agrasen Institute of Technology, which is affiliated to the respondent no. 1 Guru Gobind Singh Indraprastha University. That vide letter dated 27.8.2010, the respondent No. 1 allowed the said migration to the respondent No. 2 institute subject to the fulfillment of certain conditions which were duly enumerated in the said letter. It would be relevant to produce the said letter as under:

IPU-7/JR(Acad)/change of college/Univ.Mig/2010-11/5804

Date 27/8/2010

The Director

Maharaja Agrasen Institute of Technology (2nd Shift)

PSP Area Sec - 22 Rohini Delhi - 86

Subject : Inter University Migration from Lord Institute of Engineering and Technology, Hyderabad to Maharaja Agrasen Institute of Technology (2nd Shift) in the 3rd semester of B. Tech programme for the session 2010-11.

Sir,

This is with reference to application of Mr. Arpit Singh on the subject cited above. I am directed to inform you that the competent authority is pleased to approve the request of migration of Mr. Arpit Singh, in the 3rd Semester from Lord Institute of Engineering and Technology, Hyderabad, B. Tech (CSE) to Maharaja Agrasen Institute of Technology (2nd Shift) B. Tech (MAE) programme for the session 2010-11, subject to submission of the following documents/completion of

formalities within a fortnight from the date of issue of this letter to enable the University to issue the Enrolment Number:

1. Marksheet of 12th class with Minimum aggregate of 55% marks in PCM provided the candidate has passed in each subject separately. Candidate must additionally have passed English as a subject of study.
2. Marksheets of 1st year (1st and 2nd Semester) of B. Tech programme (the candidate must have cleared all the papers).
3. Fee receipt of Rs. 10,000/- (to be deposited in the University's Account Branch).
4. Fee receipt of Rs. 45,000/- along with additional fee, if, applicable, (to be deposited at respective institute).

Any failure on the part of the candidate with respect to depositing the fee or submission of result as mentioned above shall result in automatic withdrawal of this offer for which the candidate will be responsible.

You are requested to submit the above mentioned documents at Academic Reception Counter, Room No.-108 Administrative Block GGSIP University for further action please.

Sd/-

(Col. P.K. Umapnyu)

Joint Registrar, Academic

9. It is explicit from the above said conditions, that the petitioner was required to submit his class 12th mark sheet with minimum aggregate of 55% in PCM provided that the candidate has passed in each subject separately and the second being that he should submit the mark sheet of the 1st year (1st and 2nd Semester) of B. Tech programme and the said order also categorically states that the candidate must have cleared all the papers. It also stipulates that the same should be submitted within a fortnight of the said order.

10. The case of the petitioner herein is that as per the said order, he deposited the requisite fee on 14.9.2010 and submitted the relevant documents on the same very day and in the mark sheet submitted by him it is clear that he has failed in the subject of Engineering Drawing in the Second Semester. The contention of the counsel for the petitioner was that after the said submission of documents and fee, no intimation was given to the petitioner regarding his migration being cancelled till the impugned order dated 16.12.2010 and the petitioner had even started attending the classes from September onwards and appeared in the examination as well. The petitioner also pleaded that right from the day of migration the respondent had knowledge about the compartment of the petitioner in Engineering Drawing and despite that the respondent issued the Admit Card to the petitioner and thus by the rule of promissory estoppels the

respondents are stopped from canceling the migration of the petitioner. The petitioner prayed to this court that now the petitioner having completed one year of his study, any adverse order would do irreparable loss and injury to him and his academic career and thus the court should consider the case of the petitioner compassionately.

11. The University on the other hand has taken a stand that as the petitioner failed to supply the proof of having passed the first and second semester within 15 days of the offer letter, his migration stood automatically revoked and it is wrong that he is a student of the respondent No. 2 college. The stand of the respondent No. 1 is that the petitioner has played fraud upon the authorities in concealing the fact of his compartment and therefore if the fact of his compartment was known to the respondent university then even the migration offer would not have been issued to the petitioner. The University has categorically taken a stand that the migration of other similarly situated students has been cancelled and it follows a uniform policy and no exception can be made in the case of the petitioner.

