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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment Reserved on : 5th July, 2013
Judgment Pronounced on : 8th July, 2013

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WP(C) 1626/2012

RAJNI AGARWAL

....Petitioner

Through : Dr.Sukhdev Sharma, Adv.

versus

UOI & ORS.

...Respondents

Through : Ms.Shakshi Agarwal, Adv. for
Mr.Himanshu Bajaj, Adv. for R-1.
Mr.K.B.Upadhyay and Mr.S.N.Tripathi,
Advocates for respondent nos.2 & 3.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S. SISTANI, J.

1. The petitioner is stated to be a resident of Himachal Pradesh. She appeared for the entrance test for seeking admission to the Himachal Pradesh Branch of National Institute of Fashion Technology (NIFT). Having succeeded in the written examination she was called for counselling and thereafter granted admission to the Accessory Designing course in the year 2009. The petitioner appeared in the Semester-I Examination Foundation Programme (Accessory Designing) (in July-December 2009), promoted to Semester-II and appeared in the Semester-II Examination (January to June 2010) and thereafter promoted to Semester-III.
2. On 06.08.2010 at the request of the petitioner, she was allowed inter-disciplinary transfer from Accessory Designing to Textile Designing.

Petitioner also signed an undertaking before appearing in Semester-III Examination (July to December 2010). Having succeeded in the examination she was promoted to Semester-IV but she was declined permission to appear in the Semester-IV Examination to be held in May 2011 on the ground that inter discipline transfer was not permitted. It is the case of the petitioner that after a lapse of one year, on 10.05.2011 she was informed by the respondents that she along with similarly situated students were allowed to attend classes for Semester-IV as an interim measure and they would be allowed to appear in the end-term examination or re-examination only if the Board of Governors (BOG) approved their permanent transfer otherwise they would be required to study second year (i.e. Semester-III and Semester-IV) in their original discipline in the session 2011-2012 as per the undertaking given by them.

3. Counsel submits that the petitioner was allowed to appear in the Textile Design Examination III Semester i.e. the course of transfer and was promoted to Semester-IV and also permitted to attend the classes in Semester-IV. Counsel for the petitioner has strongly urged before this Court that all efforts made by the petitioner to contact the Joint Secretary and Director General (NIFT) to decide their case expeditiously went in vain. Finally, the petitioner received a letter from the Registrar on 19.07.2011 by which the petitioner was informed that after careful deliberations the Board of Governors did not accept her request for transfer from Accessory Designing to Textile Designing. Petitioner was directed to join Semester-III of Accessory Designing as per the undertaking. Counsel for the petitioner further contends that the Board of Governors had given their decision after a lapse of one year when the petitioner had already passed Semester-III Examination and promoted to Semester-IV. She not only attended classes but even appeared in the mid-

term examination of Semester-IV. Counsel submits that since a decision was not taken within a reasonable period a vested right has been created in favour of the petitioner and further it has caused a loss of one year in her career besides harassment. It is also contended that some other similarly situated students were transferred from Accessory Designing to Fashion Communication in the same institution whereas the request of the petitioner has been denied.

4. Counsel for the petitioner has relied upon M/s.Moti Lal Padampat Sugar Mills Co. Ltd. v. State of Uttar Pradesh & Ors. AIR 1979 SC 621, in support of his contention that principles of promissory estoppel would be applicable. Para 24, relied upon by the petitioner reads as under:-

“The law may, therefore, now be taken to be settled as a result of this decision, that where the Government make a promise knowing or intending that it would be acted on by the promisee and, in fact, the promise, acting in reliance on it, alters his position, the Govt. would be held bound by the promise and the promise would be enforceable against the Govt. at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution. It is elementary that in a republic governed by the rule of law, no one, howsoever high or low, is above the law. Everyone is subject to the law as fully and completely as any other and the Government is no exception. It is indeed the pride of constitutional democracy and rule of law that the Government stands on the same footing as a private individual so far as the obligation of the law is concerned; the former is equally bound as the later.”

