

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.6341 OF 2016

ORDER:

The writ petition is filed seeking a writ of *Mandamus* complaining the inaction on the part of the 1st respondent-University in transferring the petitioner from Lucknow (U.P) campus to Hyderabad campus pursuant to the request made by the petitioner on 03.08.2015.

Petitioner being a minor, she is being represented by her father Mr. George John.

The brief facts as set out in the writ affidavit as well as from the submissions made on behalf of the petitioner are that pursuant to the notification issued by the 1st respondent-University, petitioner appeared for All India Common Entrance Test, 2015 for admission into B.A (Honours) in English. The first respondent-University runs three Satellite and Constitutant Campuses; one at Hyderabad, another at Lucknow (U.P) and third one at Shillong, Meghalaya. Petitioner appeared in the Common Entrance Test conducted by the 1st respondent-University and secured 68 marks and was placed at 101th place so far as Hyderabad campus is concerned. For admission into in Lucknow campus, petitioner was placed at 3rd place. Since the petitioner belongs to general category and as all the seats being limited to 40 and in the general category being only 20 seats available, petitioner did not secure admission in Hyderabad campus. Then petitioner chose to join in Lucknow campus in terms of the rank obtained by her. Having come to know that there were three seats vacant in Hyderabad campus, petitioner approached the 1st respondent-University on 3.8.2015 by making a representation seeking for transferring her to Hyderabad campus from Lucknow campus. As there was no response to the same, once again, petitioner's father addressed a letter on 28.1.2016 to the 1st respondent's University. In spite of both the representations, there was no response. Further, the petitioner's father sought the help of the Legal Aid which was given by the Legal Services Authority by appointing a counsel and the writ petition came to be filed in the month of February, 2016, complaining the

inaction on the part of the 1st respondent-University.

Considering the nature of the relief which was sought in the writ petition and considering the fact that admittedly three seats were unfilled in Hyderabad campus, the 1st respondent-University's standing counsel was directed to obtain instructions from the University. Further, considering the specific allegations in the writ petition that one Tirna Chandra was given admission though she had not applied and qualified, Registrar of the 1st respondent- University, was directed to be present with the record. Then the time was sought on the ground that the Registrar was not present and finally a counter-affidavit came to be filed on 28.03.2016.

Thereafter, the matter was listed for hearing on the reopening day of the Summer Vacations, 2016 and on the date of hearing i.e., on 04.06.2016, the Vice Chancellor of the 1st respondent-University was present. In view of the nature of the relief that is sought by the petitioner and considering the fact that admittedly three vacancies are available apart from five more vacancies arising on account of the candidates leaving the courses after initial joining, the Vice Chancellor was queried by the Court as to whether there is any possibility that the petitioner's case can be considered for transfer. As the Vice Chancellor had expressed her view that it is as per the rules in force it is only the Executive Council who could take decision in the matter, this Court impleaded the Executive Council as a party respondent, having acceded to the request of the Vice Chancellor six weeks time was granted to enable the University to convene the Executive Council meeting for considering the case of the petitioner. Then the matter was directed to be listed on 27.06.2016.

The learned standing counsel representing the University had placed on record the extract of the Minutes of the 21st Meeting of the Executive Council held on 24.06.2016 wherein the request of the petitioner was rejected. Considering the prayer in the writ petition in normal circumstances, this Court would have directed the petitioner to work out the remedies as against the decision of the University as the limited prayer in the writ petition is only complaining the in action on the part of the University. However, considering the plea on behalf of the petitioner that he is being the party in person with ailing when the matter taken and having travelled from Dehradun to

Hyderabad and keeping in view of the relief that is being claimed by the petitioner for transfer of his daughter from one campus to another campus, he was permitted to argue the case, even with regard to the rejection of the University in refusing to transfer the petitioner without a formal application seeking amendment of the prayer in the writ petition.

Even the learned standing counsel for the 1st respondent-University had argued the case on merits and in fact the learned standing counsel at the very first instance, in the counter-affidavit filed had taken a clear stand in para No.7 of the counter-affidavit. In the counter-affidavit it is also admitted that the University did not have the sliding rule or procedure available between the campus in the University irrespective of the fact that there are unfilled seats or any dropouts by the students who have joined in that particular academic year. It is further asserted that T. Chandra has made two applications for two campuses i.e, both for Hyderabad and Lucknow and as she got 76 marks and she was placed at Serial No.No.20 in the General Category she got a seat in the general category.

In these set of facts, though in the writ petition the relief that is sought is only disposal of the representation in the equivalent analysis both the parties argued before this Court with regard to the reasonableness of the validity or otherwise of the rejection of the request of the petitioner for her transfer from the Lucknow campus to Hyderabad campus.