12. The respondent No. 2 college has also endorsed the stand of the respondent No. 1 and submitted that no mark sheet of the first and second semester as contended by the petitioner was submitted by him at the time of application for migration in July 2010 as the result of the first year was only declared at the end of August, 2010. The respondent No. 2 also submitted that any leniency shown to the petitioner would tantamount to the violation of norms of the university and college and this court should not take any compassionate view favoring the petitioner.

13. The migration letter dated 27.8.2010, reproduced herein above, stipulated certain mandatory conditions subject to fulfillment of which the migration of the petitioner would have attained finality. The condition number 2 which is relevant for deciding the present matter is that the petitioner was required to submit his 1st year mark sheet, both of the first and second semester, wherein he should have cleared all his exams. The petitioner being fully aware of the said condition submitted his mark sheet on 14.9.2010 wherein he had failed in the subject of Engineering Drawing. It is thus evident that the petitioner knowing fully well the condition of clearing all the papers in the first year submitted the mark sheet. It is clear that the petitioner has acted in a deceitful manner and played fraud upon the authorities in submitting the mark sheet although knowing fully well that he was not eligible for the said migration. The petitioner has thus approached this court with unclean hands and the petitioner can be denied relief on this ground alone.

14. Another facet of the mandatory conditions as stipulated in the migration order was that the said requisite documents were to be submitted within a fortnight and on non submission within the said time frame, the migration order would be automatically revoked. The petitioner admittedly submitted the documents as per his stand on 14.9.2010 and the migration letter was of

27.8.2010 and hence the petitioner was late in submitting the documents as well and therefore his migration stood revoked automatically on this ground as well.

15. Another argument of the petitioner was that the authorities accepted the fee deposited by him and issued the Admit Card which would go on to show that the migration order had been complied with. On the said argument, the University took a stand that the said branch of the bank receives hundreds of payments on daily basis and the fee receipts of the petitioner were neither approved nor countersigned by any of the officials of the University. This court finds merit in the said submission of the respondent University that the depositing of the fee would not create any right in favour of the petitioner as otherwise depositing of fee by anyone to the Bank would be construed as creating a right of admission by such student in his favour. The University is an establishment and not an individual and hence the mere deposit of fee in the University account will not be considered as binding the University to give admission to such individual and does not by any stretch of imagination create a vested right of admission.

16. It also cannot be overlooked that as per the said migration letter, the petitioner was required to submit the requisite documents to enable the University to issue an Enrolment Number. Even in the forms required to be filled by the student for depositing the fee in the respondent No. 2 institute, against the column of Enrolment Number, the petitioner has filled up "Migration -7" which goes on to show that the petitioner was aware that his migration had not been approved as he was not yet issued the Enrolment Number, which could have only been issued had the University accepted the documents submitted by him. Another fact which goes on to reinforce the fact of the migration being not approved by the University is that in the Admit card issued to the petitioner, no Enrolment Number was mentioned, and rightly so, as the Enrolment Number is issued by the Examination Branch of the University only upon verification and confirmation by the Academic Branch of the University, which was not done in the case of the petitioner as he did not fulfill the eligibility criteria stipulated in the migration order.

17. Hence, in the face of the above said position, the argument of the counsel for the petitioner that the deposit of fee and the issuance of the Admit Card would create estoppels on the University does not cut any ice. Also, the plethora of judgments cited by the petitioner would not be applicable to the facts of the case at hand. Even otherwise, the language of the letter dated 27.8.2010 is luculent where it makes the migration a contingent act, which would be finalized only upon the fulfillment of the conditions stipulated therein.

18. The petitioner also argued that if at this stage any adverse order is passed then it would jeopardize the academic career of the petitioner as he has already reached the third year of the B. Tech Course. Undoubtedly, under the interim directions of this court, the petitioner was allowed to undertake his course of study and appear in the examinations but with the caution that his fate would be dependent upon the final decision in the writ petition and no equity would flow in

his favour by allowing him the said interim relief. It is a settled legal position that the courts while deciding academic matters would not pass any orders based on misplaced sympathy and compassion as it would lead to setting a malefic precedent. Here it would be relevant to refer to the judgment of the Apex Court in the case of *Guru Nanak Dev University Vs. Parminder Kr. Bansal and another*, wherein it was held that :

