

(2009) 09 DEL CK 0409

In the Delhi High Court

Case No : Writ Petition (Civil) No. 11053 of 2009

Ayesha Chaudhary

APPELLANT

Vs

University of Delhi and Another

RESPONDENT

Date of Decision : 17-09-2009

Acts Referred:

Delhi University Ordinances — Ordinance 4, Ordinance 4(1), Ordinance 4(2),
Ordinance 4(3)

Citation : (2009) ILR Delhi 346 Supp

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Advocate : D.R. Nigam, for the Appellant; Maninder Acharya and Pawan Kumar Aggarwal, for the Respondent

Final Decision : Allowed

Judgement

Anil Kumar, J.—The petitioner seeks a direction to the respondent No. 2 to grant 'No Objection Certificate' to her to migrate from respondent No. 2 to Maitreyi College or any other day college.

2. The petitioner is a young girl of 19 years and she took admission in respondent No. 2, evening college, in the course of B.A (Hons) Economics as she could not get admission in the day college near her residence at Vasant Kunj, New Delhi and, therefore, she opted for admission to the evening college.

3. The petitioner asserted that after joining respondent No. 2 she realized that the college does not have proper transport facilities from outside the college to her residence and after the end of the evening college which was up to 8 PM, the area gets very deserted and lonely.

4. The petitioner somehow completed her first year and secured 65% marks in first year B.A (Hons) Economics. The petitioner after passing first year of B.A (Hons) Economics took admission in the second year and deposited the requisite fees.

5. According to the petitioner as after the end of the evening college it was becoming difficult for her to get the conveyance and on account of number of crimes having taken place near and around the college, she applied for migration to Maitreyi College, a day college of Delhi University which is near the place of her residence. The petitioner opted to migrate to day college on account of her constant fear and her apprehension about her security. The petitioner contended that Maitreyi College granted "no objection" certificate for migration of the petitioner.

6. After securing "No Objection Certificate" for admission to Maitreyi College, Delhi University which is near her residence, the petitioner approached respondent No. 2 on 30th July, 2009 and made a representation to the principal for grant of "No Objection" for migration of the petitioner to Maitreyi College. In the representation the petitioner categorically contended that it gets very late and dark in the evening by the time classes are over. The petitioner asserted that though the classes are over by 7 PM, however, at times on account of exigency of situation she has to stay even beyond 7 PM. After the late hours it gets dark and road outside the college becomes lonely and deserted especially in winters and proper transport facilities are also not available outside the college and, therefore, at times her mother has to come and pick her up and she also has to wait for long outside the college gate which is also effecting her health. Petitioner contended that she is the only child and that too a girl and there is lot of tension at home regarding her safety and in the circumstances the petitioner requested the respondent No. 2 to issue a "no objection" certificate for migration of petitioner to Maitreyi College or any other day college.

7. While making request for grant of "no objection" certificate the petitioner also pointed out the incidents of crime, hooglisim and eve teasing on the outside road around college and also pointed out an incident which took place on 30th July, 2009 around 6 PM in which unknown persons had assaulted two girls. At the time of incident fortunately for the petitioner, her parents were present and so no untoward incident had happened with the petitioner and in the circumstances it was requested that it will be appropriate to issue "no objection certificate" as the petitioner is very apprehensive about her safety.

8. Despite the representation made by the petitioner by letters dated 30th July, 2009, her case was not considered necessitating another letter dated 7th August, 2009 reiterating her request for grant of "no objection certificate". The petitioner also brought to the notice of the principal that she and her father had met the Head of the Economics department, however, it was communicated to them that college has passed a resolution taking a policy decision not to allow migration of any student from the evening college to any other college. The petitioner also pointed out that though the letter was given to the principal for "no objection certificate", however, the letter was marked by the principal to the head of the department who, however, refused to accept the same on the ground that the power is of the principal to decline or accept the request for migration of the

petitioner. The petitioner also contended that her father was asked to meet the principal time and again, however, no decision had been communicated to the petitioner necessitating filing of the present writ petition on 20th August, 2009.

9. The petitioner also relied on Ordinance IV of University of Delhi dealing with the cases of migration. Ordinance IV(1)(3)(2) deals with the migration of the students from one college to other college. The said ordinance is as under:

Ord. IV - Migration

1. (1) A student who has not completed his course of study or having completed his course of study has not appeared at the examination for which he was reading in any other Indian University or in any College under the control of a board of Intermediate Education shall not be admitted to the University except on production of the following documents:

(a) leaving certificate from the Principal of the College or from the Registrar of the University he is leaving.

(b) Certified copies of the report of attendance against his name in the register of students of the University or the College concerned.

(2) Admission of a student to the University in the second academic year of study for a degree examination may only be allowed on the ground that the parent or guardian of the student is residing in or has migrated to Delhi.

