
(2019) 01 DEL CK 0020

In the Delhi High Court

Case No : Civil Writ Petition No. 12097, 12958, 12968, 13196, 12801, 12811, 12812, 12712, 12755, 12757, 12797, 12798, 12799, 12802, 12809, 12803, 12804, 12955, 12093, 12094, 12095, 12096, 12121, 12125, 12128, 12131, 12132, 12151, 12162, 12172, 12173, 12177, 12186,

Somya Gupta & Ors

APPELLANT

Vs

Guru Gobind Singh Indraprastha University And Anr

RESPONDENT

Date of Decision : 07-01-2019

Acts Referred:

Guru Gobind Singh Indraprastha University Act, 1998 — Section 26(2), 27
Evidence Act, 1882 — Section 115

Citation : (2019) 01 DEL CK 0020

Hon'ble Judges : C. Hari Shankar, J

Bench : Single Bench

Advocate : Sanjay Sharawat, Divyank Rana, Ashok Kumar, Ashok Agarwal, Kumar Utkarsh, Prathana Singh, Rakesh Wadhwa, Jainendra Maldahiya, S. Sarin, Shimpay Arman Sharma, Kuldeep Balhara, R.K.Saini, Vipin Malik, Nimish Chib, Sushil Kumar Pandey, Neha Sharma, Rakesh Munjal, Rakesh Kumar, Mukesh Gupta, Y. Munjal, Mukesh Gupta, Abhinav Agnihotri, Vipin Malik, M.K.Sharma, Rajesh, Anand Pandey, Sunil Dalal, Ashok Gurnani, Maninder Acharya, Mukul Talwar, Ekta Sikri, Jasbir Bidhuri, Arun Sanwal, Ritu, Beenashaw N. Soni, Jamal Akhtar, K.P.S. Rao, Sudhir Nandrajog, Anirudh Sharma, Shriya Handa, Amitesh Kumar, Binisa Mohanty, Jawahar Raja, Kritika Padode

Final Decision : Allowed

Judgement

1. These writ petitions involve cognate and similar issues and are, therefore, being taken up for consideration and decision vide this common judgment.
2. For ease of reference, the judgment would refer to the facts obtaining in W.P. (C) 12097/2018 (Somya Gupta v. GGSIPU), which was taken up as the lead case in this batch. It may be noted that common arguments were advanced, on behalf of the Respondent-University, in all these writ petitions.

Facts

3. The eight petitioners in W.P. (C) 12097/2018 have all completed the first two semesters of their undergraduate education, constituting the first year thereof, from various universities. A tabular representation, thereof, may be presented as under:

4. It would thus be seen that the "parent" Universities, where the petitioners had completed their first and second semesters, constituted an eclectic mix.

5. The Respondent No 1-University (hereinafter referred to as "the GGSIPU") was created, and is governed by the Guru Gobind Singh Indraprastha University Act, 1998 (hereinafter referred to as "the GGSIPU Act"). In exercise of the powers conferred by Section 27 of the said Act, the Board of Management of the GGSIPU revised Ordinance 7, which related to migration of students, in 2015. Clause 1.0 of the said Ordinance reads thus:

"Ordinance 7

1.0 No migration shall be allowed from other Universities/Colleges to the University Schools of Studies, University maintained colleges or affiliated institutions i.e. no inter-university migration shall be allowed in normal circumstances. It can be allowed in the beginning of second tier/Semester only under special circumstances by the Vice-Chancellor, on the recommendations of the sub-committee, comprising of three members of Academic Council, constituted by the Vice-Chancellor subject to the condition that the applicant student/candidate must have cleared each paper of both the semesters of first year/ or all papers of the first year as it applies for a particular programme. It must be ensured that there should not be any gap between the 1st year and the 2nd year of a particular programme meaning thereby that the pursuance of the programme remains continuous."

6. Under the afore-extracted Clause 1.0 of Ordinance 7, the GGSIPU issued the following Notice, on 9th August, 2018, inviting applications from students who wished to migrate:

"No IPU-7/Acad/Migration-2018/2018-19/4712

Dated: 09/08/18

NOTICE

Subject: Migration (Change of shift, Mutual Migration, Intra University, Inter University) of the students admitted in 1st Semester in the Academic Session 2017-18

In pursuance of Provisions in Ordinance 7 (Migration of Students) GGSIPU Act, No 9 of 1998, Candidates seeking Migration (Change of Shift, Mutual Migration, Intra-University, Inter-University) in various programmes in Guru Gobind Singh Indraprastha University are required to submit the following:

1. Migration Application

2. No Objection Certificate (NOCs) from both the Institutes
3. Copy of result of first year (both semesters)
4. Copy of Result of Class 12th qualifying examination documents as per the eligibility criteria.

The above documents may be submitted between 09th August 2018 to 17th August 2018 (11 AM to 3 PM) only on University working days in, Admission Branch, Administrative Block, GGSIPU Dwarka.

Candidates desirous of seeking Migration should also fulfill the Eligibility Criteria for the programme applying for migration as laid down in the Admission Brochure for the Academic Session 2017-18.

As per Amended provision of Migration Ordinance 7: No migration is permitted into the Medical Colleges of the Guru Gobind Singh Indraprastha University from any Institution/College.

Issuance of No Objection Certificate (NOCs) from the Institute does not imply cancellation of Admission from the particular college, it only means consent for migration given by the College. Submission of Migration application does not imply that the migration will be carried out.

Migration will be effective from third semester for the Academic Session 2018-19.

Enclosed: - Copy of Ordinance 7, GGSIPU Act 09 of 1998

Sd/-

(Pravin Chandra)

Incharge, Admissions"

7. Vide subsequent Notice dated 19th August, 2018, the last date, for submission of applications by students seeking migration to colleges under the GGSIPU, was extended till 21st August, 2018. The petitioners admittedly submitted their respective applications, seeking migration, from the Universities in which they were studying heretofore, and under which they had completed their first and second semesters, to the GGSIPU, before the prescribed cut-off date of 21st August 2018. All requisite details and documents were submitted with the applications, including the NOCs from their earlier Universities and from the Institute, i.e. the college affiliated to the GGSIPU, to which they desired to migrate.

8. Though the Admission Brochure of the GGSIPU, for the Academic Session 2017-18 has not been made available by any of the parties, it is not in controversy that the petitioners, in the present case, qualified the eligibility criteria for migration, which was passing of the 12 th standard examination and obtaining minimum qualifying marks therein.

