
(2002) 07 DEL CK 0131

In the Delhi High Court

Case No : CW No. 6532 and CM 11208 of 2001

Shri Jatin Behl

APPELLANT

Vs

University of Delhi and Others

RESPONDENT

Date of Decision : 17-07-2002

Acts Referred:

Citation : (2002) 99 DLT 546

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : R.K. Saini and Arun Bhardwaj, for the Appellant; Anurag Mathur and S.K. Luthra, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Sarin, J.—Petitioner seeks a writ of mandamus, to respondent No. 3 i.e. Moti Lal College (Evening) a college in the south Campus, to permit migration of the petitioner to respondent No. 4 college i.e. Moti Lal Nehru College (Morning). Petitioner was admitted to respondent No. 3 evening college in B.Com (Pass), First Year, in the academic year 2000-2001. It may be noted that the minimum percentage of marks the required for admission to morning college, 1st Year B.Com.(Pass), was over 80%. Petitioner had obtained only 69.75% marks in 12th Class Board Examination. the petitioner not being eligible for admission to morning College, secured admission in the Evening College. Petitioner has passed the first year examination, securing 57.25 marks.

2. Petitioner on 13.8.2001, addressed a letter to the Principal of respondent No. 4, i.e. the morning college stating that he had secured 229 marks out of 400 marks in the first year and sought migration from evening college to morning college. Petitioner reiterated his request on 8.10.2001. In the said letter, he referred to an earlier letter of 18.9.2001. The reason given by the petitioner in the letter dated 8.10.2001, was that he was preparing for entrance examination for Chartered Accountancy, for which coaching classes were available from 5.00 to 7.00 p.m. in the evening only, near his residence. It was in these

circumstances that petitioner sought migration from evening college to morning college so that he could pursue the B.Com(Pass) Course and simultaneously attend coaching classes and prepare for Chartered Accountancy Entrance Examination. Petitioner also claimed that he was to join a computer course, which was also available in the evening.

3. The Principal of Moti Lal Nehru College (Morning) on 13.8.2001, gave an endorsement of "No-Objection" of the said college to the admission of the petitioner, for migration from evening to morning college.

4. Petitioner is aggrieved by decision of respondent No. 3 i.e. Moti Lal Nehru College (Evening), is not giving its consent for migration from, evening to morning college.

Counter affidavits have been filed by Respondent No. 3 and 4. In its counter affidavit respondent No. 3 has opposed the migration to respondent No. 4 college, claiming that there was no vested right to seek migration. It is averred in the counter affidavit that the facility of migration is provided to obviate extreme hardship. It is not to be invoked in a routine manner or in such a manner, so as to defeat the admission procedure.

5. Mr. R.K. Saini and Mr. Arun Bhardwaj appearing on behalf of the petitioner urged that every student is entitled to improve his educational and career prospects. Towards this end, if after one year of successful B.Com Course, the petitioner finds that for effective preparation for the Chartered Accountancy entrance examination, he needs to attend coaching classes, which are available only in the evening, then the request for migration has to be sympathetically considered and allowed in the interest of advancement of the student's career.

6. Learned counsel relies on the decision of Division Bench of this Court in Aman Ichhpuniani Vs. The Vice Chancellor Delhi University and Others, , where the legal position with regard to permitting migration has been succinctly summed up as under:-

"To sum up, in our opinion: (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 payer 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. 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."

7. Reliance is also placed by the counsel for the petitioner on the decision of this Court in CW No. 3089/95 titled *Sumit Sawhney v. Principal of Shri Aurbindo College and Ors.* to urge that the interest of the student ought to be kept in mind and given due weightage. It was held that a college could not withhold consent for migration unreasonably, if the college to which admission was sought was willing to admit the student. Further that the student should not be compelled to study in a college against his/her choice.

8. Mr. Anurag Mathur, appearing on behalf of respondent No. 3, opposes the request as not a bona fide one and being in contravention of established procedure. He submits that the petitioner did not in the first instance, disclose the reasons for seeking migration. It was simply stated that the petitioner wanted to migrate. As an after thought, he is attempting to improve his case by setting up the plea of attending coaching classes in the evening. Moreover, learned counsel submits that petitioner had secured initially 57.25% marks for admission to the 1st year B.Com(Pass) while the minimum percentage for admission to the morning college was 80 per cent as per merit list. Even the percentage of 69.75, which the petitioner secured in the 1st year, was for below the minimum percentage for admission to morning college. He submits that if this was to be permitted, it would be a convenient method to secure admission to the morning college, through migration, by-passing the established procedure and negating the merit criteria.

Learned counsel contends that the academic session of second year was almost over and as per the prospectus of the University, migration is not permitted in the third year. Learned counsel further submits that the migration to the morning college would be contrary to the norms inasmuch as the morning college has already exceeded the sanctioned strength, while the evening college is being subjected to reducing numbers.

9. Counsel for the petitioners on the other hand placed reliance on the decision of this Court in CW.No. 7550/99 titled *Kamal Gupta v. University of Delhi and Ors.* as also on CW.No. 6394/98 titled *Abhishek Garg v. The Principal, Shaheed Bhagwat Singh College and Ors.* to urge that if a student had approached the Court well in time, the fact that the academic session was coming to an end would not come in the way of the Court granting relief.

10. Mr. S.K. Luthra, learned counsel appearing for respondent No. 4, does not deny the fact that the number of students in the morning college have exceeded sanctioned strength. However, he submits that a decision had been taken by the College then that it would accommodate the petitioner, if there was no-objection by respondent No. 3. He submits that the case would need to be reviewed based

on the prevailing position of drop outs and new entrants etc. for the next academic session.

