

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Date of Decision : 18.11.2008**

% **W.P.(C) 6939/2008**

ANIKA JAIN

..... Petitioner
Through: Mr. Ashok Aggarwal with Mr. Anuj
Aggarwal, Advocates

versus

UNIVERSITY OF DELHI & ANR

..... Respondent

Through: Mr. S. K. Luthra, Advocate for
respondent no.1.
Ms. Beenashaw Soni, Advocate for
respondent no.2.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may
be allowed to see the judgment?
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported Yes
in the Digest?

VIPIN SANGHI, J. (Oral)

1. The petitioner took admission in the B.Sc Computer Science (Hons.) Course at respondent no.2 college, Keshav Mahavidyalaya, situated at Pitampura, Delhi, an affiliated college of the University of Delhi in the academic session 2007-09. Presently the petitioner is studying in the second year (3rd semester). The petitioner sought migration to Hansraj College by applying to that college. The petitioner was shown as one of the short listed candidates by Hansraj college. Therefore, the said college has shown its readiness to grant admission

to the petitioner upon migration. As per the rules, the petitioner requires a "No Objection Certificate" from the respondent no.2 college. The petitioner applied to respondent no.2 for the same. The reason given by the petitioner for seeking permission to migrate initially was stated to be "personal". The petitioner while repeating her request elaborated by stating that she seeks permission to migrate on account of her "residential problem" as she lives in Shahdara at her cousin's residence as her family stays at Agra. The Principal of the respondent no.2 college has however refused to grant the "No Objection Certificate" allegedly on the ground that there are already less number of students in the respondent no.2 college in the said course. Since the request of the petitioner for grant of NOC by respondent no.2 college has been declined, the petitioner has filed the present writ petition. Notice was issued to the respondents. Counter affidavit has been filed by respondent no.2 college.

2. The stand taken by respondent no.2 college is that the petitioner has not disclosed any reasonable or cogent ground to entertain her application for seeking migration. Reliance has been placed on judicial pronouncements, and in particular the decision in ***Aman Inhhpuniani V. the Vice Chancellor Delhi University***, 1998(44) DRJ (DB) decided on 19.12.1997 which contains the guidelines to be applied while dealing with cases of migration from one college to another in the same University. Respondent no.2 submits that no student has a vested right to migrate from one college to

another. It is submitted that the petitioner took admission in the respondent no.2 college out of her own choice, and that the petitioner was apprised of the policy of the college not to grant NOC to migrate to another college. Respondent no.2 asserts that it has the right to decline the NOC, and as a matter of "policy" it does not permit outward migration in second year.

3. At the time of argument, learned counsel for respondent no.2 has vehemently opposed the writ petition. She submits that as it is, there are only a few students admitted in the respondent-college in the course in question. The course in question is a self financing course, which means that the students have to pay for arranging the infrastructure, lecturers etc. for the said course to be held. If a student is permitted to migrate, the respondent college would not only lose the fees from the student for the remaining sessions, but also the grant received by it from the UGC. The teacher student ratio would also be adversely affected and the same would render the existing staff surplus. Unfortunately, all this is not stated by respondent no.2 in its counter affidavit. No facts and figures have been furnished before the Court. It is also argued that the petitioner has not made out a genuine case to justify seeking of migration to Hansraj college. The submission of counsel for respondent no.2 is that even for purposes of commuting, it is much easier for the petitioner to commute to respondent no.2 college since a direct Metro line is operating from Shahdara to Rohini.

4. The petitioner has filed an additional affidavit disclosing the circumstances leading to her request for seeking migration. It is stated that till the end of February 2008, the father of the petitioner was posted at Agra Divisional office of the New India Assurance Company Limited with whom he is employed. Since then the parents of the petitioner have left Delhi and started living in Agra. The petitioner possibly could not have lived alone at the house in Rohini. She had therefore shifted to her cousin sister's house at 4/2450, Gali No.13, Bihari colony, Delhi-85. The petitioner has placed on record the Voter Identity Card and ration card of her cousin sister, Chhaya Jain along with her affidavit. She has explained the circumstances in which she has described her reason for seeking migration as a "personal problem" in the first application made to the respondent college. She further states that she had done her entire schooling 10+2 from Kulachi Hansraj College. Her father had been working in The New India Assurance Co. Ltd for years. In September, 2005, he got transferred from Delhi to Agra. The petitioner continued to live with her mother at her house in Rohini. However her father who was in Agra became sick due to Dengue fever in October 2006 and due to immense dosage of antibiotics his physical condition deteriorated. He remained on rest for ten months. At his request he was transferred to Delhi for five to six months in September, 2007. However he had to return to Agra, as aforesaid, in early March 2008. Since then her family has shifted to Agra. Along with the affidavit, the petitioner has

also placed on record the certificate issued by The New India Assurance Co. Ltd. which corroborates the statements made by the petitioner in the affidavit. The petitioner further states that she had secured 90.66 percent in PCM (Physics, Chemistry and Mathematics) in the qualifying Senior Secondary School Examination conducted by CBSE. On the basis of the said marks, she could have got admission in various other colleges in the same courses. However, she took admission in the respondent no.2 college, primarily on account of it being close to her place of residence in Rohini. She has placed on record the first cut off list showing the minimum percentage of marks at which admission in the same course had been offered by different colleges for the academic year 2007-2008. From this tabulation, it appears that the petitioner could have got admission in Acharya Narain Dev College, A.R.S.D College, Deen Dayal Upadhyaya College, Indra Prastha College, Ram Lal Anand College and a couple of other colleges with her marks as aforesaid. From the aforesaid, it appears that when the petitioner decided to take admission with respondent no.2, the governing consideration for her was the distance of the college from her place of residence. It cannot be said that she took admission in respondent no.2 college because she was not meritorious enough to get admission in other reputed colleges. The submission of learned counsel for respondent no.2 is that the father of the petitioner had been transferred in the year 2005 itself whereas the petitioner had taken admission in the respondent no.2 college in July 2007. She

submits that there is no reason for the petitioner to have taken admission with the respondent no.2 college, if the story set up by the petitioner is to be believed.

