

(2013) 08 DEL CK 0357

In the Delhi High Court

Case No : Writ Petition (C) 4467 of 2013 and CM 10320 of 2013

Shashank Shandilya

APPELLANT

Vs

Guru Govind Singh Indraprastha University and Another

RESPONDENT

Date of Decision : 19-08-2013

Acts Referred:

Constitution of India, 1950 — Article 12, 226, 32

Citation : (2013) 08 DEL CK 0357

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

Bench : Single Bench

Advocate : Rajesh Gogna, for the Appellant; Vaibhav Kalra, for R-1 and Mr. Ankit Jain, for R-2, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Jain, J.—The only issue involved in this petition is as to whether the petitioner, who is studying with respondent no. 2, an institute affiliated to respondent no. 1, is entitled to grant of NOC by respondent no. 2 for migration from there to Maharaja Agrasen Institute of Technology, another institute affiliated to the respondent no. 1-university. The petitioner before this Court took admission in respondent No. 2-HMR Institute of Technology, which is affiliated to Guru Gobind Singh Indraprastha University, in the academic year 2012-13. On 27.06.2013, the petitioner applied to respondent No. 2 for grant of NOC required for obtaining migration to another institute affiliated to I.P. University on the ground that the college was far from his house and since they were planning to shift to Rohini, it would be very hectic for him to reach the college in future. However, NOC has not been issued, despite reminders sent by the petitioner to respondent No. 2-Institute. Being aggrieved from the failure of respondent No. 2 to issue NOC to him, the petitioner is before this Court by way of this writ petition.

2. In its counter-affidavit, respondent No. 2 has taken a preliminary objection that since it is a private institution, getting no grant from the State, a writ

petition against it is not maintainable. It is also claimed that the application of the petitioner seeking NOC has already been rejected vide decision dated 19.07.2013. On merits, it is claimed that there is no justification for issue of the NOC sought by the petitioner. It is also claimed that respondent No. 2-Institute runs 30 buses from the college to various parts of Delhi and the petitioner can also avail the said transport facility. Another plea taken in the counter-affidavit is that the expenses to be incurred by respondent No. 2 on infrastructure, staff and faculty are fixed and have to be borne only from the fee realized from the students and in case the petitioner is allowed migration, the seat occupied by him would remain vacant for next three years, depriving respondent No. 2 of the fees for the said three years. It is also claimed that the issue of NOC to the petitioner besides putting strain on the financial resources of the college, also had a demoralizing effect on its faculty.

3. Ordinance 7 of GGSIP University deals with migration of students and to the extent it is relevant, the said Ordinance reads as under:-

(ii) Under genuine circumstances migration of the students from University School of Studies to another institution and vice-versa or from one institution to another institution in the same programme/discipline may be allowed provided that the "No Objection Certificate" is issued by the University School of Studies/ institution where he or she is studying in the previous semester and also vacancy exists in the institution/University School of Studies where he or she is seeking migration. Such migration shall be allowed only with the prior approval of Vice-Chancellor.

(iii) In case of migration of the student from one affiliated institution to another institution, the fee structure shall remain unchanged.

4. As regards the plea that respondent No. 2-Institute is not amenable to the writ jurisdiction of this Court, I find no merit in the same. In fact the issue is no more res integra and stands concluded by various pronouncements of the Apex Court as well as this Court.

In *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, appellant No. 1, before the Court was a public trust running a Science College at Ahmedabad, affiliated to Gujarat University. A direction was issued to all the affiliated colleges to pay the pay scales recommended by University Grants Commission to its teachers. The appellants, instead of implementing the direction, sought to terminate the services of certain teachers and when the permission to remove the services of the said teachers was rejected by the University, they decided to close down the college. However, the terminal benefits were not paid to the teachers, who were constrained to approach the High Court for payment of such benefits. The writ petition filed by the Trust was contested, inter alia, on the ground that the trust not being a statutory body was not subject to the writ jurisdiction of the High Court. Rejecting the contention, the Apex Court, inter alia, held as under:-

19. The term "authority" used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Art. 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words "Any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation allowed by the person or authority to the affected party. No matter by what means the duty is imposed. If a positive obligation exists mandamus cannot be denied.