Mr. George John, party in person appearing on behalf of the petitioner submits that in the initial online admission list which was put up in the web sight, one Tirna Chandra has been given admission with the Admit Pass No.7021024 in the General Category having secured 76 marks. However, in the merit list, which was furnished to the Parliamentary Committee by the University through the letter dated 15.10.2015, the name of the said T. Chandra is not found. It is the specific case of the petitioner that the said T. Chandra had not applied for the admission into Hyderabad campus and has not paid the requisite fees through bank. However, in the admission merit list which was notified on 15.6.2015, T. Chandra shown at 20th place and was given admission. It is the specific assertion of the petitioner's father that as a matter of fact T. Chandra was placed at Rank No.1 in Lucknow campus.

However, though she sought admission in Lucknow campus, she was accommodated in the Hyderabad campus. He also further asserts that under the Right to Information Act when the petitioner sought details with regard to application and payment made by the said T. Chandra, University had not responded. He was forced to approach the appellate authority i.e., Central Information Commission, New Delhi and the issue is pending before the appellate authority. He further submits that the course that is being offered in all the three campuses is identical with the same syllabi and there being three seats available in Hyderabad campus and there being no change of University, not granting transfer to the petitioner is unreasonable and arbitrary and the University ought to have considered the request of the petitioner.

Adverting to the counters filed by the 1st respondent-University that on account of the notification categorically stating that no transfers from one campus to other campus would be allowed. He submits that the said instructions not being statutory in nature cannot have any sanctity unlike in a case of rules or regulations. He further asserts that the rigidity which apply to the regulation or rule would not apply and no prejudice would be caused by considering the request of the petitioner. He also submits that the courts are not power less in moulding the relief in a given case and at any rate no rule or regulation is beyond the scope of judicial review of the powers conferred under this Court under Article 226 of the Constitution of India or in the Supreme Court. He further submits that the rule of sliding as declared by the Supreme Court in **Unni Krishnan, J.P and others vs. State of A.P and others**^[1] has not been followed by the University and if only they had followed the rule of sliding as on 29.7.2015, there was atleast a possibility for the petitioner to have obtained the seat in Hyderabad campus. Inasmuch as the 1st respondent-University having failed to apply the sliding rule in terms of the law declared by the Supreme Court, now it is not open for the respondent-University to contend that the admission instructions notified are sacrosanct and inviolable rule. He further passionately invokes the equitable jurisdiction of this Court to do justice in the facts of the case. Inasmuch as there being no claimant other than the petitioner seeking

transfer and granting the transfer in no way would have caused prejudice either to the University or to third party and in that view of the matter, the action of the University in not considering the request of the petitioner is unreasonable and arbitrary.

Further, the petitioner being a top ranker student in the two semester of 1st year in Lucknow campus would have only added to the academic excellence to the advantage at Hyderabad campus.

On the other hand, Smt K. Lalitha, learned standing counsel appearing on behalf of the 1st respondent-University by placing reliance on Sections 14 and 15 of the English and Foreign Languages University Act & Statutes (for short, "the Act") submits that the notification was issued in terms of the norms fixed by the academic counsel in exercise of their powers under Section 14 of the Act. Inasmuch as it is undisputed and admitted fact that admission notification itself had categorically stated that no student once admitted into one campus shall be entitled to seek transfer to other campus. The petitioner with the full of knowledge had taken admission into Lucknow campus and now again seeks transfer to Hyderabad campus. There being no right in the petitioner's to seek such transfer, the rejection of the petitioner's request is justified. She also submits that it is also impermissible for the University itself to grant transfer as that would be violating the notified admission norm. Further the Executive Council who is the supreme authority in terms of Sections 11 and 12 of the Act had in fact considered the request of the petitioner and had after deliberation rejected the request of the petitioner by a reasoned order. Further, she submits that the contentions put forward by the petitioner with respect to T. Chandra are untenable as the T. Chandra had secured 76 marks and she was placed in the overall rank at 20th place. She submits that the omission of T. Chandra's name in the list furnished to the Parliamentary Committee only on account of the fact that by the date of information being furnished to the Parliamentary Committee, T. Chandra had left the University on 09.07.2015 as she chose not to pursue the course. In those circumstances, the name of T. Chandra was not found in the list which was sent to the Parliamentary Committee but not for any other reasons. At any rate, the learned standing counsel would contend that the T. Chandra

being at the 20th place having secured 76 marks granting of admission to her cannot be found fault as the petitioner had secured only 68 marks and she was placed at 101th place and there are as many as 53 candidates between the petitioner and the last candidate who was admitted under the general category with a score of 76 marks. Further, the learned standing counsel places reliance on the judgments of this Court reported in

1. **Miss. Romini Susan Kurian v. State of A.P and others** ^[2]
2. **Indu Gupta v. Director, Sports Punjab, Chandigarh and another** ^[3]
3. **C. Rajanaidhar and others v. Government of India and others** ^[4]

to contend that the prospectus issued by the University and the conditions of the broucher that is published by the University and the notifications issued by the University are binding on the candidates and they are inviolable. This aspect of the matter is settled by the Division Bench of this Court apart from the Full Bench of Punjab and Haryana High Court.