5. Counsel submits that the petitioner was forced to sign the undertaking as there were unequal bargaining powers between the petitioner and the respondent and submits that in view thereof the undertaking submitted by the petitioner cannot be enforced or relied upon by the respondent.

Counsel further submits that the decision taken by the Board of Governors is illegal and arbitrary and the Court is well empowered to issue appropriate directions to ensure that Rule of Law prevails. Reliance is placed on Brij Mohan Lal v. Union of India & Ors. 2012 (6) SCC 502 wherein it was held as under:-

“189. Keeping in view its constitutional duty, the constitutional rights of citizens of this country at large and with reference to the facts of a given case, this Court may be duty-bound to amplify and extend the arm of justice in accordance with the principle *est boni judicis ampliare justiciam non-jurisdictionem*. The argument that the matters of policy are, as a rule, beyond the power of judicial review has to be dispelled in light of the consistent view of this Court. This Court would be required to take unto itself the task of issuing appropriate directions to ensure that the rule of law prevails and the constitutional goals are not defeated by inaction either when the law requires action or when the policy in question is so arbitrary that it defeats the larger public interest.”

6. Counsel for the respondent submits that the NIFT was set up in the year 1986 for the purposes of imparting high quality of education in the field of fashion technology and ancillary areas. The said institute is a recognized premier institute of the country and operates under the aegis of the Ministry of Textiles, Government of India. It is a well-reputed institute, nationally and internationally, where exemplary standards of education are imparted and maintained. The said institute is a national institution with fifteen centres. Counsel for the respondent has further highlighted that the NIFT headquarter is at Delhi, and there are fifteen regional centres in Delhi, Mumbai, Chennai, Gandhinagar, Kolkata, Hyderabad, Rae Bareli, Bangaluru, Bhopal, Kannur, Shillong, Kangra,

Jodhpur, Patna and Bhubaneswar. The fifteen NIFT centres are directly under the supervision and control of the NIFT headquarters where all policies governing NIFT are formulated and implemented. It is further submitted by the counsel for the respondent that the respondent is governed by the National Institute of Fashion Technology Act, 2006.

7. Counsel for the respondent further submits that the policies of the respondent have been formulated as per the provisions of the Act and the petitioner has failed to point out any cogent reason which would require interference with the functioning, order or policies of the respondent. Counsel further submits that under Section 7 of the NIFT Act 2006 the Board of Governors have been empowered inter-alia to frame Rules and Regulations for managing the institution. Exercising the said power the Board of Governors have approved the student inter-discipline transfer policy. The policy is well-thought out and well-laid policy by the Board of NIFT.
8. Counsel for the respondent further submits that in the month of March 2010 the petitioner had requested for inter-discipline transfer from Accessory Designing to Textile Designing and at that point of time there was no policy for inter-discipline transfer. On 03.08.2010 the request of the petitioner for inter-discipline transfer from Accessory Designing (III) to Textile Designing (III) was received on compassionate grounds along with four other similar requests. In the absence of any policy with regard to inter-discipline transfer and pending consideration of her request for transfer, the petitioner was allowed to attend classes in the course of her choice at her request and on the basis of an undertaking furnished by her. In the undertaking the petitioner stated that she had been explained the consequences she would have to face in case the request for permanent transfer to the Textile Designing is not approved by the Board of

Governors and in such a case she would lose one complete academic year. The petitioner agreed to face the consequences and furnished the undertaking. Counsel further submits that the four other students who had given similar undertakings have not challenged the order and honoured the commitment made by them. It is submitted that delay, if any, is neither intentional nor deliberate. The request of the petitioner was considered and examined at all levels by the Board of Governors. Counsel contends that in the meeting held on 12th July 2011 the Board of Governors observed as under:-

“The Board observed that these four cases do not fulfil the conditions of the NIFT Policy for inter discipline transfer and hence their requests cannot be accepted. Further, if these students are allowed permanent inter discipline transfers on compassionate grounds as a special case, as sought by them, it would be unfair to students more meritorious than them who were not given the opportunity to apply similarly and would set a wrong precedent in a premier educational institute.