9. The colleges, affiliated to the GGSIPU, to which the petitioners desire to migrate - in the case of the petitioners in W.P. (C) 12097/2018, the Vivekananda Institute of Professional Studies (hereinafter referred to as "the VIPS") - allowed the petitioners, consequent to the submission of their applications for migration, to join and attend the third semester classes under them, awaiting the decision of the GGSIPU on the petitioner's applications for migration. The College states that this was permitted in order to enable the concerned applicants to attend the number of classes required, to entitle them to appear in the third semester examinations.

10. Consequent to being permitted to join and attend classes, by the College, the petitioners severed their relationship with their "parent" Universities/Colleges, by having their names removed from the rolls thereof.

11. There was, admittedly, no communication, from the GGSIPU to any of the petitioners, regarding their applications for migration, till the issuance of the impugned communication, from the GGSIPU to the College, vide e-mail dated 2nd November, 2018 which was, in turn, forwarded by the College to the individual students on 3rd November, 2018. The communication reads thus:

"Sir/Madam,

This is in reference to applications so received from various candidates applied for migration in GGSIP University as per the notified notice for applying for the same till 21/8/2018. This is to inform you that the request of the following student/students was placed before the duly constituted Committee as per Ordinance 7. The Committee after due deliberation did not recommend the following cases as enumerated below. The recommendation of the Committee was approved by Competent Authority of the University.

Regards

Admission Branch"

12. The result of the issuance of the above extracted impugned communication, just 18 days short of the commencement of the third semester examination conducted by the GGSIPU, was that the petitioners, having attended the third semester classes under the College/Colleges affiliated to the GGSIPU, with the consent of such College/Colleges, found themselves in no man's land. Averring that, on the basis of the assurance held out, by the College (affiliated to the GGSIPU), by permitting them to attend the third semester classes, they had severed their links with their parent Colleges/Universities, and that the rejection of their applications for migration, at such a late stage, by the GGSIPU, had left them floundering with nowhere to go, the petitioners have approached this Court by means of the present writ petitions. Needless to say, they seek quashing of the above extracted communication, dated 2nd/3rd November, 2018, whereby their applications for migration were rejected as "not recommended" and also seek, consequently, a mandamus, to the GGSIPU, to accept their requests for

migration.

The Rival Pleadings and Submissions

13. Arguing for the petitioners, learned Senior Counsel Mr. Rakesh Munjal submitted that the act, of the GGSIPU, in sitting on the applications, of his clients, for migration, for nearly three months and, practically on the eve of the third Semester Examination, rejecting the applications by a completely unreasoned order, could never be allowed to sustain the scrutiny of law. He pointed out that the petitioners were admittedly fulfilling the eligibility criteria, for being permitted migration to the GGSIPU and, having submitted their applications for migration within the time specified, with all requisite documents, the GGSIPU could not be permitted to reject the said applications. Apropos Clause 1.0 of Ordinance 7, Mr. Munjal would submit that the applicable statutory provisions, including the provisions of the said Ordinance, did not define the "special circumstances", which would entitle candidates to seek migration. The decision of the GGSIPU to reject the petitioner's applications for migration was, Mr. Munjal would further seek to submit, additionally vitiated as, on the assurance impliedly held out by the College, which was affiliated to the GGSIPU, by allowing them to attend the third semester classes conducted by it, the petitioners had prejudicially changed their position by severing their links with their parent colleges/Universities to which, therefore, it was impossible for them to return. The petitioners were, therefore, he would submit, entitled to relief, even by application of the principles of equitable and promissory estoppel.

14. The writ petition emphasises, in this context, the fact that the concerned Colleges issued identity cards to the petitioners, marked their attendance and also permitted them to appear in their internal assessment examinations. Mr. Munjal further submitted that the petitioners could not be expected to wait for a decision, on their migration applications, from the GGSIPU, before joining classes, as, in that event, they would not have the requisite attendance to permit them to appear in the third semester examinations. The iniquity of the act of the respondents was also emphasised, by pointing out that the rejection of the petitioners request for migration would result in a loss, to them, of two precious academic years. This, in a scenario in which the petitioners were not at fault, and had effectively been led up the garden path by the GGSIPU, by its inaction in failing to communicate any decision, on the petitioner's applications, for nearly three months, Mr. Munjal would submit, could never be tolerated in law.

15. Apropos the submission, of the GGSIPU, in its affidavits filed in response to the writ petition, that it had, in fact, called for additional details from the applicants who were seeking migration, Mr. Munjal points out that the said details were called, not by way of communications to the concerned candidates, but by way of an omnibus communication to the College in which the petitioners were studying (i.e., in the case of the petitioners in W.P. (C) 12097/2018, the VIPS), on 17th October, 2018, just 6 days prior to the meeting of the sub-Committee on 23rd October, 2018. There is no explanation, Mr. Munjal points out, for the

inordinate delay, on the part of the GGSIPU, in responding to the petitioner's applications. Mr. Munjal also submits that, the Ordinance being silent regarding the "special circumstances", which would entitle a candidate to migration, the sub-Committee was not empowered to carve out, on its own, such "special circumstances", no such power being conferred, on it by the Ordinance. By carving out such "special circumstances" (in its meeting dated 23rd October, 2018), Mr. Munjal would submit that the sub-Committee effectively amended the Ordinance, which it was not empowered to do. That apart, the said "special circumstances" amounted to a change in the existing policy, which could never be applied retrospectively, to applications submitted prior thereto, for which purpose reliance is placed on the judgment of a learned Single Judge of this Court in *Siddharth Tomar v. GGSIPU*, (2010) 172 DLT 82.

16. Mr. Munjal also points out that a perusal of the manner in which applications were accepted, and rejected, by the sub-Committee, reveals that the sub-Committee acted with patent arbitrariness, inasmuch as, in respect of applications, by applicants, citing identical reasons for seeking migration, some were accepted by the sub-Committee, while others were rejected.

17. Mr. Munjal also presses, into service, the principle of legitimate expectation, submitting that, with the lapse of nearly three months after submitting of their applications for migration, his clients legitimately expected that their applications had been/would be allowed and that they would be permitted to continue their studies under the aegis of the GGSIPU.

18. Mr. Munjal also points out that the impugned order is completely unreasoned and could not, even on that ground, be sustained.