Having considered the respective submissions, there is any hardly disputed questions of fact except the question whether the said T. Chandra was given admission at Hyderabad campus without there being any application by her and without there being any payment from her. Inasmuch as there is no specific material placed before this Court, at this point of time, notwithstanding the submissions made on behalf of the petitioner, this Court is unable to express any opinion and come to a definite conclusion whether any irregularity was committed in giving admission in favour of T. Chandra. Further, even as per the petitioner, the said aspect of the matter is being probed into and necessary information was sought by the Central Information Commission (CIC). In those circumstances, this Court does not desire to express any opinion on that.

A perusal of the 'Important Instructions' notified by the University for the online Admissions 2015-2016 are as under:

"Application related instructions:

1. Applications for admission to various academic programmes

should be submitted online in the prescribed form for it. Read the instructions carefully before filling the application form.

2. The Information Book contains details of the Programmes offered, duration of Programmes and courses, eligibility criteria, Fee, Deposit structure, availability of seats etc. Read it carefully before you apply for a programme at the University.
3. No student shall be allowed to apply for more than two full time programmes in an academic year. This is to be done by filling two separate forms and paying fee separately as applicable.
4. If a student wishes to apply for a second programme, submit a separate application and make a fresh payment of the entrance fee.
5. The drop down menu in the application form allows you to select the campus (Hyderabad, Lucknow, Shillong) for a programme. Once selection of a campus is made, no requests for change of campus or transfer to another campus will be entertained before or after the admission for any reasons whatsoever.”

In the above quoted instructions, the respondent university has placed reliance on the instruction No.5.

The question in the present case is to be considered whether such instruction could be applied to the case on hand. A careful reading of the instructions would leave no manner of doubt that the said instruction is to be complied with at the stage of making an application for admission. In other words a candidate who is seeking admission and who desires to take admission test had to clearly indicate whether he is seeking admission into one or other campus or into any one of the campus. It is not in dispute in the present case that the petitioner had applied seeking admission both in Hyderabad campus as well as in the Lucknow campus. It is also not in dispute that as on the date of petitioner's case being considered for admission the minimum cut of marks for general category was placed at 76 and all the 20 seats got filled up. The petitioner having realised that she is not likely to get admitted under the general category in Hyderabad Campus, she took admission in Lucknow campus. The admission instruction will get restricted only at the time of seeking admission as once having chosen, having selected, having agreed option in the application form, the candidate cannot seek change of campus or seek transfer to another campus.

So far as the claim of the petitioner that if the University only had applied sliding rule the possibility of the petitioner getting a seat in Hyderabad campus at the very admission stage, would only lead to speculation and as such that contention cannot be accepted.

A careful reading of the same would only be restricted to apply to a candidate who has chosen, who sought admission in relation to only one campus seeking change at the time of admission or immediately after taking admission seeking transfer to another campus. In those circumstances, the instruction No.5 has no application to the case on hand. It may be noted in the present case that the petitioner made an application for seeking transfer in the month of August setting out the reasons for transfer. The reasons set out may be relevant or irrelevant certainly so far as the instruction No.5 is concerned has no application. The representation made by the petitioner seeking is independent of instruction No.5, as the petitioner is not seeking either change of option or transfer at the time of admission. The application which was made by the petitioner is being an independent of the instruction No.5, the University ought to have considered the same on its own merits; the stand of the University is that it is on account of the instruction No.5 only the request of the petitioner is not being considered would fall to ground once this Court holds that instruction No.5 has no application in the facts of the present case.

Considering the fact that the course of study, the syllabi is one and the same in both the campuses and there being no inter University change, the decision of the University in refusing to transfer a student especially when there are admittedly at least three seats kept vacant would fall as an irrational decision and irrationality is one of the ground a writ court can interfere as enunciated by the Division Bench of this Court in a judgment reported in **T. Devender and others vs. The State of Andhra Pradesh, rep. By the Secretary to Government, Panchayat Raj and Rural Development Department and others**^[5].

Further, once this Court is of the opinion that Instruction No.5 has no application in the present case, the judgments relied on by the learned counsel for the 1st respondent-University has no application to the facts in the present case and the said judgments do not require to deter this court to issue

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- [\[1\]](#) (1993) 1 Supreme Court Cases 645
[\[2\]](#) AIR 1992 Andhra Pradesh, 380 (DB)
[\[3\]](#) AIR 1999 Punjab and Haryana 319
[\[4\]](#) 2002(5) ALD 459
[\[5\]](#) 1992 (3) ALT 1