

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

Reserved on: 12.12.2019

Date of decision: 18.12.2019

+ LPA 475/2019 and CM APPL. 32690/2019, 32692/2019

IN THE MATTER OF:

SHUBHAM GARG & ORS

.....Appellants

Through: Mr. Dayan Krishnan, Sr. Advocate with
Mr. Abhinav Agnihotri, Advocate

versus

GURU GOBIND SINGH INDRAPRASTHA UNIVERSITY & ANR

....Respondents

Through: Mr. Mukul Talwar, Sr. Advocate with
Ms. Ekta Sikri, Mr. Jasbir Bidhuri and Ms. Pallavi,
Advocates for R-1.

Mr. Rakesh Kumar Khanna, Sr. Advocate with
Mr. Ankur Garg, Mr. Himanshu Mehra and
Ms. Charu Tyagi, Advocates for R-2.

+ LPA 472/2019 and CM APPL. 32534/2019

KARTIK KAUSHIK

.....Appellant

Through: Mr. Abhinav Agnihotri, Advocate

versus

GURU GOBIND SINGH INDRAPRASTHA UNIVERSITY & ANR

.....Respondents

Through: Mr. Mukul Talwar, Sr. Advocate with
Ms. Ekta Sikri, Mr. Jasbir Bidhuri and Ms. Pallavi,
Advocates for R-1

+ LPA 473/2019 and CM APPL. 32639-40/2019

VIVEK NAG & ORS

.....Appellants

Through: Mr. Abhinav Agnihotri, Advocate

versus

GURU GOBIND SINGH INDRAPRASTHA UNIVERSITY & ANR

.....Respondents

Through: Mr. Mukul Talwar, Sr. Advocate with
Ms.Ekta Sikri, Mr. Jasbir Bidhuri and Ms. Pallavi,
Advocates for R-1

Mr.Rakesh Kumar Khanna, Sr. Advocate with Mr.
Ankur Garg, Mr.Himanshu Mehra and Ms. Charu
Tyagi, Advocates for R-2

+ LPA 474/2019 and CM APPL. 32681/2019

SAURABH PUJARI

..... Appellant

Through: Mr. Abhinav Agnihotri, Advocate

versus

GURU GOBIND SINGH INDRAPRASTHA UNIVERSITY & ANR

.....Respondents

Through: Mr. Mukul Talwar, Sr. Advocate with
Ms.Ekta Sikri, Mr. Jasbir Bidhuri and Ms. Pallavi,
Advocates for R-1

Mr.Saurabh Ajay Gupta and Ms. Syed Tabeer
Riyaz, Advocates for R-2

+ LPA 476/2019 and CM APPL. 32698-32701/2019

TEJAS GUPTA & ORS

.....Appellants

Through: Mr. Anil Sapra, Sr. Advocate with
Mr. Kartik Jindal, Ms.Akansha Chaudhary and
Mr. Achin Mittal, Advocates

versus

GURU GOBIND SINGH INDRAPRASTHA UNIVERSITY & ANR

.....Respondents

Through: Mr. Mukul Talwar, Sr. Advocate with
Ms.Ekta Sikri, Mr. Jasbir Bidhuri and Ms. Pallavi,
Advocates for R-1

Mr.Rakesh Kumar Khanna, Sr. Advocate with Mr.
Ankur Garg, Mr.Himanshu Mehra and Ms. Charu
Tyagi, Advocates for R-2

+ LPA 480/2019 and CM APPL. 32918/2019

SHUBHAM CHAUDHARY

..... Appellant

Through: Mr. R.K.Saini, Mr. Ankit Singh and Ms.
Bhavana Jain, Advocates

versus

GURU GOBIND SINGH INDRAPRASTHA UNIVERSITY & ANR

.....Respondents

Through: Mr. Mukul Talwar, Sr. Advocate with
Ms.Ekta Sikri, Mr. Jasbir Bidhuri and Ms. Pallavi,
Advocates for R-1

+ LPA 519/2019 and CM APPL. 36163/2019 & 36165-66/2019

ABRA SHAH & ANR

..... Appellants

Through: Ms. Anjana Gosain, Ms. Shalini Nair
and Ms. Himanshi, Advocates

versus

GURU GOBIND SINGH INDRAPRASTHA UNIVERSTIY & ANR

.....Respondents

Through: Mr. Mukul Talwar, Sr. Advocate with
Ms.Ekta Sikri, Mr. Jasbir Bidhuri and Ms. Pallavi,
Advocates for R-1

+ LPA 742/2019

AYUSHI BATRA

..... Appellant

Through Mr. Abhinav Agnihotri, Advocate.

versus

GURU GOBIND SINGH INDRAPRASTHA UNIVERSITY &
ANR

..... Respondent

Through Mr. Jasbir Bidhuri, Advocate for R-1.

+ LPA 743/2019

RITIKA JAIN

..... Appellant

Through: Mr. Dayan Krishnan, Senior Advocate
with Mr. Siddharth Sharma and Ms. Shruti Arora,
Advocates

versus

GURU GOBIND SINGH INDRAPRASTHA UNIVERSITY & ANR

..... Respondents

Through: Mr. Jasbir Bidhuri, Advocate for R-1.

Mr. Rakesh Khanna, Senior Advocate with

Mr. Ankur Garg and Ms. Charu Tyagi, Advocates
for R-2.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE ASHA MENON

HIMA KOHLI, J.

1. The appellants/students are aggrieved by a common judgment dated 29.05.2019, passed by the learned Single Judge, dismissing the writ petitions filed by them and holding that the impugned order/communication dated 02.11.2018, issued by the respondent No.1/Guru Gobind Singh Indraprastha University (in short, 'GGSIPU), rejecting their request for change of shift and change of branch/stream, did not warrant any interference.

2. For ease of reference, we propose to recapitulate the facts set out in LPA 475/2019, which has been treated as the lead matter for purposes of arguments.

FACTUAL BACKDROP

3. The appellants are students pursuing B.Tech programme in the respondent No.2/Maharaja Agrasen Institute of Technology (in short, 'Institute') affiliated to the respondent No.1/GGSIPU. They are presently studying in the fifth semester, which is a part of the academic year 2018-19. Each academic year in the said course comprises of two semesters. Within the B. Tech programme itself, there are several streams including Computer Science and Engineering (CSE), Information Technology (IT), Electricals and Electronics Engineering (EEE) and Mechanical and Automation Engineering (MAE). A common syllabus is prescribed for the first year in respect of all the B. Tech streams/branches. Respondent No.1/GGSIPU permits migration only after the student successfully completes the 1st academic year.

