

(2011) 11 DEL CK 0362
In the Delhi High Court
Case No : LPA 899 of 2011

Arpit Singh

APPELLANT

Vs

Guru Gobind Singh Indraprastha University and Another

RESPONDENT

Date of Decision : 24-11-2011

Acts Referred:

Citation : (2011) 184 DLT 763

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Anil Goel, for the Appellant; Mukul Talwar, for R-1 and Mr. Laliet Kumar and Mr. Saurabh Dhawan for R-2, for the Respondent

Final Decision : Allowed

Judgement

Rajiv Sahai Endlaw, J.—The appeal impugns the judgment dated 13.10.2011 dismissing W.P.(C) No.8765/2010 preferred by the appellant. The counsels for the respondents appear on advance notice. Considering the nature of the controversy and the pleadings having already been completed in the writ petition, we heard the counsels finally.

2. The appellant in the academic year 2009-10 was admitted to the B.Tech (Computer Science Engineering) course of the Lord Institute of Engineering and Technology (LIET), Hyderabad affiliated to Jawahar Lal Nehru Technological University, Hyderabad. After completing the first year of the course, he applied to the respondent No.1 Guru Gobind Singh Indraprastha University (GGSIPU) for migration to the respondent No.2 Maharaja Agrasen Institute of Technology (MAIT) affiliated to the respondent no.1 University.

3. The respondent No.1 University vide its letter dated 27.08.2010 approved the request of the appellant for migration, in the third semester, from the LIET, Hyderabad to B. Tech. (Mechanical Engineering) Programme (Second Shift) of MAIT for the Session 2010-11, subject to the submission of the following documents / completion of formalities within a fortnight from the date of

issuance of the letter to enable the respondent No.1 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).

The letter dated 27.08.2010 further provided:

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.

4. The appellant, in the first year examination held by the LIET, Hyderabad, though had passed in all the other subjects but had got compartment in Engineering Drawing. It is the case of the appellant that he was suffering from fever on the date of the said examination and which affected his performance. The appellant appeared in the compartment examination held by the LIET, Hyderabad in December, 2010 and in the result whereof declared in January, 2011, he passed/cleared the said subject also.

5. It is the case of the appellant that he had, while applying for migration, informed the respondent No.1 University of his having obtained a compartment in the Engineering Drawing examination and being eligible to appear in the compartment examination scheduled for December, 2010. It is further the case of the appellant that he on the basis of the letter dated 27.08.2010 of the respondent No.1 University, paid the fees and took admission in respondent No.2 MAIT and from September, 2010 also started attending the classes, appeared in the mid term examinations held in October-November, 2010 and again in November-December, 2010 and also deposited the examination fee with the respondent No.1 University and was issued the admit Card for the Third Semester End Term Examination scheduled in December, 2010.

6. The respondent No.1 University however vide its letter dated 16.12.2010, for the failure of the appellant to have submitted the documents subject to submission whereof migration had been permitted, cancelled the letter dated 27.08.2010 earlier issued permitting migration.

7. Upon the representations of the appellant having not met with any success, the writ petition from order wherein this appeal has arisen was filed, impugning the order dated 16.12.2010 of the respondent No.1 University cancelling the migration of the appellant.

8. The learned Single Judge has in the judgment impugned in this appeal held, that the permission granted by the respondent No.1 University vide letter dated 27.08.2010 for migration was subject to fulfillment of certain mandatory conditions stipulated in the said letter; that the appellant did not fulfill the said requirements and in fact was not even in a position to fulfill the same inasmuch as he had not cleared all the papers of the first year (first and second semester) of the B. Tech. programme and had a compartment in Engineering Drawing; that the appellant knowing fully well the condition of clearing all the papers of the first year, played a fraud upon the authorities in submitting his marksheet although knowing fully well that he was not eligible for the migration; the appellant had thus not approached the Court with clean hands and was not entitled to any relief on this ground alone; that the acceptance of fees by respondent No.2 MAIT from the appellant was of no avail and did not create any rights in favour of the appellant; that the appellant had obtained the admit card for the Third Semester End Term Examination also by wrongfully filling up the column of enrolment number when no enrolment number had been issued to him by the respondent No.1 University for the reason of his having not complied with the conditions which he was required to comply as per the letter dated 27.08.2010; that the consideration of academic year of the appellant being wasted was not relevant; that the appellant had approached the Court at his own peril knowing fully well that he was guilty of concealment of facts.

9. It was the contention of the appellant before the learned Single Judge as also before us that in the matter of migration, no distinction could be maintained between those who had cleared/passed the first year in the first attempt and those who had cleared the same in the compartment examination. It was further the case of the appellant relying upon the judgment of the Division Bench of this Court in University of Delhi Vs. Varun Kapur, that the result of the compartment examination would relate back to the year in which the main examination was held and a candidate clearing the said exam by way of a compartment examination could not be said to have passed the examination in a subsequent year. Though the learned Single Judge has noticed the said contention of the appellant but has unfortunately not dealt with the same and has proceeded to dismiss the writ petition relying upon Guru Nanak Dev University Vs. Parminder Kr. Bansal and another, (laying down that Courts while deciding academic matters would not pass any orders based on misplaced sympathy and compassion) and on A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Another, (cautioning the Courts against interference in academic matters and passing orders which would make the academic institutions defy their own rules and regulations).

