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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 6998/2017 & C.M. Nos.29076/2017 & 39843/2017
RICHHA TRIPATHI Petitioner

Through Mr. Dileep Kumar Mishra, Adv.
versus

JIMS ENGINEERING MANAGEMENT & ANR. Respondents
Through Mr. Kunal Madan, Adv for R-1.
Ms Ekta Sikri and Mr. Jasbir Bidhuri,
Adv for R-2.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **13.11.2017**

By way of this petition, the petitioner is seeking a direction qua respondent No. 1 to issue him a No Objection Certificate (NOC) for the purpose of migration from respondent No. 1 to Maharaja Surajmal Institute of Technology, another institute affiliated to respondent No. 2 (Guru Gobind Singh Indraprastha University). Both respondent No. 1 and Maharaja Surajmal Institute of Technology are affiliated to the aforementioned University.

Record shows that the petitioner was pursuing a B. Tech (ECE) Program under respondent No. 1. She was admitted in the said course for the year 2016-2017. She had completed two semesters under respondent No. 1 when she applied for a NOC to get admission in the Maharaja Surajmal Institute of Technology. This NOC had been granted by her on 22.06.2017. Submission is that Maharaja Surajmal Institute of Technology has granted her a NOC but respondent No. 1 has failed to do so inspite of repeated requests made

by the petitioner. She was accordingly constrained to file the present writ petition.

Respondent No. 1 had refused to grant a NOC to the petitioner. The stand of respondent No. 1 is that the petitioner was pursuing a four year course i.e. her admission commenced from the year 2016 and which had to continue up to the year 2020; if the petitioner is permitted to migrate to another college, respondent No. 1 would suffer a huge monetary loss; the seat of the petitioner would remain vacant for the next three years and the total fee for the said three years i.e. six semesters is Rs.2,61,000/-; it would be an immense loss to respondent No. 1. The petitioner is a resident of Janak Puri and her only reason for seeking migration is the travel distance to respondent No. 1 (Noida). Submission is that this is not a valid ground in terms of Ordinance 7 of the Migration Policy of respondent No. 2; it is not a 'genuine reason'. The petitioner cannot be granted an NOC.

Respondent No. 2 has filed a separate counter affidavit. Respondent No. 2 has largely supported the stand of respondent No. 1. It has been brought to the notice of the Court that Ordinance 7 of the University lays down the guidelines for migration. Although migration is permitted but a NOC has to be obtained from both institutes i.e. from the institute where the candidate is presently studying as also NOC from the college where the candidate now proposes to study. Submission is that if respondent No. 1 has not granted an NOC to the petitioner, the case of the petitioner cannot be considered. Attention has been drawn to the Migration Policy

contained in Ordinance 7 of the Guidelines of the University. Respondent No. 2 also supports the stand of respondent No. 1 that respondent No. 1 is a self-financing institute who gets no financial support either from the Government or from the University and the submission of respondent No. 1 that its financial loss would be immense is an argument which cannot be washed away.

Rejoinder has been filed by the petitioner negating the stand of the respondents. Submission is that the petitioner had filed this petition in June, 2017 seeking migration which is in terms of Ordinance 7 of the University Rules. He cannot be denied migration only because of the financial burden which respondent No. 1 has alleged.

Arguments have been heard. Record has been perused.

Ordinance 7 of respondent No. 2 is the Migration Policy of the University. Clause 2.0 (b) (i)(a) provides as under:-

“Mutual migration of the student(s) in the same programme/discipline may be allowed when ‘No Objection’ is conveyed by both the Deans/Directors/Principals, concerned of the University School of Studies/respective institutions, as applicable. Such migration shall be allowed with the approval of the Registrar of the University.”

Admittedly a No Objection has to be obtained by the candidate from both the concerned institutions i.e. institution from where the candidate is seeking migration as also a No Objection from the institute where the candidate seeks to migrate. Respondent No. 1 was

the institute from where the petitioner wishes to migrate. She wanted migration to the Maharaja Surajmal Institute of Technology. She has a No Objection from the said Institute.

