

(2012) 05 DEL CK 0196

In the Delhi High Court

Case No : Writ Petition (C) 1393 of 2012

Rakesh Kumar Gupta

APPELLANT

Vs

Registrar, University of Delhi and Another

RESPONDENT

Date of Decision : 15-05-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 05 DEL CK 0196

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : Sneh Gupta, for the Appellant; Maninder Acharya and Mr. Amit Bansal, for R-2, for the Respondent

Judgement

Hima Kohli, J.—This petition has been filed by the petitioner, father of Ms.Sneh Gupta praying inter alia for issuance of directions to the respondent No.1/ University and the respondent No.2/School of Open Learning (SOL) to admit her in the second year B.Com (Hons.) course in the respondent No.2/SOL. Briefly stated, the facts of the case are that Ms.Sneh Gupta, d/o Mr.Rakesh Kumar Gupta, petitioner herein (hereinafter referred to as the student) was admitted in I.P. College for Women, that is affiliated with the respondent No.1/University, in the first year of B.Com (Hons.) Course for the academic session 2010-11. Due to some personal reasons, she decided to leave the aforesaid college and decided to attend classes through correspondence in the respondent No.2/SOL. As a result, in October, 2011, the student approached I.P. College for seeking migration to the respondent No.2/SOL after declaration of the first year results of B.Com (Hons.) wherein she had scored 77.27% marks and had secured a third position in her college. Pursuant thereto, I.P. College had issued a Transfer Certificate dated 12.09.2011 wherein it was stated that the student had paid fees upto the end of April, 2011. Thereafter, the student approached respondent No.2/SOL and submitted an application dated 12.09.2011 stating inter alia that she wanted to seek migration from I.P. College to the respondent No.2/SOL in the second year. Enclosed with the aforesaid application was the marks statement/net result of

the student as secured by her in the first year.

2. It is averred in the writ petition that respondent No.2/SOL had informed the student that she was required to submit her mark sheet before 03.10.2011, which was the last date fixed for direct admissions. The petitioner states that the mark sheet of his ward was printed on 21.10.2011 and was received in November, 2011 due to which the same could not be submitted to the respondent No.2/SOL by 03.10.2011. It is further stated that the student had again approached the respondent No.2/SOL on 17.11.2011 along with her mark sheet and Transfer Certificate and had requested for permission to migrate but her request was declined by the respondent No.2/SOL on the ground that she was not enrolled in the second year B.Com.(Hons.) course in I.P. College and because migration is permitted only from a regular college to SOL, she must establish that she was a bonafide student enrolled in I.P. College in the same year.

3. Aggrieved by the refusal on the part of the respondent No.2/SOL to permit the student to migrate to SOL, the present petition was filed by her father on 27.02.2012.

4. Notice was issued on the present petition on 07.03.2012 and the counsels for the respondent No.1/University and the respondent No.2/SOL who had entered appearance, were directed to file their counter affidavits.

5. In the counter affidavit filed by the respondent No.2/SOL, it is stated that the student is not entitled to any relief in the present petition for the reason that as per the rules of the respondent No.2/SOL contained in the prospectus, only a bonafide student of a college is entitled to migration to SOL and admittedly, the student had paid her regular fee with I.P. College upto April, 2011 and not thereafter and resultantly, on the date when she had sought migration, she was not a bonafide student enrolled with any college and, therefore, she could not be considered for purposes of migration to the respondent No.2/SOL. In support of the aforesaid averments, a copy of the prospectus of SOL for the academic year 2011-12 with regard to migration/direct admission is enclosed with the counter affidavit as Annexure R-1.

6. It is further averred by the respondent No.2/SOL in its counter affidavit that since the last date for migration of students to SOL was over on 31.12.2011, the student could not be granted any relief as she had chosen to approach the Court belatedly, in the end of February, 2012. Lastly, it is submitted by the learned counsel for the respondent No.2/SOL that repeated efforts had been made to explain the aforesaid position to the petitioner and his ward and they were informed that they could still approach I.P. College and submit the fee of the student so that her name would find mention in the rolls of the said college as a student of B.Com.(Hons.) second year for being considered eligible for admission within the migration date, but they remained adamant and were reluctant to take any steps in that direction and instead approached this Court with the present

misconceived petition.