5. The petitioner has explained the circumstances in which her father was transferred to Agra; was taken ill and came back to Delhi, and; has gone back To Agra after recovering only on 1.3.2008. The reasons given by the petitioner for seeking migration in my view appear to be genuine. It cannot be said that the petitioner has merely cooked up the facts, as is sought to be made up by respondent no.2. The Division bench in ***Aman Ichhpuniani*** (supra) has laid down the following guidelines in relation to inter college migration within the same University.

- (i) to migrate from one college of the University to another is not a vested right of student. **A student may seek migration from one College to another, if there be reasons for doing so.** Ordinance-IV confers discretionary power on the principal of the College from which migration is sought to forward or not to forward a prayer by a student seeking migration. **The power is coupled with a duty to act reasonably guided by relevant consideration not by whim or caprice.** The welfare of the student and the institution have both to be kept in view and weighed- if there be conflict between the two;
- (ii) A student has a right to choose an educational institution of his choice while seeking an admission, but such right cannot be exercised with the same vigour and vitality while seeking migration;
- (iii) **A request by student seeking migration for reasons relevant and germane to such prayer may not be denied unless the principal be satisfied of the non-availability of the grounds**

or be of the opinion that the migration will not be in the interest of the student or the interest of the institution outweighs the interest of the student. The choice of the student has to be respected by giving due weight; for no sensible student would ordinarily like to leave the institution which he had chosen to join.”(emphasis supplied).

6. No doubt, the petitioner has no vested right to seek migration. However, if a student is able to disclose good reasons for seeking migration, the college cannot act whimsically and seek to withhold the NOC in an arbitrary manner. The discretion to be exercised by the Principal of the College while considering the application has to be exercised objectively and without any feeling of possessiveness in respect of a student, either on account of the fact that the student provides revenue to the college, or is otherwise a meritorious student. The welfare of the student cannot be ignored and brushed aside and the Principal cannot permit his vision to be blinded by the perceived welfare of his college while considering the application of a student seeking migration. It is not that a student who seeks admission in a college can be bound down as a prisoner or a slave. The aspect whether the migration would be in the interest of the petitioner has not even been considered by the Principal. Hansraj college is a well established college, which had a higher cut off percentage than the respondent college for the course in question and the petitioner is likely to save on time, energy and money in commuting from her present place of residence in Shahdara to Hansraj College, than she would spend in commuting between Shahdara and

Rohini/Pitampura. The interest of the respondent college cannot be said to outweigh the interest of the petitioner. The choice of the petitioner has to be respected. She would not have sought permission for migration, had it not been necessitated on account of her change of residence. The fact that the petitioner is a young girl and has now shifted to Shahdara; the distance between Shahdara and Rohini is much larger, compared to the distance between Shahdara and Hansraj college which is situated in the heart of North Campus, and; the fact that even when the petitioner had earlier sought admission, distance of her college from her residence was a relevant consideration, are all germane considerations and could not have been overlooked by the Principal of respondent no.2 college. Considering the fact that the geographic distance from Shahdara to Hansraj college is much less compared to the distance to Rohini, the submission of learned counsel for the respondent college with regard to the petitioner's commutation cannot be accepted.

7. Having considered the aforesaid aspects, I am of the view that the Principal of the respondent College has not exercised his discretion by taking into account all the relevant considerations and his decision appears to be coloured by the perceived welfare of the respondent college alone. The said decision cannot be sustained and is most arbitrary, and is accordingly quashed. Normally, in a case where an authority is vested with a discretionary power, and the Court finds that the same has not been exercised while keeping the germane

considerations in view, or the exercise is based on extraneous considerations, the Court would require the authority to reconsider the matter in the right perspective. However, in the present case, the respondent college has categorically stated that as a matter of "policy" it does not grant migration to its students. That being the position, and considering the urgency in the matter, in my view no useful purpose would be served in asking the Principal of respondent no.2 to reconsider his decision by applying the correct criteria. Moreover, the Principal of respondent no.2 has already exhibited lack of objectivity and independence in the matter while refusing the NOC on the ground that it is not in the interest of the institution, without addressing the petitioner's concerns.

8. The learned counsel for the petitioner states that the petitioner has already deposited the fees in respect of the second year with the respondent no.2 college. The petitioner is ready and willing to deposit for the third year as well, the fees that the respondent college may lose on account of the petitioner's migration. In my view this offer made by the petitioner is fair and would compensate the respondent no.2 college substantially from the loss of revenue that the college shall suffer on account of losing the petitioner from its rolls. Accordingly, I direct respondent no.2 college to grant NOC to the petitioner upon the petitioner depositing the fee for the third year within a period of one week.

9. Considering the fact that the petition has been pending since September 2008 and during the pendency of the writ petition, I am informed, the cut-off date for seeking migration has expired on 15.10.2008, I direct the respondent University to permit the migration of the petitioner even at this stage in the facts of this case.

Petition stands disposed of. Dasti.

VIPIN SANGHI, J.

NOVEMBER 18, 2008
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