

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

% Date of Decision: 09.10.2013

+ W.P.(C) 5686/2013 & CM 12569/2013
RINKU RATHI THROUGH: HER FATHER

..... Petitioner

Through: Mr. Yogesh Sharma, Adv.

versus

ADITI MAHAVIDYALAYA COLLEGE AND ANR

..... Respondent

Through: Mr. MJS Rupal, Adv. for UOD
Mr. Anmol Singh, Adv. for R-1

CORAM:
HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (ORAL)

The petitioner before this Court is a student of respondent no.1- Aditi Mahavidyalaya College situated at Aachandi Road, Bawana, Delhi. Being desirous of seeking migration to Janki Devi Memorial College, another college affiliated to respondent no.2 – University of Delhi, the petitioner applied to the aforesaid college on 29.7.2013 seeking NOC in this regard. No reply to the aforesaid application was, however, received by the petitioner from respondent no.1- Aditi Mahavidyalaya College. Being aggrieved, the petitioner is before this Court seeking the following reliefs:

- a) Issue an appropriate writ of Quo warranto or any other appropriate writ in the facts and circumstances of the case to the respondent no.1 as for what valid reasons the petitioner is

being denied the withdrawal of admission/ issuance of transfer certificate/ college leaving certificate from the institution of respondent no.1 and/or

- b) issue a writ of mandamus or any other appropriate writ in the facts and circumstances of the case with directions to the respondent no.1, 2 to take appropriate steps in pursuance of the withdrawal of admission/ issuance of transfer certificate/ college leaving certificate of the petitioner in the desired course for which the petitioner is eligible in all requisite manner.

2. The learned counsel appearing for the respondent no.1 states that the Staff Council of the College has taken a general decision not to grant any NOC for migration of the students to another college and therefore the request of the petitioner could not be acceded to. However, admittedly no order on the aforesaid application of the petitioner has been passed by the college till date.

3. In W.P(C) No.5413/2013 decided by this Court on 10.9.2013, the petitioner before this Court had applied to this very college i.e. respondent no.1- Aditi Mahavidyalaya College for issue of NOC for taking admission to Guru Gobind Singh College, another college affiliated to Delhi University on the ground that since she was frequently falling sick it would not be possible for her to commute everyday for about 60/70 kms. The said application was declined on the ground that as per the Staff Council decision, no migration was allowed. Being aggrieved, the aforesaid petitioner approached this Court seeking

direction to the aforesaid college to issue NOC and college leaving certificate to her. Allowing the writ petition filed by her, this Court, *inter alia*, held as under:

“3. Admittedly, the rules framed by Delhi University do not prohibit migration from one college to another college affiliated to the said university, in the second year of the course being pursued by the student. However, no such migration can be allowed by the university unless migration certificate is issued by the college in which a student is studying and NOC is granted by the college in which admission is sought by him/her.

4. The next question which comes up for consideration is as to whether refusal of migration certificate to the petitioner solely on the ground that a unanimous decision was taken by the staff council to ban migration from the said college during the academic year 2013-2014 can be said to be legally sustainable in law and if not, whether the petitioner is entitled to grant of migration certificate by the said college.

5. In **Sumeet Sawhney VS. The Principal Sri Aurvindo College & Ors.,** CWP 3089/95, decided on 19.10.95, the writ petitions filed by the students, seeking migration from one college to another college in Delhi University was opposed on the ground that the NOC was refused (i) to maintain and improve the academic standards of the College by retaining the good students; and (ii) to maintain the student-teacher ratio on the basis of which maintenance grant is given to the college by the University Grant Commission. A Division Bench of this Court, *inter alia*, held:-

"Though the anxiety of the Staff Council and the College to maintain and improve the academic standard of the College as also their anxiety to maintain the student teacher ratio, may be appreciated but at the same time, we find it difficult to accept the contention that in order to achieve the

said objects, the students can be compelled against their desire and wish to continue study in a particular college. Undoubtedly no student has any vested right to seek migration but the real question in these cases is not about the vested right of the students, but it is about the legality of the stand of the College from where migration is sought. Can No Objection Certificate be refused to a student when the College to which admission is sought, is willing to give admission to that student. The answer to this question has to be in favour of the student. Where a student with a view to improve his career wants to join another college, which student feels is better and thinks that he would be able to make a better mark in another college to deny migration to such a student on the grounds stated by the College from which migration is sought, would be unjust and unreasonable. The grant of permission to migrate may be discretionary but the discretion is required to be exercised on sound legal principles and by adopting just, fair and reasonable approach. Ordinarily this Court may not interfere in exercise of discretion in academic matters but where the career of students is involved and the approach of college is not just and reasonable, the Court has to come to the aid of aggrieved students. As already noticed above, the stand of the University and the College to which migration is sought is also that students cannot be compelled to study in a particular college. Further apart from the decision of the Staff Council, no other provision has been brought to our notice barring migration. On the other hand Ordinance-4, as noticed above, specifically permits migration. It may also be noticed that while operating aforesaid Ordinance in practice the student who is to apply for No Objection Certificate from which he seeks migration, would do so only when he has been ensured admission in any

other college and, therefore, the question of violation of Ordinance-4 does not arise.

