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

+ W.P.(C) 8656/2011 & CM.No.15950/2011

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Judgment dated 12.09.2012

MUDIT AGARWAL AND ANR Petitioner

Through: Mr.Ravinder Sethi, Sr. Advocate with
Mr.Rajiv K. Ghawana, Advocate

versus

GURU GOBOND SINGH INDRAPRASTHA

UNIVERSITY AND ANR Respondent

Through: Mr.Mukul Talwar, Adv. for respondt/GGSIPU
Mr.Laliet Kumar and Mr.Imran Ahmed,
Advocates for respondent no.5

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. Present petition has been filed by petitioners under Article 226 of the Constitution of India seeking a writ, order or direction in the nature of mandamus directing respondent no.1 to allow change of branch of petitioner no.1 from B.Tech (EEE) to B.Tech (MAE) and petitioner no.2 from B.Tech (MAE) to B.Tech (EEE).
2. Rule. With the consent of counsel for the parties, present petition is set down for final hearing and disposal.
3. The necessary facts to be noticed and as set out in the present writ petition are that the petitioner no.1 passed his Class XII examination in the year 2010. Petitioner no.1 appeared for the entrance examination conducted by respondent no.1 and was granted admission in Guru Premsukh College of Engineering in B.Tech (IT) course. Petitioner no.1 has completed his first

and second semester from Guru Premsukh College of Engineering. As per the petition, since the institute, Guru Premsukh College of Engineering, was far away from the residence of petitioner no.1 and his father also required some medical attention, petitioner no.1 through his father approached respondent no.2 institute for migration into B.Tech (Electrical and Electronics Engineering) course under the Intra Migration Scheme of the University. Petitioner no.1 also sought No Objection Certificate from Guru Premsukh College of Engineering which was granted to the petitioner vide letter dated 16.8.2011. On 18.8.2011, respondent no.2 institute applied to respondent no.1 University forwarding the case of petitioner no.1 for migration to respondent no.2 institution against the vacancies existing in the respondent no.2 institute. Respondent no.1 vide its letter dated 23.9.2011 allowed the migration of petitioner no.1 to respondent no.2 institute in B.Tech (EEE) course under second shift, although, petitioner no.1 was allowed to join the classes in respondent no.2 institute w.e.f. 01.09.2011 itself.

4. Petitioner no.2 completed his diploma in Electronics and Telecommunication Engineering from the Institute of Electronics and Telecommunication Engineers in December, 2010. As per the petition, a student, who has completed three years diploma in Engineering, is eligible to seek admission in second year of B.Tech Engineering course under the lateral entry to B.Tech Programme of respondent no.1 University. In view thereof, petitioner no.2 sought admission in respondent no.2 institute in the second year and third semester of B.Tech (Mechanical and Automation Engineering) Course under the Management Quota pursuant to the advertisement published by respondent no.2 in July, 2011. Counselling of the Management Quota was conducted in September, 2011, and petitioner no.2 was admitted in B.Tech (MAE). Since after

attending few classes petitioner no.2 could not cope up with the subjects of Mechanical and Automation Engineering as he had done his diploma in Electronics and Tele Communication Engineering, by an application dated 19.9.2011 petitioner no.2 requested respondent no.2 to shift him to Electrical and Electronic Engineering. Similar application was also made by petitioner no.1 on 19.9.2011 to change his branch from Electrical and Electronic Engineering to Mechanical and Automation Engineering.

