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**(1996) 11 DEL CK 0022**

**In the Delhi High Court**

**Case No :** Civil Writ Petition No's. 1654 and 3686 of 1996

Hans Pal Singh Bhinder

APPELLANT

Vs

University of Delhi

RESPONDENT

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**Date of Decision :** 01-11-1996

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (1996) 39 DRJ 584

**Hon'ble Judges :** Chander Mohan Nayar, J

**Bench :** Single Bench

**Advocate :** Mukul Rohatagi, Maninder Achary, S.K. Kaul and Radha Chawla, for the Appellant;

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**Judgement**

C.M. Nayar, J.

(1) This judgment will dispose of two petitions Civil Writ No.1654/96 (Shri Hanspal Singh Bhinder v. University of Delhi and another) and Cwp No-3686/96 (Miss Nidhi Sota v. University of Delhi and another). The petitioner in the first case is a resident of Delhi and after passing his 10+2 Examination appeared in Pre-medical Entrance Test (DPMT) for admission to MBBS/BDS Courses. He did not, however, succeed in that test and was not placed in the merit list.

(2) The petitioner appeared in Mbbs Entrance Test conducted by Manipal Academy of Higher Education (M.A.H.E.) and passed the said examination and was ranked at No.232 as will be indicated from the communication dated October 18, 1994 (Annexure P/6 to the writ petition). He joined the said course and passed the first professional Examinations from the above said University having obtained 55 per cent marks and was placed in the second class. The petitioner thereafter applied for transfer/migration from Kasturba Medical College, Manipal, Karnataka to another medical college under respondent No. 1, University of Delhi or any other college at Delhi. The application of the petitioner was rejected vide communication dated April 9, 1996. The same reads as follows:

"WITH reference to your letter dated 6.4.1996 regarding Inter University Migration, I regret to inform you that migration to MBBS/BDS Courses in this University have been stopped from January, 1991 onwards and thus your request for migration cannot be acceded to."

(3) Similarly in the other case the petitioner completed her class XIIth Senior Secondary Examination in the year 1994 from Mater Dev Convent School, New Delhi and commenced her Mbbs course in the academic year 1994-95 at Sree Siddhartha Medical College and Hospital, Tumkur, Karnataka under the Bangalore University. The said college, it is alleged, is recognised by Medical Council of India, respondent No.2 herein. The petitioner undertook her first Mbbs course parts I & II examination of the Bangalore University held in February/ March, 1996. The petitioner and her parents are the permanent residents of Delhi and it is alleged that since she had never resided in hostel accommodation and had undertaken her entire schooling as a Day Scholar in Delhi, it was extremely difficult for her to undergo the course of study away from her permanent residence. Consequently, the petitioner requested for migration to respondent No. 1 University as the Institute at Karnataka where she is presently studying has already given a certificate dated May 31, 1996 to the effect that it has no objection to the transfer of the petitioner to any other college. The case of this petitioner was also rejected vide communication dated September 20, 1996.

(4) The main grievance of the petitioners is that respondent No.1, University of Delhi, has no jurisdiction to refuse migration to the petitioners and the amendment brought in by notification dated 17th August, 1995 in clause 3 of Ordinance IV and amended clause 3 is liable to be quashed. Ordinance IV which deals with migration initially read as follows:

"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 resident 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 shall not be permitted "

(5) The subsequent amendment was made vide notification dated August 17, 1995 which totally ended the migration. The relevant amended clause 3 reads as follows:

"CLAUSE3: 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 Science shall not be permitted."

(6) This amendment is sought to be assailed in these two writ petitions on the following grounds: (a) the respondent University could not have issued blanket bar to migration as the same is permitted by Medical Council Act and the Special Act will, Therefore, hold the field; (b) The recommendations on Graduate Medical Education issued by Medical Council of India relating to migration permit migration and 587 it is mandatory for the University to accept the same. paragraph V is referred to in this regard: "V.Migration/Transfer of students from one Medical College to another (a) A student studying in a recognised medical college may be allowed to migrate/transfer to another recognised medical college under another/same university. (b) The migration/transfer can be allowed by the University concerned within three months after passing the 1st professional examination, as a rule. (c) Migration/transfer of students during the course of their training for the clinical subjects should be avoided. (d) The number of students migrating/transferring from one medical college to another medical college during one year will be kept to the minimum so that the training of the regular students of that college is not adversely affected. The number of students migrating/transferring to/from any one medical college should not exceed the limit of 5% of its intake in any one medical college in one year. (e) Cases not covered under the above regulations are to be referred to the Council for consideration on individual merits. (f) An intimation about the admission of migrated/transferred students into any medical college should be sent to the Council forthwith. (c) The amendment to the Ordinance which bars migration cannot be held to be operative as the amendment is not made in accordance with the provisions of Sections 29, 30 and 31 of the Delhi University Act, 1922. (d) The reasons given for the proposed amendment are wholly arbitrary and extraneous to the matter in issue.