21. Here again we may point out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. Commenting on the development of this law, Professor De Smith states: "To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract." (Judicial Review of Administrative "Act 4th Ed. p. 540). We share this view. The judicial control over the fast expanding maze of bodies effecting the rights of the people should not be put into water-tight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available "to reach injustice wherever it is found". Technicalities should not come in the way of granting that relief under Article 226. We, therefore, reject the contention urged for by the appellants on the maintainability of the writ petition.

In *Payal Gupta Vs. Lt. Governor of Delhi & Ors.* 1994 III AD (Delhi) 1119, a Division Bench of this Court, dealing with the case of a student, who was denied admission by a private school, inter alia held as under:-

The question whether a writ could lie against a recognised unaided school is no longer *res integra*. It was contended by Mr. Kaul that the Cambridge School was not a State and that it was run by a society registered under the Societies Registration Act. Jurisdiction of this Court under Article 226 of the Constitution is not confined to the authority which is a State within the meaning of Article 12 of the Constitution. In *Kuldip Mehta Vs. Union of India and Others*, this Court has taken the view that Article 226 also speaks of directions and orders which can be issued to any person or authority. In that case a writ was issued against a public limited company which had nominees on its Board of Directors from the National Textile Corporation Limited, a Government company.

In *Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc.*, the Apex Court observed that the private educational institutions merely supplement the efforts of the State in educating the people, and that it was not an independent activity. It further said that no private educational institution could survive or subsist without recognition and/or affiliation, the bodies which

granted recognition and/or affiliation were the authorities of the State, and these private educational institutions were under same obligations as enjoined upon the recognizing/affiliating authority and would, thus, be a State. The Cambridge School which was a recognised school was held to be amenable to the writ jurisdiction of this Court.

In *Usha Handa Vs. The Lt. Governor Union Territory of Delhi Raj Bhavan*, this Court reiterated that a writ petition was maintainable against a private educational institution.

In *Ms. Anu Saxena Vs. Jesus and Mary College and Others*, this Court held that Jesus and Mary college, which was affiliated to Delhi University was State or other Authority within the meaning of Article 12 of the Constitution and, therefore, amenable to the writ jurisdiction of this Court.

5. In *Sumeet Sawhney VS. The Principal Sri Aurobindo 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.

6. The following propositions emerged from these two Division Bench judgments 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.

7. In the case before this Court, the only reason given by the petitioner in his application seeking NOC was that the college is very far from his home and since they were shifting to Rohini, it would be very hectic to reach the college from his future residence. This application was submitted on 27.6.2013. However, the petitioner continues to reside at A-5, Mansa Ram Park, Sunday Market Lane, Uttam Nagar, New Delhi-110059, which was also his residence at the time he took admission with the respondent no. 2-Institute. No material on record has been placed by the petitioner to show that he is definitely shifting to Rohini in near future. No Rohini address has been disclosed in the writ petition. Therefore, the ground given in the application does not appear to be a bona fide and genuine reason for shifting from respondent no. 2-Institute to another institute affiliated to the same university. It is true that the distance between the present residence of the petitioner and the respondent no. 2-Institute is more than the distance between the residence of the petitioner and Maharaja Agrasen Institute of Technology where he wants to migrate, but, the distance is not substantial if one takes into consideration the fact that the petitioner in any case will have to

cover a substantial distance for reaching even Maharaja Agrasen Institute of Technology from his present residence. Moreover, as stated in the counter affidavit of respondent no. 2, the institute is operating a fleet of 30 buses from the college to various parts of Delhi and it is very much possible for the petitioner to avail the said facility. Considering the availability of transport directly to respondent no. 2-Institute, there appears to be no justification for seeking migration only on account of distance between the residence of the petitioner and the institute in which he is presently studying.