19. Reliance was also placed, by Mr. Munjal, on the judgment of this Court in *Radhika Garg v. Delhi University*, 2005 (119) DLT 225. Reliance is also placed on the judgment of the Supreme Court in *Nitasha Paul v. Maharishi Dayanand University* (1996) 2 SCC 103, for the proposition that, even though migration is not a matter of right, the University cannot decide questions of migration arbitrarily and according to the whims of its Vice-Chancellor or Principal.

20. Effectively supporting the cause of the students, Mr. Sudhir Nandrajog, appearing for the Respondent No 2-College, submits that, as the petitioners had submitted all requisite documents and details prior to the cut-off date of 23rd August, 2018, and as they admittedly fulfilled the eligibility criteria for migration to the GGSIPU, the decision, of the GGSIPU, to reject their applications for migration was, *ex facie*, arbitrary. He submits that there was a signal departure, in the present academic year (2018-2019) from the situation that had obtained, and the practice that was followed, in other earlier academic years. Mr. Nandrajog emphasises that the GGSIPU had never, earlier, sought information regarding any "special circumstance", before approving applications, submitted by students, for migration and that, had the GGSIPU informed the College that, this year, the procedure and practice was going to be departed from, his College

would also have required, from the students, specific reasons for migration, before allowing them to attend classes. He submits that the "special circumstances", as carved out by the sub-committee in its Meeting, dated 23rd October, 2018, on the basis whereof, apparently, candidates had been sifted out, were being framed for the first time, and submitted that, now that they had been framed, his client would also ensure that, in future years, only students, whose cases fell thereunder, were granted admission, and permission, to attend classes. Mr. Nandrajog submits that, however, applying the said decision to throw out students, in the present academic session, after they had nearly completed their third semester, and were at the threshold of writing the examinations, was illegal and intolerable. He additionally submits that the decision to allow the petitioner to attend classes was also influenced by the requirement of minimum attendance, in order to enable them to appear in the third semester examinations.

21. Drawing attention to the aspect of unconscionable delay, in the present instance, on the part of the GGSIPU, in taking a decision on the petitioner's applications for migration, Mr. Nandrajog submits that, in all earlier years, the decision on the applications for migration was taken in August/September and that it was for the first time, in the academic session 2018-2019, that the decision was delayed by almost three months, and the applications were rejected only in November, 2018. He also submits that this delay was despite the fact that his client had diligently followed up the matter with the GGSIPU.

In connection therewith, Mr. Nandrajog would also submit that the fact that the requirement for special reasons was communicated, by the GGSIPU to his client, indicated that the GGSIPU was well aware of the fact that the petitioners were attending classes in his client's College. In such circumstances, Mr. Nandrajog echoes the submission of Mr. Munjal that the petitioners would also be entitled to relief by application of the principles of equitable and promissory estoppel, for which purpose he relies on the well-known judgment of the Supreme Court in *U.O.I. v. Godfrey Phillips India Ltd*, (1985) 4 SCC 369. In fine, Mr. Nandrajog would emphasise that the impugned order, were it to be sustained, would result in the loss of two precious academic years of the petitioners, who were innocent in the entire affair.

22. The petitioners' claims were vehemently opposed by Ms Maninder Acharya, learned Additional Solicitor General (ASG) and Mr. Mukul Talwar, learned Senior Counsel, appearing for the GGSIPU. It is emphasised, by said learned Senior Counsel, that the law does not recognise any vested right to migration, and that the Notice, dated 9th August, 2018 (*supra*), whereby applications for migration were invited, itself clarified clearly that grant of NOCs by both the Institutes, i.e. by the "parent" College/University and the College to which the students were seeking migration, would not amount, *ipso facto*, to a guarantee that the student's claim to migration would necessarily be allowed. The Ordinance, it was pointed out, was also clear that, ordinarily, inter-University migrations, to the

GGSIU, would not be allowed, and that such claims would be allowed only in "special circumstances". It is emphasised that there was no requirement, in law, for such special circumstances to be delineated in the Ordinance itself and that the decision to confer discretion, on the sub-Committee of the Academic Council, which consisted of three eminent academicians, to objectively decide the merits of the individual applications and, for the said purpose, take a decision on the circumstances which ought to be treated as "special", could not be said to suffer from arbitrariness in any manner. Learned ASG was emphatic in contending that, in such matters, some play in the joints necessarily had to be allowed and that, so long as the decision taken did not suffer from the vice of arbitrariness or perversity, no case for interference, by a writ court, could be said to exist. Learned Senior Counsel further emphasised that the petitioners did not, in their applications seeking migration, cite any reason, far less any "special circumstance", as would entitle them to such claim.

23. Responding to the submission that it was necessary to permit the petitioners to attend classes, in order to enable them to have, to their credit, the requisite attendance, for being allowed to write the third semester examinations, learned Senior Counsel submitted that it was precisely for this reason that the sub-Committee, in its meeting dated 23rd October, 2018, recommended that additional classes be held for the students whose applications for migration were approved. They sought to submit, further, that the illegal act, of the Respondent No 2-College in permitting the petitioners to attend third semester classes conducted by it, could not confer any equities on the petitioner and that action was being taken against the College in that regard.

Learned Senior Counsel also sought to fault the petitioners for having attended the said classes, contending that, if they did so, in the face of the disclaimer, expressly contained on the notice, dated 9th August, 2018 (*supra*), inviting applications for migration, to the effect that acceptance of applications and grant of NOC by the "parent" University and the college to which they desire to migrate, conferred no guarantee of migration, they did so at their own peril. Rather, learned Senior Counsel would seek to urge, many of the petitioners actually scored ranks and marks much below the cut off, as would entitle them to admission to the College in normal course, and were using the facility of migration as a route to secure "backdoor entry" into the college.

24. To a query, from the Bench, as to the extent to which the GGSIPU could be treated as bound by the decision, of the College, affiliated to it, to allow the petitioners to attend classes, Mr. Mukul Talwar, learned Senior Counsel submitted that the Colleges affiliated to the GGSIPU were not its "constituent colleges", unlike, for example, colleges affiliated to the Delhi University. The control, of the GGSIPU, over colleges affiliated to it, he would submit, was minimal, and guided by the principles contained in the classic judgment of the Supreme Court in *T. M. A. Pai Foundation v. State of Karnataka*, (2002) 8 SCC 481.

