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

% **Date of Decision: 08.08.2024**

+ **W.P.(C) 9902/2024**

YASH SHARMA

.....Petitioner

Through: Mr. Rakesh Kumar and
Mr.M.L. Kalkal, Advs.

versus

GOVT OF NCT OF DELHI & ORS.

.....Respondents

Through: Mr. Santosh Kumar Tripathi,
SC (Civil) GNCTD with Mr.
Utkarsh Singh and Mr.
Divyam Nandrajog Advs for
GNCTD.

Mr. Namit Suri & Mr. Arjun
Kaushal, Advs. for R-2.

Mr. Pritish Sabharwal, Adv.
for R-3.

Ms. Revathy Raghavan,
Ms.Divya Singhvi, Ms. Arya
Kumari and Mr. Debasis Jena,
Advs for UGC.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J. (ORAL)

1. The present writ petition under Article 226 of the Constitution of India has been filed by the petitioner herein seeking issuance of writ of mandamus or any other appropriate writ for directions to



respondent No. 2 i.e. Gitarattan International Business School and respondent No. 3 i.e. Guru Gobind Singh Indraprastha University ('GGSIPU') for issuance of Transfer Certificate, Conduct Certificate and Migration Certificate/NOC in favour of the petitioner.

2. Learned counsel for the petitioner states that the petitioner is the student of BA LL.B in Gitarattan International Business School, Rohini, Delhi affiliated to GGSIPU and has appeared in the 1st and 2nd Semester examination of BA LL.B. It is stated that the National University of Advanced Legal Studies ('NUALS'), Kochi, Kerala issued a notification dated 07.06.2024 regarding admission to the students in the 3rd Semester of five year BA LL.B (Hons) Degree Course and thereafter invited applications from the qualified candidates for admission by way of Inter-University Transfer to 3rd Semester of five year BA LL.B (Hons) Degree Course of NUALS for the academic year 2024-25. It is stated that the petitioner had submitted his application for the admission to the 3rd Semester of five years BA LL.B (Hons) Degree Course by way of 'Inter-University transfer' taking in account that he has better future prospects in case he pursues his studies in NUALS, Kochi. Learned counsel for the petitioner submits that the petitioner was short-listed *vide* notification dated 05.07.2024 issued by NUALS. The short-listing was made on the basis of CLAT 2023 rank as obtained by the petitioner in the said examination. It is stated that the name of the petitioner was mentioned at serial No. 5 of the aforesaid notification of NUALS and therefore the petitioner had requested respondent No.2 *vide* his application dated 06.07.2024 to grant Transfer Certificate, Conduct



Certificate and Migration Certificate/NOC as required by NUALS, Kochi. It is further stated that the petitioner was granted time to submit the relevant documents with NUALS by 10.07.2024. Therefore, the petitioner had requested respondent No. 2 Institute for grant of aforesaid certificates. The petitioner had also sent request through e-mail to respondent No. 2 Institute on 10.07.2024 to provide the required documents at the earliest. Further, the petitioner had also sought extension from NUALS, Kochi to submit the required documents as soon as they are available with him. Thus, NUALS had extended the time to submit documents at his request.

3. Learned counsel for the petitioner draws this Court's attention to the e-mail dated 15.07.2024 as respondent No. 2 Institute *vide* its e-mail had informed the petitioner that the Transfer Certificate, Conduct Certificate and Migration Certificate/NOC are required to be issued by the concerned Institute as per procedure. It is stated that respondents No. 2 & 3 have not issued Transfer Certificate, Conduct Certificate and Migration Certificate/NOC etc. to enable him to take admission in NUALS, Kochi and it is the fundamental right of the petitioner to study in the Institute of his choice. Thus, respondent Nos. 2 and 3 be directed to issue Transfer Certificate, Conduct Certificate and Migration Certificate/NOC at the earliest.

4. Learned counsel for the respondent No. 4 UGC, who appears through Video Conferencing on advance notice, states that they have no role to play in the issuance of the said certificates, as required by the petitioner.

5. Learned counsel for respondent No.2 institute states that



respondent No. 2 Institute will follow the decision taken by the University concerned.

6. Learned counsel for the respondent No. 3/GGSIPU, on the other hand, draws this Court's attention to Notification dated 13.07.2022 i.e. Amendment in Ordinance-7: Migration of Students, which reads as under:-

“1. The Board of Management of the University in its 77 Meeting held on 14.06.2022 vide Agenda Item no. 77.07 has approved Amendment in the Ordinance 7: Migration of Students and the same is reproduced below:

Amended Provision in Ordinance 7: Migration of Students

(i) No Migration Intra and Inter-University is permitted in any of the programmes being conducted in University School of Studies as well as in the Affiliated Colleges/ Institution in Guru Gobind Singh Indraprastha University.

(ii) No Migration is permitted into the medical colleges of the Guru Gobind Singh Indraprastha University from any institution/ college.

2. It is once again reiterated that the Board of Management vide Agenda Item No. BM 77.07 resolved and approved that no Migration Intra and Inter-University is permitted in any of the programmes being conducted in University School of Studies as well as in the affiliated Colleges/ Institution including medical colleges in Guru Gobind Singh Indraprastha University.”

7. Learned counsel for the respondent No. 3 University states that as per notification dated 13.07.2022, it was held on 14.06.2022 that no migration Intra and Inter-University is permitted in any of the programmes being conducted in University School of Studies as well as in the affiliated colleges/institutions in GGSIPU.