5. It is the case of the petitioners that change of branch is permissible subject to intimation and approval of respondent no.1 University. Further according to petitioners, since interchange of branch is permissible and mutual interchange is also possible respondent no.2 allowed the petitioners to attend the classes of their desired branch in which transfer was sought. Meanwhile, respondent no.2 also forwarded the request of the petitioners vide letter dated 26.9.2011 to respondent no.1 University for mutually interchanging the branches of the petitioners. It is further the case of the petitioners that the officials of respondent no.2 institute also met officials of respondent no.1 and as informed by officials of respondent no.2 to the petitioners a verbal permission was granted for mutual interchange of the branches and pursuant to this verbal permission the petitioners were allowed to attend the classes of their desired branches in which transfer was sought.
6. Mr.Sethi, learned senior counsel for the petitioners, submits that the petitioners thereafter continued to attend their classes in their desired branches under a bonafide belief that their admission to the desired branches had been approved by the competent authority. Mr.Sethi further submits that the petitioners also appeared in the practical examination of their respective branches held from 29.11.2011 to 7.12.2011. The date sheet of the third semester theory examination was also released and the

examination was to commence from 12.12.2011. After the completion of practical examination the petitioners approached respondent no.2 on 8.12.2011 for issuance of admit card, however, admit card was denied to the petitioners on the ground that their application for interchange of branch was still pending. The petitioners were provided copies of the letters dated 26.9.2011, 3.10.2011, 10.10.2011 and 7.12.2011, by which respondent no.2 had requested University for mutual interchange of branch. Apprehending that the petitioners would not be permitted to sit in the theory examination, the petitioners knocked the doors of this Court for seeking appropriate directions to the respondents.

7. While issuing notice in this matter, petitioners were permitted to appear in the examination in the stream where they had last attended classes of their choice. It was also directed that the result of the petitioners be kept in a sealed cover and no special equities will flow in their favour. Respondent no.2 institute has supported the case of the petitioners.
8. Mr.Laliet Kumar, learned counsel for respondent no.2, submits that there are two modes of seeking admission in the third semester of B.Tech programme, which is affiliated to respondent no.1 University:
 - “a. Migration from one college of the University/other university under Ordinance 7 of the I.P. University, to any other college of the University after taking no objection certificate from both the colleges.
 - b. The admission under Lateral entry done on the basis of the CET rank by the University, and on the basis of the management quota under Lateral entry for the CET qualified candidates by the Institute, in the manner provided by the Rules in this regard.”
9. Mr.Laliet Kumar, learned counsel for respondent no.2, submits, that it is the case of respondent no.2 institute that the institute received an

application from petitioner no.1 for issuance of No Objection Certificate for the purpose of migration from Guru Prem Sukh College of Engineering where petitioner no.1 was studying in B.Tech (IT Branch) to MAIT. Mr.Kumar further submits that since the course contents of all the streams in the first year of B.Tech programme is the same and therefore there is no prohibition in migrating from one branch to another branch of B.Tech, respondent no.2 institute had issued a No Objection Certificate for B.Tech (Mechanical Branch) in favour of petitioner no.1 as there was availability of seats in the Mechanical branch. Mr.Kumar also submits that respondent no.1 University was required to allocate the seats under Management Quota in lateral entry on pro-rata basis in different branches i.e. Computer Science, Mechanical, ECE, EEE and Information Technology of B.Tech to respondent no.2 institute, however, respondent no.1 University had provided seats only in B.Tech (ECE Branch) and B.Tech (Mechanical Branch) and no seats were provided in other three branches. On account of the anomaly this matter was raised with the University but even then no seats were allotted in the other three branches. It is submitted that during the admission in the subsequent year this anomaly was rectified by the respondent no.1 University. It is also submitted that there were availability of a large number of students in B.Tech. (EEE), however, as no seat for admission in B.Tech (EEE) was provided to the respondent no.2 Institute, all the students were given admission in B.Tech (ECE) and B.Tech (Mechanical) programmes.

