

(2011) 03 DEL CK 0262

In the Delhi High Court

Case No : Writ Petition (C) 243 of 2011 and CM No. 439 of 2011 (for stay)

Sagar Setia

APPELLANT

Vs

Delhi Technological University

RESPONDENT

Date of Decision : 04-03-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 03 DEL CK 0262

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Laliet Kumar and Deepak Vohra, for the Appellant; Atul Nanda and Rameeza Hakeem, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The Petitioner was admitted to B. Tech. course in Production & Industrial Engineering (PIE) in the Respondent University in August, 2010. The prospectus for admission to the said course in Clause 3.12 thereof provides as under:

3.12 Up gradation to a Branch of Higher Preference

i. A candidate who has been admitted to a Branch other than his/her first choice will automatically be transferred, as per his/her merit in AIEEE-2010, to a Branch of his/her higher preference as indicated in his/her Application. The list of the students with upgraded branches will be displayed periodically. Notifications in this respect will be issued by the Chairman, B. Tech. Admission Committee.

ii. Freezing

In case a candidate desires to continue in the branch allotted to him/her at the time of admission or a subsequent up gradation, other than his/her highest preference indicated in his/her Application then he/she must submit, a request in the prescribed preformed to the Chairman, B. Tech. Admission Committee for

freezing the same. Similarly a branch once upgraded, the new allotted branch may also be got freeze within one day after the up gradation. Any freeze request made later may not be entertained.

iii. Once an up gradation list is issued, it is mandatory for the students to shift to the new branch. Request for reversion to the old branch will not be entertained.

iv. The syllabus for first semester for all the branches is the same. No change of section will be done during the first semester classes. Once the final upgraded list is displayed (likely on 31.12.2010), the change of branches will be affected immediately, as per the final list. No. change/shift will be allowed thereafter.

The Petitioner was on 1st September, 2010 upgraded to B. Tech, Software Engineering (SE) which as per the admission form filled up by the Petitioner was higher in preference to B. Tech. (PIE).

2. The Petitioner on 20th December, 2010 submitted an application to the Respondent for being shifted to B. Tech., Civil Engineering (CE). It is not in dispute that B. Tech. (CE), in the admission form filled up by the Petitioner was lower in preference to B. Tech. (PIE) and B. Tech. (SE). Upon no response being given to the said application of the Petitioner and upon the said request having not been acceded to, this writ petition was filed seeking mandamus against the Respondent University to shift the Petitioner to B. Tech.(CE).

3. Since the Petitioner rather than seeking a course of higher preference was seeking the course of lower preference, notice of the writ petition was issued and the counsel for the Respondent appearing on advance notice directed to obtain instructions. The counsel for the Respondent University on the next date informed that there was no seat available in B. Tech. (CE) which the Petitioner was seeking. The counsel for the Petitioner then sought relief of being shifted to B. Tech. (Environmental Engineering) (EE) in which seats were stated to be available. It was also informed that B. Tech. (EE) was a lower preference in the admission form filled up by the Petitioner to even B. Tech. (CE).

4. The counsel for the Respondent University however on the next date i.e. 4th February, 2011 informed that the Petitioner could not be shifted to B. Tech. (EE) also for the reason of same being not permissible under the Policy of the Respondent University and also for the reason of the second semester by then being underway. In the circumstances, counter affidavit was directed to be filed.

5. The counsel for the Petitioner and the senior counsel for the Respondent University have been heard.

6. The opposition by the Respondent University to the writ petition is simple. It is contended that the prospectus for admission does not provide for any down grading or permit seeking of a course of preference lower than the one allotted and as such no mandamus contrary to the admission procedure can be issued. It is further contended that in any case, the prospectus provides that no change or shift will be allowed after 31st December, 2010 and now when the second

semester is also over by more than half, the change ought not to be ordered.

7. Per contra the counsel for the Petitioner has contended that there is no prohibition in the prospectus to down grading. It is contended that in the absence of a prohibition, the Rule of Merit should prevail. It is argued that since those with rank lower than of Petitioner in the AIEEE-2010, on the basis whereof admissions are made to the Respondent University also, have been admitted to B. Tech. (CE), there is no reason for depriving the Petitioner having a higher rank from the said course. Reliance in this regard is placed on paras 18 to 20 and 23 of the judgment of the Division Bench of this Court in Aman Ichhpuniani Vs. The Vice Chancellor Delhi University and Others, and on the judgment of another Division Bench of this Court in Rajive Goyal and Others Vs. University of Delhi and Others, and the Full Bench judgment of this Court in Veena Gupta Vs. University of Delhi,

8. The Rule followed by the Respondent University is that a student is bound by the preference of courses filled up in the admission form and thereafter the inter-course migration is permitted only in accordance with the said preferences so filled up, with the student becoming eligible for a higher preference upon a vacancy therein. The Rule is not of allowing the students to change their preferences. The senior counsel for the Respondent University is thus right in contending that the relief claimed by the Petitioner is contrary to the admission procedure prescribed by the Respondent University.

9. The Supreme Court in Maharshi Dayanand University Vs. Surjeet Kaur, has held that no mandamus directing educational institutions to act contrary to their rules, can be issued in exercise of jurisdiction under Article 226 of the Constitution of India.

10. The Division Bench of this Court in judgment dated 3rd March, 2011 in LPA No. 599/2010 titled Varun Kumar Aggarwal v. UOI has also held the prospectus to be binding. The same view was taken by undersigned in Ms. Jyoti Yadav and Another Vs. Govt. of NCT of Delhi and Others

11. As far as the argument of there being no prohibition of migrating to lower preference and of the Rule of Merit is concerned, normally a student has no right to change the course to which he is admitted, save in accordance with the Rules of the educational institutions. The Rules in the present case prescribe moving up the preference scale and do not provide for moving down the preference scale filled up at the time of admission. The Clause 3.12 setout hereinabove shows that the movement is automatic and a student has no option in the matter. The entire said procedure would be obstructed if it were to be read therein that the movement in the opposite direction is also permissible.

12. I also do not agree with the contention that the principle of merit can be applied in the present facts. It is open to a student to choose a particular stream and the perception of which course is better, may vary not only from student to student but also from time to time. The Petitioner himself has changed his

perception since the time of filling up the admission form. It thus cannot be said that the conduct of University is contrary to Rule of preference to be given to merit. Rajive Goyal was seeking migration to the Medical College of higher preference. Similarly, the judgment of the Full Bench is not found to be apposite to the facts of the present case.

13. The counsel for the Petitioner has also argued that the Petitioner having not applied for freezing in terms of Clause 3.12 (ii) (supra) of the prospectus had indicated intention to change. However in view of what has been held above, the Petitioner without applying for freezing was to automatically get higher and not lower preference.

14. The counsel for the Petitioner has also urged that the syllabus even in second semester is not vitally different and there will be no difficulty in Petitioner being permitted to change even now. Once the Respondents are found to have acted in terms of their prospectus, all this is irrelevant.

15. The Petitioner is therefore not found entitled to the relief claimed, the writ petition is dismissed.

No order as to costs.