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

Reserved on: 7th January, 2019
Pronounced on: 9th January, 2019

+ W.P.(C) 8939/2018 & CM APPLs. 35536/2018, 37417/2018
53723/2018

DHRUV KUMAR SHARMA Petitioner
Through: Mr. Girish Kumar Sharma and
Ms. Sushma Sharma, Advs.

versus

GURU GOBIND SINGH INDRAPRASTHA
UNIVERSITY AND ANR. Respondents
Through: Mr. Jasbir Bidhuri and
Mr. Arun Sanwal, Advs. for R-1
Mr. Ankit Jain and Mr. Siddharth Nath,
Advs. for R-2
Ms. Binisa Mohanty and Mr. Amitesh
Kumar, Advs. for R-3

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

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J U D G M E N T

1. Dhruv Kumar Sharma, the petitioner, has moved this Court, for issuance of a writ of mandamus, to the Fairfield Institute of Management and Technology (hereinafter referred to as “FIMT”), to issue a No Objection Certificate (NOC), which would enable him to migrate to one of the other colleges/institutes affiliated to the Guru Gobind Singh Indraprastha University (impleaded as Respondent No.1

and referred to, hereinafter, as “the GGSIPU”), for the third semester of the B.A. LL.B course being undertaken by him.

2. Consequent to passing his Class XII examination, from the Central Board of Secondary Education (CBSE), in 2017, the petitioner applied, to the GGSIPU, pursuant to which he was allotted admission in FIMT, which is affiliated to the GGSIPU. The petitioner has passed his first and second semesters of his B.A. LL.B course as a student of FIMT. The result of the second semester was declared on 31st July, 2018.

3. The writ petition avers that, before the announcement of the result of his second semester examination, the petitioner sought admission in the Vivekananda Institute of Professional Studies (VIPS), also affiliated to the GGSIPU, for being admitted in the third semester of the B.A. LL.B course, purportedly because he and his family members had “planned to shift their residence from South Delhi to North Delhi”. The exact pleading, as contained in para 4 of the writ petition, to this effect, reads thus:

“That prior to the result of 2nd semester, the petitioner and his family members planned to shift their residence from South Delhi to North Delhi, as such the petitioner approached the Vivekananda Institute of Professional Studies, which is affiliated to respondent No 1, for his admission in BA LLB 3rd semester (Session 2018-19) by way of Migration from respondent No 2 and Vivekananda Institute of Professional Studies, issued NOC for Migration of the petitioner from the respondent No 2 Institute to their Institute vide NOC dated 24th June, 2018.”

On 24th June, 2018, NOC was granted by VIPS, therefor.

4. The writ petition avers that, the petitioner, thereafter, approached FIMT, for NOC, in order to enable him to migrate to VIPS (as the extant guidelines, relating to migration from one college to another, under the GGSIPU, required both colleges/institutes to issue NOC for the said purpose), *vide* the following letter, dated 9th July, 2018:

“To,

The Registrar,
Guru Gobind Singh Indraprastha University,
Main Campus,
Dwarka,
New Delhi

09 July 2018

Sub: Application to obtain No objection certificate (NOC) in order to migrate from my existing college Fairfield Institute of Management and Technology located at Kapashera, New Delhi

Dear Sir,

I respectfully wish to bring the following facts to your kind notice.

I am a student of Fairfield Institute of Management and Technology located at Kapashera. I am pursuing BA LLB course (Law) in Fairfield and had appeared for my 2nd semester exams in May, and the result is awaited. My Enrolment No is 04190103817, and I have cleared all the papers my 1st semester with no backlogs.

I am a resident of Basant Nagar, New Delhi-110057 and due to certain reasons my family shall be relocating in Pitampura in North Delhi and thus travelling to Kapashera shall be tedious from Pitampura, in the absence of proper metro connectivity.

Sir, due to above mentioned reasons, I shall be wasting my precious time in travelling such a long distance to and follow from Pitampura and Kapashera.

I thus humbly request you to kindly help me getting the NOC for migration from Fairfield Institute of Management and Technology and will try to secure admission in some other college of your esteemed University.

Thanking you,

Yours sincerely,

Dhruv Kumar Sharma
R/o 59, Basant Nagar,
New Delhi-57
9999119270”

(Emphasis Supplied)

5. However, FIMT refused to oblige, directing the petitioner to await issuance of notice, by the GGSIPU, for intra-University migration.