4. Some of the appellants/students were studying in the first shift that runs from 7 AM to 1:30 PM and others, in the second shift, from 2 PM to 8:30 PM. On successfully completing their 1st academic year, which comprises of the 1st and 2nd semesters, the appellants/students desired to migrate from the branch and the shift they had initially opted for by exercising their options in terms of a Notice dated 09.08.2018, issued by the respondent No.1/GGSIPU, extracted below:-

*“Guru Gobind Singh Indraprastha University
Sector 16 C, Dwarka, New Delhi-110078*

ADMISSION BRANCH

IPU-7/Acad./Migration-2018/2018-19/4712

09/08/2018

NOTICE

SUBJECT: Migration (Change of Shift Mutual Migration, Intra University, Inter University) of the students admitted in 1 st Semester in the Academic Session 2017-18

In pursuance of Provisions in Ordinance 7 (Migration of Students) GGSIPU Act, No. 9 of 1998, Candidates seeking Migration (Change of Shift, Mutual Migration, Intra university, Inter University) in various programmes in Guru Gobind Singh Indraprastha University are required to submit the following:

- 1. Migration Application*
- 2. No Objection Certificate (NOCs) from both the Institutes*
- 3. Copy of Result of first year (both semesters)*
- 4. Copy of Result of class 12th qualifying examination documents as per the eligibility criteria.*

The above documents may be submitted between 09th August 2018 to 17th August, 2018 (11 am to 3 pm) only on University working days in Admissions Branch, Administrative Block, GGSIPU Dwarka.

Candidates desirous of seeking Migration should also fulfil the eligibility Criteria for programme applying for Migration as laid down in the Admissions Brochure for the Academic Session 2017-18.

As per Amended provision of Migration Ordinance 7: No migration is permitted into the Medical Colleges of the Guru Gobind Singh Indraprastha university from any Institution/College.

Issuance of No objection certificate (NOCs) from the institute does not imply cancellation of Admission from the particular college. It only means consent for migration given by the College. Submission of Migration application does not

imply that migration will be carried out.

Migration will be effective from 3rd Semester for the Academic Session 2018-19.

Enclosed- Copy of Ordinance 7, GGSIPU Act 09 of 1998.

*SD/-
(Pravin Chandra)
Incharge Admissions”*

5. As the Notice dated 09.08.2018 reproduced above, refers to the provisions of Ordinance 7 governing migration in the respondent No.1/GGSIPU, it is considered necessary to reproduce the said Ordinance below:-

“ORDINANCE 7: MIGRATION OF STUDENTS

In pursuance of the provisions of Section 27 of Guru Gobind Singh Indraprastha University Act 1998 (9 of 1998), the Board of Management of the Guru Gobind Singh Indraprastha University, hereby makes the revised Ordinance 7 relating to Migration of students.

1.0 No Migration shall be allowed from other University/Colleges to the University Schools of Studies, University maintained colleges or affiliated institutions i.e. no inter-university migration shall be allowed in normal circumstances. It can be allowed in special circumstances by the Vice-Chancellor, on the recommendations of Sub-Committee, comprising of three members of Academic Council, constituted by the Vice-Chancellor subject to the condition that the applicant student/candidate must have cleared each paper of both the semester of 1st Year/or all the paper of the 1st year as it applies for a particular programme. It must be ensured that there should not be any gap between the 1st Year and the 2nd Year of a particular

programme meaning thereby that the pursuance of the programme remains continuous.

However, under no circumstances a student/candidate who has compartment in any one paper of the 1st year or either of the 1st or 2nd semester of the 1st year shall be permitted for migration.

2.0 Migration (inter-se) from the University Schools of Studies, maintained institutions or affiliated institutions shall, however be considered as under:

a) No migration shall be allowed during 1st year of studies except on extreme compassionate grounds, with the prior approval of Academic Council.

b) Migration from University School of Studies to University maintained institution or affiliated institutions and vice-versa or from one institution to another institution in the same programme/discipline in the 2nd year/3rd semester can be considered in respect of the following cases:

(i)(a) 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.

(b) In case applicants seeking migration from affiliated institutions to University School of Studies are more than the vacancies available, migration will be allowed on the basis of merit.

(ii) Under genuine circumstances migration of the students from the University School of Studies to another institution and vice-versa or from one institution to another institution in the programme/discipline may be allowed provided that the „No Objection Certificate“ is

issued by the University School of Studies/institution where he or she is studying in the previous semester and also vacancy exists in the institution/University School of Studies where he or she is seeking migration. Such migration shall be allowed only with the prior approval of Vice-Chancellor.

(iii) In case of migration of the student from one affiliated institution to another institution, the fee structure shall remain unchanged. However, in case of migration from affiliated institutions to University Schools of Studies, the candidate is required to pay the fee as prescribed in the University Schools of Studies for the same programme/discipline.

3.0 Under exceptional circumstances or in order to take care of unforeseen situations, the Academic Council may consider any relaxation in this Ordinance for reasons to be recorded in writing.

The above ordinance has come into force with effect from the date of the approval by the Board of Management.”

FIRST ROUND OF LITIGATION

6. Since the Notice dated 09.08.2018 required a student to obtain a No Objection Certificate (NOC) from the concerned Institute if he/she desired a shift/migration from one Institute to the other, the appellants/students herein, who desired not only a change in the shift, but also a change in the branch within the same Institute, i.e., from the morning shift to the afternoon shift or vice versa, applied to the respondent No.2/Institute for a NOC, which was duly accorded and was submitted by them before the cut off date for migration, that was initially notified by the University as 19.08.2018 and later on, revised to 21.08.2018. Thereafter, the appellants/students kept on waiting for a clearance from the respondent No.1/GGSIPU and on not

receiving a response till the middle of October, 2018, some of them approached the court by filing a writ petition [W.P.(C) 11722/2018].

7. The aforesaid writ petition was disposed of by the learned Single Judge vide order dated 30.10.2018, wherein the statement of the counsel appearing for the respondent No.1/GGSIPU was recorded to the effect that the pending representations of the petitioners therein for change of shift/branch would be known to them within two days. This was followed by an order dated 02.11.2018, passed by the respondent No.1/GGSIPU *inter alia* rejecting the request of the appellants/students for change of shift and change of branch, that came to be impugned by them in the second round of litigation.

SECOND ROUND OF LITIGATION

8. The reasons for the respondent No.1/GGSIPU to have rejected the request of the appellants/petitioners for change of shift and branch have been summarized in para 14 of the impugned judgment, reproduced hereinbelow:-

“14. Following thereupon, the impugned order came to be passed, by the GGSIPU, on 2nd November, 2018, rejecting the request of the petitioner on the following grounds:

(i) NOC was required to be submitted from “both the Institutions”, in case of migration, whereas, in the present case, the NOC had been submitted only from one institution.

(ii) Upgradation/change of branch/stream, within an institution was allowed only by the Upgradation policy/regulations applicable to the GGSIPU for the B.Tech. program, which already stood completed, for the 2018-2019 academic session.

(iii) The duly constituted Sub-Committee of the Academic Council of the GGSIPU considered, and examined, the issue of change of shift, under the provision of migration of students as per Ordinance 7 of the GGSIPU, in its meeting held on 3rd October, 2018, and, after due deliberation, recommended that "... no shift stage, in any program, be allowed to be considered as under the Migration Process...", as Ordinance 7 allowed migration only across institutions. This recommendation, of the Sub-Committee of the Academic Council was approved by the Vice-Chancellor of the GGSIPU. Accordingly, no request for shift change in an institution would be considered by the GGSIPU. All requests for change of shift in the same institution/college, for the 2018-2019 Academic Session had therefore, been rejected, by the GGSIPU, not being covered under Ordinance 7, which related to migration of students.