(7) The -learned counsel for the respondent University, on the other hand, has contended that the amendment is made in accordance with law and is duly approved by the Court and has been placed before the Visitor. The recommendations of Medical Council of India for migration to the extent of 5 per cent in any one Medical College in one year is a mere recommendation and the use of the word "may" in paragraph V will indicate that discretion is vested in the University. There is no provision of migration in the All India Institute of Medical

Sciences (AIIMS) and the Rule has been uniformly applied to all the students and no migration has been permitted since the year 1991. The matter was considered by the Medical Courses Admission Committee in a meeting held on 19th December, 1989 wherein the decision was 588 taken to completely stop migration. Paragraph 3 of the Minutes of the meeting will indicate the reasons for putting an end to migration. The relevant portion which deals with migration reads as follows: "3.The Committee took up for consideration the last date for receipt of applications and the conditions for inter-university migration to IInd year Mbbs course for the year 1990.

(8) The following facts were placed before the Committee:-

"IT may be mentioned that the following recommendations of the Medical Courses Admission Committee made at its meeting held on 4.11.1987 are still under consideration of the Academic Council:-

(9) The Medical Courses Admission Committee while considering the cases for migration in the 2nd Professional Mbbs Course, felt that the processing of the applications for migration and to take decisions on the cases of migration have become complicated due to mounting pressures that a stage has come when the University should consider of not allowing any migration. Though there is provision under the rules of the Medical Council of India, the migrations are allowed to the extent of 5% of the total intake capacity of the Medical Colleges affiliated to the University of Delhi.

(10) During the course of discussion, the members felt that the All India Institute of Medical Sciences, New Delhi, does not allow migration. The members also pointed out that there is no provision of migrations in respect of the following Faculties of the University:- 1. Faculty of Management Studies 2. Faculty of Technology The members after considering the matter from various aspects held the view that the University may be requested to permit the Faculty of Medical Sciences not to allow any migration in futu."

(11) The question is as to whether it is mandatory for the respondent University to permit migration on the basis of recommendations as issued by Medical Council of India. The relevant recommendation V has already been referred to in the earlier part of the judgment. Sub clause (a) merely indicates that the students who are studying in recognised Medical College may be allowed to migrate/transfer to another recognised Medical College under another/same University. Sub clause (d) restricts the number of students migrating to/from one Medical College not to exceed the limit of 5 per cent of its intake in any one medical college in one year. The reading of the above provisions clearly establishes that the Medical Council of India has merely framed guidelines and have given the option to the Medical colleges to allow migration. There does not seem to be any statutory direction by the Medical Council of India to medical colleges to allow migration. It will be open for the concerned medical colleges to permit or not to permit migration as there is no statutory bar which is provided

in the Indian Medical Council Act, 1956. Therefore, in this background the Delhi University has not provided any migration in respect of the Faculty of Technology as well. Similarly, All India Institute of Medical Sciences (AIIMS) does not permit any migration. The matter was carefully considered by the Medical Courses Admission Committee on 19th December, 1989 when migration was barred. The decision is based on cogent grounds after due deliberations and application of mind and cannot be called into question in exercise of jurisdiction under Article 226 of the Constitution of India. The plea, accordingly, fails.

(12) The next argument that the amendment barring migration cannot be sustained as it has not been framed in accordance with the provisions of Sections 29, 30 and 31 of the Delhi University Act (hereinafter referred to as the Act") may now be examined. Particular reference is made to sub- clause (3) of Section 29 and sub-clauses (1) and (4) of Section 31. These provisions read as under: "29. (3) Every new Statute or addition to the Statutes or any amendment or repeal of a Statute shall require the previous approval of the Visitor who may sanction; disallow or return it to the Executive Council for further consideration. 31(1) The ordinances of the University as in force immediately before the commencement of the University (Amendment) Act, 1952, may be amended, repealed or added to at any time by the Executive Council:

PROVIDED that (i) no Ordinance shall be made affecting the conditions of residence or discipline of students, except after consultation with the Academic Council; (ii) no Ordinance shall be made- (a) affecting the admission or enrolment of students or prescribing examinations to be recognised as equivalent to the University examinations, or (b) affecting the conditions, mode of appointment or duties of examiners or the conduct or standard of examinations or any course of study; unless a draft of such Ordinance has been proposed by the Academic Council. (4) All Ordinances made by the Executive Council shall be submitted, as soon as may be, to the Visitor and the Court, and shall be considered by the Court at its next meeting and the Court shall have power, by a resolution passed by a majority of not less than two- thirds of the members voting, to cancel any Ordinance made by the Executive Council, and such Ordinance shall from the date of such resolution cease to have effect."

(13) The learned counsel for the petitioner contends that the amendments approved by the Admission Committee have not been placed before the Court and submitted to the Visitor. Therefore, the provisions, putting an end to migration, are ineffective and have no force in law. The authorities of the University are referred to in Sections 17, 18, 21 and 23 of the Act. These provisions read as follows:

"17. The following shall be the Authorities of the University: (i) The Court, (ii) The Executive Council, (iii) The Academic Council, (iii-a) The Finance Committee, (iv) The faculties and (v) such other authorities as may be declared by the Statutes to be authorities of the University.

