

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 14.07.2015

+ **W.P.(C) 3531/2014**

VAIBHAV BHANSALI

.....Petitioner

versus

UNIVERSITY OF DELHI & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Nitesh Kumar Singh with Ms Neha.

For the Respondents : Mr Mohinder J.S. Rupal for University of Delhi.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner has filed the present petition challenging the order dated 30.01.2014 passed by the respondent university (hereafter also the 'impugned order'), whereby the petitioner's request for migration from Deen Dayal Upadhyaya College to another college i.e. Shaheed Sukhdev College of Business Studies was rejected on the ground that there is no provision for inter-college migration in the course of Bachelor of Management Studies under the existing Ordinance-IV of the respondent university.

2. Briefly stated, the facts that are relevant for examining the dispute in the present petition are as under:-

2.1. The petitioner had applied for a four year under-graduate course of Bachelor of Management Studies (hereafter the 'said course') for the

academic session 2013-17, conducted by the respondent university. The admission to the said course was granted to the students on the basis of their total score which was computed on the basis of 50% weightage to marks from the Common Entrance Exam result, 30% weightage to marks from the best four subjects score in Sr. Secondary Examination and 20% weightage to marks obtained in interview.

2.2. In the entrance examination, which was held on 26.06.2013, the petitioner scored 70.12 and the total score of the petitioner was 148. The petitioner achieved an overall 317th rank. On the basis of the overall rank, the petitioner was granted admission to Deen Dayal Upadhyaya College instead of his first preference college, Shaheed Sukhdev College of Business Studies. The petitioner made a representation dated 08.08.2013, to the respondent university for re-checking of his result as he was expecting a score of 164. The respondent university, by its letter dated 21.08.2013, confirmed the score of the petitioner to be 148.

2.3. Subsequently, two writ petitions titled as 'Manoviraj Singh v. University of Delhi & Anr' (being W.P.(C) No.5074/2013) and 'Stuti Uppal and Ors v. University of Delhi & Anr' (being W.P.(C) No.5424/2013) were filed before this Court, *inter alia*, praying for review of the results, on the ground that the answer keys displayed on the website of the respondent university showed that the answer sheets of the candidates were evaluated on the basis of wrong answers keys in relation to nine questions. This Court, by an order dated 25.09.2013, allowed the said petitions and directed the respondent university to re-compute the result of

all the candidates after substituting wrong answers with correct answers and to fill the seats in the order of merit.

2.4. Thereafter, the petitioner made a representation dated 03.10.2013, to the respondent university for grant of admission to his first preference college, as according to the petitioner after the re-computing of the results his score should have been 164 and he was thus eligible for admission to the college of his first preference - Shaheed Sukhdev College of Business Studies. The petitioner's request was not acceded to.

2.5. Aggrieved by denial of admission to Shaheed Sukhdev College of Business Studies, the petitioner filed a writ petition (being W.P.(C) 6551/2013) before this court. The counsel appearing for the respondent university made a statement before the court that the counseling session was over and there was no vacant seat for the general category students and even the admission tickets to the admitted candidates had been issued. In view of this statement the Court dismissed the said petition on 11.10.2013.

2.6. Against the said order dated 11.10.2013, the petitioner filed an appeal (being LPA No. 843/2013) before a Division Bench of this Court which was disposed of on 12.11.2013. The Division Bench held that *“no relief can be granted in the present petition except to the extent that the appellant is granted liberty to apply for migration in the next academic year. Upon such an application being filed by the appellant, the University and the College are directed to consider the same in accordance with law.”*

2.7. Subsequently, a Division Bench of this Court, by an order dated 19.11.2013 in LPA No. 806/2013 titled as ***‘Ms. Isha Khanna vs. University***

of Delhi & ors.’, granted admission to Isha Khanna in the said course in Shaheed Sukhdev College of Business Studies in the next academic session i.e. 2014 - 2018 without any further examination and/or interview. The Division Bench noted that students, lower than the appellant (therein) in the order of merit had been admitted in the said course in Shaheed Sukhdev College of Business Studies and therefore, the appellant (therein) was entitled for admission.

2.8. The petitioner again made a representation dated 23.12.2013, to the respondent university stating that any seat falling vacant in the said course should have been first communicated to him and the seat allocated to Isha Khanna should be offered to him, as he was higher in the order of merit. On 09.01.2014, the petitioner filed a review petition (being Review Petition No.32/2014), *inter alia*, seeking review of the order dated 12.11.2013 passed by the Division Bench in LPA No.843/2013. The said review petition was dismissed by the Division Bench of this Court by an order dated 24.01.2014.