In view of the above, the Board rejected the requests of extension of inter discipline transfer of these students and decided that they should join 3rd semester in their parent department as per the undertaking.”

9. It is also the case of the respondent that in case the prayer of the petitioner is accepted it would cause serious impediment in running of the institute and granting relaxation to the petitioner would be extremely unjust to other similarly placed students. Counsel submits that the Board of Governors considered the case of the petitioner and four other similarly situated students and observed that the said cases did not fulfil the

conditions of NIFT policy for inter-discipline transfer. Counsel further clarifies that after completion of Semester-III the petitioner submitted her request for extension of her transfer and before her request could be processed she continued to attend the Textile Design classes in Semester-IV. It is submitted that the petitioner had taken a calculated risk knowing fully well that in case her request is declined she would have to be reverted back to the second year of Accessory Designing.

10. It is further submitted by counsel for the respondent that after submitting an express undertaking the petitioner is estopped from filing the present writ petition.
11. The respondent has also filed an additional affidavit where it has been categorically stated that respondent did not invite applications for inter-discipline transfer and it is the petitioner who approached the respondent for inter-discipline transfer. Since there was no policy on such transfers such applications were never invited. The petitioner had made the application on her own on 29th March 2010 seeking transfer from Accessory Designing to Textile Designing on the ground that due to wood dust she gets attacks of allergic bronchitis. Her request was considered in the hope that the Board of Governors of NIFT would consider the same. Petitioner was asked to furnish an undertaking which she did as there was no certainty that her request would be considered favourably. It is also clarified that the petitioner was permitted to attend classes of Textile Designing only for Semester-III, however, after the inter-discipline transfer policy came into force on 25.08.2010 petitioner was informed about the same. Counsel submits that the petitioner continued to attend classes in Semester-IV at her own risk. Counter further contends that even though the petitioner was not eligible for Inter Discipline Transfer as per the new Inter Discipline Transfer policy, the petitioner on her own

volition took a chance of mid-course change in the course and submitted another undertaking on 01.03.2011.

12. On the ground of discrimination counsel for the respondent has drawn the attention of the Court to para 4 of the additional affidavit which reads as under:-

“4. That the petitioner has raised a contention that NIFT had allowed IDT prior to 2011-12 i.e. when there was no policy on IDT prior to 25.08.2010. NIFT did not have a policy of IDT. Prior to 25.08.2010 subject to availability of vacancy DG NIFT approved all cases on the basis of merits of the case. As per the records the case of Mr.Parthipan K. was considered in the absence of the policy as a special case by the DG in view of the availability of the seats in the desired discipline and due to the fact that the student has lost one year. Tania Adlakha was allowed on extreme medical grounds. Many similarly placed students namely D.Giri Prasad, Priyanka Jena, Poonam Sanghani, etc. were rejected due to non-fulfilment of the conditions of the NIFT IDT policy. Further, in the absence of the IDT Policy, during 2006-2009, IDT (Inter Discipline Transfer) of many students was allowed on the basis of vacancy position and SGPA (Semester Grade Point Average). Therefore, the petitioner cannot be compared with other those students.”

13. Counsel has submitted that the case of the petitioner does not fall in any of the grounds for inter-discipline transfer of the course.
14. I have heard the counsel for the parties and considered their rival submissions. The submissions of the counsel for the petitioner can be summarized as under:-

A. The petitioner was allowed inter-discipline transfer from Accessory Designing to Textile Designing and was allowed

to attend classes in the third semester, allowed to appear in the examination of the third semester and permitted to attend classes of the fourth semester, hence a vested right has been created in favour of the petitioner.

- B. There is discrimination on the part of the respondent as similarly situated persons have been allowed inter discipline transfer.
- C. Undertakings cannot be relied upon by the respondent as there was unequal bargaining power possessed by the respondent.
- D. On account of the medical condition of the petitioner she cannot continue the Accessory Designing on account of allergy.