The impugned communication also draws attention to the caveat, contained in the notice dated 9th August, 2018, read with letter dated 19th August, 2018, whereby applications for migration were invited, in which it was clearly stated that issuance of NOC, from the Institute did not imply cancellation of admission from the particular college, but only implied that consent of migration had been given by the College, and that the submission of an application for migration application did not imply that migration would be carried out. In any event, it was noted, interests of students were not affected, as they were already studying in the same institution."

9. Following were the grounds taken by the appellants/students before the learned Single Judge to assail the communication dated 02.11.2018:-
 - (a) That there was no question of obtaining two sets of NOCs from two Institutions since the students were seeking change of shift within the same Institute, from morning shift to evening shift or vice versa.

- (b) That the respondent No.1/GGSIPU had permitted respondent No.2/Institute to conduct the B. Tech course in two shifts, morning shift and evening shift, for which it had been allocated two different Institute Codes. The morning shift was allocated Code No.148 and the evening shift was allocated Code No.964. It was therefore impermissible for the respondent No.1/GGSIPU to contend that the NOC was only of one Institute.
- (c) In view of the Notice dated 09.08.2018 that had invited applications for change of shift, both Intra-University and Inter-University, respondent No.1/GGSIPU was estopped from asserting that change of shift/branch was impermissible under Ordinance 7 or that Ordinance 7 applies only to migration, across different institutions.
- (d) That even in the earlier years, the respondent No.1/GGSIPU had been acceding to requests made by students for change of shift and branch and there was no justification for changing its position in the academic year 2018-19.
- (e) That having entertained requests for change of shift and branch in the immediately preceding year, if the respondent No.1/GGSIPU had decided not to entertain such applications in the academic year 2018-19, then the said decision ought to have been made public at the earliest and having failed to do so, the students had a legitimate expectation that they would be entitled to apply for change of shift and branch, in terms of the Notice dated 09.08.2019.

- (f) That change of shift and branch could not be treated as an 'upgradation' as sought to be urged on behalf of the respondent No.1/GGSIPU.
- (g) Lastly, reliance was placed on the recommendations made by the Sub-Committee of the Academic Council in its meeting held on 03.10.2018, wherein it was observed that since applications for migration had been invited by the respondent No.1/GGSIPU a long time back and the academic session had commenced in August, 2018, if any a student had obtained a NOC from the respective Institute after submission of request for migration, *"the issuance of NOCs by the institute may be considered as on genuine circumstances for academic session 2018-19"*.

10. The writ petitions of the appellants/students were opposed by the respondent No.1/GGSIPU on the following grounds:-

- (i) That change of branch would amount to upgradation/change of discipline within an institution and under the upgradation policy of the University, the marks obtained by a student i.e., Semester Grade Point Average (SGPA) in the 1st semester of the B. Tech Programme would be taken into consideration.
- (ii) That none of the appellants possess the requisite SGPA for upgradation to the CSE Branch and under the guise of change of shift, they were indirectly attempting to obtain such upgradation through the writ petition.
- (iii) That vide Notice dated 10.5.2018, the respondent No.1/GGSIPU had invited applications for upgradation/change of branch in the B.Tech.

Programme from students who would be promoted to the 3rd semester in the academic year 2018-19 and the said notice specifically stated that upgradation/change of branch would be done strictly on the basis of the SGPA obtained by the student in the 1st semester of the said programme, subject to availability of vacancies.

(iv) That Ordinance 7 did not allow change of shift within the same institute and required issuance of NOCs from both the institutions, where migration was sought clearly implying that migration could only be between two institutes.

(v) That the very first recommendation of the Sub-Committee of the Academic Council pursuant to the meeting conducted on 3.10.2018, had clarified that no shift change was possible under the migration policy of GGSIPU.

(vi) That the fact that GGSIPU had been allowing change of shift in the past by treating it as a migration, could not be treated as an estoppel against the University, since there can be no estoppel against the statute and nor would the principles of legitimate expectation come into play.

FINDING RETURNED IN THE IMPUGNED JUDGMENT

11. Upon hearing arguments advanced by the learned counsel for the parties, the learned Single Judge held in para 41 as below:-

“41. I am in entire agreement with the submission, of learned counsel appearing for the petitioner, that, in the face of this Notice, it is not open to the GGSIPU to contend that change of shift was not permissible, or even that it did not amount to migration. It is not necessary, for this purpose, to advert to Ordinance 7, or enter into any interpretive exercise thereof. Once the

*Notice, issued by the GGSIPU, invited applications for change of shift, which was parenthesized, with mutual migration and inter-University and intra-University migrations, as another category of “migration”, the applying students could hardly be expected to be required to refer to Ordinance 7, to ascertain whether, in fact, change of shift was “migration”, or not. **Indeed, the issue of whether change of shift did, or did not, amount to “migration”, is really tangential to the issue at hand. Ordinance 7, therefore, does not really impact the issue at hand. The GGSIPU is clearly bound by the representation held out, by it, to the students by the Notice dated 9th August, 2018 (supra) and is, therefore, estopped from seeking to contend that “change of shift” did not amount to migration. Even if Ordinance 7, which dealt with “migration”, were to be interpreted as not bringing, within its fold, change of shift, the Notice, dated 9th August, 2018 (supra), indisputably invited applications from students desiring a change of shift. Once, pursuant, and in response, to the said Notice, students applied for change of shift, it was, clearly, not open to the GGSIPU to reject the application on the ground that “change of shift” did not amount to “migration”, as conceptualized in Ordinance 7, or that any change, which was sought, had to be within the same shift.” (emphasis added)***

12. As can be seen from the above, the learned Single Judge was of the opinion that in the light of the Notice dated 9.8.2018, issued by the respondent No.1/GGSIPU that categorically invited applications from candidates ***“seeking Migration (Change of Shift, Mutual Migration, Inter university, Inter University) in various programmes”***, it was not permissible for GGSIPU to argue that change of shift was not permissible or that change of shift would tantamount to migration. The Court held that in

the face of the aforesaid notice, Ordinance 7 would not have any bearing as the students had applied for change of shift on the strength of the said notice. It was further held that even the recommendations made by the members of the Sub-Committee of the Academic Council were to the effect that since applications for migrations had already been invited by the University a long time ago and the academic session had already commenced from August, 2018, if any student had obtained NOCs for migration from their respective Institute, then the said NOCs must be taken into consideration on genuine circumstances for the academic year 2018-19.