6. The said notice was issued, by the GGSIPU, on 9th August, 2018, in response whereto the petitioner applied to FIMT, enclosing all requisite documents and seeking issuance, by FIMT of the requisite NOC, which was required to be submitted on or before 17th August,

2018. Written communications were also addressed, by the petitioner, to FIMT, requesting it to issue the NOC.

7. As there was no response, whatsoever, from the FIMT, positive or negative, the petitioner has moved this Court, by means of the present writ petition. The prayer clause in the writ petition reads thus:

“It is, therefore, most respectfully prayed that this Hon’ble Court may very graciously be pleased to:-

- (i) Issue a writ in the nature of mandamus or any other writ/writs, order/orders, direction/directions whereby directing the respondent No. 2 to issue necessary NOC to the petitioner for the purpose of his migration from the Institute of the respondent No. 1 to any other Institute of the respondent No. 1;
- (ii) Issue a writ/order/direction whereby directing the respondent No. 1 to accept the NOC and to issue migration certificate to the petitioner for his admission to some other Institute affiliated to respondent No. 1, enabling the petitioner to continue his 3rd semester of BA LLB 2018-19;
- (iii) Pass such other order further orders/orders, which this Hon’ble Court may deem fit and proper in the facts and circumstances of the case.”

8. The writ petition, it may be noted even at this juncture, only offers the *plan*, of the petitioner and his family, to shift from South Delhi to North Delhi, as a ground to support the prayers made therein. No time period, within which the said “shifting” would take place, finds any reference in the writ petition. It is interesting to note that,

though the writ petition was filed in the last week of August, 2018, the petitioner and his family continue to reside in South Delhi. Learned counsel appearing for the petitioner – who happened to be the petitioner’s parents – submit that they would probably be shifting to North Delhi in March, 2019.

9. It appears that, during the pendency of these proceedings, VIPS allotted the seat, which it had kept vacant for the petitioner, to another candidate, as a result thereof the petitioner’s dreams of studying under VIPS went up in smoke. The petitioner, in these circumstances moved C.M. 35536/2018, before this Court, stating that “in the above circumstances, the petitioner enquired from other institutes of the Respondent No. 1 regarding vacancy for the above course and during enquiry, Amity Law School Delhi, F-1 Block, Sector-125, Amity University Campus, Noida has telephonically informed them that they are having two seats vacant and if the Court will directed to give admission in the Institute, they will provide the necessary NOC for the same for giving admission in the Institute.” In these circumstances, it was prayed that Amity Law School be permitted to be impleaded as an additional respondent, and be directed to keep one seat vacant for the petitioner in the third semester of its B.A. LL.B program.

10. This application was allowed, to the extent of the prayer, therein, for impleading Amity Law School as a respondent. As a result, Amity Law School is, now, Respondent No. 3 in the writ petition.

11. I am unable to comprehend how the petitioner could maintain the present writ petition, to seek grant of NOC, from FIMT, in order to enable him to join Amity Law School. The only case made out by the petitioner, in the writ petition, was that, as his family was planning, at some unspecified time in the future, to shift to North Delhi, he wished to migrate to VIPS which, undisputedly, is located in North Delhi. Once the chance of migrating to VIPS no longer survived, the very ethos of the writ petition perished. Paragraphs 2 to 4 of C.M. 35663/2018, whereby impleadment of Amity Law School was sought, are completely damning, to the case of the petitioner, reading, as they do, thus:

“2. That the present writ relates to issuance of directions to the respondent No. 2 for issuance of NOC *for the purpose of migration of the petitioner from its Institute to any other Institute of the respondent No. 1.*

3. That the petitioner has annexed a copy of NOC (Annexure P-1) along with the petition, vide which Vivekananda Institute of Professional Studies issued NOC dated 24.6.2018 for migration of the petitioner from the Institute of the respondent No. 2 to their Institute, however, since the petitioner has not been issued NOC by the respondent No. 2, whereas the petitioner applied for the same within stipulated period, as such the above said Institute namely Vivekananda Institute of Professional Studies has already filled/allotted the vacancy to some other candidate, as such now they have no seat vacant for giving admission to any student in B.A. LL.B (3rd Semester), 2018.

4. That in the above circumstances, *the petitioner enquired from other institutes of the respondent No. 1*

regarding vacant seat for the above course and during enquiry, Amity Law School Delhi, Amity University Campus Sector-125, Noida has telephonically informed that they are having two seats vacant and if the Court will direct them to give admission in their Institute, they will provide the necessary NOC for the same for giving admission in their Institute.

5. That in the above circumstances, Amity Law School, Amity University Campus, Sector-125, Noida, U.P., is the necessary party to the present petition.

