
(2013) 09 DEL CK 0208
In the Delhi High Court
Case No : Writ Petition (C) 5413 of 2013

Himani Sharma

APPELLANT

Vs

University of Delhi and Others

RESPONDENT

Date of Decision : 10-09-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 09 DEL CK 0208

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Ravi Gupta and Mr. Ankit Gupta, for the Appellant; Varun Kumar, Anmol Singh for R-2 and Mr. Mohinder J.S. Rupal, for University of Delhi, for the Respondent

Final Decision : Disposed Off

Judgement

V.K. Jain, J.—The petitioner before this Court took admission in B.Com (Hon) of Delhi University, in respondent no. 2- "Aditi Mahavidyalaya" situated at Auchandi Road, Bawana, Delhi. The petitioner vide application dated 26.8.2013 applied to respondent no. 3-Shri Guru Gobind Singh College, Pitampura, Delhi, seeking migration to the said college in the third semester of B.Com (Hons), on the ground that her residence had changed and the said college was nearer to her residence. The respondent no. 3- Shri Guru Gobind Singh College granted "No Objection" to the petitioner on the same date.

Vide application dated 27.8.2013, the petitioner applied to respondent no. 2-Aditi Mahavidyalaya for issue of NOC for taking admission in Shri Guru Gobind Singh College on the ground that since she was frequently falling sick, it was not possible for her to commute everyday for about 60-70 kms and she had been granted admission in Shri Guru Gobind Singh College. The said application was declined on the same date on the ground that as per Staff Counseling decision, no migration was allowed. Being aggrieved from the decision of the Aditi Mahavidyalaya to refuse migration certificate to the petitioner, she is before this

Court seeking the following reliefs:

- a) Respondent no. 1 and 2 to issue the No Objection Certificate and College Leaving Certificate to the petitioner;
- b) Respondent no. 3 to give the admissions to the petitioner in the 2nd year B.Com. (Hon.)

The writ petition has been contested by respondent no. 2-Aditi Mahavidyalaya. It is stated in the counter affidavit filed by the Principal of the said college that in terms of Ordinance 18 of Delhi University, there has to be Staff Council in every college and it is the said council which has to take decision in the matter of organizing admission of students. It is further stated in the counter affidavit that the Staff Council, in its meeting held on 30.4.2013 had decided to ban migration of students for the academic year 2013-2014.

2. Admittedly, the rules framed by Delhi University do not prohibit migration from one college to another college affiliated to the said university, in the second year of the course being pursued by the student. However, no such migration can be allowed by the university unless migration certificate is issued by the college in which a student is studying and NOC is granted by the college in which admission is sought by him/her.

3. The next question which comes up for consideration is as to whether refusal of migration certificate to the petitioner solely on the ground that a unanimous decision was taken by the staff council to ban migration from the said college during the academic year 2013-2014 can be said to be legally sustainable in law and if not, whether the petitioner is entitled to grant of migration certificate by the said college.

4. In *Sumeet Sawhney VS. The Principal Sri Aurvindo College & Ors.*, CWP 3089/95, decided on 19.10.95, the writ petitions filed by the students, seeking migration from one college to another college in Delhi University was opposed on the ground that the NOC was refused (i) to maintain and improve the academic standards of the College by retaining the good students; and (ii) to maintain the student-teacher ratio on the basis of which maintenance grant is given to the college by the University Grant Commission. A Division Bench of this Court, *inter alia*, held:-

Though the anxiety of the Staff Council and the College to maintain and improve the academic standard of the College as also their anxiety to maintain the student teacher ratio, may be appreciated but at the same time, we find it difficult to accept the contention that in order to achieve the said objects, the students can be compelled against their desire and wish to continue study in a particular college. Undoubtedly no student has any vested right to seek migration but the real question in these cases is not about the vested right of the students, but it is about the legality of the stand of the College from where migration is sought. Can No Objection Certificate be refused to a student when the College to

which admission is sought, is willing to give admission to that student. The answer to this question has to be in favour of the student. Where a student with a view to improve his career wants to join another college, which student feels is better and thinks that he would be able to make a better mark in another college to deny migration to such a student on the grounds stated by the College from which migration is sought, would be unjust and unreasonable. The grant of permission to migrate may be discretionary but the discretion is required to be exercised on sound legal principles and by adopting just, fair and reasonable approach. Ordinarily this Court may not interfere in exercise of discretion in academic matters but where the career of students is involved and the approach of college is not just and reasonable, the Court has to come to the aid of aggrieved students. As already noticed above, the stand of the University and the College to which migration is sought is also that students cannot be compelled to study in a particular college. Further apart from the decision of the Staff Council, no other provision has been brought to our notice barring migration. On the other hand Ordinance-4, as noticed above, specifically permits migration. It may also be noticed that while operating aforesaid Ordinance in practice the student who is to apply for No Objection Certificate from which he seeks migration, would do so only when he has been ensured admission in any other college and, therefore, the question of violation of Ordinance-4 does not arise.

In *Aman Ichhpuniani Vs. The Vice Chancellor Delhi University and Others*, the petitioners before this Court, approached the colleges in which they were studying at that time for issue of NOC for the purpose of migration to another college affiliated to Delhi University. In the first writ petition before this Court, NOC was sought on the ground that the petitioner wished to migrate to reputed college in North Campus, which would be more convenient to him and in the second writ petition, NOC was sought so as to enable the petitioner to pursue a computer course and Chartered Accountancy, without clash of timings with the afternoon classes, the petitioner being a student of Bhagat Singh College (Evening). In the third case, NOC was sought on the ground that the classes in the college clashed with the computer classes of the petitioner in the afternoon and, therefore, she wanted to migrate to a morning college. In the 4th case, no reason was given for the proposed migration. However, in the application to the college where the petitioner was seeking migration, she had claimed that the said college was near to her residence and considering the erratic bus service, she wanted to migrate to the said college. In all these cases, the application seeking migration was turned down, without passing a speaking order.