25. The learned ASG also sought to submit that, in the present case, the

"migratory" attempts of the petitioner's did not appear to be wholly bona fide. She pointed out that, in 21 cases, NOC had been taken, from the "parent" College/University even before the issuance of the Notice, dated 9th August, 2018. She also pointed out that, in the case of the A.P. Goyal Shimla University, it was found that several NOCs had been granted on the same date, i.e. 22nd June, 2018. It was not possible, therefore, in her submission, for students, coming from the said University, to claim a right to be migrated to the GGSIPU. (It may be noted, here itself, that, in response to this submission, Mr. Munjal points out that the GGSIPU had, in fact, allowed the applications of other students, who had sought migration from the said A.P. Goyal Shimla University.)

26. Finally, learned ASG would seek to submit, the Court could not be privy to a decision which would dilute the standards of education prevalent in the GGSIPU, of which it was rightly proud. Non-meritorious students, if allowed to seek admission to Colleges functioning under the aegis of the GGSIPU, would inevitably result in lowering of the standards of the University, which could not be allowed at any cost. Learned ASG conceded that, possibly, the GGSIPU could have acted with greater promptitude in dealing with the applications, submitted by the students, for migration, but submitted that the students, too, had not moved any judicial forum, seeking expeditious decision on their applications and that, therefore, any delay that might have been occasioned in that regard could not clothe the students with any right in their favour.

27. Learned Senior Counsel appearing for the GGSIPU have also emphatically contended that the reliance, by the petitioners, on the principles of promissory estoppel and equitable estoppel is unmerited, as there can be no estoppel against the statute. It is also sought to be emphasised that the scope of interference, by courts, in matters relating to education, is heavily circumscribed, and must be limited to rare and exceptional cases.

28. The GGSIPU has further sought to contend, in a "second additional affidavit" filed by it on 15th December, 2018 that, in respect of 141 applicants who had applied for migration, reports regarding verifications of the NOCs/mark sheets, submitted by them, were as yet not forthcoming from their "parent" Universities/colleges. Learned ASG submits that no relief could, quite obviously, be granted to such students.

29. Reliance was placed, by learned Senior Counsel appearing for the GGSIPU, on the following decisions:

- (i) Aman Ichhpuniani v. Vice-Chancellor, Delhi University, 71 (1998) DLT 202 (DB)
- (ii) Jatin Behl v. University of Delhi, 2002 SCC Online Del 726,
- (iii) Apurva v. University of Delhi, ILR (2012) III Del 67,
- (iv) Apurva v. University of Delhi, (2012) 189 DLT 178 (DB),
- (v) Shashank Shandilya v. GGSIPU, 2013 SCC Online Del 3170,

- (vi) Antriksh Anand v. GGSIPU, 2013 SCC Online Del 3905,
- (vii) Sudhanshu Giri v. Vice-Chancellor, 2017 SCC Online Del 7452,
- (viii) Simran Singhal v. Vice-Chancellor, Indraprastha University, 2017 SCC Online Del 6409,
- (ix) Ravi Singhal v. GGSIPU, 2017 SCC Online Del 10499,
- (x) Vaibhav Bhansali v. University of Delhi, 2015 SCC Online Del 10412 and
- (xi) All India Council for Technical Education v. Surinder Kumar Dhawan, (2009) 11 SCC 726.

30. Pursuant to a request by the Court, the GGSIPU has also provided a copy of Guru Gobind Singh Indraprastha University Statute 24, made by the Board of Management of the GGSIPU in exercise of the powers conferred by Section 26 (2) of the GGSIPU Act, which governs the conditions under which affiliation is granted to colleges and institutes by the GGSIPU.

Analysis and Findings

31. The petitioners before this Court are students who, in response to the Notice, dated 9th August, 2018, applied for migration to colleges affiliated to the GGSIPU. That they were eligible for such migration, and that the forms submitted by them were in order, and was submitted before the last date stipulated therefor, are not in dispute. Neither is it in dispute that the Respondent No 2-College, which is affiliated to the GGSIPU, consciously allowed the petitioners to attend the third semester classes conducted by it. The petitioners' links with their "parent" colleges/Universities stand admittedly severed and, were the impugned decision, of the GGSIPU, to reject their applications for migration, to be upheld, it is an admitted position that the petitioners would suffer a loss of two academic years. If, however, the rigour of the law so requires, the petitioners would, undoubtedly, have to suffer such loss. The question before this Court is - does the law so require?

32. It is important to bear, in mind, the fact that the present case is not one in which any student/students has sought to take undue advantage of the law, or have resorted to fraudulent means in order to secure admission/migration. (It may be noted, in this connection, that somewhat serious allegations were raised, by the learned ASG, regarding Petitioner No. 5 in W.P. (C) 12097/2018, Gautam Krishnan, whereupon Mr. Munjal submitted that the said petitioner was no longer pressing his case.) This fact, coupled with the legal reality that the right to education is a fundamental right, has necessarily to kept in view, by the court, while examining a case such as the present.

33. I deem it appropriate, at this juncture in this context, to deal with the submissions, of the learned ASG, whereby the bona fides of some of the students has been sought to be questioned. The fact that (i) in 21 cases, NOCs were obtained, from the parent Universities/colleges even before the issuance of

Notice, dated 9th August, 2018, by the GGSIPU and (ii) certain colleges were doling out NOCs wholesale, the A.P.Goyal Shimla University being one of the prime culprits, having issued NOCs to all students seeking to migrate to the GGSIPU on the same date, i.e. 22nd June, 2018, according to her, indicated that the requests for migration, in such cases, appeared, prima facie, to be orchestrated, rather than bona fide. As these aspects would require further investigation and inquiry, learned ASG exhorts this Court to hold its hands at this stage. The Court is unable to agree. Nothing unnaturally out of place can, in the opinion of this Court, be gleaned in the act of some of the students in obtaining NOCs, from the "parent" Colleges/Universities prior to the issuance of the Notice, dated 9th August, 2018, by the GGSIPU. Even if the formal Notice inviting applications for migration had yet to be issued, Clause 1.0 of Ordinance 7 was very much in place, and it is a matter of fact that, applying the said Ordinance, migrations were being allowed, by the GGSIPU, on a yearly basis. That apart, obtaining of the NOC from the parent University/College did not result, ipso facto, in cessation of the relationship with such University/College. It is not, therefore, as if the students had cancelled their admissions with the "parent" Universities/Colleges even before the Notice, inviting applications for migration, was issued by the GGSIPU on 9th August, 2018. The further submission of the learned ASG, regarding the A.P. Goyal Shimla University having granted mass NOCs on a single date, too, cannot be regarded as a necessary indicator of an orchestrated migration. There was no embargo on the said College/University granting NOCs to students, seeking migration, on the same day. The submission is entirely in the realm of conjecture and surmise. That apart, as learned senior counsel Mr. Munjal has correctly pointed out, the applications of several students, who were migrating from the A.P. Goyal Shimla University were actually allowed, so that the plea, of the learned ASG, that the said University was resorting to fraud, does not merit any further consideration.