6. That in case Amity Law School Delhi, F-1 Block, Sector 125, Amity University Campus, Noida is not impleaded as necessary party in the above said petition, the petitioner shall suffer irreparable loss and *the very purpose of filing the present writ petition shall become infructuous*. Hence this application.”

(Emphasis Supplied)

12. Law, unquestionably, recognises a fundamental right to education. There is, however, equally unquestionably, no fundamental right to have oneself educated in an institution of one's personal choice or preference, irrespective of merit. Migration, from one college to the other, is not a matter of right. In specific cases, where the student concerned faces serious difficulties or inconvenience, in continuing in the institution in which she, or he, studies, this Court has, no doubt, been magnanimous and has entertained requests for migration. The judgments, on which learned counsel appearing for the petitioner relied are all such cases. In ***Anika Jain v. University of Delhi, (2009) 107 DRJ 42***, the petitioner was a single girl, staying alone, as her parents had shifted to Agra. As it was impossible for her, in such circumstances, to stay alone in the house earlier occupied by

her, with her parents, at Rohini, the petitioner shifted to her cousin's house at Bihari Colony, Shahdara. Though the petitioner could have, by dint of her merit, secured admission in other prestigious colleges, she took admission, in the Respondent No 2 - College (in that case) as it was close to her place of residence at Rohini. This Court also took notice of the fact that the distance between Shahdara and the Hansraj College (to which the petitioner desired to migrate) was much less than the distance between Shahdara and the Respondent No 2 - College. In *Aarushi Jerath v. University of Delhi*, (2010) 119 DRJ 390, the ground cited was that the petitioner was actively involved in dramatics, and that the Hindu College, to which she desired to migrate, had a well-organised and popular dramatic society, unlike the college in which she was studying at that time. She also relied on the fact that the Hindu College was more “prestigious”, and had better future job prospects for her, than the college in which she was studying at the time. In *Himani Sharma v. University of Delhi*, 2013 SCC OnLine Del 3547, the petitioner cited health grounds, stating that she was frequently falling sick and was not, therefore, in a position to commute every day, 60 to 70 km, to and from the college in which she was studying while the said college were situated at a distance of 30 km from her residence, the college, to which she desired to migrate, was situated at a distance of 12 km. In each of these cases, therefore, there was a compelling circumstance, cited by the student concerned, to support her, or his, claim for migration, which impressed this Court to grant relief.

13. No such compelling circumstance emerges, from the pleadings in the present case. The only ground, on which the claim was sought to be founded, in the writ petition, was that the petitioner was intending to shift, with his family, to Pitampura, in the near future. That eventuality has not arisen till date, and the petitioner continues to reside, with his family, in Basant Nagar. The sole justification, cited in the writ petition, therefore, stands belied, and the writ petition is liable to be dismissed even on this single ground.

14. Besides, the “distance” argument can no longer survive, with the possibility, of the petitioner securing admission in VIPS, having ceased to exist. Amity Law School is situated in Noida, and is nowhere in the vicinity of North Delhi. Nor, it may be noted, is it anywhere in the vicinity of Basant Nagar, where the petitioner presently resides. Learned counsel for the petitioner, in this regard, submits that there is good “Metro connectivity” to Noida, which is not available to the FIMT. For the petitioner, present in Court, who is a young man, in good health, the mere existence of “Metro connectivity” can hardly be a ground, in my opinion, for him to base a claim, under Article 226 of the Constitution of India, for migration. The latitude shown, by this Court, in cases of single girls, staying at distant locations, or of students suffering from health issues, can hardly be extended to the petitioner. “Metro connectivity”, today, extends practically through the length and breadth of the National Capital Region and, if this were to be accepted as a ground to seek migration, this Court would have to start allowing migrations in all cases. The result would be that migration, which, it is well settled, is

not a matter of right, would become a matter of rule. That is clearly impermissible.

15. Learned counsel for the Respondent No 2 - College points out, significantly, that, once the respondent submitted, in its counter-affidavit, that the distance from Pitampura (and Basant Nagar) to the Respondent No 2 - College was less than the distance from Pitampura (and Basant Nagar) to Amity Law School, the petitioner shifted stance, and, in his rejoinder-affidavit, stated that his family was planning to shift to Adarsh Nagar, instead of Pitampura. I do not intend to enter into this controversy as, in my view, even on the basis of the pleadings as contained in the writ petition, no case for grant of relief, by this Court, can be said to be made out.

16. The writ petition is, therefore, dismissed, with no order as to costs.

C. HARI SHANKAR, J

JANUARY 09, 2019

HJ