REASONS FOR DECLINING RELIEF TO THE APPELLANTS IN THE WRIT PETITION:

13. So far so good. Now comes the twist in the tale. After rejecting the stand taken by the respondent No.1/GGSIPU and holding that it was not open for it to turn down the applications of the students who wanted a change in the shift alone, the learned Single Judge went on to hold that the Notice dated 9.8.2018 did not refer to any change of branch and that the University had issued a separate Notice dated 10.5.2018, inviting applications for change in branch which had categorically stated that a request for change of branch would amount to upgradation and further, that such a change in branch/upgradation was permissible only within the same shift. Taking note of the fact that the writ petitioners had not challenged the Notice dated 10.5.2018, which disallowed applications for change of branch across shifts, the impugned judgment records that if the appellants' requests for change of branch and shift were to be allowed, it would result in granting them admission to the CSE stream, without their having qualified for such

admission on merits. We may extract below the observations made in paras 54 and 55 of the impugned judgment:-

“54. My attention has not been invited, by any of the learned Counsel appearing for the petitioners, to any Rule, Regulation, or executive instruction, permitting students in the GGSIPU to seek change of branch across shifts, or, for that matter, to seek change of branch without securing the requisite SGPA. Nor does the writ petition refer to any such Rule, Regulation, or executive instruction. At the cost of repetition, it merits reiteration that the Notice, dated 9th August, 2018 supra, too, does not do so. The sole crutch on which the petitioner seeks to balance her case is, therefore, the fact that, in the previous two academic sessions, i.e. 2017-2018 and 2016-2017, requests for change of branch, along with change of shift, had been entertained and allowed.

*55. There is no gainsaying the fact that such requests had, in fact, been entertained and allowed in the previous two academic years, and, the respondents, too, do not dispute this factual position. **The petitioner cannot, however, seek parity, for the 2018-2019 academic session, in view of the Notice, dated 10th May, 2018 supra issued by the GGSIPU, which clearly noted that change of branch/upgradation was permissible only in the same shift, and would be decided on the basis of the SGPA scored by the applicant in the first semester. The petitioner has not sought to contend that any such notice, clarifying the position, had been issued in the earlier academic years 2016-2017 or 2017-2018. The position obtaining in the 2018-2019 academic session was, by virtue of the issuance of the said Notice dated 10th May, 2018, read with the fact that the Notice dated 9th August, 2018, too, did not invite applications for change of branch, drastically different. No leverage can, therefore, be sought to be drawn, by the petitioner, from the allowing, by the GGSIPU, of applications for change***

of shift and branch, in the earlier academic years 2016-2017 and 2017-2018. The reliance, by the petitioner, on the said fact cannot, therefore, come to her aid.”
(emphasis added)

14. The learned Single Judge thus concluded that “*there is no provision, in any instrument, whether statutory or in the form of any of the notices issued by the GGSIPU, to support the petitioner’s case that it was entitled to apply for change of shift along with change of branch, for the 2018-2019 academic session*”. At the same time, conscious of the fact that implementation of the impugned judgment would result in the appellants/students losing an entire academic year, the learned Single Judge clarified that the same would not be an impediment for the University to adopt an empathetic approach qua the students and permit them to continue in the class they were presently studying, if it was so deemed appropriate. It is a different matter that the respondent No.1/GGSIPU declined to go that way.

PRELIMINARY SUBMISSION MADE IN THE LPA’S:

15. When the present appeals except for LPA 742/2017 and 743/2019 which were filed later, were listed for admission on 22.7.2019, we had observed thus:-

“1. The appellants are aggrieved by a common judgment dated 29.05.2019, passed by the learned Single Judge whereby, their writ petitions for seeking change of shift and branch, have been dismissed primarily on the ground that the appellants could not seek parity for the academic sessions 2018-2019, in view of the Notice dated 11.05.2018 issued by the respondent no.1/GGSIPU, wherein it was clearly stated that change of

branch/upgradation was permissible only in the same shift.

2. Mr. Anil Sapra, Sr. Advocate and Mr. Dayan Krishnan, Sr. Advocate appearing for the appellants submit that in the earlier years, notices similar to the notices dated 10.05.2018 and 09.08.2018 were issued and yet the respondents had permitted a change of shift and branch and therefore, it is impermissible for them to urge that though the contents of the said notices are no different from those issued in the previous academic years, the same ought to be given a different interpretation. Secondly, it is submitted that on a reading of the Minutes of Meeting dated 03.10.2018 of the Sub-Committee of the Academic Council constituted to deliberate on change of shift for migration cases, it is apparent that the respondent no. 1/GGISPU had been acceding to the requests of the students for intra-university migration and migration within the same institution along with change of shift, in the past years.

3. Limited to the aforesaid two grounds, issue notice to the respondents in all petitions.”

16. In response to the issues flagged by learned counsel for the appellants/students, the respondent No.1/GGSIPU was permitted to file a brief affidavit which they did on 13.8.2019. It has been averred in the said affidavit that the appellants/students cannot be permitted to take refuge of the alleged past practice of permitting students to change their shift and branch and any departure from the practice followed in the previous years cannot bind the University and nor can the students seek parity on the basis of such past practice. To re-enforce the aforesaid submission, reliance was placed on the decision of the Supreme Court in the case of Sneh Prabha versus State U.P. & Anr. reported as (1996) 7 SCC 426 and it was

submitted that if State does commit a mistake, it cannot be forced to perpetuate the same mistake.

ARGUMENTS ADVANCED ON BEHALF OF THE APPELLANTS:

17. The gravamen of the arguments addressed by Mr. Dayan Krishnan and Mr. Anil Sapra, learned Sr. Advocates appearing for the appellants/students was that over the past years, the University had been routinely allowing requests of students pursuing B.Tech Programme for “change of shift and branch” and treating them as Intra-University migration, pursuant to similar notices issued in the earlier academic years as for e.g., the academic sessions, 2015-16 and 2016-17, under Ordinance 7 which the appellants have now been able to lay their hands on, after pronouncement of the impugned judgment. Copies of the said notices have been placed on record. It was argued that had this position been brought to the notice of the learned Single Judge by the respondent No.1/GGSIPU as it was well aware of the correct position, then the appellants/students would have been successful in the writ petitions because the court has already decided the issue of change of shift in their favour but has disallowed change of shift coupled with change of branch only on the ground that the appellants could not demonstrate that notices similar to the Notice dated 10.5.2018 for the academic session 2018-19, had been issued by the University in the previous academic years 2016-17 or 2017-18. It was urged that now that notices issued by the University in the previous two years have been filed, they go to substantiate the stand taken by the appellants/students that the respondent No.1/GGSIPU has been permitting students to apply for change of shift alongwith change of branch in the earlier academic years and

for the very same reason, the appellants/students ought to have been treated on the same footing.

18. It was also urged before us that when Ordinance 7 was introduced, there was no concept of running two shifts in the same Institute and the two shifts system was introduced much later. Ever since then, the University has been treating the morning shifts and the evening shifts within the same Institute as distinct to the point that separate Codes have been assigned for the morning shift and the evening shift. As a result, over the years, respondent No.1/GGSIPU has been permitting change of shift and change of branch within the same Institute by treating it as an '*Intra-University*' migration and the said word used in para 1 of the Notice dated 09.8.2018, must be understood to mean an Institute with a particular code and if the same Institute has been assigned two separate codes, then the morning shift and the evening shift shall have to be treated as distinct Institutes, thereby permitting students change of shift and branch, within the same Institute.