34. That apart, in any event, the GGSIPU does not seek to contend, even obliquely, that the petitioners' applications for migration were rejected on the ground of any want of bona fides. The submission, of learned ASG as well as of Mr. Mukul Talwar, in one voice is that the sub-Committee recommended cases which were found to possess "special circumstances" and rejected those which were not. It is not for this court, therefore, to venture into the arena of whether the grant of NOCs, by the "parent" colleges/Universities, where the petitioners - or other applicants similarly situated - had completed their first and second semesters, had acted bona fide, or mala fide, while granting the said NOCs, or whether the petitioner-applicants themselves were complicit in any subterfuge, perpetrated by the said "parent" colleges/Universities, in that regard. Needless to say, in case it comes to light, at any later point of time, pursuant to investigation and enquiry conducted in accordance with law, that any of the applicants/petitioners had sought to hoodwink the GGSIPU, or had resorted to means, unfair or illegal in any manner, while applying for migration, their applications would, ipso facto, merit rejection. That stage, however, has not arrived as yet,

and this Court does not propose, therefore, to opine further on the issue. This Court is concerned with whether the impugned communication, dated 2nd/3rd November, 2018, whereby the requests, for migration, of the petitioners in these writ petitions, were "not recommended", could sustain, keeping all factors in mind.

35. To that, in the opinion of this Court, there can be only one answer.

36. The submission, advanced on affidavit by the Respondent No 2-College and vocalised, on its behalf, by Mr. Nandrajog, to the effect that, in earlier years, the GGSIPU had been taking decisions on the migration applications in August or at the latest, in September, is not denied by the GGSIPU. Not a whisper of an explanation is forthcoming, for the delay of 2½ months between the submissions of applications, seeking migration, by the petitioners (towards the middle of August, 2018), and the rejection, thereof, by the GGSIPU (on the 2 nd/3rd November, 2018), except by way of a left-handed explanation that inter-University migrations were processed after intra-University migrations. Having not chosen to communicate with the petitioners, for such an inordinately long period of time, during which period the colleges, affiliated to the GGSIPU, acting on the applications submitted by the petitioners, granted them provisional admission and allowed them to attend the third semester classes being conducted by the said colleges, this Court is convinced that the GGSIPU could not have rejected the petitioners' applications for migration, barely two weeks before the third semester examinations were to begin, by which time the petitioners had compromised their academic session irretrievably. The situation stands exacerbated by the act, of the colleges, affiliated to the GGSIPU, in permitting the students to attend classes. The GGSIPU, needless to say, blames the colleges of having acted illegally, and the learned ASG submits that action was being taken against the said colleges. That, however, can afford little panacea to the students. This Court is convinced that the twin factors of the GGSIPU having unconscionably delayed their decision on the petitioners' applications for migration, without any explanation therefor, and of the colleges, affiliated to the GGSIPU, having permitted the petitioners to attend the third semester classes conducted by them, seen together and in juxtaposition, make out a clear case for interference by this Court, and for restraining the GGSIPU from, at such a late stage, rejecting the petitioners' applications for migration. The petitioner-students, and their academic and educational careers, cannot be permitted to perish, between the grinding wheels of the University and the college.

37. This Court is also of the opinion that, irrespective of the factual, or contractual, link between the GGSIPU and its affiliated colleges, there exists a definite jural link, which cannot be wished away. A student, who applies to a college affiliated to a University, does not consciously distinguish between the college and the University. He cannot be expected to be aware of the nature of degree or control, which the University exercises over the college. For the

student, the education, in the college, is the means towards the end of securing the degree conferred by the University. For him, the two are inseparably intermingled. A student, who attends classes in a college affiliated to the University, having been permitted by the college to do so, could not be expected, in his wildest imagination, to foresee the possibility that, having completed the semester with the requisite attendance, the University would entirely disown him. In such a situation, the student would find herself, or himself, irremediably placed between Scylla and Charybdis, with nowhere to go. The Court exercising writ jurisdiction can hardly countenance such a situation, or allow it to be tolerated, in fact or in law. It is the bounden duty of the court, in such a situation, to create a Trishanku swarga for the students, so that they, and their education, are not sacrificed, in the feud between the University and its affiliate college.

38. This Court is also constrained to observe, in this context, that the reliance, by Mr. Talwar, on the judgment of the Supreme Court in *T. M. A. Pai* (supra) appears inapposite. The said decision does not deal, directly or indirectly, with the degree of control, which may be exercised by a private university over its affiliate colleges. Paragraphs 48, 56 and 67 to 70 of the judgment in *T. M. A. Pai* (supra), to which Mr Talwar draws particular attention, too, fail to enlighten. The concept of autonomy of affiliate educational institutions, in the said decision, is delineated either in the context of minority educational institutions, or of aided educational institutions. Even in these cases, the judgment concentrates essentially on the degree of governmental control over such colleges.

39. The Court is, in the present case, concerned with the rights of the students, as ventilated by them, and has, therefore, to approach the issue from the perspective of the students. Besides, this Court is unable to accept that the GGSIPU was entirely unaware of the admissions, granted by its affiliate colleges, to the "migratory" students. It has been pointed out, in this regard, both by Mr. Munjal and Mr. Nandrajog, that the communication, from the University, seeking "better particulars" (as the learned ASG would phrase it) from the students applying for migration, was also addressed to the colleges where the students were studying. There was no independent communication to any of the students in this regard. This, too, indicates that the GGSIPU was aware of the fact that the students were studying with the College concerned or, at any rate, could be contacted through the College.