8. A perusal of the communication dated 19.7.2013 sent by the respondent no. 2 to the petitioner would show that his request for grant of NOC was declined for the following reasons:

Based on the information furnished by you in the request letter, the Academic Committee observed that the student in seeking NOC on the ground of distance. Further, the committee observed that at the time of admission in the institute, the student was residing at the same place and hence, the distance between HMRTM, Hamidpur, Delhi and his/her residence was well within the knowledge of the student/parents.

Further, the student has also stated that in future he would be shifting his residence to Rohini, Delhi, it may be mentioned that the present residence of student at Uttam Nagar, New Delhi is about 34 km from the college whereas his future residence at Rohini would be about 22 km from the college. Thus, the traveling time from his future residence to college would be much less as compared to his present residence. In addition to this, the institute has buses plying from all parts of Delhi hence there is no transport problem for the students.

Considering the reason, disclosed in the application, the decision does not appear to be unfair, unreasonable or arbitrary.

9. More importantly, admittedly respondent no. 2 is a private educational institution getting no financial support either from the Government or from the university. Therefore, the institute has to meet its expenses only from the fees it charges from the students. If NOC is granted to the petitioner, there is a likelihood of one seat in the respondent no. 2-Institute remaining vacant for as many as three years. There is no material to show that some other student is ready and willing to join respondent no. 2-Institute, to occupy the seat that would be vacated in case the petitioner migrates to Maharaja Agrasen Institute of Technology. As stated in the counter affidavit of respondent no. 2, the expenses of the institute for infrastructure required to maintain and run the institute is fixed. So is the number of teachers and employees working in the institute. Therefore, in case the seat presently occupied by the petitioner remained unfilled for three years, that would be to the financial detriment of respondent no. 2-Institute, since it cannot reduce its expenditure on infrastructure, faculty or employees working in the institute. The petitioner before this Court has not come

out with an offer to pay the remaining fees of the course to respondent no. 2-Institute. Had such an offer been made by him, it would not have been possible for the respondent no. 2-Institute to take the plea of financial hardships in case the petitioner is allowed to migrate to another institute, thereby leaving one seat unfilled for three years.

10. As regards the contention of the petitioner that Maharaja Agrasen Institute of Technology is academically better than the respondent no. 2-Institute, the case of the respondent no. 2 is that it has been consistently improving its performance, considering that the institute started much later than Maharaja Agrasen Institute of Technology. In fact, according to respondent no. 2-Institute, its results in the second shift would show that it has performed better than Maharaja Agrasen Institute of Technology in the year 2012-2013. In the 1st semester of the academic year 2012-2013, the respondent no. 2 had first position in CSE (second shift), ECE (second shift) and EEE (second shift) whereas Maharaja Agrasen Institute of Technology had 3rd, 2nd and 3rd position respectively for the aforesaid course. In the third semester, the respondent no. 2 had 10th ranking, whereas Maharaja Agrasen Institute of Technology had 4th ranking. In the 5th semester, respondent no. 2 had 7th ranking whereas Maharaja Agrasen Institute of Technology had 9th ranking and in the 7th semester respondent no. 2 had 4th ranking and Maharaja Agrasen Institute of Technology had 7th ranking. Thus, though on a cumulative basis, performance of the students studying in Maharaja Agrasen Institute of Technology may be better than the performance of the students studying in respondent no. 2-Institute, it can hardly be disputed that respondent no. 2 has recently been improving its ranking and the students studying there are performing better than they were performing earlier. Obviously, that would not have been possible had the faculty teaching them not been good enough and the institution been lagging in providing the requisite infrastructural facilities to its students. This is not the case of the petitioner that the teachers in respondent no. 2-Institute are less qualified than the teachers teaching in Maharaja Agrasen Institute of Technology. This is also not the case of the petitioner that respondent no. 2 is not providing infrastructure as required under the rules of the university or that the infrastructure available in Maharaja Agrasen Institute of Technology is demonstratively superior to that available in respondent no. 2-Institute. In these circumstances, it would be difficult to justify issuance of NOC to the petitioner merely on account of comparative academic performance of the students studying in the two institutes i.e. Maharaja Agrasen Institute of Technology and the respondent no. 2-Institute. This is more so when I find that in the application seeking NOC, no such plea was taken by the petitioner.