Disposing of the writ petitions, this Court held 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.

The Division Bench allowed the writ petitions filed by the students who wanted migration since their timings in Bhagat Singh College (Evening) clashed with other courses they were seeking to pursue. The other two writ petitions were rejected on the ground that no specific reasons had been assigned in the application seeking migration.

5. In W.P(C) No. 4467/2013, Shashank Shandilya versus Guru Govind Singh Indraprastha University decided on 19.8.2013, this Court deduced the following legal proposition from the above referred Division Bench Judgment of this Court:

(i) Though a student has no vested right to seek migration from one college to other or for that matter from one university to another, his desire to study in an educational institution of his choice needs to be examined and appreciated in a right perspective.

(ii) If a student seeks migration certificate/NOC for the purpose of migrating from one college to another in the same university or from one university to another, such a request should be examined by the institution, taking into consideration the interest of the student as well as the institution in which he is studying and the decision so taken should be just, reasonable and fair, to both, the institution as well as the student.

(iii) The request of a student for grant of NOC/Migration Certificate can be rejected only for the reasons which are cogent, objective, fair, transparent and reasonable.

(iv) If the decision taken by the institution to refuse the migration certificate/NOC is found on reasons which are not legal or germane or are arbitrary and illogical, it would be open to the Court to interfere with the decision of the institution, in exercise of its jurisdiction under Article 226 of the Constitution.

6. In the case before this Court, the respondent no. 2 college did not undertake

the exercise to consider the request of the petitioner on merit. No speaking order was passed by the Principal of the said college, taking into consideration the interest of the petitioner as well as of the college and migration was refused solely on account of a decision taken by the Staff Council, not to grant migration from the said college to another college of the university. In my view, Staff Council was not justified in imposing a blanket ban on grant of migration certificate, when the rules of the university, which are binding upon the college, do permit migration from one college to another college in appropriate cases. A blanket decision, not to grant migration certificate in any case, irrespective of the merit of the case, would be wholly arbitrary, unreasonable and unfair. The request of the petitioner for grant of migration certificate could have been rejected only for the reasons which are cogent, fair and reasonable. The decision to refuse migration therefore is liable to be quashed.

7. Coming to the merits of the case of the petitioner, admittedly the respondent no. 2-college is situated at a distance of about 30 kms from the place where the petitioner is residing. On the other hand, respondent no. 3- Shri Guru Gobind Singh College is situated at a distance of about 12 kms from her residence. It would, therefore, certainly be more convenient and easy for the petitioner to commute, if she takes admission in Shri Guru Gobind Singh College. It is true that at the time the petitioner took admission in Aditi Mahavidyalaya, she was residing at the very same place where she presently resides, but in my view, if on account of her performance in the first course of the studies, a college which is more convenient to her is granting admission to her, it would not be appropriate to refuse migration certificate on the ground that there has been no change in the place of residence of the petitioner. This is more so when the case of the petitioner is that on account of her ill health, it is extremely inconvenient for her to travel for about 60 kms everyday.

8. The convenience of the student is required to be weighed vis-?-vis inconvenience, if any, to the college from which migration is sought by the student. Admittedly, the respondent no. 2 Aditi Mahavidyalaya is a college aided by the University Grants Commission. Therefore, no inconvenience or loss would be caused to the said college if the petitioner migrates to another college affiliated to the same university. On the other hand, it would certainly be beneficial for the petitioner if she studies in a nearby college. In any case, since the primarily it is for the student to decide where she wants to study, the request for grant of migration certificate, in my view, cannot be refused except for reasons which are cogent, germane and logical. No such reason, however, is available for refusal of migration certificate to the petitioner.

9. During the course of arguments, the learned counsel for the Aditi Mahavidhyalaya pointed out that though the petitioner obtained ER in one subject in the first year, this information was not disclosed by her while applying to Shri Guru Gobind Singh College for grant of NOC. In support of his contentions, he relied upon the application dated 26.8.2013 where no such

disclosure has been made. This, however, was strongly refuted by the learned counsel for the petitioner who stated that the petitioner had disclosed her marks of the first year to Shri Guru Gobind Singh College, before NOC was given by the said college on her application. In these circumstances, it would only be appropriate to direct that the university, which has to ultimately approve the migration from one college to another, shall not grant permission for migration of the petitioner from Aditi Mahavidhyalaya to Shri Guru Gobind Singh College unless it is satisfied that the petitioner had disclosed her mark sheet of the first year to Shri Guru Gobind Singh College.

10. The learned counsel for Delhi University submits that mere distance from the place of the student to the college would not be a sufficient ground for grant of migration. In support of his contention he relies upon a decision of this Court in *Apurva Vs. University of Delhi* [2012 (189) DRTJ 178]. A perusal of the aforesaid decision, however, would show that migration in that case was declined on several grounds including different reasons quoted by the appellant from time to time, a policy decision of the college, not to allow migration on the ground of distance and the last date for migration was allowed which however is not the case before this Court. That judgment, therefore, does not ipso facto apply to the present case. For the reasons, stated hereinabove, respondent no. 2 is directed to grant migration certificate to the petitioner within one week from today subject to her complying with the prescribed formalities in this regard. However, permission for migration of the petitioner from "Aditi Mahavidyalaya" to Shri Guru Gobind Singh College shall not be granted by Delhi University if it finds that the petitioner had not disclosed to Shri Guru Gobind Singh College, the college either by submitting/showing her first year mark sheet or otherwise, that she had obtained ER in one subject in the first year course of study.

The writ petition stands disposed of in terms of this order. There shall be no order as to costs.