10. Mr.Laliet Kumar, learned counsel for respondent no.2, also submits that at the time of giving admission in the 2nd year in a particular branch, the respondent no.1 University does not consider the eligibility quotient i.e. branch of the Diploma course and may allot a different branch to a student based on the CET Rank. Mr.Kumar further submits that petitioner no.2

has passed his eligibility exam in Electrical stream i.e. Diploma in Electrical Engineering after studying for three years and, thus, his natural choice was admission in B.Tech (EEE), however, as there were no seats offered by respondent no.1 University to respondent no.2 institute in the EEE branch, petitioner no.2 was granted/allocated B.Tech Mechanical stream instead of B.Tech EEE stream by respondent no.2 institute. Mr.Lalit Kumar contends that petitioner no.1 was permitted to attend classes in respondent no.2 institute for bonafide reasons and in anticipation of getting approval of his migration to B.Tech Mechanical Branch. Upon receipt of a communication from petitioner no.1 based on his information that the seat in B.Tech (Mechanical) Branch is not available respondent no.2 institute forwarded another letter in continuation of the earlier letter to respondent no.1 University on 20.9.2011 requesting the University to consider the admission of the petitioner no.1 in the Branch available i.e. EEE. Accordingly, respondent no.1 University granted the approval of migration of the petitioner no.1 from Guru Premsukh College of Engineering to respondent no.2 institute from B.Tech (IT Branch) to B.Tech (EEE Branch) on 23.9.2011. Mr.Kumar further contends that after respondent no.2 institute received a communication from the petitioners for mutual interchanging of branch, vide letters dated 26.9.2011 respondent no.2 institute made a request to respondent no.1 University to accord its approval for mutual interchange of branch from B.Tech (EEE) to B.Tech (Mechanical) and from B.Tech Technical (Mechanical) to B.Tech (EEE).

11. It is the stand of respondent no.2 that respondent no.1 University did not reply to the letters of respondent no.2 institute and it was orally communicated to respondent no.2 that the branches of the students would be changed in due course as it was the practice in the earlier years as well.

It is pointed out that a meeting was held in the Office of the Vice-Chancellor of respondent no.1 University on 16.11.2011 where it was orally communicated that as a Court case was pending in respect of migration of one student no final decision would be taken and the University would take a decision after disposal of the pending Court case. However, the officials of respondent no.1 University gave their verbal permission to the petitioners to attend classes. Although minutes of the meeting were drawn but the same were never forwarded to respondent no.2.

12. Reliance is placed by counsel for respondent no.2 to the minutes of the meeting wherein it has been noticed as under:

"It was also informed there is already court case pending in the Hon'ble High Court regarding migration in Mechanical branch, and no further action will be taken by the University till final disposal of the Court case."

13. Learned counsel for respondent no.2 submits that it is the case of respondent no.2 that respondent no.1 University had decided not to take any conclusive decision on account of pendency of a Court case although verbal consent was given. Counsel further submits that respondent no.1 is shifting the blame on respondent no.2, which is untenable and contrary to the record.
14. Present petition is opposed by Mr.Mukul Talwar, learned counsel for respondent no.1 University, on the ground that the petitioners have not come to Court with clean hands as essential and relevant facts have been deliberately suppressed by the petitioners. Mr.Talwar further submits that the petitioners have failed to disclose that the representations received from respondent no.2 institute were duly considered in a meeting at the level of the Vice-Chancellor where the Chairman of respondent no.3 as well as its Director were present. During the meeting the two officials of

respondent no.2 institute were informed that the request of the students had been declined. Mr.Talwar also submits that the Chairman of respondent no.2 institute had agreed during the meeting that petitioner no.1 could not be granted a second migration. Mr.Talwar next contends that the genesis of the writ petition is based on a representation dated 19.9.2011 allegedly made by petitioner no.1 to respondent no.2 institute. In the said representation petitioner no.1 claims to have been allocated the EEE Stream in respondent no.2 institute and he requested that he may be allowed to shift to MAE stream of B.Tech. Mr.Talwar further contends that the said letter is a forged document and an attempt to mislead the Court for the reason that on 19.9.2011 petitioner no.1 was not even a student of respondent no.2 institute and on the said date only an application by petitioner no.1 was pending consideration of respondent no.1 for permission to migrate from Guru Prem Sukh College of Engineering to respondent no.2 institute. Mr. Talwar also contends that petitioner no.1 had desired to migrate from the B.Tech (IT) Branch to B.Tech (MAE) Branch and, thus, on 19.9.2011, petitioner no.1 was still a student of Guru Prem Sukh College of Engineering and could not have possibly made an application dated 19.9.2011, a copy of which has been filed as Annexure P-2 to the writ petition. Mr.Talwar further contends that the stand of petitioner no.1 is further belied by the fact that on 20.9.2011 petitioner no.1 made a representation to respondent no.2 institute stating therein that since no vacancy existed in the said institute in the MAE Branch he would be satisfied in case he is permitted to migrate in the EEE Branch, which letter was forwarded by respondent no.1.