40. The reliance, by the petitioners, on the doctrine of estoppel, is also well-placed. Having failed to act on the applications of the petitioners, seeking migration, till two weeks prior to the date of commencement of the third semester examinations, the GGSIPU was clearly estopped, by conduct, from rejecting the said applications. Having allowed, consciously or unconsciously, the students to attend the third semester classes with its affiliate colleges, keeping silent, all the time, regarding their requests for migration, the GGSIPU could not, at the last minute, be permitted to pull out the rug from under the feet of the

students. Reference may usefully be made, in this context, to the following passages, from "Estoppels and the Substantive Law" by Arthur Caspersz, which were approvingly cited by the Supreme Court in *B. L. Sreedhar v. K. M. Munireddy*, (2003) 2 SCC 355:

"42. In such cases the conduct must be such that assent may reasonably be inferred from it. The doctrine of acquiescence has, however, been stated to be founded upon conduct with a knowledge of legal rights, and as stated in some cases appears to imply the existence of fraud on the part of the person whose conduct raises an estoppel. The remarks of the Judicial Committee, however, in *Sarat Chunder Dey v. Gopal Chunder Laha* [(1892) 19 IA 203] clearly extend the doctrine of estoppel by conduct of acquiescence or indifference to cases where no fraud whatever can be imputed to the person estopped, and where that person may have acted bona fide without being fully aware, either of his legal rights, or of the probable consequences of his conduct. In every case, as already pointed out, the determining element is not the motive or the state of knowledge of the party estopped, but the effect of his representation or conduct as having induced another to act on the faith of such representation or conduct.

Lapse of time and delay are most material when the plaintiff, by his conduct may be regarded as waiving his rights, or where his conduct, though not amounting to a waiver, has placed the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards asserted. When, however, an argument against a relief, otherwise just, is founded upon mere delay not amounting to bar by limitation, the validity of that defence must be tried by principles substantially equitable."

(Emphasis supplied)

41. Statutory support, for the principle of "estoppel", is to be found in Section 115 of the Indian Evidence Act, 1882 (hereinafter referred to as "the Evidence Act"). Dealing with the said provision, and examining the concept of "estoppel" conceptualised thereunder, para 35 of the judgment of the Supreme Court in *Pratima Chowdhury v. Kalpana Mukherjee*, (2014) 4 SCC 196 holds thus:

"35. Section 115 of the Evidence Act is being extracted hereinbelow:

"115. Estoppel.-When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.

Illustration

A intentionally and falsely leads B to believe that certain land belongs to A, and thereby induces B to buy and pay for it.

The land afterwards becomes the property of A, and A seeks to set aside the sale

on the ground that, at the time of the sale, he had no title. He must not be allowed to prove his want of title."

It needs to be understood that the rule of estoppel is a doctrine based on fairness. It postulates the exclusion of the truth of the matter. All for the sake of fairness. A perusal of the above provision reveals four salient preconditions before invoking the rule of estoppel.

(i) Firstly, one party should make a factual representation to the other party.

(ii) Secondly, the other party should accept and rely upon the aforesaid factual representation.

(iii) Thirdly, having relied on the aforesaid factual representation, the second party should alter his position.

(iv) Fourthly, the instant altering of position, should be such, that it would be iniquitous to require him to revert back to the original position.

Therefore, the doctrine of estoppel would apply only when, based on a representation by the first party, the second party alters his position, in such manner, that it would be unfair to restore the initial position."

(Emphasis supplied)

42. All the above four ingredients, required to be fulfilled before the principle of "estoppel" could apply are seen, in fact, to be fulfilled in the facts of the present case. By failing to act on the applications, of the petitioners, for migration, for 2 ½ months, and to communicate, with the petitioners, for the entire said period, the GGSIPU, by its inaction, effectively held out a representation, to the students, causing them to believe that their applications stood approved, especially as, in earlier years, the decisions on the applications were taken by August/September. The students, by severing their links with their parent colleges/Universities, and continuing to pursue their studies under the Respondent No 2-College, believed and acted on the said representations. Having severed their links with their parent universities/colleges, the petitioners altered their factual position, on the basis of such belief. The said altering of the possession of the petitioners' had resulted in a situation in which it was not only iniquitous, but impossible, for the status quo ante to be restored as, were the decision of the GGSIPU, to reject the petitioners' applications, to be upheld, the petitioners would lose two precious academic years, and there could be no question of their returning to their parent Colleges/Universities. Applying, therefore, Section 115 of the Evidence Act, the GGSIPU stands estopped from contending that the petitioners applications for migration stood rightly rejected.

43. In a somewhat more recent decision in *Manuelsons Hotels (P) Ltd v. State of Kerala*, (2016) 6 SCC 766, the Supreme Court has held thus, regarding the doctrine of "promissory estoppel":

"19. In fact, we must never forget that the doctrine of promissory estoppel is a

doctrine whose foundation is that an unconscionable departure by one party from the subject-matter of an assumption which may be of fact or law, present or future, and which has been adopted by the other party as the basis of some course of conduct, act or omission, should not be allowed to pass muster. And the relief to be given in cases involving the doctrine of promissory estoppels contains a degree of flexibility which would ultimately render justice to the aggrieved party.

20. The above statement, based on various earlier English authorities, correctly encapsulates the law of promissory estoppel with one difference - under our law, as has been seen hereinabove, promissory estoppel can be the basis of an independent cause of action in which detriment does not need to be proved. It is enough that a party has acted upon the representation made. The importance of the Australian case is only to reiterate two fundamental concepts relating to the doctrine of promissory estoppel - one, that the central principle of the doctrine is that the law will not permit an unconscionable departure by one party from the subject-matter of an assumption which has been adopted by the other party as the basis of a course of conduct which would affect the other party if the assumption be not adhered to. The assumption may be of fact or law, present or future. And two, that the relief that may be given on the facts of a given case is flexible enough to remedy injustice wherever it is found. And this would include the relief of acting on the basis that a future assumption either as to fact or law will be deemed to have taken place so as to afford relief to the wronged party."