19. Learned counsel for the appellants/students have laid much emphasis on the fact that on the basis of the past practice adopted by the respondent No.1/GGSIPU, the understanding given to the appellants/students was that Intra-University change of shift and branch were both permitted and acting on the above understanding, they had applied for a change of shift and branch. Moreover, as per past practice, respondent No.2/Institute had also been issuing NOC's on the very same understanding. It was further submitted that as the 3rd semester in the second academic year commences from the first week of August every year, the authorities ensure that all the formalities regarding change of shift and change of branch are wrapped up

within the first week of that very month but in the year 2018, the respondent No.1/GGSIPU let the matter hang till the end of October, 2018. In the meantime, on submitting NOC's issued by the respondent No.2/Institute to the University and pending clearance at that end, the appellants/students were permitted to join the new shift and branch which they did. This was with the tacit approval of the respondent No.1/GGSIPU. In all this duration, not only the appellants/students, but even the respondent No.2/Institute kept on corresponding with the respondent No.1/GGSIPU asking for permission, but they drew a blank. Running against time and realising that the 3rd Semester would soon be over, the appellants/students were left with no option but to knock at the door of the court for relief in the middle of October, 2018. Prodded on by the court, the respondent No.1/GGSIPU finally issued a letter dated 02.11.2018, stating inter alia that no request for 'change of shift' within the same Institutions/college in the academic session 2018-19, would be considered under the procedure of migration of students, as prescribed under Ordinance 7. But by then, the 3rd semester was almost over and the examinations were to commence from the last week of November, 2018 thus leaving the appellants/students in a lurch.

ARGUMENTS ADVANCED ON BEHALF OF THE RESPONDENT NO.2/INSTITUTE

20. Mr. Rakesh Khanna, learned Sr. Advocate appearing on behalf of the respondent No.2/Institute supported the stand taken by the appellants/students and submitted that on its part, the Institute had been vigorously pursuing the matter and had written several letters informing the University that it had forwarded requests received from a number of students for migration in the academic session 2018-19, that had commenced on

01.8.2019 and they were still awaiting a confirmation. He contended that once the respondent No.1/GGSIPU had allowed the appellants/students to change their position and the students as also the Institute had acted on the previous representations held out by the University, the doctrine of *estoppel* would come into play and that this was clearly a case of *estoppel* by conduct. Learned counsel also referred to the noting file of the respondent No.1/GGSIPU to urge that even the University understood shifts to mean “*distinct institutions for the purposes of migration*”.

ARGUMENTS ADVANCED ON BEHALF OF THE RESPONDENT NO.1/GGSIPU

21. Mr. Mukul Talwar, learned Sr. Advocate appearing for the respondent No.1/GGSIPU vehemently contested the arguments advanced by learned counsel for the appellants/students and the respondent No.2/Institute and sought to explain that an error had crept in the Notice dated 09.8.2018 issued by the University inasmuch as it had referred to “*Intra University migration*” which is contrary to the stipulation contained in Ordinance 7. Much emphasis was laid by him on the penultimate para of the Notice dated 09.8.2018, to urge that it had been made clear that simply because the appellants/students had been issued NOC’s by the respondent No.2/Institute, will not imply that migration will automatically be permitted by the University. He contended that the record of the respondent No.2/Institute itself demonstrates that the appellants/students had not changed their position as sought to be argued and they were continuing to attend classes in the concerned streams where they had been originally admitted which fact could be borne out from a tabulated statement dispatched by the respondent No.2/Institute to the respondent No.1/GGSIPU for issuance of attendance

cards to enable the students to sit in the 3rd Semester end term examinations that were to be conducted in November/December, 2018.

22. To buttress his argument that the doctrine of promissory estoppel cannot come to the aid of the appellants/students if the same is against the statute, learned counsel for the respondent No.1/GGSIPU relied on the decision of a coordinate Bench of this Court in the case of Guru Gobind Singh Indraprastha University versus Ram Narayan Tiwari & Anr., reported as **2018 SCC OnLine 12786**. The decision in the case of Gursharan Singh and Others versus New Delhi Municipal Committee and Others reported as **(1996) 2 SCC 459** was cited to contend that negative equality cannot be claimed by the appellants/students as that would amount to perpetuating an illegal procedure, not sanctioned by law.

ANALYSIS AND DISCUSSION:

23. It can be seen from the aforesaid narrative that by now, the dust has settled on the issue of change of shift since the impugned judgment has upheld the plea taken by the appellants/students that the respondent No.1/GGSIPU cannot be permitted to cite Ordinance 7 to contend that change of shift was impermissible as it had itself issued a Notice dated 9.8.2018, inviting applications from students for change of shift coupled with mutual migrations, both intra-University and inter-University, by treating it as a “migration”. The said decision has not been challenged by the University by filing independent appeals or cross-appeals. However, a feeble attempt was made in the course of arguments to cite Order XLI, Rule 22 of the CPC and urge that the University is aggrieved by and entitled to raise a grievance against the findings returned in the impugned judgment on the

effect of Ordinance 7, though the conclusion arrived at is not being challenged. We are however, not persuaded by the said submission and concur with the view expressed by the learned Single Judge that the University is bound by the representation held out by it to the students vide Notice dated 09.8.2018 and it is estopped from contending that “change of the shift” did not amount to migration.

24. This leaves the aspect of change of branch. The only reason that had weighed with the learned Single Judge for declining the relief of change of branch/discipline coupled with the change of shift to the appellants/students was failure on their part to produce any Rule, Regulation or Executive Instruction, which could demonstrate that the respondent No.1/GGSIPU had been permitting students to seek a change of branch, across shifts or to seek change of branch without securing the prescribed SGPA (Semester Grade Point Average). Observing that the Notice dated 9.8.2018, issued by the University also does not make a mention of change of branch/discipline and that the earlier Notice dated 10.5.2018, issued by the University had clearly stated that change of branch/upgradation was permissible only in the same shift and would be decided on the basis of the SGPA scored by a student in the 1st semester, the learned Single Judge has declined relief to the appellants/students.

A. PAST PRACTICE CONSISTENTLY ADOPTED BY THE RESPONDENT NO.1/GGSIPU W.E.F. 2006-07

25. It is only at the appellate stage that the appellants have been able to lay their hands on two Notices, one dated 5.4.2016, relevant for the academic session 2016-17 and the other dated 5.7.2017, relevant for the

academic session 2017-18, which are similar to the Notice dated 10.5.2018, issued by the respondent No.1/GGSIPU for the academic session 2018-19. It transpired during the course of arguments advanced by counsel for the parties that though notices on similar lines were consistently issued by the University in the previous academic sessions, as was issued on 10.5.2018 for the academic session 2018-19, that stated *inter alia* that upgradation/change of branch of the students in the Engineering Programme within the same College/Institute on the basis of their performance in the 1st semester shall be based on the SGPA scored by them, the respondent No.1/GGSIPU had been permitting change of shift alongwith change of branch/discipline in routine, within the same Institute from the academic session 2006-07 onwards.

