

\$~2 (2021 Cause List)

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

Date of Decision: December 21, 2021

+ W.P.(C) 2789/2021

HIMANSHU

..... Petitioner

Through: Mr. Aman Mudgal, Advocate.

versus

UNIVERSITY OF DELHI & ORS.

..... Respondents

Through: Mr. Ankur Chhibber and Mr.

Anshuman Mehrotra, Advts.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

JUDGMENT

PRATEEK JALAN, J. (ORAL)

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The proceedings in the matter have been conducted through video conferencing.

1. The petitioner was admitted to the School of Open Learning ["SOL"] under the respondent No. 1-University of Delhi ["the University"] in the year 2019. He has been pursuing his B.A. degree from the SOL since then. By way of this writ petition, the petitioner seeks a writ of *mandamus* directing the respondents to migrate the petitioner to some other college under the University.

2. The prospectus of the SOL has been placed on record by the petitioner, in which the relevant rules regarding inter-college/university migration have been extracted in section 6.2. The said section reads as follows:-

“6.2 INTER COLLEGE/UNIVERSITY MIGRATION

As per the Amended Ordinance IV of the Ordinances of the University of Delhi applicable for necessary compliance w.e.f. the Academic Session 2012-2013:

*1. **Inter-university migration** may be permitted only in the beginning of the III Semester of only B.A. Programme and B.Com Programme under semester mode on production of (i) Leaving Certificate from the Principal of the College or from the Registrar of the University he/she is leaving and (ii) marks sheets of the examinations already passed and (iii) documentary evidences in support of the ground on which migration has been sought.*

Provided that such a student will have to pass all the papers of Semester-I & Semester-II examinations of the said course of the University of Delhi.

Provided further that their marks shall be proportionately upgraded in the Semester-I & Semester-II examinations in the absence of the Internal Assessment Marks.

*2. **Admission of a student to the University** in the III Semester of study for B.A./B.Com degree examination may only be allowed on the ground that the parent or guardian of the student in or has migrated to Delhi.*

*3.a. **Inter College migration within the University of Delhi in the III Semester** of B.A., B.Com, B.A. (H), B.Com (H) Courses under the semester mode **may be allowed** subject to availability of seats and **consent of Principals of both the colleges.***

b. Inter College migration will not be allowed at the post-graduate level.

*c. **The last date for migration will be 31st August.***

*4. Application for migration from one college of the University of Delhi to another **shall only be entertained by the Principal if forwarded by the Principal of the college from which***

migration is sought, and the necessary alteration in the enrolment entries shall only be made in the University Register by the Registrar after obtaining the consent in writing of both Principals.”¹

3. It is undisputed that in the wake of the COVID-19 pandemic, the petitioner’s first and second semester examinations were held in May, 2020 and the results were declared together on 02.11.2020. By this time, the last date for applications for migration had lapsed. In the normal course, the last date for such an application is 31st August, but in the year 2020, by a notification dated 04.09.2020, it was extended to 30.09.2020.

4. Alongwith the writ petition, the petitioner has annexed a copy of the application dated 19.11.2020 addressed by him to the Dean, Students’ Welfare and the Dean of the Colleges of the University, requesting them to extend the last date for the process of migration on the ground that the petitioner’s first and second semester results were declared belatedly, and the petitioner was, therefore, unable to apply within the mandated last date. The writ petition has been filed for a direction upon the University to accede to this request.

5. During the course of hearing also, the only ground urged by Mr. Aman Mudgal, learned counsel for the petitioner, in support of the relief sought, is that the petitioner was unable to apply before the last date of 30.09.2020 in view of the fact that his first and second semester results had not yet been released.

¹ Emphasis supplied.

6. Mr. Anshuman Mehrotra, learned counsel for the University, submits that the application of the petitioner was altogether incompetent, not just due to the delay in making of the application, but also because the petitioner has not specified any particular college to which migration is sought, nor made an application to the Principal of his present college. Mr. Mehrotra submits that the role of the University commences only after the Principals of the two colleges have consented to the migration.

7. Mr. Mehrotra further submits that, in the present case, the petitioner had not given any reason in support of his application for migration, as required *inter alia* by the judgments of this Court in *Aman Ichhpuniani vs. The Vice Chancellor Delhi University*² and in *Apurva vs. University of Delhi and Another*³. Mr. Mehrotra further submits that the petitioner is now at the fag-end of his course, of which only one semester remains.