(Emphasis supplied)

The principles enunciated in the above extracted passages, from the judgment in *Manuelsons Hotels* (supra), in the opinion of this Court, completely cover the facts of the present case. On the basis of the silence, on the part of the GGSIPU, in responding to the migration applications submitted by them, and the positive act of the Respondent No 2-College, in permitting them to attend the third semester classes, during which period the Respondent No. 2-College marked the petitioners' attendance, issued identity cards to them, and allowed them to participate in internal assessments (with which acts, this Court reiterates, the GGSIPU cannot seek to entirely distance itself), the petitioners were led to assume that their applications were in order. An "unconscionable departure", on the part of the GGSIPU, from the said assumption of fact cannot, therefore, be permitted, at this stage, when barely two weeks were left for the commencement of the third semester examinations. The Supreme Court has, in the above extracted passages, also highlighted that the consideration, which has to bear with the Court while examining such facts, is the solemn duty of rendering justice to the wronged party. It is emphasised, by the Supreme Court, that "the relief that may be given on the facts of a given case is flexible enough to remedy injustice wherever it is found". This court is convinced that, were the decision of the GGSIPU, to reject the petitioners' applications for migration, at this stage

when they were on the threshold of appearing in the third semester examinations, and had irreconcilably altered their positions, to be upheld, it would result in manifest injustice to the petitioner-students. This Court cannot be privy to such injustice.

44. In the above context, reference may also usefully be made to the judgment of a Division Bench of this Court in *University of Delhi v. Ashok Kumar Chopra*, AIR 1968 Del 131. This Court was seized, in the said case - which was an appeal from the judgment of a learned Single Judge - with a situation somewhat similar to that obtaining in the present case. The three student-appellants, in that case, had also applied for admission to the B.A. (Pass) course in the Deshbandhu College of the University of Delhi, having filled in the requisite applications and furnished all required particulars therefor. Provisional admission was granted, to the students, by the College. The students completed the semester, whereafter the University sought to cancel their admissions on the ground that they did not possess the essential qualifications for admission to the B.A. (Pass) course, the SSC qualification possessed by them being recognised as equivalent only to matriculation by the University of Delhi. Among other findings, the Division Bench of this Court held that, "once the University had kept quiet and had not set any intimation to the students concerned that it had not confirmed the provisional admission made by the Principals of the Colleges, that silence and inaction will amount to a representation that the University had approved the admission of the students concerned", which operated as an estoppel, against the University being allowed to contend, or plead, that it had not approved their admissions. Reiterating the finding yet again, this Court went on, in the same decision, to rule that "by its inaction and silence for a long time, the University must be held to have confirmed or approved the admission of the students in question and the University is estopped from contending that in fact it did not approve the admission of the students in question". The facts obtaining in the present case, in the opinion of this Court, warrant a similar conclusion.

45. To the plea of estoppel, argued by learned Senior Counsel for the petitioners, Mr. Mukul Talwar responds that there could be no estoppel against statute. The submission is, however, in the opinion of this Court, neither here nor there. That there can be no estoppel against statute, is axiomatic. No occasion arises, however, for application of the said principle, in the facts of the present case, inasmuch as this Court is not directing the GGSIPU to, in any manner, violate the statute, i.e. the provisions of Ordinance 7. The right, of the GGSIPU, to scan the applications for migration, received from students, and to select some and reject others, is not being compromised, in any manner, by this judgment. Exercise of power under the statute has, however, necessarily to be in a fair and transparent manner, and not in a manner which would result in injustice to the students. Requiring implementation of the statute - or, in this case, the Ordinance - in a meaningful and reasonable manner, does not amount to acting "against statute". The plea, of Mr. Talwar, that there can be no estoppel against statute, while unexceptionable as a proposition of law, has, therefore, no application in the

facts of the present case.

46. This Court is always required to be mindful of the fact that justice is the zenith to which the law aspires. Law, it is trite, bends before justice. The following words, from *S. Nagaraj v. State of Karnataka*, 1993 Supp (4) SCC 595, immediately come to mind:

"Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way. The order of the Court should not be prejudicial to anyone. ... Even the law bends before justice. Entire concept of writ jurisdiction exercised by the higher courts is founded on equity and fairness."

(Emphasis supplied)

47. In the present case, neither did the GGSIPU Act, nor did Ordinance 7, enumerate the "special circumstances", the fulfilment of which, alone, entitled a student to seek migration to the GGSIPU. The assertion, by the Respondent No 2-college, on affidavit, to the effect that no such "special circumstances" had ever been conceptualised in earlier years, stands un rebutted. Nor did the Notice, dated 9th August, 2018, issued by the GGSIPU inviting applications for migration, require the students to state any such "special circumstances". The petitioner-students applied consequent to the said Notice, and it would be totally unreasonable to expect them to familiarise themselves with the provisions of Ordinance 7. The GGSIPU ought, at the very outset, to have made known to the applying students, in the Notice dated 9th August, 2018, the position that their applications would be considered only if "special circumstances" existed in their favour, and that they were, therefore, required to make out a case to that effect, by citing, or providing, such "circumstances". The applications, as submitted by the petitioners were in order and in accordance with the Notice, and were submitted within the time prescribed therefor. The Respondent No 2-College provisionally admitted the petitioners, and allowed them to attend classes for the entirety of the third semester, and there is no reason for the students to have believed that this was being done without the knowledge and approval of the GGSIPU. All indicia which apply to a regular course of study by regular students, such as issuance of Identity Cards, marking of attendance, and internal assessments, were applied to the petitioners. As a result, the petitioners severed their links with their parents colleges/Universities, and ingratiated themselves with the Respondent No 2-College. At the fag end of the semester, when the students were on the brink of having to write their third semester examinations, the GGSIPU communicated, to them, the decision "not to recommend" their applications for migration. This Court is of the view that the said decision, and the manner in which, and the stage and time at which, it was communicated by the GGSIPU, were entirely unfair, to say the least.

48. The submission, of learned ASG, that migration is not an alternate mode of admission, and that, if relief were to be granted by the court in the present case, it would amount to legalising "backdoor entries", and the reliance placed, by her,

on the judgment of the Constitution Bench of the Supreme Court in *State of Karnataka v. Umadevi*, (2006) 4 SCC 1 are, in the opinion of this Court, misguided. In the first place, migration is, most certainly, a form of admission into the University as, by migrating to a University, the student, who was not a student of the University, becomes one. Secondly, persons who secure admission by migration cannot be treated as backdoor entries, as migration is a statutorily recognised, perfectly legal form of securing admission to a University, and to a college affiliated thereto. This Court is also unable to appreciate the submission, repeatedly urged by the learned ASG as well as by Mr. Mukul Talwar, that students, who failed to make the grade on merit, were seeking, by the circuitous mode of migration, to gain access to the portals of the University. The facility of migration has little to do with the merit of the student, and everything to do with the circumstances in which the student is placed. A student who, owing to the circumstances in which he is placed, seeks to migrate to "better" University, neither circumvents, thereby, the normal process of admission, nor seeks any kind of "backdoor entry" to the University. To equate such admissions, with illegal appointments to government service, effected in contravention of the regularly prescribed mode of recruitment is, in the opinion of this Court, to equate chalk with cheese. The reliance, of the learned ASG, on *Uma Devi* (supra), too, therefore, fails to convince.