26. The only explanation sought to be offered by the respondent No.1/GGSIPU for changing course in the academic session 2018-19 is that the University realised that it had fallen in an error in interpreting Ordinance 7 over all these years and under a mistaken notion, had been permitting change of shift and change of branch to students within the same Institution, notwithstanding the fact that they had failed to secure the requisite SGPA. In view of the fact that the respondent No.1/GGSIPU itself remained under an impression that change of shift coupled with change of branch within the same Institute was permissible and the University had been acting on the said understanding for a decade and a half, till as recently as the previous academic session 2017-18, we are of the opinion that the appellants/students cannot be faulted for applying for NOCs to the respondent No.2/Institute and seeking change of branch alongwith change of shift for the academic

year 2018-19 on an understanding that the same would be allowed as a matter of course. Relying on the said representation held out by the respondent No.1/GGSIPU, not only did the appellants/students submit NOCs to the University, based on the said NOCs issued in their favour by the respondent No.2/Institute, the latter had also permitted them to attend the 3rd semester classes in the changed shifts/branches/disciplines. In the above backdrop, the appellants/students are justified in invoking the doctrine of *estoppel* by conduct against the respondent No.1/GGSIPU. We are afraid that in the given facts, none of the decisions cited by learned counsel for the respondent No.1/GGSIPU and referred to above, would be applicable.

B. LACK OF PROMPTITUDE DEMONSTRATED BY THE RESPONDENT NO.1/GGSIPU

27. There is yet another factor that weighs in favour of the appellants/students and against the respondent No.1/GGSIPU which is, failure on its part to act with promptitude in the instant case. As noticed above, in terms of the Notice dated 9.8.2018, issued by the University, students desirous of seeking migration, were required to submit their applications on or before 21.8.2018, which they did after obtaining requisite NOCs from the respondent No.2/Institute, so no delay is attributable to them. Thereafter, expecting that permissions will come from the respondent No.1/GGSIPU in due course, as was the case in the past years, the respondent No.2/Institute permitted the appellants/students to attend the 3rd semester classes in the changed shift and changed branch/discipline. In all this duration, the respondent No.1/GGSIPU remained mute and did not take a decision on the requests received by it for migration. This lull continued till the middle of October, 2018, when the anxiety of the appellants/students

mounted on failing to hear either ways from the University. Conscious of the fact that the date of commencement of the 3rd semester end term examinations was just round the corner, the aggrieved students filed a writ petition complaining that the University had failed to take any action. On 31.10.2018, on an assurance given by the counsel for the respondent No.1/GGSIPU to the court that the fate of the appellants/students would be known to them within two days, the petition was disposed of and only then did the respondent No.1/GGSIPU pass an order on 02.11.2018, rejecting the applications of the appellants/students for change of shift/change of branch.

28. In view of the past practice adopted by the respondent No.1/GGSIPU that gave a clear impression to the student community that it was permitting intra-University change of shift and change of branch/discipline and based thereon, the appellants/students having altered their position by submitting applications for change of shift/stream alongwith the requisite NOCs from the respondent No.2/Institute and further, having regard to the fact that the respondent No.2/Institute had permitted the appellants/students a change in the shift and branch on an expectation that, as was the case in the previous academic sessions, the respondent No.1/GGSIPU would permit migration even in the academic session 2018-19, we are of the opinion that it would be extremely iniquitous to revert the appellants/students to their original position at this belated stage. This is all the more so when the entire delay in communicating a decision lies squarely at the door of the respondent No.1/GGSIPU.

29. In our opinion, the past conduct of the respondent No.1/GGSIPU was itself sufficient for the appellants/students and the respondent No.2/Institute

to have reasonably inferred that as in the previous academic sessions, this time too, the University will give its approval for a change of shift and change of stream in the academic session 2018-19. Acting on the faith of such a representation/conduct on the part of the respondent No.1/GGSIPU and having altered their position, the University is *estopped* from arguing that the applications for change of shift/branch submitted by the appellants/students had been rightly rejected. The gross apathy of the respondent No.1/GGSIPU spread over three months, coupled with the decision of the respondent No.2/Institute to allow the appellants/students to attend the 3rd semester classes and mark their attendance in the changed shift and branches, cannot be brushed away simply on the strength of a disclaimer appended by the University at the foot of the Notice dated 9.8.2019 to the effect that issuance of “*NOCs*” from the institute did not imply cancellation of admission from the particular college or that “*Submission of Migration application does not imply that migration will be carried out*”.

30. A famous proverb dating back to the 17th Century that states “*actions speak louder than words*”, applies with full force to the facts of the present case. In one breath, the respondent No.1/GGSIPU had been issuing Notices in the previous academic sessions disallowing applications for change of branch across shifts without the requisite SPGA scores and in the other breath, it has been unfailingly permitting both, change of shift and change of branch/discipline to students in the 2nd academic year, notwithstanding the SGPA scored by them in the 1st semester. In the face of this practice consistently adopted by the respondent No.1/GGSIPU over a decade and a

half, it cannot be heard to state that the doctrine of *estoppel* by conduct cannot be invoked against it by the appellants/students.

31. We are, therefore, not inclined to accept the submission made by Mr. Mukul Talwar, learned Senior Advocate appearing on behalf of the respondent No.1/GGSIPU that the University is entitled to take a plea of *estoppel* against statute. The instant case is not one where estoppel is being invoked by the appellants/students against the statute, rather, it is one where they are entitled to invoke the doctrine of *estoppel* on the basis of the past conduct of the respondent No.1/GGSIPU. By its sheer inaction and dead silence maintained over a prolonged period, the University is *estopped* from contending at such a belated stage that it is empowered to decline approval to the migration applications submitted by the appellants/students at the eleventh hour. [Refer: University of Delhi versus Ashok Chopra, **AIR 1968 Delhi 131**, B.L. Sreedhar versus K.M. Munireddy, **(2003) 2 SCC 355**, Pratima Chaudhary versus Kalpna Mukherjee & Anr. **(2014) 4 SCC 196** and Manuelsons Hotels Pvt. Ltd. versus State of Kerala and Ors., **(2016) 6 SCC 766**].

