

(2013) 05 DEL CK 0341
In the Delhi High Court
Case No : Writ Petition (C) 6078 of 2012

Shyam Sunder Sharma

APPELLANT

Vs

University of Delhi and Another

RESPONDENT

Date of Decision : 02-05-2013

Acts Referred:

Citation : (2013) 05 DEL CK 0341

Hon'ble Judges : G.S. Sistani, J

Bench : Single Bench

Advocate : F.K. Jha, for the Appellant; M.J.S. Rupal, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Sistani, J.—The petitioner claims himself to be a brilliant student with an excellent academic record in Sanskrit language. The petitioner has received a National and State level Gold Medal, has attended international conference at USA and completed Acharya degree from SSU Varanasi, U.P., in which he secured 70.55% in May, 2011. In the year 2011, the petitioner claims that he was informed by the Head of the Department of Sanskrit of the respondent that the petitioner would not be eligible for M.Phil/Ph.D unless he completes his M.A. Since the submission of form for admission in regular classes was closed, the petitioner was assured by the respondents that he would be transferred to a regular college if he seeks admission to school of open learning. Based on the assurance that such an option is available he took admission in the school of open learning in August, 2011. The petitioner points out that the prospectus of the year 2011-2012 also supported this view that transfer/migration of a student from the school of open learning to a regular college was permitted subject to completion of 1st year of M.A. course. On 10.2.2012 the petitioner approached the respondents through Right to Information Act to ascertain the existing policy in relation to processing of the request for transfer/migration from school of open learning to a regular college, however, no satisfactory reply was received. The petitioner, however, verified this fact by making another application under the

Right to Information Act on 4.7.2012 as to whether other students at Post-Graduate level can be transferred or not from the school of open learning to a regular college of the respondents and the reply received by the petitioner was in the affirmative. Meanwhile the petitioner secured second position in the first semester of M.A. and first position in the second semester obtaining 69.5% marks from the respondent, school of open learning. It is contended that if both the results of the petitioner are taken together then the petitioner topped the entire semesters out of all the students.

2. According to the petitioner, as per the policy the petitioner required to seek a no objection certificate from the source college i.e. School of Open Learning to target college i.e. the regular colleges of the respondents such as St. Stephens or any other college where migration is sought. however, respondent no. 2 refused to give permission for transfer on one pretext or the other.

3. A short affidavit has been filed by the University. It is stated in the affidavit that the petitioner has no cause of action to espouse the relief, which he is claiming. It is further stated that the University of Delhi and its affiliated colleges, including the School of open learning to which the petitioner herein belongs, strictly adheres to the rules and regulations that are formulated by the authorities for each academic year for various undergraduate and post-graduate courses and the same is notified to all the colleges under the University. It is also stated in the affidavit that at the time when the petitioner had taken admission in the school of open learning at the University for the academic year 2011-2012 it was clearly mentioned in the prospectus that the migration in any semester or final year in M.A. (Sanskrit) shall be as per the University Rules i.e. even though there would be an option for the students to migrate to other colleges after the completion of the semester but the rules governing such migration shall be formulated by the University.

4. Learned counsel for the respondent submits that the prospectus of postgraduate school of open learning, which has been filed and strongly relied upon by the petitioner, also clearly states that "information contained in this Prospectus, Admission forms and other documents, is based on rules, regulations, orders and notifications as on May 30, 2011. Any or all changes that may be made in future will be announced and shall supersede the current positions." It is, thus, contended that a reading of the above rule clearly shows that the school of open learning is subject to the rules framed by the University of Delhi from time to time and these Rules will supersede the already existing Rules in regard to the concerned subject. It is further contended by Mr. Rupal that as per the subsequent notifications dated 27.7.2012 issued by the University of Delhi it has been notified to all the colleges that inter-college migration would not be allowed in post-graduation courses and a copy of the same was also sent to the Executive Director of the school of open learning. It is next contended by Mr. Rupal that the petitioner herein is relying upon the policy for inter-college migration of students for the year 2011 and also as per the policy the student

can only apply for migration after the publishing of the result whereas the petitioner's results were declared on September, 2012, and hence the petitioner would be governed by the new policy which was formulated by the University and not the earlier policy, which stands superseded by the new policy. Mr. Rupal thus contended that since a new policy was declared on 27.7.2012 the petitioner cannot rely upon the procedure for migration of students.