In *Aman Ichhpuniani vs. Vice Chancellor, Delhi University* 1998 (71) DLT 202, the petitioners before this Court, approached the colleges in which they were studying at that time for issue of NOC for the purpose of migration to another college affiliated to Delhi University. In the first writ petition before this Court, NOC was sought on the ground that the petitioner wished to migrate to reputed college in North Campus, which would be more convenient to him and in the second writ petition, NOC was sought so as to enable the petitioner to pursue a computer course and Chartered Accountancy, without clash of timings with the afternoon classes, the petitioner being a student of Bhagat Singh College (Evening). In the third case, NOC was sought on the ground that the classes in the college clashed with the computer classes of the petitioner in the afternoon and, therefore, she wanted to migrate to a morning college. In the 4th case, no reason was given for the proposed migration. However, in the application to the college where the petitioner was seeking migration, she had claimed that the said college was near to her residence and considering the erratic bus service, she wanted to migrate to the said college. In all these cases, the application seeking migration was turned down, without passing a speaking order.

Disposing of the writ petitions, this Court held as under:-

“(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.”

The Division Bench allowed the writ petitions filed by the students who wanted migration since their timings in Bhagat Singh College (Evening) clashed with other courses they were seeking to pursue. The other two writ petitions were rejected on the ground that no specific reasons had been assigned in the application seeking migration.

6. In W.P(C) No.4467/2013, ***Shashank Shandilya versus Guru Govind Singh Indraprastha University*** decided on 19.8.2013, this Court deduced the following legal proposition from the above referred Division Bench Judgment of this Court:

(i) Though a student has no vested right to seek migration from one college to other or for that matter from one university to another, his desire to study in an educational institution of his choice needs to be examined and appreciated in a right perspective.

(ii) If a student seeks migration certificate/NOC for the purpose of migrating from one college to another in the same university or from one university to another, such a request should be examined by the

institution, taking into consideration the interest of the student as well as the institution in which he is studying and the decision so taken should be just, reasonable and fair, to both, the institution as well as the student.

(iii) The request of a student for grant of NOC/ Migration Certificate can be rejected only for the reasons which are cogent, objective, fair, transparent and reasonable.

(iv) If the decision taken by the institution to refuse the migration certificate/ NOC is found on reasons which are not legal or germane or are arbitrary and illogical, it would be open to the Court to interfere with the decision of the institution, in exercise of its jurisdiction under Article 226 of the Constitution.

7. In the case before this Court, the respondent no.2 college did not undertake the exercise to consider the request of the petitioner on merit. No speaking order was passed by the Principal of the said college, taking into consideration the interest of the petitioner as well as of the college and migration was refused solely on account of a decision taken by the Staff Council, not to grant migration from the said college to another college of the university. In my view, Staff Council was not justified in imposing a blanket ban on grant of migration certificate, when the rules of the university, which are binding upon the college, do permit migration from one college to another college in appropriate cases. A blanket decision, not to grant migration certificate in any case, irrespective of the merit of the case, would be wholly arbitrary, unreasonable and unfair. The request of the petitioner for grant of migration certificate could have been rejected only for the reasons which are cogent, fair and reasonable. The decision to refuse migration therefore is liable to be quashed.”

4. However, in the present case, the respondent no.1 college did not even pass an order at all on the application for the petitioner. The learned counsel for the respondent no.1 states that before any order could be passed, this writ petition was filed. However, the fact remains that the application was submitted on 29.7.2013 whereas the writ petition came to be filed only on 8.9.2013. The learned counsel for the petitioner states that in fact the college even declined to accept the application and, therefore, the petitioner had to send the same by speed post. Be that as it may, on receipt of application from the petitioner, the principal of the college was required to consider the application expeditiously and pass a speaking order taking into consideration the interest of the petitioner as well as of the college. No such exercise, however, was undertaken. The learned counsel for the respondent no.1 states that vide order dated 10.9.2013 passed by this Court, in *Himani Sharma versus University of Delhi & Ors.(surpa)*, the college decided not to oppose such petitions and that is why no speaking order was passed. Even if that be so, the fact remains that for more than four weeks the college has not passed any order on the application of the petitioner. In any case, as already held by this Court, a blanket decision of the Staff Council not to grant migration certificate irrespective of the merit of the cases would be wholly arbitrary, unreasonable and unfair which cannot be sustained in law.

5. A perusal of the application submitted by the petitioner would show that she sought migration on the ground that the college was far away from her residence and since the bus service was very bad, it was very difficult for her to reach the college in time and in fact she was missing out her morning classes for this reason. The petition does not

disclose as to what is the distance between Aditi Mahavidyalaya College and the residence of the petitioner and what is the distance between Janki Devi Memorial College and the residence of the petitioner. In these circumstances, the writ petition is disposed of with direction to the respondent no.1- Aditi Mahavidyalaya College to consider the application of the petitioner in light of the decision of this Court in *Himani Sharma versus University of Delhi & Ors.(surpa)*, and pass appropriate order thereon within one week from today. The order so passed shall be communicated to the petitioner forthwith.

There shall be no order as to cost.

Dasti.

V.K. JAIN, J

OCTOBER 09, 2013/*rd*