7. In rejoinder, the petitioner, who appears in person states that respondent No.2/SOL has adopted a pick and choose policy inasmuch as while denying migration to his daughter, it had admitted a student by the name of Kanika Modi, who was studying in a college affiliated to respondent No.1/University and was granted migration to SOL in September, 2011 on the basis of a Transfer Certificate that was issued on 27.09.2011 and another student by the name of Rashmi Chaubey, who was studying in I.P. College along with his daughter and was also granted migration by the respondent No.2/SOL on the basis of a Transfer Certificate issued by the college on 12.09.2011.

8. Learned counsel for the respondent No.2/SOL refutes the above submission and states that a bare perusal of the Transfer Certificates of the aforesaid two students enclosed as Annexure R-2 and Annexure R-3 to the counter affidavit would reveal that both of them had paid their fee upto the end of April, 2012 whereas the Transfer Certificate issued to the ward of the petitioner would reveal that she had paid her fee upto the end of April, 2011 and, therefore, her case cannot be treated at par with the aforesaid two students. Learned counsel for the respondent No.1/University adds that permission to migrate can only be granted to a student who is already studying in another institution or college and in the case of the student herein, this was not so since she has not been able to show that she had remained enrolled as a student with I.P. College at the time when she had submitted her application to the respondent No.2/SOL for seeking migration.

9. It is further submitted by the learned counsel for the respondent No.1/University that the last date for migration to the respondent No.2/SOL was extended till 31.12.2011 for the academic year 2011-12 in terms of a notification dated 26.12.2011 and much water had flown under the bridge thereafter and it is too late for the petitioner's daughter to seek admission in the respondent No.2/SOL for the current academic year. A copy of the notification dated 26.12.2011 issued by the University is handed over on behalf of the respondent No.1 and is taken on record.

10. The Court has considered the submissions made by the petitioner as also the counsels for the respondents. The entire dispute hinges on the non-deposit of fee by the petitioner and his ward with I.P. College till April, 2012, for which reason, her request for migration was refused by the respondent No.2/SOL. The records reveal that the officers of both, respondent No.1/University and respondent No.2/SOL had advised the petitioner and his ward that the only formality required to be completed by them was production of proof of deposit of fee from May, 2011 to April, 2012 in I.P. College and after she had deposited the said fees, she would be eligible for migration to the respondent No.2/SOL.

11. It is also apparent from a perusal of the rules applicable in this regard that when a student is given transfer from one college/university to another college/

university, he/she is required to pay the full fee to the Institution from which he/she migrates upto the end of the month in which he/she leaves and in that eventuality, he/she shall have to pay fee to the new institution only from the next month in which he/she migrates and it has been clarified that in any case no student will be charged fee for the same month twice over. As per the resolution passed by the Executive Council of the respondent No.1/University, the aforesaid rule applies to the respondent No.2/SOL as well. Therefore, there is no running away from the fact that the petitioner and his ward were required under the Rules to pay the full fee to I.P. College and show the proof of deposit to the respondent No.2/SOL for seeking migration.

12. When the student had completed her B.Com(Hons.) first year from I.P. College, and was declared passed on 13.08.2011, instead of depositing the fee for the second year in the academic session 2011-12 and continue to be enrolled with I.P. College for the second year, as was done by Ms. Kanika Modi and Ms. Rashmi Chaubey, the other two students, she took the Transfer Certificate from the college on 12.09.2011. For the aforesaid reason, the student cannot claim parity with Ms.Kanika Modi or Ms.Rashmi Chaubey as the aforesaid students had deposited their fee in the institution/College where they were studying upto the end of April, 2012 and, therefore, they were treated as bonafide students in their institutions/colleges on the date when they had sought migration to the respondent No.2/SOL. The same is evident from a perusal of their Transfer Certificates issued by their respective colleges.

