

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO**

WRIT APPEAL No.723 of 2016

JUDGMENT: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

_____ This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the learned Single Judge in W.P. No.6341 of 2016 dated 27.07.2016. The respondent-writ petitioner invoked the jurisdiction of this Court, by way of W.P.No.6341 of 2016, questioning the inaction of the appellant-University in not considering her request for transfer from the Lucknow Campus to the Hyderabad Campus of EFLU (i.e the appellant-University), made in her letter dated 03.08.2015 as illegal and arbitrary.

_____ In the order under appeal, the learned Single Judge held that the writ petitioner was a top rank student in the first two semesters in the Lucknow Campus of the respondent-University; a careful reading of the instructions, for online admissions-2015-16, would show that these instructions are required to be complied with only at the stage of making an application for admission; a candidate, who desires to take the admission test, has to clearly indicate that he is seeking admission into one or other campuses or into any one of the campuses; the respondent-writ petitioner had applied for admission both for the Hyderabad and Lucknow campuses of EFLU; the minimum cut off marks, for admission of students in the general category for EFLU, Hyderabad was 76, and all the 20 seats were filled up; having realised that she was not likely to get admission under the general category in the Hyderabad campus of EFLU, the writ petitioner had obtained admission in Lucknow; instruction No.5 had no application to the facts on hand; the writ petitioner had made an application seeking transfer from the Lucknow Campus to the Hyderabad Campus of EFLU, in the month of August setting out the reasons why she sought a transfer; the petitioner was not seeking either a change of option or her transfer at the time of admission; as the application for transfer was independent

of instruction No.5, the respondent-University ought to have considered the same on its own merits; the course of study and syllabi are one and the same in both the Campuses; there being no inter-university change, the decision of the University in refusing to transfer a student, especially when there were admittedly atleast three vacant seats, is an irrational decision; and irrationality is one of the grounds for interference by a writ court. A writ of Mandamus was issued directing the appellant-1st respondent-University to transfer the respondent-writ petitioner from the Lucknow campus to the Hyderabad campus of EFLU within a period of two weeks.

Smt. K. Lalitha, learned Standing Counsel for the appellant-University, would submit that Ms. T. Chandra, with whom the writ petitioner seeks parity, had submitted her application seeking admission in both the Campuses at Hyderabad and Lucknow; she had secured 76 marks in the common entrance test for the Hyderabad campus, and was ranked 20 in the list of selected students under the general category; as she had secured rank No.20, she was given admission in the Hyderabad campus of EFLU under the general category; the writ petitioner had got issued a letter from a Member of Parliament with a request for her transfer; in reply, the Vice-Chancellor had informed that her request was reviewed, admissions for the academic year 2015-16 were closed, she stood at the 100th position in the order of merit among the general category candidates at the Hyderabad campus of EFLU, the last candidate admitted in the B.A. Programme in the Hyderabad campus of EFLU had scored 73 marks, and there were 52 qualified applicants above her who had secured 68 marks; as there were 52 qualified applicants above the writ petitioner who were not given admission, the request of the writ petitioner for transfer from EFLU, Lucknow to EFLU-Hyderabad was not justified; and the interim direction to the Executive Council of the University, to consider the writ petitioner's request for transfer, was examined by the Executive Council, and her request for transfer was rejected.