15. The argument of the respondent can be summarised as under:-

- A. There is no infirmity or illegality in the decision rendered by the Board of Governors;
- B. The High Court would not ordinarily interfere in the functioning and policy of an educational institution;
- C. The petitioner had taken a calculated risk by attending classes in the Textile Designing knowing fully well that no policy was in place which is evident from the undertakings filed by the petitioner and in light of the undertaking given by the petitioner, the petitioner is estopped from seeking the relief prayed for;
- D. The Court cannot take a sympathetic view of the matter as it would amount to misplaced sympathy;

- E. No discrimination on the part of the respondent; and lastly,
- F. The petitioner has failed to file a single document on record to show that she is suffering from any allergic disease or asthma.

16. It is not in dispute that the petitioner made a request seeking transfer in the third semester from Accessory Designing to Textile Designing. The request of the petitioner was considered and petitioner was asked to file an undertaking. The undertaking dated 6.9.2010 reads as under:-

“It has been explained to me and I fully understand the NIFT Policy that does not permit mid course change in discipline. Based on this clear understanding, I have carefully considered the matter and I would still like to try for change of the discipline. But in the eventuality that NIFT Policy, as may be formulated hereafter still does not permit any change of discipline, I shall revert back to my parent department and shall have no claim on the basis of this temporary inter discipline transfer to department of my choice. Finally, I have been explained and fully understood that after one semester if I return to my original department, I would be losing one complete year because I would need to complete the 3rd Semester in my parent department.

I hereby undertake that I have read and understood the contents of the undertaking and I am aware of its implications.”

17. A perusal of the undertaking would show that the petitioner had been explained that the policy of NIFT does not permit mid course change in discipline. Petitioner had also informed that in the eventuality that NIFT Policy which may be formulated does not permit any change of discipline, she would be reverted back to parent department and would have no claim on the basis of temporary inter-discipline transfer. Petitioner was also

made aware that if she would return to her original department she would be losing one complete year. Based on the undertaking submitted by the petitioner it is crystal clear that the petitioner was well aware of the facts and she has decided to take a calculated risk in the matter.

18. The relevant portion of the inter-discipline transfer policy reads as under:-

“1) Requests for Inter-discipline transfers can be made only after declaration of results at the end of the second semester and before commencement of the third semester.

2) Inter-discipline transfers would be dependent on the seat-vacancy position and would be subject to the condition that supernumerary increase in seats would not increase to more than 5% of the sanctioned strength, under any circumstances. Simultaneously, under no circumstances would the parent department be allowed to drop to a strength less than 90% of its sanctioned/enrolled strength (whichever is less). For purposes of calculation the sanctioned strength of each discipline and batch per Centre shall be 30.

3) In case of vacancies existing in any disciplines for which several request(s) have been received, the inter-discipline transfer would be considered only under the following heads:

(i) Extreme Medical grounds : requests would need to be supported by documentary evidence. NIFT would retain the right to verify and/or reject the evidence without assigning any reasons.

(ii) Merit:

(a) The student(s) with the highest CGPA would be considered for the above.

(b) If the number of students applying for inter-discipline transfer exceeds the number of vacancies, the student(s) obtaining same CGPA, but with higher rank in the NIFT entrance examination shall

be given preference.

(c) No discipline change would be allowed to any student who has repeated any semester of the Foundation Program due to academic failure to clear the same.

4) Inter-discipline transfers would be considered only within the same centre.

In case the above conditions are not satisfied, no case of change of stream/discipline shall either be considered or allowed.”

19. The case of the petitioner was considered by the Board of Governors and the documents placed on record would show that based on the policy formulated by the Board of Governors, the petitioner could not have been granted inter-discipline transfer. Counsel for the petitioner has strongly urged before this Court that in case the petitioner is not granted inter-discipline transfer not only would she lose one year but she may not be in a position to carry out the course on account of the medical reasons. There is no force in this submission made by counsel for the petitioner for the reason not a single document has been placed on record before this Court in support of the plea that the petitioner was allergic either to saw dust or Plaster of Paris. The Court cannot lose track of the fact that in the application made before the institute the petitioner had stated that she is allergic to saw dust and in the written submission made it is stated that she is allergic to Plaster of Paris while in the writ petition there is mention of neither. In the absence of any supporting documents the petitioner cannot derive any benefit of the policy which permits inter-discipline transfer on medical grounds. In fact, as per the policy the inter-discipline transfer is permitted in extreme medical grounds. In the case of Guru Nanak Dev University v. Parminder Kumar Bansal & Anr. (1993) 4 SCC 401, the

