

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

% Date of decision: 14th March, 2017

+ W.P.(C) 11061/2016

SUDHANSHU GIRI

..... Petitioner

Through: In person.

versus

THE VICE CHANCELLOR DELHI UNIVERSITY
DELHI

..... Respondent

Through: Mr. Mohinder J.S. Rupal and
Ms. Disha Malhotra, Advs. for
Delhi University / R1.
Mr. Ankur Chibber, Adv. for R2 &
R3.

CORAM:-

HON'BLE MR JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J. (ORAL)

1. The present petition has been filed by the petitioner with the following prayers:

“In view of the above said facts and circumstances the petitioner most respectfully humbly prays before this Hon'ble Court:-

a) to issue appropriate order or writ directing the Respondent no.1 to 6 to grant / allow the case of the petitioner for migration on the basis of merit and medical need to the morning of Moti Lal Nehru College from Motilal Nehru College Evening.

b) Any other relief as this Hon'ble Court may deem fit and proper in the interest of justice.”

2. Suffice to state, petitioner is seeking migration from Moti Lal Nehru College (Evening) to Moti Lal Nehru College (Morning). Petitioner took admission in the Moti Lal Nehru College (Evening) on July 23, 2015. It is his case that on August 19, 2016, he applied for migration to Moti Lal Nehru College (Morning). On September 23, 2016, he was informed by the Principal of the College that he has not received the application from his office. On receipt of the application, the Principal forwarded the application to the Dean of Students Welfare. When the petitioner approached the Dean, Students Welfare, he wrote a note on the letter addressing to the Principal that the rules for migration to be followed. It is the petitioner's case that he made a representation dated September 21, 2016 and October 8, 2016 to the University and Delhi Government respectively. A reply dated November 5, 2016 was received from the Delhi Government but not from the University or the College. On October 20, 2016, petitioner sent a legal notice to the College and University and received a reply from the College authorities denying the migration.

3. The petitioner who appeared in person and was heard extensively would submit that he got assurance from the Sr. Administrative Officer that if he obtains good marks in the first year, he will get migrated to a morning College. It is his case that he fulfils the eligibility criterion for migration as he was the topper in both first and second semester. He would submit that there were 185 vacancies in the morning batch, against which 321 students have been admitted by the HOD. That apart he states that he sought migration on medical grounds as well. He has drawn my attention to various prescriptions filed along with the petition to contend that being underweight he is prone to allergies and immunity level is

very low. That apart, it is his case that the students with lesser marks have been allowed migration from Evening College to the Morning College like a girl student from Moti Lal Nehru College (Evening) was allowed migration to Delhi College of Arts and Commerce. He would state that the plea of the respondents that there are no vacancies against which the petitioner can be accommodated is misconceived as against 185 vacancies, respondents having accommodated 321 students and, they could easily accommodate one more student, i.e., petitioner himself.

4. During the course of arguments, the petitioner conceded to the fact that between 7-9 PM in the evening, he goes for tuition in Corporate Accountancy / Cost Accountancy. He states that pursuing studies in the Evening College is hampering his studies in the tuition. If he is migrated to a Morning college of which timings are till 1.35 PM, he can have sufficient time to rest and go for tuition in the evening. He has filed a compilation of documents to contend that as on date there are 7 seats vacant, against which his case can still be considered.

5. On the other hand, Mr. Ankur Chibber, learned counsel appearing for respondent nos. 2 and 3 would submit that Moti Lal Nehru College both Morning and Evening are the constituent colleges of the Delhi University and they are required to follow the ordinances and instructions issued by the University. He denies any assurance was given to the petitioner that he will get migrated if he excels academically. He states, as per the provisions of the Ordinance-IV and the notification dated July 27, 2012 issued by the University, the migration is only permissible at the beginning of the second year and the same needs to be effected on or before 31st August of a particular year. He vehemently contends the plea

of the petitioner that there are vacancies available in the Moti Lal Nehru College (Morning). According to him, all 321 students are in place. That apart it is his submission that petitioner was required to first obtain an NOC from the Moti Lal Nehru College (Evening) before he could approach the Moti Lal Nehru College (Morning). He states that medical grounds are no consideration for allowing migration. That apart he states that it is only a ploy to seek migration inasmuch as the petitioner is fit enough to undertake tuition in the night between 7 to 9 PM. He also states that there are many colleges between his residence and the Moti Lal Nehru College, to which colleges he can seek migration if the medical condition is so precarious. He is seeking a backdoor entry into the morning college as the petitioner had applied in the morning college, but could not get admission therein as he did not have the cut-off marks. Mr. Chibber would rely upon the judgment of this Court in the case of *Apurva v. University of Delhi & Anr. 2012 (189) DLT 178* to contend that in identical facts, learned Single Judge dismissed the writ petition relying on a Judgment of the Division Bench of this Court.