49. I may, at this stage, advert to the disclaimer, contained in the Notice dated 9th August, 2018, on with such pointed reliance is placed by all learned Senior Counsel appearing for the respondents. The said disclaimer merits reproduction, thus:

"Issuance of No Objection Certificate (NOCs) from the Institute does not imply cancellation of Admission from the particular college, it only means consent for migration given by the College. Submission of Migration application does not imply that the migration will be carried out."

It would be seen that this clause uses two expressions, i.e. "college" and "Institute". In contrast, the first para of the said Notice requires the applicant-students to submit, inter alia, "No Objection Certificate (NOCs) from both the Institutes". Where, therefore, the first para of the Notice refers to the "parent" College/University, from where the students had passed their first year, as well as the College to which they were seeking migration, as "Institutes", the disclaimer clause, at the foot of the Notice, refers to the "college" and the "Institute".

50. Seen thus, the above-extracted disclaimer clause does not make for easy reading, let alone understanding. The respondents would seek to interpret the word "Institute", as contained in the said clause, to be the college/Institute to which the students seek to migrate, and the word "college" as the "parent" college/University. That interpretation, however, presents more than one difficulty. How, in the first place, could the Clause declare that issuance of NOC, by the college to which the student seeks to migrate, would "mean consent for

migration given by the college" from which the student seeks to migrate? Interestingly, in the case of Petitioner No. 4 in W.P. (C) 12097/2018 (Om Sudhir Vidyarthi), the documents on record indicate that NOC was granted by the parent University, i.e. the Amity University, Uttar Pradesh on 17th July, 2018, whereas NOC had been granted by the Respondent No 2-College, i.e. the VIPS prior thereto, on 2nd July, 2018. This militates against interpreting the disclaimer clause, in the Notice, dated 9th August, 2018, as meaning that grant of NOC, by the College to which the student seeks migration, implied grant of consent, for migration, by the "parent" College.

51. A more reasonable interpretation, of the said disclaimer clause appears, in the opinion of this Court, to be that grant of NOC, by the Institute/college, to which the student seeks migration, would imply grant of consent, by the said Institute/college, thereto, but would not be a guarantee that migration would be allowed by the GGSIPU. Even if one were to accord, to the Clause, such an interpretation, that would still not justify the GGSIPU taking its own time to decide the migration applications, and rejecting them at the eleventh hour. As such, the above-extracted disclaimer clause, as contained in the Notice dated 9th August, 2018, can support the respondent's case only so much, and no more.

52. Migration, no doubt, is not a matter of right. This Court is also in agreement with the learned ASG when she contends that there was no sacrosanct principle, in law, requiring the "special circumstances" to be spelt out in Ordinance 7, and that, if the sub-committee, constituted in accordance with the said Ordinance were, while examining the applications for migration, permitted to determine, for itself, the "circumstances" which merited being regarded as "special", no real exception, in law, can be taken thereto. For the same reason, the submission, of Mr. Munjal, that, by setting out, in its Minutes dated 23rd October, 2018, the criteria which, in the opinion of the sub-Committee, would constitute "special circumstances", the sub-Committee had, in excess of the jurisdiction vested in it, amended the provisions of the Ordinance, and that such amendment could not apply retrospectively, do not appeal. The submission, of Mr. Munjal, to the effect that the sub-committee had acted arbitrarily, inasmuch as it had, between applicant-students who had cited the same circumstance/reason for seeking migration, recommended some and rejected others, has also been answered, by the learned ASG, by pointing out that the sub-committee would have arrived at its decision, not only on the basis of the reasons cited by the concerned applicants, but also in view of the documents and materials provided in support thereof, all of which were not before this Court. There appears to be substance in the said submission of the learned ASG. However, given the view that this Court is taking in the present case, no occasion arises, for this Court to enter into a comparative assessment of the decisions taken by the sub-committee in respect of individual students - assuming, that is, that, in exercise of its writ jurisdiction, this Court would at all be competent to do so.

53. These factors, however, pale into insignificance, in view of the fact that the

affiliate colleges had granted provisional admission to the petitioners and permitted them to attend the third semester classes conducted by them, and the GGSIPU, for its part, maintained complete silence, on the petitioner's applications for migration, not choosing to communicate with the petitioners till the impugned order dated 2nd November, 2018. These factors, by themselves, vitiate the decision, of the GGSIPU, not to recommend the applications, for migration, submitted by the petitioners.

54. In view of the above reasoning adopted by this Court, it becomes unnecessary to burden this judgment by reference to the various decisions, enumerated in para 22 (supra), on which learned Senior Counsel for the respondents placed reliance, as none of the said decisions deal with a similar fact situation.

Conclusion

55. Resultantly, the impugned decision, of the GGSIPU, not to recommend the petitioners, in all these writ petitions, for migration, to the colleges in which they have attended the third semester classes, is quashed and set aside. The applications for migration, submitted by the petitioners pursuant to the Notice dated 9th August, 2018, shall accordingly stand allowed. The petitioners, who were permitted to undertake the third semester examinations, by interim orders passed by this Court in these proceedings, shall be treated as having regularly appeared in the said examinations, and their future advancement shall abide by their performance therein seen in the light of the applicable rules and guidelines in that regard.

56. These directions shall also cover the petitioners, if any, in respect of whom verification, of the documents submitted by them, is still under process. If, however, on such verification, the petitioners are found ineligible for migration, or any lack of bona fides is found, in the application of any of the petitioners, this judgment shall not preclude the GGSIPU from cancelling/withdrawing the permission for migration, granted by this judgement. Needless to say, in any such eventuality, the rights of any student/students, which may be prejudicially affected, to challenge the decision, would remain saved.

57. The writ petitions stand allowed in the above terms and to the above extent, with no order as to costs.