(3) In all cases of migration a certificate is required from the Principal of the College to which admission is sought by a student to the effect that he has attended a sufficient number of lectures in the subjects offered by him at this University in the College or the University from which he migrates, so as to enable him to complete the course of study prescribed by the University.

2. Applications for migration 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 writing of both Principals.

3. Migration of a student to the University in a Course of Study to the Degree Examination under the Faculty of Technology and Faculty of Medical Sciences shall not be permitted.

10. The petitioner also relied on 156(2009) DLT 13, Anika Jain v. University of Delhi and Anr. to contend that the petitioner is entitled for 'no objection' from the respondent No. 2 for her migration from the evening college to Maitrayi college or any other day college.

11. The learned Counsel for the University of Delhi, Ms. Maninder Acharya has contended that no reply to the show cause notice is to be filed. The learned Counsel, however, on instructions stated that no college can have a policy not to

consider the request for migration from one candidate and to reject the same only on account of having such policy.

12. The petition is contested by the respondent No. 2 and an affidavit dated 7th September, 2009 of Dr. V.S. Vidhyarathi, acting principal has been filed. The respondent No. 2 has relied on a decision taken in the meeting of the staff council stipulating that the council reiterates the earlier decision that the migration of students from the college should not be permitted as a general principle, however, in case of extreme circumstances, migration may be granted. The staff council in its meeting dated 25th August, 2008 also resolved that the application of the student for migration should be examined by the concerned department and its recommendation should be considered by the principal. The staff council also approved the practice of not granting the migration as a general principle as it has enabled the college to retain talent and, therefore, it was decided to continue with the general principle of not granting migration. The relevant decision of the staff council in one of its meeting held on 25th August, 2008 is as under:

The issue of migration from the college was also taken up. In this context the council reiterated the earlier decision which states that the migration of students from the college should not be permitted as a general principle. However, in case of extreme circumstance, migration may be granted. In such case, the application of the student should be examined by the concerned Department and its recommendation should be considered by the Principal. The members were unanimous in the view that the present practice has enable the college to retain talent. This has had a positive impact on the students as a whole as well as on the teachers. A sufficient number of students performing well has an uplifting impact on others. It was, therefore, decided to continue with the existing practice. In case the students wishing to migrate from another college, they would be required to obtain "no objection" from their college Principal and only then such cases would be entertained. Item -2: Any other item with the permission of the chair Members expressed concern over the outsiders roaming in the College. The members requested the Principal to regulate entry of the students at the gate. The Principal assured that he would take all necessary measures to ensure that outside elements do not enter the College.

13. The respondent No. 2 denied that no policy decision has been taken not to allow any inter college migration. The respondent No. 2 also denied lack of proper transport facilities and buttressed its contention on the ground that there are total 1235 students out of which 269 are girl students and since no hostel facilities is available, the students commute everyday from the college after attending the classes. The plea of the petitioner that it gets lonely and deserted after evening classes was also denied on the ground that the respondent No. 2 college is situated between Moti Lal Nehru College (evening) on one side and South Campus of the University of Delhi which also has a women's hostel on the other side. The plea of the petitioner about law and order situation in the vicinity

was not accepted.

14. Respondent No. 2 further asserted that since the petitioner did not get admission in any other day college nearby her residence, therefore, the petitioner was merely bidding her time in the respondent No. 2 college till she has got an opportunity to migrate to some other college of her choice/preference and the reason cited for seeking migration from the respondent No. 2 college are mere excuses in support of her desire to shift to some other college preferably to a day college. In the circumstances, it was asserted that no student can be encouraged to block a seat which in any case is so scarce these days in Delhi. The hardship caused to the petitioner was alleged to be concocted. Not issuing the 'no objection' certificate has also been justified on the ground that it will result into deprivation of some other deserving student from getting admission and resulting in permanent vacancy during the remaining duration of the course of seats. Denial to issue 'No objection' for the migration is also asserted on the ground that it will have a demoralizing effect on the staff of such a college and it can adversely affect its staff student ratio which may also result into job loss by reduction in staff strength in the former college. The emphasis was also laid by the respondent No. 2 about revision of college timing from 1.35 PM to 7.05 PM in place of 2.30 PM to 7.55 PM in order to ensure that the students reach home early. The respondent No. 2 also denied that the law and order situation in the vicinity of respondent No. 2 College is bad. It was rather contended that the law and order situation in the vicinity is not worse compared to any other area in Delhi.

15. The 'no objection' has also been denied on the ground that the petitioner could not have approached the principal of Maitreyi College before seeking no objection certificate from the respondent No. 2 College. It is contended that the real reason for the petitioner to migrate is not her safety but a ploy to migrate to a day college of her preference/choice as she could not possibly get admission earlier in the day college. The respondent No. 2 also asserted that the petitioner does not have a right to get a 'no objection' certificate and issuance of no objection certificate to the petitioner shall have a demoralizing effect on others. The other allegations made by the petitioner in the petition were also denied.