32. To test the other submission made by learned counsel for the respondent No.1/GGSIPU that the appellants/students were actually continuing to study in the originally allocated shift/branch and the documents filed by them in support of the said plea, have been doctored to show otherwise, since we noticed from the records that during the pendency of the writ petitions, orders had been passed from time to time permitting the appellants/students to sit in the changed streams for the 3rd semester and 4th semester end term examinations, subject of course to the outcome of the said

petitions and without creating any equities in their favour and further, on finding that they had sat in the said examinations, vide order dated 16.09.2019, we had directed the respondent No.1/GGSIPU to produce the results of the appellants for the 3rd and 4th semesters in a sealed cover. On the next date, i.e., on 17.09.2019, the sealed cover handed over in court was opened and on perusing the tabulated statement prepared by the respondent No.1/GGSIPU upon collating their results, it turned out that in respect of 30 appellants, whose results were collated, out of a total of 12 subjects in each of the two semesters, only 6 had got compartments in 1-3 subjects. This puts paid to the submission made by learned counsel for the respondent No.1/GGSIPU that the appellants/students were continuing to attend classes in the concerned streams where they had been originally admitted. Had that been so, the results would have shown otherwise.

C. REVELATION FROM THE RELEVANT RECORDS MAINTAINED BY THE UNIVERSITY

33. Coming to the last aspect that has persuaded us to allow the present appeals, we find from a perusal of the impugned letter of rejection dated 02.11.2018, issued by the respondent No.1/GGSIPU that it refers to a duly constituted Sub-Committee of the Academic Council of the University which had examined the issue of shift change under the provisions of migration of students. Relying on the recommendations made by the said Sub-Committee to the effect that “*no shift change in any programme be allowed to be considered as under the migration process*” since Ordinance 7 allows migration across institutions only, which was duly approved by the Vice Chancellor, the University had turned down the migration applications submitted by the students. In the course of arguments, directions were

issued to the counsel for the respondent No.1/GGSIPU to produce the relevant noting file and the records pertaining to the first report of the Migration Committee constituted by the University after issuance of the Notice dated 09.08.2018 so as to examine the steps taken by the University right upto 02.11.2018, when the rejection order was passed.

34. In compliance with the said directions, a photocopy of the relevant extract of the noting file was produced by the learned counsel for the respondent No.1/GGSIPU, accompanied by a typed version of the hand written notes, which throws light on the manner in which the issue was approached by the University. A perusal of the noting file reveals that sometime in the beginning of September, 2018, a note was put up on the subject of *“Migration of Students for the Academic Session 2018-19”*, which referred to the provisions of Ordinance 7 and mentioned three circumstances in which migrations are to be considered under the said Ordinance. One of the three situations highlighted in the said note was in respect of migration of students within the University schools and/or its affiliated institutions. A proposal was made that in the first instance, *“change of shift/change of branch/intra-University migration may be processed on the request received from the students”*.

35. The aforesaid note was put up to the Joint Registrar (Admissions), who wrote on 07.09.2018 that *“the case of migration within the University school/affiliate institutes is to be as per the proviso mentioned in Ordinance 7”*. The Registrar recommended that the case of migration within the University school/affiliate institutes may be taken up first. The said view was endorsed by the Pro-Vice Chancellor and the Vice Chancellor of the

University and resultantly, as was the practice adopted in the previous academic years, a Migration Committee was constituted under Ordinance 7, which submitted its recommendations on 14.09.2018 to the following effect:-

“1. The Committee was appraised for the Procedure for inviting applications for migrations for Academic Session 2018-19 in the terms of Ordinance 7, GGSIPU Act. The Committee perused all the noting and approval on the file related to Process of Migration.

2. Applications have been received, with a request for Migration for Change of Shift, Change of Branch Intra University and Inter University to any affiliated colleges/University School of Studies of the Univeristy in Programme B. Tech.

3. The Committee recommends that Migration from within the University/Affiliated Colleges that is Intra Migration to University School of Studies be given to all the Applicants applying to the University from the Affiliated on the basis of CGPA secured by the candidates in their 1st Year of Examination and as per the no. of seats available in University Schools of Studies.

4. Migration has been carried out in a order, which is mentioned as below:

- i. Change of shift/Change of Branch Migration within the College.*
- ii. Intra University Migration.*

5. *Inter University Migration as per approved in the relevant file i.e., from other Universities will be carried out later on.*

6. *As brought into the Notice of Committee that the Academic Session for 2018-19 has already commenced w.e.f. 01.08.2018 and recommendation for Migrations are being carried out now, it is also recommended that the students allowed for Migration, their Internal Examination may be held after some time in the general interest of the Students.*

7. *The detail of the students along with the name of the parent college/institute where the student is studying and the college/institute where the student is seeking migration are mentioned below. The Committee has examined the cases and recommends as below:” (emphasis added)*

36. As can be seen from the aforesaid recommendations, following the same practice as was being adopted by the earlier Migration Committees constituted on an annual basis by the University, the Migration Committee for the year 2018-19 had also recommended approval of change of shift and change of branch as migration within the college besides Intra-University migration. This position is also borne out from a perusal of the list of students annexed with the Report of the Migration Committee that shows that change of shift and change of branch within the same Institute had been duly recommended. Instead of acting on the Report of the Migration Committee in entirety, the University implemented the recommendation for migration from Affiliated colleges to University schools while keeping the rest of the recommendations in abeyance, which included recommendations approving change of shift and change of branch within the same Institute by treating the same as intra-University migration.

37. The aforesaid recommendations dated 14.9.2018 were placed on the file by the Convener, i.e., Incharge (Admissions) for the approval of the Vice Chancellor on 18.9.2018. On 24.9.2018, the Registrar appended a note as follows:-

“- As per clause 2.0 (b)(i)(b), migration to university school is purely on merit basis. The same may be allowed. (Ordinance 7; Migration of students)

- Under clause 2.0(b)(ii), migration may be considered under genuine circumstances. Therefore, before any decision is taken on their application, their genuineness may be brought on file. Their circumstances may show some light on their genuineness.

- Further it is noticed that shift changes from Ist to IInd or vice-versa is also being treated as migration whereas it is very close to upgradation which is done on basis of merit. Therefore, this matter may be re-examined whether such cases fall in category of migration. Ordinance talks about two NOCs in case of migration whereas in such cases there is only one institute and therefore only one NOC.”

38. It is noteworthy that the aforesaid note was recorded by a Registrar, who was appointed in the University on 13.07.2017 and he was the one, who had for the first time expressed some reservations on whether change of shift/change of branch from morning to evening shift or vice-versa within the same Institute can be treated as Intra University migration. In this background, the Pro-Vice Chancellor, marked the file to the Incharge (Admissions), who recorded the following note on 25.09.2018:-

1. The file has been put up following the current procedure of the migration as followed till date.

2. For migration, shifts are considered as distinct institutions.

3. The file may be approved for this year/academic session. The recommendation of the duly constituted committee may be taken as final for migration this year/academic session in all cases of migration. Moreover Academic session has already started.

4. The issues raised by the Registrar may be considered by a sub-committee of the Academic Council as it may lead to recommendations that lead to changes in the process of upgradation for B.Tech/etc and in migration of students ordinance.” (emphasis added)

39. In spite of the aforesaid observations made by the Incharge (Admissions) that shifts are considered as distinct institutions for migration and the recommendations of the Migration Committee may be accepted for this year, more so since the academic session had already commenced, the Pro-Vice Chancellor opined that the file be placed before the Vice-Chancellor for approval and for constituting an Academic Council Sub-Committee. The said note was approved on 25.9.2018 and a Sub-Committee of the Academic Council was constituted. The said Sub-Committee held a meeting on 03.10.2018 and made the following recommendations:-

“The minutes of the meeting of the AC sub-committee is placed on file. The meeting was held on 3/10/2018. The sub-committee recommends the following:

1. For the academic session 2018-19, no shift change in any programme be allowed to be considered as under the Migration process.