8. Having heard learned counsel for the parties, I am of the view that no relief can be granted to the petitioner. Upon an analysis of the rules pertaining to migration [set out in paragraph 2 above], it is evident that Rules 1 and 2 deal with inter-university migration by which a student is admitted to the University afresh. As the petitioner was already a student of the University in the SOL, Rules 1 and 2 do not apply to him. Rules 3 and 4, on the other hand, deal with inter-college migration within the University. For the present purposes, the

² (1998) 71 DLT 202 (DB) [CW 3907/97 and connected matters, decided on 19.12.1997]

³ W.P.(C) 7437/2011 decided on 25.01.2012.

significant features of Rules 3 and 4 are as follows:-

- a. Migration is permitted in the third semester.
 - b. The migration is subject to availability of seats and consent of Principals of both the colleges.
 - c. The last date for migration is 31st August [extended in the year in question to 30.09.2020].
 - d. The application for migration must first be made to the student's present college and can be considered by the transferee college only after it is forwarded by the Principal of the present college.
9. With regard to the timing of the application, Mr. Mehrotra submits that the application under Rule 3(a) does not require the petitioner's marksheets to be submitted. He points out that the petitioner had, in fact, commenced his third semester prior to making the application dated 19.11.2020, and also prior to the first and second semester results having been declared. This position is not disputed by Mr. Mudgal. In these circumstances, I am of the view that the delay in making the application cannot be explained by the delay in declaration of the first and second semester results. The petitioner has not shown any attempt to make the application at an earlier point of time.
10. The petitioner has also not placed any documents on record to show that he complied with Rule 4. Significantly, the petitioner's application dated 19.11.2020 does not identify the college to which he seeks migration. Rule 4 clearly contemplates consent of the Principals of both colleges prior to the University making any alteration in its enrolment entries. The petitioner did not seek such consent from the

Principal of the SOL, nor did he request the Principal of the SOL to forward his request to the Principal of any other college. The procedure adopted by the petitioner was, thus, entirely *de hors* the relevant rules.

11. Mr. Mehrotra has also relied upon judgments of the Division Bench in *Aman Ichhpuniani*⁴ and the judgment of the learned Single Judge in *Apurva*⁵. In *Aman Ichhpuniani*⁶, the Division Bench held as follows:-

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

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23. To sum up, in our opinion:-

⁴ Supra (note 2)

⁵ Supra (note 3)

⁶ Supra (note 2)

(i) to migrate from one college of the University to another is not a vested right of student. A student may seek migration from one College to another, if there be reasons for doing so.....

(ii) A student has a right to choose an educational institution of his choice while seeking an admission, but such right cannot be exercised with the same vigour and vitality while seeking migration;

(iii) A request by student seeking migration for reasons relevant and germane to such prayer may not be denied unless the principal be satisfied of the non-availability of the grounds or be of the opinion that the migration will not be in the interest of the student or the interest of the institution outweighs the interest of the student. The choice of the student has to be respected by giving due weight; for no sensible student would ordinarily like to leave the institution which he had chosen to join.

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28. The petitioners Madhurjya Kotoky and Kumari Neeru Rawal CW 3749/97 and 4446/97 respectively have not in their respective applications assigned any reason for seeking migration. They have each made a bald prayer for migration solely because they 'wish to do so'. The principals of the respective institutions in which these petitioners are studying would have been better advised to call for each of the two petitioners, accompanied by their parents and guardians, if necessary, and counselled them in the matter of migration. That was not done. However, as these petitioners have failed to put forth their reasons for migration before the principals of the institutions for their consideration, we cannot find fault with the respondents withholding the prayers. No relief can, therefore, be allowed to these petitioners in exercise of our writ jurisdiction. They should be left free to make an appropriate prayer to the principals concerned."⁷

⁷ Emphasis supplied.

12. In *Apurva*⁸, the Court has dealt with the requirement of reasons and also rejected the request of the students for relaxation in the last date. The relevant extracts of the said judgment of the learned Single Judge are as follows:-

*“20. The minutes of the meeting of the Staff Council dated 17.10.2011 is a telling remark on how the incessant requests of students in the second year of the college, seeking migration to other colleges without any cogent reasons has demoralized the teaching faculty and adversely affected the financial health of the institution. **In the absence of any valid reasons provided by the petitioner to seek migration from respondent no.2/college, there is no compulsion on the Principal of the college to accede to such a request just for the asking.** The shifting stand of the petitioner is itself a pointer to the absence of valid reasons in her case for seeking migration.*

*21. It is also relevant to note that in view of the latest Notification dated 22.11.2011 issued by respondent No.1/University wherein the last date for migration of students between regular colleges had been extended till 30.11.2011 for the academic year 2011-12, **this Court is not in favour of granting any such relaxation to the petitioner at this belated stage. It is pertinent to note that the academic year 2011-12 is at its fag end with only two months left for the examinations of the said academic year to commence in April 2012.** In such circumstances, there is no justification to accede to the request of the petitioner for permitting her to migrate from respondent No.2/college at this belated stage.”⁹*

13. These judgments make it clear that migration is not a vested right of any student and can be granted only upon valid reasons being

⁸ Supra (note 3)

⁹ Emphasis supplied.

shown. In the application dated 19.11.2020, no such reason is shown. The writ petition is also entirely bereft of reasons in this regard.

14. Having regard to the aforesaid factors and also to the fact that the petitioner has now completed five of the six semesters of his B.A. degree, there is no ground to grant the relief sought in this petition.

15. The writ petition is accordingly dismissed.

PRATEEK JALAN, J

JANUARY 6, 2021

‘vp’/