15. Mr.Talwar next submits that any change in the Branch/Stream by the student of the Engineering Programme is allowed only in the third semester by a process known as 'Upgradation'. This process of

Upgradation is governed by the Regulations of 2006 passed by the Academic Council of the University in this regard.” It is further submitted that neither petitioner no.1 nor petitioner no.2 are covered by the said regulation and, thus, neither of the petitioners can take benefit of this process of upgradation. It is next submitted that petitioner no.1 himself has admitted that he was admitted to the respondent no.2 College only in the Academic Session 2011-2012, having migrated from the Guru Prem Sukh Memorial College of Engineering, where the petitioner no.1 had undertaken the first and the second semesters of the B.Tech (IT) programme. Similarly, the petitioner no.2 has also admitted that he had taken admission in the respondent no.2 institute only in the academic session 2011-2012 under the Lateral Entry Scheme. Since neither petitioner no.1 nor petitioner no.2 were students of respondent no.2 college in Academic Session 2010-2011, both the petitioners cannot even be considered for Upgradation. It is also submitted that the process of Upgradation is based upon the marks obtained by the students of a particular institute in the first semester of the B.Tech Programme. The change of stream/branch is allowed strictly as per a merit list prepared by the Institute based upon the marks obtained by the students/applicants in their first semester examinations. Mr.Talwar further submits that the regulations do not contemplate a mutual exchange *inter se* of branches/streams by two students of the Engineering programme and such a procedure if allowed shall amount to totally bypassing merit and would be contrary to the rules of fairness and equity. In view thereof the counsel for respondent no.2 prays that present writ petition be dismissed.

16. Mr.Sethi, learned senior counsel for the petitioners, has strongly urged before this Court that since the petitioners were permitted by the college to attend classes and they were not aware of the *inter se* communications

between respondent no.1 and respondent no.2. The petitioners are bonafide students and in their desire to pursue a course of their choice they had sought migration. Petitioner no.1 had initially sought migration on account of distance between his house and the college and also on account of the fact that he wanted to spend more time with his father who was ill. Senior counsel further submits that since the petitioners were allowed to attend classes of their desired stream the petitioners presumed that respondent no.2 institute had taken necessary permission and only then would they be permitted to attend the classes. Mr.Sethi has vehemently denied that the letter dated 19.9.2011 is a forged document and submits that respondent no.1 University is only trying to distract the attention of the Court to cover up their own deficiencies, lapses and delay. Mr.Sethi further denies that the minutes of the meeting were never brought to the notice of the petitioners.

17. In response to the submission made by Mr.Talwar with regard to letter dated 19.9.2011, learned senior counsel for the petitioners has clarified that petitioner no.1 had learnt that vacancies were available in the EEE Branch and accordingly in July, 2011, he made an application for migration to respondent no.2 institute and pursuant to his making an application he was allowed to join the classes and a formal permission was also granted on 23.9.2011. Counsel further submits that petitioner no.1 was allowed to join the classes of respondent no.2 institute w.e.f. 1.9.2011 itself. After attending the few classes in the EEE Branch petitioner no.1 made a request to the institute for change of branch from EEE to MAE to respondent no.2, but respondent no.2 institute expressed its inability as no seat in MAE was available and therefore letter dated 20.9.2011 was written by petitioner no.1. Subsequently petitioner no.1 learnt that petitioner no.2 had made a request for transfer from MAE to

EEE and accordingly their request was forwarded by respondent no.2 to respondent no.1 on 26.9.2011. Having regard to the fact that mutual interchange of branches was allowed, a verbal assurance was given to the Chairman of respondent no.2 institute that written permission would be granted later on and the students can be permitted to attend classes in their respective branches.