Supreme Court observed that such interim order is subversive of academic discipline. The relevant observations are as under:-

“We are afraid that this kind of administration of interlocutory remedies, more guided by sympathy quite often wholly misplaced, does no service to anyone. From the series of orders that keep coming before us in academic matters, we find that loose, ill-conceived sympathy masquerades as interlocutory justice exposing judicial discretion to the criticism of degenerating into private benevolence. This is subversive of academic discipline, or whatever is left of it, leading to serious impasse in academic life. Admissions cannot be ordered without regard to the eligibility of the candidates The Courts should not embarrass academic authorities by themselves taking over their functions.”

20. Similar view was also taken in CBSE v. Nikhil Gulati & Anr. (1998) 3 SCC 5, it was said by the Supreme Court that, *that unless the High Court can justify its decision on principle and precept, it should better desist from passing such orders, for it puts the ‘Rule of Law’ to a mockery, and promotes rather the ‘Rule of Man’.*
21. In the case of Adarsh Shiksha Mahavidyalaya & Ors. v. Subhash Rahangdale & Ors. (2012) 2 SCC 42, the Supreme Court held that “*the cases filed by students.... with the hope that at the end of the day they will be able to get favourable order by invoking sympathy of the Court, have choked the dockets of various High Courts and even this Court. In future, the High Courts shall not entertain such prayers.*”
22. Since the case of the petitioner was considered in light of the policy framed by the respondent and in the facts of her case the petitioner has been unable to satisfy this Court that there are justifiable reasons for judicial review on this matter, I find no ground to entertain the present

petition. It has been repeatedly held that Courts should not substitute its own view over the expertise of an academic body and Courts should leave the decisions of academic matters to experts who are more familiar with the problems they face than the courts generally can be. The Supreme Court while following its earlier decision of the Constitution Bench in University of Mysore v. C.D.Govinda Rao AIR 1965 SC 491 has held in Tariq Islam v. Aligarh Muslim University & Ors. (2001) 8 SCC 546 that “normally it is wise and safe for the Courts to leave the decision of academic matters to experts who are more familiar with the problems they face than the courts generally are”.

23. There is also no force in the submission made by counsel for the petitioner that the petitioner has been discriminated as in the additional affidavit which has been filed by the respondent a cogent explanation has been given in para 4 of the counter affidavit which has been extracted above. Statement has also been made by counsel for the respondent during the course of the hearing that no inter-discipline transfer has been permitted to any student placed similar to the petitioner. In fact, four students who had applied along with the petitioner had gracefully honoured the undertaking given by them. Counsel for the petitioner has also urged before this Court that the principles of promissory estoppel would apply to the facts of the present case. This submission of the petitioner is without any force. It is the petitioner who made an application seeking inter-discipline transfer. Petitioner was made aware that inter-discipline transfer is not permitted. Petitioner was also informed the consequences in case her request is declined which is evident from the undertaking. The undertaking would show that petitioner was fully aware of the consequences. Petitioner having taken the calculated risk cannot seek refuge under the principles of promissory

estoppel as the same are not applicable to the facts of the present case. The submission that the respondents were in unequal bargaining power can also not be appreciated as it is the petitioner who wanted inter-discipline transfer and was willing to take a chance and not that the respondent forced the petitioner to attend classes in the third semester and the fourth semester. For the reasons stated above the present petition is without any merit and the same is dismissed. However, it is made clear that the petitioner would be permitted to complete her course irrespective of the fact whether the span period has come to end or not. Needless to state, the said relief is granted to the petitioner in the peculiar facts and circumstances of the present case.

(G.S. SISTANI)
JUDGE

JULY 08, 2013
dk