5. Mr. Rupal submits that the petitioner has placed reliance on the terms of the prospectus, which were purchased by him at the time of seeking admission. The relevant portion of the terms of the prospectus relied upon by the petitioner read as under:

Migration in any semester or Final Year MA (HN, HS, SK, PS) as per University Rules". According to the policy of the respondent one notification was issued on 16th December 2011, which read as under:

No. Aca.I/Mig.-Sol/2011-12/340 dated 16th December, 2011.

NOTIFICATION

It is notified that last date for migration of students from the School of Open Learning to regular Colleges has been extended till 31.12.2011 for the academic year 2011-2012.

Sd/-

Deputy Registrar (Academic)

6. Mr. Rupal, learned counsel for the respondents, submits that by a subsequent notification the earlier notification stands superseded. Mr. Rupal has relied upon *Aman Ichhpuniani Vs. The Vice Chancellor Delhi University and Others*, to show that a student has no vested right to seek migration. For the same proposition, counsel for the respondents has relied upon *Anika Jain v. University of Delhi & Anr.*, reported at 156 (2009) DLT 13 . Mr. Rupal has also relied upon *Shri Jatin Behl Vs. University of Delhi and Others*, wherein it has been held by the High Court that the migration cannot be granted in a routine manner to by-pass the admission procedure to enable the students to seek admission to a course he is not eligible as per the merit. Reliance has also been placed by *Apurva Vs. University of Delhi and Another*, wherein the Division Bench had declined to grant migration where two years in a three year course, in which migration is permissible, was virtually over. Mr. Rupal submits that in the case of petitioner herein there is only a two year course and that two years course has still come to an end and, thus, the prayer of the petitioner for grant of migration should be rejected. Mr. Rupal also submits that the Rule of the University by which no migration in the post graduation courses is permitted has not been challenged by the petitioner and further the petitioner has failed to obtain a no objection either from the source college or from the college to which migration is sought.

7. I have heard learned counsel for the parties, considered their rival

submissions and also perused the documents placed on record. Before dealing with the rival contentions of the parties, I deem it appropriate to set out some of the undisputed facts in the present case. The petitioner is a brilliant student, he stood first in the first year if the marks of the first semester and the second semester in post graduation of M.A. course are taken together. Even in the Acharya degree, which he has obtained, the petitioner secured very high marks i.e. 70.55%, he has also been awarded a National and State level Gold Medal and has attended the international conference at U.S.A.

8. The terms of the prospectus, which have been extracted above, shows that at the time when the petitioner sought admission the Rule permitted migration in the post graduation course. According to this rule migration is not permitted in the first year and thus migration is only permitted in the second year. The first objection, which has been raised by learned counsel for the respondents, is that the terms of the prospectus could have been modified and the Rule changed by the University for which a provision is available in the prospectus itself. Relying on such a Rule, the Rule was changed by the University by which no migration is allowed in the Post-graduation course. This submission of counsel for the respondents is unacceptable to the Court for the reason that when the petitioner took admission in the school of open learning migration was permitted and permitted only in the second year. Thus, this Rule would come into force only in the second year and the Rule would be applicable to the batch of students who taken admission in the year 2012-2013. The amendment to the Rule of 27.2.2012 reads as under:

NOTIFICATION

SUB: AMENDMENTS TO ORDINANCE-IV OF THE UNIVERSITY (MIGRATION & RE-ADMISSION)

It is notified that the Ordinance IV of the Ordinances of the University relating to Inter-University/Inter-College Migration, Re-admission and Change of Subjects, has been amended and is hereby notified to all concerned for information and necessary compliance w.e.f. the academic session 2012-2013.

9. Reading of the Rule clearly show that this rule is applicable for the academic session 2012-2013. The petitioner started his academic session 2011-2012 and, thus, in my view this Rule would be applicable only for those students, who seek admission in the year 2012-2013 and would not be applicable to the petitioner. There is no doubt to the proposition that migration cannot be sought as a matter of right but the courts have recognized the fact that in cases of extreme hardships and other criteria, which has been laid down, which is not relevant for the purpose of the present case, migration should be allowed and in fact in a matter where the University had failed to exercise its discretion to consider the request for migration this court had issued directions to the University to exercise the discretion vested in them.