2. As the applications for migrations have already been invited by University long time back and also academic session has began from August 2018, if any student has obtained NOC(s) from their respective Institute after submission of request for migration, the issuance of NOCs

by the institute may be considered as on genuine circumstances for academic session 2018-19.

3. The Up-gradation Regulation may be amended for consideration in the next academic session 2019-20 and onwards and to include/allow shift changes in the same institution also after comprehensive review and to be applicable to all programmes of studies.

4. The Migration Ordinance may be made more comprehensive or a suitable Regulation be framed for providing detailed procedure to be followed for migration as per provisions in the said Ordinance.” (emphasis added)

40. As can be seen from the tone and tenor of the recommendations made by the Sub-Committee on 03.10.2018, it was of the view that for the academic year 2018-19, no shift change in any programme be allowed to be treated as a Migration process. At the same time, the Sub-Committee was cognizant of the fact that the University had already invited applications from students for migration a long time ago and the academic session had also begun in August, 2018. In the said circumstances, the Sub-Committee opined in para 2 that if the students had obtained NOC's from their respective institute, the said NOC's may be considered by the University on genuine circumstances for the academic session 2018-19.

41. When the aforesaid Report of the Sub-Committee was placed back before the Migration Committee, it resolved on 08.10.2018, that no shift change in any programme shall be allowed as under the migration process in the academic session 2018-19, without recommending the relaxation suggested by the Sub-Committee in para 2 of its Report. The said recommendations were approved by the Vice Chancellor on 10.10.2018, but no decision was communicated to the appellants/students or the respondent No.2/Institute till 02.11.2018.

42. What emerges from a reading of the noting file of the respondent No.1/GGSIPU is that in its Report dated 14.09.2018, the Migration Committee had recommended change of shift and change of branch for intra-University migration. The said decision appears to be in consonance with the decision taken by the University uninterruptedly in the previous academic years and duly implemented. However, this time, the Registrar of the University had some reservations about the decision taken by the Migration Committee in the light of Ordinance 7 that referred to two NOCs in case of migration, whereas the applications submitted by the students for migration were supported with only one NOC, issued by one Institute and he desired that the matter be re-examined.

43. In response to the aforesaid note, the Incharge (Admissions) clarified that for purposes of migration, shifts are considered as distinct institutions. Thus there is no manner of doubt that the understanding of the high officials of the University was that if two shifts were being run in one Institute, i.e., morning shift and evening shift, then each of the two shifts would be treated as a distinct institution. Even the subsequently constituted Sub-Committee had recommended in its meeting held on 03.10.2018, that since applications for migration had already been invited from students a long time ago and the academic session had commenced in August, 2018, wherever students had obtained NOCs from their Institute, the said NOCs may be treated on genuine circumstances for the relevant year.

44. The version of the learned counsel for the respondent No.1/GGSIPU is that the second para of the Report submitted by the Sub-Committee on 03.10.2018, must be understood to mean that no change in branch had been permitted Intra-University. We are however not persuaded by the said

submission for the reason that in para 1 of the Report dated 03.10.2018 submitted by the Sub-Committee, it had clearly stated that no shift change in any programme should be treated as a part of the Migration process. However, in para 2, looking at the ground situation, where the University had already invited applications for migration and on the basis of NOC's received from Institutions, students had submitted applications quite a while ago and further, noting that a large part of the academic session was already over, the Sub-Committee took a balanced view and recommended that in genuine circumstances, the said applications may be entertained in the academic session 2018-19.

45. Although the recommendations of the Sub-Committee were accepted in toto by the Vice-Chancellor on 05.10.2018, the Migration Committee in the meeting held on 08.10.2018, only took into consideration the recommendation made in para 1 of the Report dated 03.10.2018 without factoring in para 2 and went on to resolve that *"there shall not be shift change as approved by the competent authority for the academic session 2018-19"*. This decision was contrary to the spirit of the recommendations of the Sub-Committee dated 03.10.2018. After receiving the recommendations of the Migration Committee on 08.10.2018, the respondent No.1/GGSIPU continued to maintain silence right upto 02.11.2018, leaving the appellants/students between a rock and a hard place. By the time the said decision was conveyed by the respondent No.1/GGSIPU on 02.11.2018, much water had flown under the bridge inasmuch as the end term examinations for the 3rd semester were scheduled to commence at the end of November, 2018 and in all that duration, the

appellants/students were regularly attending classes in the changed shifts and changed branches/disciplines, to the knowledge of the University.

46. Thus, it is clear from the Report of both, the Migration Committee and the Sub-Committee, dated 14.9.2018 and 03.10.2018 respectively, that genuine circumstances could be taken into account for permitting intra-University migration across branches within the same Institute. However, the respondent No.1/GGSIPU turned a deaf ear to the said recommendations and completely ignored the fact that in this back and forth, a large part of the 3rd semester was already over, during which period, the appellants/students had been permitted by the respondent No.2/Institute to attend the classes on the basis of NOCs issued by it for change of shift and change of branch, in anticipation of necessary approvals from the University, as were received in the past years. In our view, the above facts and circumstances are sufficient ground to quash the order dated 02.11.2018, issued by the respondent No.1/GGSIPU, declining to recommend the applications for migration submitted by the appellants/students for Intra-University change of shift and change of branch/discipline.

CONCLUSION:

47. In view of the discussion above, we are of the opinion that the appellants/students are entitled not only to a change of shift, they are also entitled to a change of branch/discipline. As a result, the impugned judgment insofar as the cases of the appellants/students for change of branch/discipline alongwith change of shift has been rejected, is set aside. The migration applications submitted by the appellants/students on the basis of the Notice dated 09.08.2018, issued by the respondent No.1/GGSIPU are deemed to be allowed. As noticed above, during the pendency of the writ

petitions, on the basis of interim orders, the appellants/students were permitted to sit for the 3rd and 4th semesters end term examinations. Further, during the pendency of the present appeals, on applications moved by the appellants/students, this court had permitted them to sit for the 5th semester end term examinations. It is directed that the appellants/students shall be treated as having appeared regularly in the said examinations and their results for the 3rd, 4th and 5th semesters shall be declared by the respondent No.1/GGSIPU. Depending on how they have performed in the aforesaid examinations, appropriate steps shall be taken to promote the appellants/students to the 6th semester, subject of course to the extant rules and regulations of the University, as may be applicable.

48. The appeals are allowed on the above terms alongwith the pending applications, with no orders as to costs.

(HIMA KOHLI)
JUDGE

(ASHA MENON)
JUDGE

DECEMBER 18, 2019

rkb/na/ap