13. Resultantly, on the date when she had applied to respondent No.2/SOL for migration, the student was no longer a student of any college and therefore, was ineligible for migration as per Ordinance 4 of the Delhi University Act, 1922. It was in the aforesaid background that the respondent No.1/University had called upon the student to deposit the fee for the second year with I.P. College to be eligible to be considered for migration before the cutoff date. However, for reasons best known to the petitioner and his ward, they refused to deposit the fee with I.P. College and at the same time insisted that respondent No.2/SOL accept the student as a migrant student.

14. Instead of fulfilling the requisite formalities, the petitioner then diverted his energies in gathering documents from the respondent No.1/University and respondent No.2/SOL by filing applications and later on, an appeal under the RTI Act. Had the petitioner asked his ward to simply surrender the Transfer Certificate that she had obtained from I.P. College, and pay the fee to the said college for the second year and then approach respondent No.2/SOL with a request for migration, things would have been simplified without loss of precious time.

15. The unfortunate result of the aforesaid misadventure is that the student finds herself in a precarious position of falling from the frying pan straight into the fire. As of now, she is not enrolled with any college for the second year and further stands to lose an entire academic year with a bleak chance of making up the lost

time due to the folly of the petitioner who has been so busy trying to make a legal point that he seems to have missed the wood for the trees.

16. At the end of the day, what is weighing with the Court is that in this legal wrangle that the petitioner has embroiled himself and his daughter, his ward alone stands to suffer. If she is not permitted migration to the respondent No.2/SOL, she would miss a whole academic year and this would be an irreparable loss to a student like her, who appears to be intelligent and hard working, having secured a third position in her subject in her college. That she had to leave a prestigious college like I.P. College midstream and seek migration to the respondent No.2/SOL is a decision that is personal to her but the manner in which she has been guided to go about seeking migration, has jeopardized her academic career. She is therefore more a victim of circumstances, created due to lack of awareness and proper guidance.

17. If the application of the rule as quoted by the counsels for the respondents No.1 and 2 is taken to the hilt, the petitioner's ward would inevitably lose the academic year, entirely to her detriment. In the given facts and circumstances, the Court is of the opinion that the student should not be made to pay such a heavy price for lack of correct guidance by the petitioner to make good the deficiency in her application for migration, which was purely a procedural formality, i.e., depositing the fee upto April, 2012 with I.P. College so as to remain enrolled with the College till she submitted the application to respondent No.2/SOL seeking migration. Another factor that has persuaded the Court to consider the case of the petitioner's ward sympathetically is that there is no minimum attendance prescribed in the respondent No.2/SOL for a student to be eligible to appear for the examinations as it is a correspondence course and the student has stated that she has been diligently studying and preparing for the examinations for the 2nd year B.Com(Hons.) course throughout the year. It is also relevant to note that the petitioner has got wiser during the course of arguments and has now withdrawn all the allegations that have been leveled by him against the officials of respondent No.1/University and respondent No.2/SOL.

18. It is therefore deemed appropriate to exercise the extraordinary powers vested in this Court under Article 226 of the Constitution of India and carve out an exception in the present case, by directing respondent No.2/SOL to grant migration to the petitioner upon her furnishing proof of having deposited the fees with the I.P. College from May, 2011 to April, 2012. It is further directed that upon the student approaching I.P. College for Women, they shall accept the fee that would be deposited by her from May, 2011 upto the year ending April, 2012 and issue a receipt therefore. The proof of deposit of fee shall be handed over to the respondent No.2/SOL within one week from today. This shall, however, not preclude the student from appearing for the second year examinations for the B.Com.(Hons.) Course that are to commence from 18.05.2012. Ms.Sneh Gupta shall forthwith submit an application to the respondent No.1/University and Respondent No.2/SOL seeking permission to appear for the aforesaid

examination which shall be then processed expeditiously by the respondents to enable her to appear in the examinations that are to commence from 18.05.2012. While disposing of the present case and leaving the parties to bear their own costs, it is clarified that the aforesaid order has been passed in the peculiar facts and circumstances of this case and the same shall not be treated as a precedent in any other case.

Dasti under the signature of the Court Master.