10. At the time when the petitioner took admission in the school of open learning there was an express provision which allowed the petitioner to migrate from one college to another. In the present era where there is a stiff competition both in grant of admission and for seeking employment the institution from where the candidate passes out has acquired great relevance. This factor was recognized by another Single Judge of this court in the case of Aarushi Jerath Vs. University of Delhi and Others, , more particularly in paras 6 and 15 which read as under:

6. The question of inter-institutional migration/inter-college migration/inter-school migration has arisen repeatedly before the Courts. The Division Bench of this Court in Aman Ichhpuniani Vs. The Vice Chancellor Delhi University and Others, has held that the Ordinance-IV of the Delhi University casts a duty on the Principal of the College from which migration is sought to exercise his discretion and take a decision on prayer for migration, guided by reason, keeping in view relevant considerations and not merely by whims or caprice. It was held that the power to forward an application seeking migration is also coupled with a duty; each prayer shall have to be dealt with on its own individual merits; if the prayer for migration be a bald prayer it may not be allowed merely for asking; on the contrary, if valid reasons are assigned and reasonable justification made out for seeking migration, the Principal on being satisfied of the same is duty bound to forward the application. It was further held that the teachers and Principal of the Institution are trustees of the students; for valid reasons the Principal may form an opinion that it would be not in the interest of the student to permit migration howsoever keen he may be to do so; the Principal may have to weigh the interest of the Institution also. The Division Bench acknowledged that sometimes the interest of the Institution and the interest of the student may conflict; in such situations the Principal will have to strike a balance and find the weighty side to which the decision shall have to swing. It was laid down that the Principal has to act objectively and if the decision of the Principal is found to be vitiated for failure to take into consideration the relevant factors and for the reasons of being influenced by irrelevant and extraneous consideration or for want of bonafides, the Courts in exercise of their power of judicial review shall intervene.

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15. We are today living in an age of competition. There is inter-university as well as inter-college competition. Every year various newspapers/magazines conduct surveys of Colleges/Institutions in different subjects and publish lists ranking the Colleges/Institutions. The said surveys have a large component of public perception. The surveyors ask from the concerned members of the public their perception of different Colleges/Institutions and rank the Colleges/Institutions accordingly. If the said surveys, rank the respondent no. 3 Hindu College above the respondent no. 2 Gargi College, whether it be correct or not, the fact remains that the esteem of the petitioner amongst her friends, relatives and acquaintances would go up if the petitioner is a student of the respondent no. 3

College. A large number of future employers of students also read the said surveys carefully and form an opinion on the basis thereof while interviewing prospective employees. Campus placements are a norm today. The surveys aforesaid rank the Institutions also on the basis of the quality of the placements from the Institute/College. Thus it cannot be said that the desire of the petitioner, if perceives the respondent no. 3 Hindu College to be better for her future prospects, to migrate to the said College is unreasonable or unfounded.

11. Having held that the subsequent rule of the University is not applicable to the case of the petitioner, I am of the view that the case of the petitioner should have been considered for migration subject to his fulfilling all the necessary formalities. Admittedly the petitioner has not only failed to procure a no objection from the college he seeks migration but he has also chosen not to implead them as a party to this writ petition. At this belated stage if a direction is passed to the college where the petitioner wishes to migrate to consider the request for migration no college will be able to entertain such a request as the second year has come to an end and the examinations are to commence from 3rd May 2013, and moreover, no college will be able to certify that the petitioner has been a student of that college as admittedly he would not have participated or attended any classes leave alone qualify the attendance criteria.

12. Further to direct the respondent or the college where the petitioner seeks migration in the absence and without not being a party to the writ petition cannot be permitted, and more so, having regard to the fact that the period of course has come to an end no college would grant migration and certify that the petitioner has been a student of the said college as the petitioner obviously has not attended any class much less any curriculum or, for that matter, has taken part in any activity. In effect, the order passed by this Court would be like a stillborn child with no life.

13. Accordingly, no relief can be granted to the petitioner in this case for migration. The writ petition is dismissed. No cost.