In the comparative chart annexed to the writ petition, respondent no. 2- institute has been shown as 11th and 12th rank whereas Maharaja Agrasen Institute of Technology has been shown as 2nd rank in IP University, the placements in respondent no. 2 is 30% as against 100% in Maharaja Agrasen Institute of Technology and the respondent no. 2-Institute has no hostel facilities. There is

no document on record to substantiate the ranking given in the competitive chart. As noted earlier, according to respondent no. 2, its ranking in the second shift in the first semester in the academic year 2012-2013 was better than Maharaja Agrasen Institute of Technology. As regards hostel, since the petitioner resides in Delhi, such a facility becomes immaterial in his case.

11. During the course of arguments, the learned counsel for the petitioner referred to Mudit Agarwal and another vs. Guru Gobind Singh Indraprastha/W.P. (C) No. 8656/2011; Khwahish Mahajan versus Guru Gobind Singh Indraprastha/W.P.(C) No. 5076/2010; Shivam Chhabra Vs. Guru Gobind Singh Indraprastha University and Another, and Arpit Singh Vs. GGSIU and Another, However, none of these cases really deals with grant of NOC for the purpose of migration from one institute to another institute. As far as, Khwahish Mahajan (supra) is concerned, it resulted in a settlement between the parties and the settlement envisaged payment of Rs. 1,92,000/- by the petitioner in that case to the institute to compensate it for the monetary losses in the form of fees for the entire remaining period of the course. As noted earlier, no such offer has been made by the petitioner before this Court. In Mudit Agarwal (supra), the issue before the Court was transfer from one branch to another branch for the same course and in the same institute. Neither in Shivam Chhabra (supra) nor in Arpit Singh (supra), the Court was called upon to adjudicate upon the decision of an institute to refuse NOC for the purpose of migration from one institute to another. On the other hand, in Apurva Vs. University of Delhi and Another, a Division Bench of this Court, took note of the decision of learned Single Judge in Chetan Goel versus University of Delhi [2005 VIII AD (Delhi) 316] holding that if the students belonging to a college which is constantly improving its academic achievements, are allowed to migrate to other colleges, the same has a demoralizing effect on the faculty which must be viewed seriously and Shri Jatin Behl Vs. University of Delhi and Others, where it was held that a student who has not been able to secure admission in a college due to less marks than the cut-off prescribed by that college, cannot be permitted to secure the same by seeking admission by way of migration. As regards the distance between the residence and the college, the Division Bench noted that it was known to the petitioner at the time he took admission in the college. In Aarushi Jerath Vs. University of Delhi and Others, this Court while dealing with the migration from one college in Delhi University to another college in the same university, inter alia, observed as under:

12...The present is not a case where the respondent no. 2 Gargi College is affected monetarily by the petitioner leaving the College mid-stream. Both the respondent no. 2 Gargi College & the respondent no. 3 Hindu College are financed by the University Grants Commission and are not dependant on the fee of the students for their viability. The private participation has however now been permitted in the Education Sector and most of the affiliates of Guru Gobind Singh Indraprastha University, which is new in comparison to the respondent no. 1 Delhi University, are self financing private colleges. In the case of such self

financing College, it is understandable that upon a student leaving/migrating mid-stream and the seat remaining vacant, the viability of the College may go haywire. The fixed expenses on infrastructure, staff, faculty etc. are undertaken by such self financing colleges on the basis of number of students to be admitted and fee to be realized therefrom. The College cannot possibly reduce the said fixed infrastructure, staff and faculty expenses upon students leaving mid-stream. However as aforesaid in the present case such issues do not arise.

The above referred reasoning clearly applies to the case before this Court, respondent no. 2 being a self-financing private college which is likely to lose in financial terms, in case the petitioner is allowed to migrate in the midst of the course and the college is not able to fill up the seat that would be vacated by him.

For the reasons stated hereinabove, I find no merit in the petition and the same is hereby dismissed. There shall be no orders as to costs.