18. Mr.Laliet Kumar, learned counsel for respondent no.2, submits that mutual interchange of branches was not a practice, which was unknown, and such permissions were granted in the past also and only keeping in mind the past practice were the petitioners permitted to attend classes in their respective streams and with a view to save their careers.
19. I have heard learned counsel for the parties and considered their rival contentions. The basic facts of the case are not in dispute that petitioner no.1 was initially a student of Guru Premsukh College of Engineering. Petitioner no.1 applied for migration from B.Tech (Electrical and Engineering) course to respondent no.2 institute. A No Objection Certificate was granted by Guru Premsukh College of Engineering and respondent no.1 and by a letter dated 23.9.2011 allowed the migration of petitioner no.1 to respondent no.2 institute in B.Tech (EEE) course under second shift. It is the consistent stand of the petitioners as also respondent no.2 institute that soon thereafter a request was made by petitioner no.1 for transfer, in anticipation of permission he started attending classes in respondent no.2 institute w.e.f. 1.9.2011.
20. Although the counsel for respondent no.1/ university has raised a doubt with regard to the authenticity of letter of 19.09.2011 addressed by petitioner no.1 to respondent no.2/ college, however, communication issued the very next date has not been denied. Based on the request of the petitioner no.1, seeking migration from Guru Premsukh College of

Engineering to the respondent no.2 (Maharaja Agarsen Institute of Technology), the respondent no.1/ university allowed the request of petitioner no.1 for migration, by communication of 23.09.2011. What is surprising and alarming is that at the request of petitioner no.1, the respondent no.2 even prior to migration having been allowed, had permitted petitioner no.1 to join the classes pending formal permission. Neither there is any explanation for the undue haste nor the reason why such a request was acceded to. After the petitioner no.1 joined the respondent no.2/ institute, the petitioner no.1 made a request to the institute for change of branch from B.Tech. (EEE) to B.Tech. (MAE), but the respondent no.2/ institute expressed its inability to exceed to such a request, as no seat in B.Tech. (MAE) was available. In the meanwhile petitioner no.2 also made a request for transfer from B.Tech. (MAE) to B.Tech. (EEE) and the request of both the petitioners were forwarded to the respondent no.1 on 26.09.2011 on the premise that mutual interchange of branches was allowed. While it is the case of the respondent no.2 that verbal permission was given, this fact is denied by respondent no.1. It is the case of the petitioners and respondent no.2 that based on this verbal permission, the petitioners were permitted to join classes in the desired branches. I am of the view that respondent no.2, institute should not have allowed the students for mutual interchange of branches without prior permission of the university, but what is equally surprising is that the university did not respond to letters addressed by respondent no.2 dated 26.09.2011, 03.10.2011, 10.10.2011 and 07.12.2011 nor the University declined the request of the respondent no.2. In the letter dated 26.09.2011 addressed to the Joint-Registrar (Academics) of respondent no.1, the respondent no.2 requested the university that the branches of the respondents may be mutually interchanged. Letter of 26.09.2011 is

reproduced below:

“Ref. No. MAIT/GGSIPU/2011

Dated: 26.09.2011

To,

The Jt. Registrar (Academic)
GGSIP University
Sector 16-C, Dwarka,
New Delhi -110 075.

Sub.: Request for Branch Interchange of 2 students in 2nd year B.Tech.