11. The petitioner has also filed an affidavit to the effect that coaching classes by accredited institutions for preparation of the entrance examination for the Chartered accountancy examination were not available in the morning. Further that it was only P.G.D.A.V. College, which was offering classes in the morning from 7.30 to 9.30 a.m., but the said college is nearly at a distance of 20 k.m. from the residence of the petitioner.

The petitioner's submission Therefore is that migration was required to the morning college, to enable him to attend the coaching classes which were available in the evening near his residence as also for pursuing the computer course in the evening. The petitioner was desirous of improving his career prospects and respondent No. 4 had given its consent to migration. The withholding of consent by respondent No. 3 was Therefore assailed as illegal.

12. Having noted the facts and the rival submissions as well as the principles enumerated in the judicial pronouncement of the Division Bench, let us consider the case at hand. The petitioner admittedly did not secure sufficient marks having obtained 69.75% in the 12th Class Board Examination to secure admission in the morning college i.e. respondent No. 4. The minimum requirement as per the merit list was 80%. Confronted with this situation, the petitioner opted for the next best available option and secured admission in the evening college i.e. respondent No. 3. Petitioner while seeking admission to respondent No. 3 college had given an undertaking in the following terms:-

I hereby state that the teaching hours of this college form 4.00 p.m. to 8.00 p.m. and its distance from my residence as per the address given in my admission/application form are not a source of inconvenience to me.

I hereby undertake, I shall not seek migration to another college on these grounds."

The petitioner despite having given the above undertaking sought migration to respondent No. 4 college after completing the 1st year, when he secured 57.25% marks. The migration was applied for when significant portion of the 2nd year session was also over. The letter dated 31.8.2001, by which migration was sought, did not disclose any reason. It was a request implicate for migration in the following words:-

Sir,

I Jatin Bahl of Motilal Nehru (Evening) B.Com.(Pass) Course has secured 229 out of 400 marks i.e. (57.25%) in 1st year. I seek migration from evening to morning in your college.

Kindly given your permission."

It is no this letter that the morning college respondent No. 4 affixed its stamp of

"No Objection". The undertaking as given by the petitioner, as noted above, coupled with the non-disclosure of any reason for seeking migration initially, by themselves cannot non-suit the petitioner, if a good case for migration is otherwise made out. However these may be factors to be reckoned with.

The reason as subsequently disclosed by the petitioner is that with a view to advance his career his wishes to join the coaching classes for the entrance examination for Chartered Accountancy. These classes are said to be available only near his residence in the evening. As noted in *Aman Ichhpuniani (Supra)* a student has no vested right to claim migration. What has to be considered is whether the consent was being unreasonably withheld by respondent No. 3 college. In the instant case petitioner was not entitled to admission in the morning college based on the results of his 12th Class Board Examination. He had accordingly obtained and secured admission in the evening College based on the marks obtained. This was not a case either of extreme hardship or any other supervening circumstance like the transfer of the parents of the petitioner resulting in change of residence or such other reasons for which migration has become inevitable. All that is claimed is that transfer to the morning college would enable the petitioner to take coaching classes, which would help him in preparation for the Entrance Examination. It is not as if morning classes are not at all available. They are available at an inconvenient distance from the petitioner's house. The respondent in their counter affidavit have brought out that the petitioner did not even seek the consent of respondent No. 3 initially. It is claimed by respondent No. 3 that the cut off marks at which admission had been closed by respondent No. 4 was 80% The petitioner having got 69.75% in his qualifying 12th Class Examination could not have secured admission in respondent No. 4 college. He cannot now be permitted to secure the same through the back door, by-passing the claims of a large number of students, who had got higher marks than him in order of merits by seeking admission by way of migration. A further factor, which is pointed out is that while respondent No. 3 evening college, is having less students than the sanctioned strength, the morning college is having 150 students as against the sanctioned strength of 120.

In these circumstances respondent No. 4 college could not have given its no objection as the same would be contrary to the UGC Guide-lines which required the colleges not to accede its sanctioned strength and adhere to the permitted sanctioned strength. The respondent No. 4 college against a sanctioned student strength of 400 was having 2000 students. Relevant part of ordinance 4 which governs the case of migration is as under:-

Applications for migrations 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 writ of both Principals."

The initial application also did not disclose any reason for seeking migration. The

plea of pursuing the coaching classes for chartered Accountancy Entrance Examination and computer course was subsequently taken.

In view of the foregoing discussion, I find that though the petitioner may be seeking migration impelled by the desire to improve his career prospects, the non-grant of consent by respondent No. 3 evening College in the facts of the present case as noted cannot be said to be arbitrary or unreasonable. Besides, in the present case the 2nd year session is over. Mr. S.K. Luthra appearing on behalf of respondent No. 4 submitted that the consent as given for the 2nd year would not hold good or ensure to the benefit of the petitioner for the 3rd year and they would have to consider the entire matter in the light of number of fresh admissions, drop outs etc. Learned counsel for respondent No. 4 has also not disputed the assertion of respondent No. 3 that respondent No. 4 was having more students than the sanctioned strength and the requirement for adherence to the UGC Guide-lines. There also appears to be merit in the contention of respondent No. 3 that migration cannot be permitted in a routine manner, so as to by-pass the admission procedure and enable a student to seek admission through migration to a course which he was not found eligible as per merit initially.

In view of the foregoing discussion, the writ petition is dismissed.