6. Mr. Mohinder J.S. Rupal, learned counsel appearing for the respondent no.1 would support the submissions made by Mr. Ankur Chibber, Adv. for respondent nos. 2 and 3 and states that the University Ordinance and the Notification does not permit migration beyond 31st August of a particular year and the migration is also subject to availability of vacancy, which is not available. The college (s) have rightly dismissed the migration.

7. Having heard the petitioner and the learned counsel for the respondents, the only issue which arises for consideration is whether the

petitioner is entitled to seek migration from Moti Lal Nehru College (Evening) to Moti Lal Nehru College (Morning). There is no dispute that the migration in the Delhi University is governed by the Ordinance-IV, which 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 B.A. 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 only 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., H.A. (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.*

A perusal of the same would reveal that the last date for migration would be 31st August, 2016 and subject to availability of seats. The issue whether the petitioner has applied on or before 31st August, 2016, even though the parties are at variance, need not be gone into as I find the respondent nos. 2 and 3 have taken a stand, there are no vacancy in the said subject in the Moti Lal Nehru College (Morning) as no student has sought migration out of the College is appealing. Even though the petitioner has relied on certain documents to contend 7 vacancies exist, which aspect could not be confirmed by Mr. Chibber as the documents filed were only during arguments. In any case, when a stand has been taken by the Respondent nos. 2 and 3, in counter-affidavit, which I reproduce as under:-

“The said application was forwarded to the Principal and since, there was no migration from the college, there was no vacancy in the said subject and therefore, no orders were passed on

his application for migration.”

This plea of the petitioner need to be rejected.

8. That apart, I note that as per the provisions of the migration, the same is allowed at the end of the First year provided the candidate passed in both the Semesters, i.e., first and second Semester which the petitioner had passed in this case. The petitioner is on the verge of completing the second year as well, which is the 4th Semester. The petitioner's plea on medical grounds has been appropriately answered by Mr. Chibber that if the medical grounds are so compelling, the petitioner can seek migration to any college which is nearer to his residence. That apart, the petitioner is going for tuition between 7-9 PM in the night can't be overlooked. It appears that the migration has been sought by the petitioner on an alleged assurance that if he excels academically, his case can be considered for migration. I see academic excellence is no ground for effecting migration. In any case, I find a student has no vested right to seek migration from one college to another. Mr. Chibber is justified in relying on the judgment of this Court in *Apurva (supra)* wherein this Court while relying upon the *Aman Ichhpuniani v. Vice Chancellor, Delhi University & Ors. 71 (1998) DLT 202 (DB)* has held that a student does not have a vested right in seeking migration. I note for benefit in Para 15 this Court in *Apurva (supra)* has held as under:

“15. The law on the issue of right of a student to claim migration from one college to the other was examined and settled in the case of Aman Ichhpuniani(supra) wherein a Division Bench of this Court when confronted with a question as to whether a student has a “vested

right” to claim migration from one college to the other or merely “a right” and if so, whether the said right is capable of being enforced and exercised in writ jurisdiction of the High Court, held as below:

“16. Nevertheless, the existence of Ordinance-IV does contemplate migration. The provision also casts a duty on the Principal of the college from which migration is sought to exercise his discretion and take a decision on prayer for migration guided by reason keeping in view the relevant considerations and not merely by whim and caprice. Like all other discretionary powers vesting in public authorities, the power to forward an application seeking migration is also coupled with a duty. Each prayer shall have to be dealt with on its own individual merits. If the prayer for migration be a bald prayer it may not be allowed merely for asking. On the contrary if there are valid reasons assigned providing reasonable justification for such demand, the Principal on being satisfied of the availability of just grounds for migration, is duty bound to forward the application. Else the exercise of discretionary power would stand vitiated for unreasonableness or arbitrariness.

17-19. xxx

20. The mind of a student is immature. In an educational institution it is in the process of being trained. The teachers and the Principal of the Institution are trustees of the students and their parents, who repose faith and confidence in them for training the mind of the students and shaping them so as to be fit to face the world and bear the burden of life. For valid reasons the Principal may form an opinion that it would not be in the interest of the student to permit migration howsoever keen he may be to do so. He may have to weigh the interest of the Institution also. Some times the interest of the Institution and the interest of the student may conflict. He shall have to strike a balance and find the weighty side to which the decision shall have to swing. The whole process shall have to be objective.

If the decision making process be vitiated or the decision itself be vitiated for failure to take into consideration the

relevant ones and/or for having been influenced by the irrelevant and extraneous consideration or want of bonafide, the decision will be open to judicial review. Of course, as held in Vice Chancellor, Utkal University & Ors. Vs. S.K. Ghose & Ors. (AIR 1954 SC 217), it is not the function of the courts of law to substitute their wisdom and discretion for that of the persons to whose judgment the matter in question is entrusted by the law.

21. xxx

22. xxx

23. *To sum up, in our opinion :-*

(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.” (emphasis added)

9. The position of law being well settled, this Court is of the view that the petitioner has not made out a case for grant of prayers as made in the writ petition. The writ petition is devoid of any merit. Same is dismissed.

V. KAMESWAR RAO, J

MARCH 14, 2017/jg