The writ petitioner has filed her written submissions contending

that the admission guidelines must be strictly followed by all educational institutions; not adopting the sliding rule principle effected transparency, fairness and equity to the admission process; the admission of Ms. T. Chandra, who was not even an applicant for admission into EFLU-Hyderabad, was illegal; Ms. T. Chandra did not even pay the fee for the entrance examination; it was evident that a candidate, who had not even applied for admission, was given a seat at EFLU-Hyderabad; she should be accommodated on similar grounds for reasons of equity, parity and in compliance with Article 14 of the Constitution of India; there are eight existing unfilled and unclaimed vacancies at EFLU-Hyderabad, and one such seat rightly belonged to her, since there is no other claimant to these seats; as there were no claimants for the 8 vacant and unfilled seats at EFLU-Hyderabad ever since 29.07.2015 i.e for the last one year or so, the learned Single Judge was justified in directing the appellant-University to transfer her from the Lucknow Campus to its Hyderabad Campus; once admissions are closed, and class sessions have started, the entrance examination rank and position has no meaning and relevance; the University did not inform her of their refusal to transfer her from Lucknow to Hyderabad; her father, as her power of attorney, ought to have been given an opportunity of being heard by this Court, more so as they have no financial capacity to engage a lawyer of value and worth to project her case; since nobody, between the last person admitted on closure of admission on 29.07.2015 and her, was admitted subsequently, keeping 3 sanctioned seats, and another 5 casual seats, vacant was illegal; and as she had obtained the 100th rank, she ought to have been transferred from the Lucknow Campus to the Hyderabad Campus of EFLU.

The petitioner is, admittedly, aged more than 18 years and the writ petition has been filed by her and not by her father representing her as a guardian. A Division Bench of this Court, in **Mudupu Harinarayana @ Haribabu**¹, held:

“.....Therefore the PoA in favour of a person to act for another person in

a Court proceeding cannot be construed as authorizing the holder of the PoA to argue a case in the Court. Order III Rule 1 of CPC, which permits “appearance or acting” in any Court by PoA, is subject to the provisions of the Advocates Act, 1961. Any such claim violates the Advocates Act which is the law relating to legal practitioners. The same would also be contrary to the binding precedents referred to herein below. We would first refer to the Advocates Act, and then to the precedents.....

.....A conspectus of Rules 1 and 2 of Order III of CPC, Section 2(a) and Sections 29, 30, 33, 34 of the Advocates Act, Rule 2 of Section 34 Rules and Cr.P.C. would show that all the pleadings in a proceeding shall be made by the party in person, or by his recognised agent. A party in person, and a recognized agent, have to make an appointment in writing (vakalatnama) duly authorizing the advocate to appear and argue the case. Only an advocate entered on the rolls of the Bar Council of Andhra Pradesh, who has been given vakalat and which has been accepted by such advocate, can have the right of audience on behalf the party, or his recognised agent, who engaged the advocate. Sections 29 and 30 of the Advocates Act make it clear that the advocates are the only recognised class of persons entitled to practise law, and such an advocate should have been enrolled as such under the Advocates Act. Section 32 of the Advocates Act empowers the Court to permit any non-advocate to appear in a particular case. This only means that any person has to seek prior permission of the Court to argue a case if he is not an advocate enrolled under the Advocates Act. Further, it is an offence for a non-advocate to practise under the provisions of the Advocates Act. Section 45 prescribes a sentence of six months imprisonment.....”

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As held by the Division Bench of this Court, in **Mudupu Harinarayana @ Haribabu v. 1st Additional District Judge, Kadapa**^[1], the father of the petitioner was not entitled to plead her case as her general power of attorney. Yesterday, when the petitioner expressed her inability to engage a counsel, we suggested that she identify any counsel of her choice, and we would request the said counsel to appear on her behalf pro-bono. The petitioner, however, expressed lack of confidence in all counsel and, instead, sought time till today to file her written submissions.

Having considered the written submissions filed by her, we are passing this order. As a separate merit list is prepared for each of the Campuses of EFLU, admission to the Hyderabad Campus of EFLU could only have been made on the basis of the merit list separately prepared for the Hyderabad Campus, and permitting a lower rank student to be transferred from the Lucknow Campus to the Hyderabad Campus of EFLU, that too after completion of the first year undergraduate course, and nearly a year after admissions, for the academic year 2015-16 for Hyderabad Campus, were closed on 29.07.2015, would defeat the very object of preparing and maintaining

a separate merit list for each of the Campuses of EFLU. In the absence of any provision permitting transfer of a student from one campus of EFLU to another, and in the light of the specific assertion in the counter-affidavit that, in the entire history of EFLU, Hyderabad, only one student was transferred i.e., from EFLU, Shillong to EFLU, Hyderabad that too because the said student was suffering from cancer and there were no medical facilities in Shillong, there was no justification in directing EFLU to transfer the writ petitioner from Lucknow to Hyderabad.