2.9. The petitioner preferred a Special Leave Petition against the order dated 12.11.2013 in LPA No.843/2013 and order dated 24.01.2014 in Review Petition No.32/2014. The same was also dismissed by the Supreme Court by an order dated 12.05.2014.

2.10. By the impugned order, the respondent university rejected the representation of the petitioner dated 23.12.2013, on the ground that there is no provision for inter-college migration in the said course under the existing Ordinance IV of the respondent university.

3. The learned counsel for the petitioner contended that the Ordinance IV of the respondent university, as amended by the Notification dated 27.07.2012, does not proscribe inter-college migration with respect to the said course. Therefore, applying the legal principle, ‘what is not prohibited is permitted’, the inter-college migration is permissible in respect to the said course.

4. He submitted that the respondent university did not raise any objection before the Division Bench of this Court in LPA No.843/2013 in respect of prohibition in inter-college migration in the said course in light of Ordinance IV of the respondent university. The Division Bench of this Court, by an order dated 12.11.2013 passed in LPA No. 843/2013, disposed of the appeal of the petitioner by granting him liberty to apply for inter-college migration in the next academic year and as there is no explicit prohibition in inter-college migration in the said course, the request of the petitioner for inter-college migration should have been acceded by the respondent university.

5. He submitted that the petitioner, even though entitled to admission in Shaheed Sukhdev College of Business Studies, did not get the admission due to the fault and confusion created by the respondent university and the petitioner has been penalized by the respondent university without any fault on his part.

6. The learned counsel for the respondent university contended that migration of students, who are enrolled under the four year under-graduate programme, is not permissible as it is not permitted by the University of

Delhi Act, 1922 and Ordinances of the respondent university. And, even after the rollback of four year under-graduate programme, no migration is permissible in the said course as per Clause 3(a) of the Ordinance-IV of the respondent university, as amended by the Notification dated 27.07.2012. He submitted that the Division Bench of this Court by an order dated 12.11.2013, permitted the consideration of request of the petitioner for inter-college migration in accordance of law and therefore, as inter-college migration is not permissible in the said course, the request of the petitioner was rejected by the impugned order.

7. Clause 3 of the Notification dated 27.07.2012 is relevant and is quoted below:-

- “3. (a) Inter College migration within the University of Delhi in the III Semester of B.A, B.Com, B.Sc., B.A.(H), B.Com (H), B.Sc. (H) Courses under the semester mode may be allowed subject to availability of seats and consent of Principals of both the colleges.
- (b) Inter College migration will not be allowed at the post-graduate level,
- (c) The -last date for migration will be 31st August.”

8. Insofar as the petitioner’s contention that the petitioner was entitled to admission in Shaheed Sukhdev College of Business Studies is concerned, the said issue was agitated by the petitioner before this Court in W.P.(C) 6551/2013. However, the same was dismissed. The petitioner had preferred an appeal (being LPA No. 843/2013) but no relief was granted to the petitioner except that the petitioner was granted liberty to apply for inter-college migration in the next academic year and the respondent

university as well as the college were directed to consider the same, in accordance with law.

9. In view of the aforesaid, the limited controversy to be addressed is whether the petitioner is entitled for migration to Shaheed Sukhdev College of Business Studies.

10. It is now well settled that migration from one college to another college, as a general principle, is not permissible. Ordinance-IV of the respondent university contains the provisions for migration. The said Ordinance-IV of the respondent university reads as under:-

“ORDINANCE-IV-(MIGRATION & RE-ADMISSION)

MIGRATION

1. Inter-university migration may be permitted only in the beginning of the III Semester of only the BA. Programme and B.Com Programme under semester mode on production of (i) leaving certificate from the Principal of the College or from the Registrar of the University he is leaving and (ii) marks sheets of the examinations already passed and (iii) documentary evidences in support of the ground on which migration has been sought.

Provided that such a student will have to pass all the papers of the I & II semester examinations of the said course of the University of Delhi.

Provided further that their marks shall be proportionately upgraded in the I & II Semester examinations in the absence of the Internal Assessment Marks.

2. Admission of a student to the University in the III Semester of study for B.A./B.Com degree examination may also be

allowed on the ground that the parent or guardian of the student is residing in or has migrated to Delhi.