5. Sri Gambhir, learned Counsel for the University says that the very implication of the idea of regularization contained within it the promise that the initial admission itself was irregular. He submitted that the University was confronted with a *fait-accompli* by virtue of interlocutory orders. The final order in the writ petition did no more than validate and perpetuate the interlocutory error without any pronouncement on or adjudication of the basic issues of eligibility. Sri Gambhir aired a serious grievance that this type of orders would introduce an element of indiscipline in academic life and exposes the system to ridicule and render any meaningful control of academic work impossible. He relied upon certain pronouncements of this Court to support his contention that in academic matters courts should be wary in directing the admissions to colleges by means of interim directions which would create complications later and expose even the beneficiaries of such orders to, difficulties when the final adjudication goes against them.

learned Counsel for the respondents, however, sought to maintain that the two candidates had now completed the 12 months of their internship and it would be hard on them if their internship is reckoned from the date of the passing the M.B.B.S. examination.

6. Sri Gambhir is right in his submission. We are afraid that this kind of administration of interlocutory remedies, more guided by sympathy quite often wholly misplaced, does no service to anyone. From the series of orders that keep coming before us in academic matters, we find that loose, ill-conceived sympathy masquerades as interlocutory justice exposing judicial discretion to the criticism of degenerating into private benevolence. This is subversive of academic discipline, or whatever is left of it, leading to serious impasse in academic life. Admissions cannot be ordered without regard to the eligibility of the candidates. Decisions on matters relevant to be taken into account at the interlocutory stage cannot be deferred or decided later when serious complications might ensue from the interim order itself. In the present case, the High Court was apparently moved by sympathy for the candidates than by an accurate assessment of even the *prima facie* legal position. Such orders cannot be allowed to stand. The Courts should not embarrass academic authorities by itself taking over their functions.

19. It is also the stand of the respondent that the migration of the similarly placed students has been cancelled and the case of the petitioner cannot be treated any differently. This court finds merit in the argument of the respondent that there is a uniform policy being followed by the University in such like cases

and the case of the petitioner cannot be made to stand on a higher footing than others by giving him the advantage of approaching the court. Also, the Apex Court has sounded the word of caution time and again for the courts not to interfere in academic matters and passing orders which would make the academic institutions defy their own rules and regulations as it would lead to the lowering down of the academic standards of the institution. It would be relevant here to refer to the judgment of the Apex Court in the case of A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Another, wherein it was held as under:

Shri Venugopal suggested that we might issue appropriate directions to the University to protect the interests of the students. We do not think that we can possibly accede to the request made by Shri Venugopal on behalf of the students. Any direction of the nature sought by Shri Venugopal would be in clear transgression of the provisions of the University Act and the regulations of the University. We cannot by our fiat direct the University to disobey the statute to which it owes its existence and the regulations made by the University itself. We cannot imagine anything more destructive of the rule of law than a direction by the court to disobey the laws. The case of the medical college started by the Daru-Salaam Trust appears to stand on a different footing as we find from the record placed before us that permission had been granted by the State Government to the Trust to start the medical college and on that account, the University had granted provisional affiliation. We also find that the Medical Council of India took strong and serious exception to the grant of provisional affiliation whereupon the University withdrew the affiliation granted to the college. We are unable to treat what the University did in the case of the Daru-Salaam Medical College as a precedent in the present case to direct the University to do" something which it is forbidden from doing by the University Act and the regulations of the University. We regret that the students who have been admitted into the college have not only lost the money which they must have spent to gain admission into the college, but have also lost one or two years of precious time virtually jeopardizing their future careers. But that is a situation which they have brought upon themselves as they sought and obtained admission in the college despite the warnings issued by the University from time to time. We are happy to note that the University acted watchfully and wakefully, issuing timely warnings to those seeking admission to the institution. We are sure many must have taken heed of the warnings issued by the university and refrained from seeking admission to the institution. If some did not heed the warnings issued by the university, they are themselves to blame.

20. The petitioner in the present case approached the court at his own peril to try his luck knowing fully well that he was guilty of concealment of facts. The situation is the petitioners own Frankenstein and now he cannot be allowed to take leverage of the same. This court would like to issue an admonition to the petitioner and the others contemplating to approach the portals of law for relief, that any disclosure about their disingenuousness, perfidious or duplicitous

conduct during the course of hearing would lead to drawing an adverse inference and dismissal of such cases out rightly.

21. In the light of the above discussion, this court does not find any merit in the present petition and the same is hereby dismissed.