Sir,

Mr.Mukesh Kumar has been admitted in the Institute in B.Tech. 2nd year, 2nd Shift (Mechanical and Automation Engineering) under Lateral Entry Management Quota Admissions. He is interested in shifting to Electrical and Electronics Engg. Branch. His application for the same is enclosed.

Mr.Mudit Agarwal has been admitted in the B.tech. 2nd year, 2nd Shift (Electrical and electronics Engg.) through migration. He has given an application for changing his branch to Mechanical and Automation Engg.

It is requested that the branches of Mr.Mukesh and Mr.Mudit Agarwal may be mutually interchanged.

Thanking you,

Sincerely yours,

(Prof. M.L. Goyal)

Director”

21. Communication dated 03.10.2011 is reproduced below:

“Ref. No. MAIT/GGSIPU/1/2011
2011

Dated: October 3,

Dear Sh.Joshi,

Kindly recall that I met you in the afternoon of September 26, 2011 and again on September 30, 2011 regarding request from Maharaja Agrasen Institute of Technology to allow mutual exchange of branch, between the two students Mr.Mukesh Kumar and Mr.Mudit Agarwal.

It had explained that Mr.Mukesh Kumar has been admitted in our institute in B.Tech. 2nd year, 2nd shift Mechanical and Automation Engineering branch under lateral entry, management quota. He has requested for change of branch from Mechanical and Automation Engineering to Electrical and Electronics Engineering. The reason for the request is that he has done his diploma in Electrical and Electronics Engineering.

Simultaneously another student Mr.Mudit Agarwal admitted in B.Tech., 2nd, 2nd shift Electrical and Electronics Engineering has requested change to Mechanical and Automation Engineering, as he had no background of Electrical and Electronics Engineering in the first year.

Consequently their application were forwarded vide letter no.MAIT/ GGSIPU/ 2011 dated 26/09/2011 copy enclosed. A copy of request of the two students for mutual exchange is also enclosed.

The matter was discussed in your office at length when S/Sh.Nitin Malik, Jt.Registrar and Dr.Parvin Chandra, Controller Examination were present. It emerged that since it is case of mutual exchange between two students who are already admitted and there is a logic and rational behind the request, there should no objection. I may also mention that there is number of precedents where such mutual exchange has been allowed in the past.

I therefore once again request you to kindly agree and accord your approval at the earliest. May I take the liberty to point out that denial of a mutual exchange request would cause unnecessary stress

on the both the students and adversely affect their studies and their future.

Kindly have the matter considered at the earliest.

Yours sincerely

(Dr.Nand Kishore Garg)
Chairman

Encl: As above

Sh.B.P. Joshi,
Registrar
Guru Gobind Singh Indraprastha University
Dwarka, New Delhi”

22. Both communications bear the stamp of receipt of the University.
23. By a subsequent letter dated 10.10.2011, the respondent no.2/institute again pleaded to the University to allow the mutual exchange, as it in no way violated the rules and norms and also in the past such a request had been allowed. Operative portion of the letter dated 10.10.2011 reads as under:

“Ref. No. MAIT/GGSIPU/1/2011
2011

October 10,

Dear Prof. Bandyopadhyay,

xxx

We feel that it is only equitable and fair that mutual exchange is allowed. The mutual exchange is in no way violating any rules nor norms. Request is based on a clear rationale and is in academic interest of the students. Denial of mutual exchange shall have an adverse bearing on the studies and academic future of the two

students. It is already causing unnecessary stress to the students. In the past such requests have been allowed. Keeping the welfare and future of the students, the request deserves to be allowed.”