10. The judgment dated 10.03.2011 of the learned Single Judge of this Court in Varun Kapur (supra) had noticed that earlier also, Division Benches of this Court in judgment dated 07.09.1999 in LPA No.385/1999 titled Sh. Prashant Srivastava Vs. C.B.S.E. and Others, held that once the supplementary examination is passed, the result thereof would relate back to the first appearance in the examination and the effect of that would be to treat as if the candidate had passed the examination on the date when the result was declared initially. Both the said cases however were with respect to Class XII examination.

11. It is further noted in the judgment dated 10.03.2011 of the learned Single Judge in Varun Kapur that another Single Judge of this Court in Deep Gupta Vs. Guru Gobind Singh Indrapastha University had also held that candidates who cleared the qualifying examination in the first attempt and those who cleared the same in compartment, for the purposes of determining eligibility cannot be discriminated. A contra view taken by another Single Judge in Ankur Vahi Vs. Union of India (UOI) and Others, was also noticed.

12. The Division Bench of this Court in Varun Kapur also observed as under:

"11. Why should we not be situationalist Judges and not rationalist Judges? We think we should. It is not a case where wholly ineligible persons or persons who have obtained admission by dubious means would continue as students of the University of Delhi in the Faculty of Law. If we hold against the respondents, two seats would go abegging, and this in our opinion would be contrary to public interest and thus the compulsion of the situation compels us to be situationalist Judges and uphold the view taken by the learned Single Judge.

13. The counsel for the appellant has argued that the present case is clearly covered by the judgment aforesaid in Varun Kapur. It is also informed that the appellant has ceased to be a student of the LIET, Hyderabad and if held to be not entitled to migration, would end up wasting two years of his academic life and which would offset him totally against his peers. Alternatively, it is argued that even it be presumed that LIET, Hyderabad would be willing to take back the appellant in the Second year, the appellant would still end up losing one year. Else, it is contended that the appellant having cleared the compartment examination has cleared the first year of the B. Tech. course and which is the only condition of which the appellant is stated to be in contravention of. 14. Per contra, the counsel for the respondent No.1 University has contended that the appellant could not have been a student of two Universities at the same time i.e. the University to which LIET, Hyderabad was / is affiliated as well as to the respondent No.1 University and which would be the effect if the appellant while pursuing compartment examination of the first year in the LIET, Hyderabad is held entitled to also join the Second Year of the course in the respondent University. It is yet further contended that the migration permitted vide letter dated 27.08.2010 was subject to fulfillment, within a fortnight, of the conditions therein and which having not been fulfilled, no right can be said to have accrued to the appellant.

15. The counsel for the respondent No.2 MAIT though has admitted receipt of fees from the appellant but denies having allowed him to attend the classes.

16. We may notice that one of us (Rajiv Sahai Endlaw, J) in Neha Singhal Vs. Guru Gobind Singh Indraprastha University and Others had occasion to deal with a migration letter similar to the one dated 27.08.2010 in the present case. In that case also on the basis of such a letter the student was admitted to the College / Institute affiliated to the respondent No.1 University while in fact migration had not been completed. Direction was given to the respondent No.1 University to issue guidelines to all its affiliates for ensuring that no fee is received from students seeking migration till unconditional approval is granted. Suggestion was also made to the respondent No.1 University to consider modifying the format of the letter approving the migration inasmuch as it was felt that the same was fraught with the possibility of misleading the students. It was held that no approval for migration ought to be granted till the documents are submitted and the University is satisfied as to eligibility. We are told that the respondent No.1 University in compliance of the said directions has already amended the format of migration letter and also issued instructions to its affiliates.

17. The question here is of the course of action to be followed; whether to leave the appellant to again approach the LIET, Hyderabad at the cost of wasting a valuable academic year or to allow the appeal and hence the appellant to continue with respondent No.2 MAIT which he is found to have joined in September, 2010 and where he has been appearing in the examinations.

18. We see no reason to not follow the dicta in Varun Kapur holding that once the compartment examination is cleared, it cannot be said that the appellant was ineligible for migration particularly in the face of the ambiguity aforesaid in the migration letter. The other considerations which prevailed with the Division Bench in Varun Kapur also exist here; the seat vacated by the appellant would go abegging. In the facts of the present case also, the situation prevails over the rationale and the appeal succeeds.

19. The appeal is accordingly allowed. The letter dated 16.12.2010 of the University cancelling the permission for migration of the appellant from LIET, Hyderabad to respondent No.2 MAIT in the B. Tech. (Mechanical Engineering) Programme (Second Shift) is quashed/set aside. The appellant who has already joined the respondent No.2 MAIT is permitted to continue the course. We were during the hearing informed that some internal examinations of respondent No.2 MAIT were to be held. The counsel for respondent No.2 MAIT assured that in the event of the appeal succeeding, a separate internal examination for the appellant would be held. The respondent No.2 MAIT is bound by the said statement. No order as to costs.