3. (a) Inter College migration within the University of Delhi in the III Semester of B.A., B.Com, B.Sc., B.A. (H), B.Com (H), B.Sc. (H) Courses under the semester mode may be allowed subject to availability of seats and consent of Principals of both the colleges.

(b) Inter College migration will not be allowed at the post-graduate level.

(c) The last date for migration will be 31st August.

4. Applications for migration from one college of the University to another shall only be entertained by the Principal if forwarded by the Principal of the college from which migration is sought, and the necessary alteration in the enrolment entries shall only be made in the University Register by the Registrar after obtaining the consent in writing of both Principals.”

11. It is apparent from the plain reading of Clause 3(a) of Ordinance-IV of the respondent university that migration from one college to another, may be allowed only in the third semester and in the courses as referred to in the said Ordinance. Plainly, the four year course being undertaken by the petitioner is not included in the said Clause. According to the learned counsel for the petitioner, as there is no specific provision for permitting inter-college migration, the same should be allowed as the Ordinance- IV does not prohibit the same.

12. I find it difficult to accept the said contention for the reason that there is no inherent right for a student to migrate from one college to another. Once a student has taken admission in a college, it is expected that he

would continue to undertake the course in the said college. However, in certain cases migration is permissible provided certain conditions are met. In **Aman Ichhpuniani v. Vice Chancellor, Delhi University & Ors.**: 71 (1998) DLT 202, a Division Bench of this Court had, *inter alia*, 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 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;”

13. It is, thus, settled that there is no vested right to seek migration and migration is permissible only in circumstances and in terms as contemplated under the Ordinance- IV of the respondent university. It is not disputed that the language of Ordinance- IV permits migration only in the third semester and in respect of specified courses. Further, migration is only permissible if the principals of both the colleges (i.e. the college where a student is studying and the college to which he seeks migration) give their “No Objection Certificate”. Since the course being undertaken by the petitioner is not a course specified under clause 3(a) of Ordinance- IV, no migration by virtue of Ordinance- IV of the respondent university would be permissible. It is also relevant to note that the petitioner has not obtained a No Objection Certificate from the Principal of the Shaheed Sukhdev

College of Business Studies. The learned counsel for the petitioner also could not point out whether any such communication had in fact been made by the petitioner to the Principal of Shaheed Sukhdev College of Business Studies for the purpose.

14. I am unable to find any infirmity with the impugned order that would warrant any interference under Article 226 of the Constitution of India. It is now well settled that the Courts would not supplant their opinion over that of the concerned authorities. This principle has to be applied *a fortiori* where the decision in question is of expert bodies in academic matters. The autonomy of the experts ought not to be interfered with. The Courts would intervene only in cases where the authorities fail to discharge their statutory obligations or have acted malafide or acted in a manner which is arbitrary and unreasonable.

15. A Coordinate Bench of this Court in **Uma Shankar v. Jawahar Lal Nehru University and Ors.**: 2006 III AD (Delhi) 157 had reiterated this principle in the following words:-

“If one goes only by appellations, the petitioner had had a very good case. The Courts however, are hardly equipped to pronounce in this issue. It has been held far too often that in matters pertaining to selection to academic and research positions in educational institutions, the autonomy of experts ought not to be lightly interfered with.”

16. The Supreme Court, in **All India Council for Technical Education v. Surinder Kumar Dhawan and Ors.**: (2009) 11 SCC 726, expressed this principle as under :-

“17. The role of statutory expert bodies on education and role of courts are well defined by a simple rule. If it is a question of educational policy or an issue involving academic matter, the courts keep their hands off. If any provision of law or principle of law has to be interpreted, applied or enforced, with reference to or connected with education, courts will step in. In J.P. Kulshrestha (Dr.) v. Allahabad University [(1980) 3 SCC 418 : 1980 SCC (L&S) 436] this Court observed: (SCC pp. 424 & 426, paras 11 & 17)

“11. ... Judges must not rush in where even educationists fear to tread. ...

* * *

17. ... While there is no absolute ban, it is a rule of prudence that courts should hesitate to dislodge decisions of academic bodies.””

17. In the present case, the request of the petitioner for inter-college migration was declined as there was no provision for inter-college migration in respect of the said course under the existing Ordinance-IV of the respondent university. In my view, there is no infirmity with the said decision and, therefore, no interference is called for in these proceedings. The petition is, accordingly, dismissed.

VIBHU BAKHRU, J

JULY 14, 2015
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