It is not in dispute that the writ petitioner, who secured 3rd rank in the common entrance examination in the year 2015-16 for EFLU-Lucknow, only secured rank No.100 in the merit list of general candidates seeking admission to EFLU-Hyderabad. It is also not in dispute that the last student to be admitted at EFLU-Hyderabad, when admissions were closed on 29.07.2015 for the academic year 2015-16, had secured rank No.49. As the writ petitioner had only secured rank No.100 in the general category of students seeking admission in EFLU, Hyderabad, there were 51 other eligible candidates, who had secured a higher rank than her, but were not granted admission to EFLU-Hyderabad.

The submission of the writ petitioner is that she is seeking transfer from EFLU-Lucknow to EFLU-Hyderabad, and since there are eight seats unfilled, there is nothing in the Regulations which preclude the University from accommodating her at EFLU-Hyderabad. Permitting transfer of the writ petitioner from Lucknow to Hyderabad, though she secured only rank No.100 in the entrance examination held for EFLU-Hyderabad, would result in candidates from rank No.50 to rank No.99 being deprived of the opportunity of being considered for admission to EFLU-Hyderabad. The justification put forth by the University for keeping the eight seats vacant is that, since the admissions were closed on 29.07.2015, all the seats which fell vacant thereafter were left unfilled.

It is not even the case of writ petitioner that any candidate, who

secured a rank below her i.e rank No.101 onwards in the merit list of general candidates for the academic year 2015-16, seeking admission in EFLU-Hyderabad, was granted admission ignoring her claim. As the last candidate, who secured admission in EFLU, Hyderabad for the academic year 2015-16, obtained rank No.49, and the writ petitioner stood at rank No.100, the appellant-University cannot be faulted in refusing to accede to her request for transfer, as transferring her from the Lucknow Campus to the Hyderabad Campus of EFLU would have deprived 50 of the students, who secured more marks and a higher rank than her, of being considered for admission into EFLU, Hyderabad. It is wholly unnecessary for us to dwell on whether Ms. Tenna Chandra had secured admission after applying for admission to EFLU-Hyderabad or not, as Smt. K. Lalitha, learned Standing Counsel for the appellant-University, on instructions, would submit that, after securing admission, Ms. T. Chandra had left EFLU-Hyderabad campus and is not at present prosecuting her B.A. Degree at EFLU-Hyderabad.

Merely because a few seats remained unfilled after admissions for the academic year 2015-16 were closed on 29.07.2015, does not entitle the petitioner to claim admission at EFLU, Hyderabad, under the guise of seeking transfer, ignoring the claim of 51 candidates who were found more meritorious than her but were not considered for admission into EFLU, Hyderabad as admissions were closed on 29.07.2015 with the last of the admitted candidates having secured rank No.49 in the entrance examination. Even if these eight seats were required to be filled up, it could only have been in the order of merit i.e from amongst candidates who obtained rank No.50 onwards. As the writ petitioner would not have secured admission on the basis of her merit she cannot, under the guise of seeking transfer, be admitted into EFLU-Hyderabad, as permitting her transfer from the Lucknow Campus to the Hyderabad Campus of EFLU would result in the claims of 50 students, more meritorious than her, being ignored. We see no reason, therefore, to fault the appellant-University in refusing to accede

to the writ petitioner's request for transfer from the Lucknow Campus to the Hyderabad Campus of EFLU.

The Writ Appeal is allowed, and the order under appeal is set aside. The miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

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(RAMESH RANGANATHAN, ACJ)

(U.DURGA PRASAD RAO, J)

18th August 2016
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^[1] 2011(2) ALT 405 (D.B.)