Clause 2.0 (b)(ii) lays down that “genuine circumstances” is a pre-requisite for migration of the student from one institute to another. The communication of the petitioner seeking migration was sent to respondent No. 1 firstly by an e-mail dated 19.7.2017 (Annexure P-5). A perusal of this communication substantiates the argument of the respondents that no reason much less any genuine reason has been highlighted in this mail for seeking a migration. No reason has been spelt out whatsoever in this communication. Learned counsel for the petitioner points out that after this communication the medical record of the petitioner had been submitted to respondent No. 1 which was another reason for the petitioner seeking a migration from respondent No. 1 to Maharaja Surajmal Institute of Technology. The contention of the petitioner is that the petitioner is a resident of Janak Puri and the distance of travelling to the institute of respondent No. 1 was a constraint upon the mental set up of the petitioner. The Maharaja Surajmal Institute of Technology is located in Janak Puri where the petitioner resides and it is more practical and comfortable for the petitioner to travel a shorter distance to attend the institute. This submission as argued by the learned counsel for the petitioner does not find mention in the record. However two documents evidencing the medical condition of the petitioner have been placed on record. These documents have been appended to a letter dated

28.07.2017 addressed by the petitioner to the Registrar of respondent No. 2. Her medical illness has been described which as per her was a sufferance from a psychosis. The medical prescriptions of the concerned doctor have been appended. No diagnosis can be detected from the aforementioned prescriptions. The “genuine circumstances” for the purpose of migration in the present case appear to be missing.

That apart, learned counsel for the petitioner has been informed that if he is willing to pay the fee for the balance three years of his course his case for migration can be considered, otherwise his seat would remain vacant for the aforementioned three years (four year course of which the petitioner has completed two semesters). The petitioner is not willing to abide by this condition.

Learned counsel for the respondents have placed reliance upon the judgments of the Bench of this Courts which had considered the scenario of migration. In 2009 (107) DRJ 42 Anika Jain Vs. University of Delhi & Anr., a Bench of this Court noting the financial constraint highlighted by the respondent institute had noted the willingness on the part of that candidate to pay up the balance fee to compensate the respondent college which in turn had led the Court to give a direction to the College to give a NOC to the said candidate upon his depositing the fee. This offer has also been made to the present petitioner but as already recorded supra the said offer has been declined by him. In W.P. (C) No.4467/2013 Shashank Shandilya Vs. Guri Govind Singh Indraprastha University and Anr. a similar contention was also considered. The plea of financial

hardship raised by the private institute had been answered in the following words:-

“9. More importantly, admittedly respondent no.2 is a private educational institution getting no financial support either from the Government or from the university. Therefore, the institute has to meet its expenses only from the fees it charges from the students. If NOC is granted to the petitioner, there is a likelihood of one seat in the respondent no.2-Institute remaining vacant for as many as three years. There is no material to show that some other student is ready and willing to join respondent no.2-Institute, to occupy the seat that would be vacated in case the petitioner migrates to Maharaja Agrasen Institute of Technology. As stated in the counter affidavit of respondent no.2, the expenses of the institute for infrastructure required to maintain and run the institute is fixed. So is the number of teachers and employees working in the institute. Therefore, in case the seat presently occupied by the petitioner remained unfilled for three years, that would be to the financial detriment of respondent no.2-Institute, since it cannot reduce its expenditure on infrastructure, faculty or employees working in the institute. The petitioner before this Court has not come out with an offer to pay the remaining fees of the course to respondent no.2-Institute. Had such an offer been made by him, it would not have been possible for the respondent no.2-Institute to take the plea of financial hardships in case the petitioner is allowed to migrate to another institute, thereby leaving one seat unfilled for three years.”

A similar issue had also arisen in W.P. (C) No.5956/2013 Antariksh Anand Vs. Guru Gobind Singh Indraprastha University & Ors. wherein also on the candidate agreeing to deposit the balance fee in favour of the institute, a direction had been given to the objecting institute to grant a NOC for the purpose of migration.

Learned counsel for the petitioner points out that this seat would not remain vacant as is the contention of the respondents. A lateral entry admission is permitted and this information has been obtained by the petitioner pursuant to an RTI raised by him which shows that a lateral entry to the B. Tech Program has been granted. On this score, learned counsel for respondent No. 2 points out that lateral admission to the B. Tech Program is through a different mode and the seat of the petitioner, if he is permitted migration, would remain vacant and cannot be filled in through lateral entry. This submission of respondent No. 2 is noted and finds mention even in the counter affidavit filed by respondent No. 2.

In this background, this Court is of the view that the NOC cannot be granted to the petitioner as the seat of the petitioner would fall vacant and respondent No. 1 not being able to fill it up for the next three years would suffer a financial loss which the petitioner is not willing to compensate. In this background, the order of respondent No. 1 refusing NOC to the petitioner cannot be interfered with.

Petition is without any merit. Dismissed.

INDERMEET KAUR, J

NOVEMBER 13, 2017/A
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