16. The petitioner filed a rejoinder refuting the averments made on behalf of the respondent No. 2. The petitioner filed the minimum percentage of marks on which admission to various courses of study had been offered by different colleges of Delhi University for the academic year 2008-2009 to contend that she was eligible to get admission on the basis of her percentage in qualifying examination in the day colleges of the University. The petitioner pleaded that she did not get admission in the day college in B.A (Hons) Economics although she was entitled as the day colleges where she was getting admission were far from her residence and she is the only daughter of the parents rather only child of her parents and, therefore, the petitioner did not take admission in the day colleges which were far from her residence. The petitioner contended that now since she

is getting admission in the day college near her residence and she has apprehension about her safety, therefore, her request for grant of 'no objection' certificate ought not to be denied. The petitioner also contended that as a policy the respondent cannot deny migration to its students. The petitioner contended that her request has not been considered and has been denied on account of alleged policy. The petitioner also contended that her request and the reasons have not been considered by the principal and the staff council rather 'no objection' has been denied without any justification and non issuance of 'no objection' certificate cannot be justified now on the basis of the reasons disclosed in the counter affidavit filed on behalf of respondent No. 2. The petitioner also pointed out the contradiction in the meeting of the staff council and the grounds taken in the counter affidavit. It is also contended that the reasons decided by the staff council are not borne out from the grounds disclosed in the counter affidavit. Regarding losing the staff, the petitioner contended that permanent faculty of the department does not change with the strength of the students and only the strength of temporary, adhoc and guest appointees change with the strength of student intake and, therefore, this cannot be a ground to deny 'no objection' to the petitioner.

17. The arguments were heard on behalf of the counsel for the petitioner and the respondents and the petition, counter affidavit and the rejoinder affidavit filed on behalf of the parties and the arguments filed along with them have also been perused. Considering the ordinance of respondent No. 1 pertaining to migration, it is apparent that the petitioner does not have a vested right to get a 'no objection' certificate from the respondent No. 2 to get migration to other colleges, however, it cannot be denied that if the petitioner is seeking migration and has disclosed some reasons, the respondent No. 2 college was liable to consider those reason. Though the respondent No. 2 in the counter affidavit filed before this Court has contended that the petitioner has cooked up the ground as she was keen to go to a day college and, therefore, she was bidding and passing her time in the evening classes, however, the reasons stated in the affidavit are after thought as the apprehension of the petitioner for migration was not decided and no reasons for not granting the 'no objection' to the petitioner were communicated to her. In absence of any reasons communicated to the petitioner pursuant to her request it is apparent that 'no objection' to the migration has been denied on account of decision taken by the staff council in its meeting dated 25th August, 2008 reiterating the policy of the college not to grant migration to the students.

18. The Division Bench of this Court in Aman Ichhpuniani Vs. The Vice Chancellor Delhi University and Others, had considered the question of migration by the students from one college to other and had laid down certain guidelines which are 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.

19. On the basis of the relevant ordinance pertaining to migration and the guidelines laid down by this Court it is apparent that though the petitioner may not have a vested right to seek migration, however, if the petitioner had disclosed some reasons for seeking migration, the respondent No. 2 ought to have considered the same and communicated the reasons for not granting the 'no objection' for migration. The respondent No. 2 could not act whimsically and contended that as a general policy migration is not to be granted in any case unless it is an extreme case. In order to ascertain whether the migration sought by the petitioner was a general case or an extreme case, the reasons disclosed by the petitioner ought to have been considered and decided and communicated to the petitioner as to why her case is not an extreme case for migration and cannot be allowed.

20. The plea of the petitioner is that though she was eligible for admission to day college, however, she did not get admission in day college near her house though she was getting admission in the far off colleges and being the only child and a girl, her parents and she opted to go to a college near her house. It cannot be denied that petitioner is living in Vasant Kunj and Ram Lal Anand College, respondent No. 2 is near her house. In the circumstances, the plea of the petitioner that she wanted admission in a college near her house cannot be termed whimsical or can be doubted in any manner. The petitioner has apprehension about her safety especially during the evening hours and when it becomes dark. It cannot be said that the apprehension and fear of the petitioner is unfounded. Though the respondent No. 2 has denied that the law and order situation is not good, however, it has been qualified by the statement that the law and order situation is not worse than in any other area. In the circumstances, the respondent No. 2 in a way has admitted that law and order situation is not normal as it should be. Therefore, the probability of a person