8. This Court has heard arguments on behalf of both the parties and has perused the material placed on record.



9. This Court notes the judgment of the Co-ordinate Bench of this Court in W.P. (C) No.11803/2022 decided on 12.09.2023 wherein it was held as under:-

“7. This court is of the prima facie opinion that a complete ban on migration has been placed on account of the recommendations of the expert committee. The same does not seem to be arbitrary or illegal. Since the validity of the notification at this stage is not pressed, therefore, this court at this stage is not dilating on the said issue. However, there can always be an exception to the aforesaid position, depending upon the facts of an individual case, particularly in cases of medical emergencies. The competent authority cannot be oblivious to the ground realities which may arise. This appears to be a case where a more pragmatic approach needs to be adopted instead of being rigid to general rule.

8. The Universities endowed with statutory discretion may legitimately adopt general rules or principles to guide itself as to the manner of exercising its own discretion in extraordinary circumstances. Therefore, the Universities should not be rigid while taking decisions in the cases where cogent reasons are given by the students for seeking migration.

9. The Constitution of India under Article 21A provides the right to free and compulsory education to all children of the age of six to fourteen years, in such a manner as the State may determine, by law. The Directive Principle of State Policy in Article 45 and fundamental duty under Article 51A(k) also emphasis providing, education opportunities to children. Constitutionally, to provide higher education may not be an obligation of a State, under Part III of the Constitution, owing to limited resources. However, the students deserve quality higher education in considering atmosphere within available resources. Devoiding them of the same, due to medical ailments that are beyond their control, will be tantamount to doing a disservice to the future of this country.

10. It is incumbent upon educational institutions to make the necessary allowances to ensure that students, who are disadvantaged due to medical reasons, are also provided quality education. Therefore, the Ordinance of the Universities for self-regulation cannot override a student's right to education and the right to live a life with human dignity.

11. The Universities should consider extraordinary circumstances and if there exists valid and justifiable reasons, providing reasonable justification for such reason, the Universities



on being satisfied by the reasons so provided, is duty bound to consider such application, if made. Else the exercise of discretionary power would stand vitiated for unreasonableness and arbitrariness.

12. This court in the case of Anika Jain v. University of Delhi held that although a candidate has no vested right to seek migration, however, if a student is able to disclose good reasons to seek migration, the college cannot act in a whimsical manner and withhold the No Objection Certificate, such an act would constitute arbitrary exercise of power. The court had also held that the discretion vested in the college/university while considering the application for migration has to be exercised objectively. The college cannot ignore the welfare of the student and the choice of the student has to be respected.

13. This court in the case of Neelam Chopra v. University of Delhi 2 has dealt with the issue of migration on account of allergic rhinitis. Paragraph nos.16 and 17 of the said decision read as under:-

‘16. In the instant case, apart from a bald denial in the counter affidavit, the requests of the petitioner have not been considered on the well settled principles noted hereinabove. Valuable time has been wasted. Grave prejudice undoubtedly results to the petitioner if she is compelled to travel even on health issues. In this view of the matter, I am not inclined to premise adjudication in the present matter on the technical view that the petitioner approached the college to which she migrates and then approached the respondent No. 2. The respondent No. 2 was bound to have considered the representations expeditiously in the light of the above principles. The same have not been considered at all. For all these reasons, this writ petition deserves to be allowed.

17. Accordingly, it is directed that the respondent No. 2 shall issue the requisite certifications or the no objection certificate to the petitioner forthwith permitting her to migrate to the Kirorimal college . In case any procedure has to be completed by the respondent No. 1 also in this behalf the same shall be completed immediately on the petitioner approaching the concerned authorities of the respondent No . 1. The process of migration of the petitioner to the Kirori Mai College shall be completed, in any case , within a period of 10 days from today.

14. Since, the university is the best authority to adjudge and appreciate the difficulty being faced by the petitioners; this court deems it appropriate to direct the university to consider the



application of the petitioners for allowing inter university migration on the basis of facts and circumstances available in the instant case.

15. Let a decision be taken by the Vice Chancellor, of the said universities, subject to ratification by the competent authority, within six week from today. If the Vice Chancellor of the university comes to a conclusion that the petitioners' grievance is genuine and their request is acceptable, let the same be accepted without being influenced by the notification dated 13.07.2022.

16. Accordingly, with the aforesaid directions, the petition stands disposed of alongwith the pending application."

10. This Court notes that the application of the petitioner herein has been summarily dealt with by respondent No. 3-University. They have not mentioned as to what decision they are taking in view of the fact that now the petitioner herein wants to pursue his studies in NUALS, Kochi.

11. In these circumstances, this Court is of the opinion that though the decision in this regard has to be taken by the University concerned, they being the best Judge to adjudge and appreciate as to why the particular amendment was carried out but at the same time, they are also duty bound to consider and appreciate the difficulties faced by the petitioner in exceptional circumstances. Therefore, this Court deems it appropriate to direct respondent No. 3 University to consider the application of the petitioner for issuance of Transfer Certificate, Conduct Certificate and Migration Certificate/NOC to enable him to take admission in NUALS, Kochi on the basis of facts and circumstances of the present case.

12. Let a decision be taken by the Vice Chancellor of the respondent No.3 University, subject to ratification by the competent



authority on or before 12.08.2024. If the Vice Chancellor of the University comes to a conclusion that the petitioner's grievance is genuine and his request is acceptable, let the same be accepted without being influenced by the Notification dated 13.07.2022 with intimation to the petitioner.

13. In view of the above, the writ petition along with pending application, if any, stand disposed of.

14. A copy of this judgment be given *dasti* under the signatures of Court Master.

15. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

AUGUST 8, 2024/A