24. By letter dated 07.12.2011 again the request was reiterated and reference was given to earlier letters and discussions held with the Registrar and with the Vice-Chancellor. There is no explanation by the University as to why the letters were not replied to and in case the university was of the view that the branches could not have been mutually interchanged, the request of the respondent no.2/ institute should have been declined at the first opportunity available or at least the respondent no.2/ institute should have been cautioned that till a final decision is taken in the interest of the career of the students they should not be permitted to attend classes of their choice.
25. While Mr.Talwar, counsel for the University has drawn the attention of the court to the Minutes of Meeting dated 16.11.2011, wherein it has been recorded that mutual migration will result in second migration of Mudit Aggarwal (petitioner no.1 herein), which is not permissible and will also result in migration of a newly admitted student in the first year. In this meeting reference of the letter of 01.11.2011 as also letter of 26.09.2011 has been given. It has also been noticed that the case was discussed when the Hon’ble Vice Chancellor had called the Chairman of respondent no.2, who agreed that there was no provision for second migration and also that the students admitted under the management quota (petitioner no.2) is lateral entry through CET and further in view of a court case pending in the High Court regarding migration in mechanical branch, no further action would be taken by the University till final disposal of the court case.
26. According to Mr.Talwar, the minutes of this meeting would show that in

fact University had declined the request of respondent no.2 /institute and the petitioners. Copies of the minutes have been placed on record. In the minutes of 16.11.2011 it was also recorded as under:

“At the end of the meeting, it was agreed to Chairman, MAIT that the University is not allowed to do 2nd migration of a indl and for future college will not issue NOC without vacancies.

The case being finally discussed and decided in the Chamber of Hon’ble Vice Chancellor be filed with no future action required on this issue.”

27. On perusal of the minutes of the meeting, it cannot be said that the University categorically declined the request of the institute for the reasons that although it recorded that a second migration is not permitted to petitioner no.1 and petitioner no.2 has been admitted to the first year, but the minutes also recorded that on account of a court case pending in the High Court regarding migration in mechanical branch, no further action will be taken by the University till final disposal of the court case. In the concluding portion the institute was directed that in future college will not issue no objection certificate without vacancies. Does this mean that the act of the college with respect to the matter in dispute stood condoned?
28. In the concluding portion of the Minutes it has been recorded that the case was finalized, discussed and decided in the Chamber of the Hon’ble Vice-Chancellor be filed with no further action required on this issue. While counsel for the petitioners and respondent no.2 submit that this amounted to acceptance of the migration, whereas counsel for the respondent no.1 submits that it amounts to declining the request.
29. In the background of the facts of this case, the short question which comes

up for consideration is whether the petitioners, who have been attending classes since September, 2011 as per the subject desired by them and the respondent no.2 having permitted them to sit for the practical examination, should be granted migration or not. While it is the stand of the university that the petitioners do not fulfill the eligibility condition for grant of migration, it is the case of respondent no.2/ institute that the students were permitted to sit in their respective classes on the basis of the verbal assurances. Neither the colleges and the universities can function on verbal assurances nor the lives of the students and their academic careers can be decided casually by the University. In case the University was of the opinion that mutual intra-migration is not permissible, the same should have been declined at the first opportunity available and the fate of the students should not have been left hanging. In the communications addressed by the respondent no.2 / institute to respondent no.1/ university full details were provided, but expeditious action was not taken even after the meeting between the parties and a final letter declining the request was also not issued. It has also not been explained that in case the university was of the view that the fraud had been played and migration was allowed by the institute for extraneous reasons in such case the university should have taken action against respondent no.2 and on account of any inaction on the part of the respondent no.1 and 2, the students cannot be made to suffer.

30. In the peculiar facts and circumstances of this case and having regard to the fact that the students have been permitted to attend classes of their choice since September, 2011, they have initially appeared in the practical examination and thereafter in the semester examination by the orders of this court, the present petition is allowed. It would be open for the University if deems appropriate to follow due process of law and take

such action as deem fit against respondent no.2 in case there is sufficient material before them that they have granted migration to the students for extraneous reasons. Respondent no.2 is also cautioned that they should not permit students to attend classes without a formal order exceeding to the request of migration and it should be brought to the notice of the students that migration can only be granted by the university and not by the institute / college, so that the students are not misled. No costs.

G.S.SISTANI, J

SEPTEMBER 12, 2012
msr/ssn