having apprehension on account of law and order situation cannot be termed whimsical. In the circumstances, if the petitioner in order to secure herself more, wants to migrate to a day college near her house, the same cannot be termed a mere ploy as has been alleged by the respondent No. 2 in the counter affidavit. The staff council in its meeting dated 25th August, 2008 rather augmented the apprehension of the petitioner about law and order situation as the staff council had expressed its concern over outsiders roaming in college and had recommended the principal of the respondent No. 2 to regulate the entry of the students at the gate. The principal had assured that he would take all necessary measures to ensure that outside elements do not enter the college. Despite such assurance on 25th August, 2008, according to the petitioner there have been incidents which have been specifically contended by the petitioner. In the circumstances, it cannot be held that the apprehensions of the petitioner are whimsical, ill founded and having no basis. The respondent No. 2 in the facts and circumstances should have considered the grounds given by the petitioner seeking no objection for migration from respondent No. 2 College to another day college. If one weighs the apprehension of the petitioner about her safety, they do outweigh the interest of the college in the facts and circumstances. The alleged loss of faculty members is also ill founded as the permanent faculty members are not too lose their jobs on account of decrease number of students teacher ratio. In any case it has not been shown that a number of students have migrated which has resulted into decrease of number of teachers. In case the petitioner is given "no objection" for migration, it will not necessarily lead to such inference that other students will also approach the principal for migration. In any case every individual case has to be considered on its own merit. The apprehension of the college compared to the apprehension of the petitioner, as has been alleged in the counter affidavit, are without any basis in the facts and circumstances.

21. The respondent No. 2 has rather not considered the interest of the college and the interest of the petitioner, as no decision was taken on the representations of the petitioner and no reasons were communicated to her. "No objection" certificate to the petitioner has been declined more as a policy and treating the case of the petitioner as not an exceptional case. Why the case of the petitioner is not an exceptional case has not been reasoned. In the circumstances, it has to be inferred that the decision of the respondent No. 2 not to grant no objection certificate is unreasonable and arbitrary.

22. The learned Counsel for the respondent has relied on Chetan Goel and Ors. v. University of Delhi and Anr. 2005 VIII AD (Delhi) 316. A Single Judge of this Court had rather held that the Courts have uniformly taken the view that cogent reasons must be given by the student for seeking migration and the decision taken thereon by the college should not be capricious, arbitrary or unreasonable relying on Anant Madan v. University of Delhi 1999 I AD (Delhi) 249 CWP No. 504/1998 titled G. Girish v. PGDAV College decided on 11th December, 1998; CWP No. 15651/2004 titled Vineeta Sharma v. Satyawati Co-Ed College (Day)

decided on 2nd May, 2005. It was held that the interest of the college have to be balanced with the interest of the students. Whether the petitioner had shown cogent and good reasons for migration could be held only after consideration of the reasons given by the petitioner. Rather the request of the petitioner has not been entertained on the basis of the general policy of the respondent No. 2 not to grant migration unless the case is of exceptional nature. The reasons now given by the respondent No. 2 cannot justify the decision already taken not to grant 'no objection' for migration. The Apex Court in case of Mohinder Singh Gill(supra) in para 8 at page 417 had held as under:

8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Commissioner of Police, Bombay Vs. Gordhandas Bhanji,

Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

23. The request of petitioner to grant 'No objection' to migration has been declined on account of policy of the respondent No. 2 not to grant approval for migration unless it is an exceptional case. The case of the petitioner has not been considered to be exceptional, however, no reasons had been given. Lack reasons by the respondent No. 2 cannot be supplemented by the reasons given by the respondent No. 2 in the counter affidavit filed in the present writ petition.

24. In the circumstances, the Court is of the view that the College has not exercised the discretion by not considering the pleas and contentions of the petitioner seeking migration to a different College and has declined the same on the basis of their policy not to grant migration to any student contrary to Ordinance IV of Delhi University. Since, the respondent has not exercised the discretion on account of their policy decision, it will be futile to send the matter back to them for re- consideration in the right perspective. A single Judge of this Court in Anika Jain v. University of Delhi and Anr. 156 (2009) DLT 13 in similar circumstances where the College as a matter of policy had not granted migration to student had declined to send the matter back for re-consideration. It was held that the principal of the College has already exhibited lack of objectivity and independence in the matter while refusing the 'no-objection' certificate without addressing the pleas and contentions of the petitioner concerned. In the circumstances, it will be just and appropriate and in the interest of justice to

direct respondent No. 2 to forthwith grant no objection to the petitioner for migration to Maitreyi College or any other day college.

25. For the foregoing reasons, the writ petition is, therefore, allowed. The respondent No. 2 is directed to issue "No objection certificate" to the petitioner for her migration from Ram Lal Anand College/respondent No. 2 to Maitreyi College or any other day college in accordance with ordinance IV of the respondent No. 1 forthwith. Considering the facts and circumstances, the parties are, however, left to bear their own costs.

Dasti.