(14) The Court shall be the Supreme authority of the University and shall have the power to review the acts of the Executive Council and the Academic Council (save when these authorities have acted in accordance with the power conferred upon them under this Act, the Statutes, or the Ordinances) and shall exercise all the powers of the University not otherwise provided for by this Act or the Statutes. 21. The Executive Council shall be the executive body of the University, and its Constitution and the terms of office of its members, other than ex-officio members, shall be prescribed by the Statutes. 23. The Academic Council shall be the academic body of the University and shall, subject to the provisions of this Act, the Statutes and the Ordinances, have the control and general regulation, and be responsible for the maintenance of standards of instruction, education and examination within the University, and shall exercise such other, powers and perform such other duties as may be conferred or imposed upon it by the Statutes. It shall have the right to advise the Executive Council on all academic matters. The constitution of the Academic Council and the term of office of its members, other than ex-officio members, shall be prescribed by the Statutes."

14. The learned counsel for the respondent University has stated that the necessary amendment has been made in accordance with law and submitted to the Court as well as to the Visitor. The amended clause (3) has been duly approved by the Court and submitted to the Visitor. In any case, this will be only a procedural irregularity which has since been cured. Therefore, the provision cannot be struck down on the grounds as raised above. 15. The law is well settled that a student has no inherent right to claim migration/transfer and it is open for the University to do away migration in view of the circumstances prevailing. There is no provision for migration in 591 All India Institute of Medical Sciences and Faculty of Technology in the University of Delhi. Similarly, no migration has since been permitted since 1991 by the University of Delhi. 16. The learned counsel for the petitioners have placed strong reliance on the judgment of the Supreme Court as reported in *Shirish Govind Prabhudesai Vs. State of Maharashtra and others*, to state the proposition that the recommendations of Graduate Medical Association by Medical Council of India permitting migration cannot be discarded and have to be accepted by respondent University. Paragraph 7 of the judgment is cited in this regards which reads as follows: "The recommendations on Graduate Medical Education are by an expert body of the Medical Council of India which is entrusted with certain statutory functions relating to medical education by the Indian Medical Council Act, 1956. The Medical Council of India having chosen to accept these recommendations, such a condition of eligibility for migration/transfer from one medical college to another adopted by the recognised medical colleges cannot be termed unreasonable or arbitrary. The qualitative difference between the non-recognised medical colleges generally as compared to the medical colleges recognised by the Medical Council of India, the recognition being based on certain objective standards relating to medical education, and the competitive merit forming the basis for admission to a recognised medical college justify as reasonable such a restriction for grant of permission for migration/transfer from

one medical college to another. One of the purposes served by such a restriction is to permit this inter- college movement of students after passing the first Mbbs examination only between students of recognised medical colleges and to prevent indirect entry into recognised medical colleges of students who had failed initially to secure entry into a recognised medical college. Movement of students between recognised medical colleges only is quite often to facilitate the students thereof in certain circumstances without conferring on them any additional benefit after the initial entry to a medical college duly recognised. Viewed in this manner, such a condition of eligibility for migration/transfer to a recognised medical college permitting only students of recognised medical colleges is neither arbitrary nor unreasonable. There being no inherent right in a student admitted to a non-recognised medical college to claim such migration/ transfer, this restriction for migration/transfer imposed by the recognised medical colleges on the basis of the recommendations adopted by the Medical Council of India, there is no foundation for the claim for such migration/transfer made by the students of non-recognised medical colleges." 592 17. The question before the court was as to whether the restriction imposed on right of student of unrecognised Medical College to claim migration/transfer to recognised medical college was arbitrary and unreasonable. This point is not in issue in the present writ petitions. The Court, in any case, clearly held that migration/transfer to a recognised medical college permitting only students of recognised medical college is neither arbitrary nor unreasonable. At the same time it has been accepted that there is no inherent right in a student to claim migration/transfer and the colleges which have done away with migration/transfer cannot be forced to accept the recommendations adopted by the Medical Council of India. The action of the respondent cannot, Therefore, be termed as discriminatory, arbitrary or violative of any constitutional provisions. Similar situation prevails in certain other colleges where no permission is granted for migration. 18. There is another aspect of the matter which may be highlighted from the facts of the present case. The petitioners herein did not succeed in the Dpmt and were not selected for admission. They opted to go out to their respective colleges in the State of Karnataka where they were admitted and have now completed the first professional examination. To permit migration in such cases will encourage students to gain entry into Delhi colleges through back door when they have not been successful in the Test and figured no where on merit. In this background, it cannot be said that the University has acted in an arbitrary manner to deny the just claims of the petitioners. The respondent University was aware of the fact that due to mounting pressure a stage had come when it was considered necessary not to allow migration/transfer. There is no migration for the students of Faculty of Management studies as well as of All India Institute of Medical Sciences, New Delhi. The Medical Courses Admission Committee considered the matter with due deliberation and put an end to migration by the amended clause. This decision cannot be termed as arbitrary and discriminatory.

(15) In view of the above reasons, there is no merit in the petitions. The same

are dismissed accordingly. There will be no order as to costs.