
(1980) 11 DEL CK 0025

Delhi High Court

Case No: Civil Writ No. 1308 of 1980

Miss Alka Garg

APPELLANT

Vs

University of Delhi and others

RESPONDENT

Date of Decision: Nov. 21, 1980

Citation: AIR 1981 Delhi 241

Hon'ble Judges: B.N. Kirpal, J

Bench: Single Bench

Advocate: G.D. Gupta with Miss Anita, for the Appellant; Gopal Narain (for Nos. 1 and 2), Mukul Mudgil (for Nos. 3 to 8), P.G. Gokhale (for No. 9) and S.R. Khandelwal (for No. 10), for the Respondent

Judgement

@JUDGMENTTAG-ORDER

B.N. Kirpal, J.

On 21st November, 1980 I had, for reasons to be recorded separately, allowed the writ petition filed by the petitioner and directed the University to grant admission to the petitioner in a Medical College in Delhi. The facts and reasons for the aforesaid decision are contained herein.

2. The question which arises for consideration is as to whether Ordinance IV of the Delhi University's Ordinances, which provides for migration of students to Delhi University, applies to those students who want to join the Medical Faculty in the Delhi University.

3. The petitioner finished her schooling in Delhi and thereafter took her pre-medical examination. Her father is a Doctor in the Central Government Health Scheme. It is stated in the petition that her father had to go to Goa on transfer. In August, 1978 the petitioner got admission in Goa Medical College, Panaji, Goa to the First Professional M.B.B.S. Course/First Academic Year of M.B.B.S. Degree under the University of Bombay.

4. The petitioner took the First Professional M.B.B.S. Course examination in December, 1979. She passed this examination having secured 61.75 per cent marks. Vide order dated 19th March, 1979 the petitioner's father was transferred back to Delhi. This transfer was made in public interest. The petitioner's father was, however, relieved by the Government of Goa only after 29th Oct., 1979. Thereafter he joined Maulana Azad Medical College, New Delhi with effect from 12th December, 1979.

5. On 15th January, 1980 the Academic Council of the Delhi University passed a resolution with regard to Inter-University Migration to the Second Professional M.B.B.S. Course. After considering the recommendations of the Medical Courses Admission Committee, it took note of the fact that the existing rules regarding Inter-University Migration were as follows:-

"1. Migration is subject to availability of seats in the II M.B.B.S. Course (First Term).

2. A candidate should have secured at least 60% marks in aggregate in the I. M.B.B.S. Examination from a College recognised by the Medical Council of India.

3. A candidate should fulfil minimum basic eligibility qualifications for admission to M.B.B.S. Course of the year of admission.

4. The last date for submission of prescribed application is 31st January of each year.

5. All cases of migration will be decided by Medical Courses Admission Committee of the University of Delhi on the basis of the marks of I Professional Examination in order of merit and according to the number of seats available in each College of the University". It was resolved in the aforesaid meeting that in future for filling certain anticipated vacancies in the Second Professional M.B.B.S. Course on the basis of Inter-University Migration, the University should hold a test and prepare a merit list. It was resolved that in future the vacancies in the Courses should be filled only from amongst the successful candidates who appeared in the said test. For the year 1979, however, it was decided that the admission would be made on the basis of the marks obtained by each candidate in the First Professional Course of the M.B.B.S. which had been taken by them.

6. The petitioner applied for migration to Delhi University on 28th January, 1980. In April, 1980 the list of the candidates who were to be given admission in Delhi in the Second Professional M.B.B.S. Course was announced. As per the said list eight students were given admission here. Three of the students were admitted in Maulana Azad Medical College and five girls were admitted in the Lady Harding Medical College. The parents/guardians of only two out of the said eight students resided at Delhi. It is not denied that as far as the petitioner is concerned, she is at the top of the waiting list for the girl candidates.

7. The petitioner's father filed representations with the University Authorities to the effect that the petitioner should be accommodated in the Lady Harding Medical

College in Delhi. The request was not accepted. On 22nd September, 1980 the present writ petition was filed.

8. The case of the petitioner is that according to Ordinance IV migration can be allowed only if the parents, guardians of a student are residing in or have migrated to Delhi. It is contended that at least three of the five girls who have been granted migration do not fulfil this essential qualification. If their admission is quashed the petitioner, who is at the top of the waiting list for girls, would be entitled to gain admission.

9. The first contention urged on behalf of the University is that the petitioner is guilty of laches. It is contended that the petitioner's father knew about the decision of the University in April, 1980. In cases where the question involved is regarding admission to University, the petitioner, it is contended, should be diligent and should approach the Court at the earliest opportunity. In the affidavit filed in reply to the writ petition, the respondent-University did not raise this objection. The objection was sought to be raised at the time of arguments. During the hearing of the petition an affidavit of Shri R. N. Thusu, Deputy Registrar was sought to be filed. In the said affidavit it has been contended that the writ petition filed by the petitioner is barred by delay and laches. In my opinion this objection has been raised by the respondent at too late a stage. If the objection had been raised in the counter-affidavit filed to the petition, the petitioner would have had ample opportunity to have met the said objection. However, it is contended by the learned counsel for the petitioner that there has been no delay in filing the writ petition. It is submitted that the petitioner's father had been approaching the University Authorities in order to seek redress. The fact that representations were being filed is not denied. In my opinion, therefore, as the petitioner was trying to seek justice from the University Authorities before filing the present writ petition, it cannot be said that there was any undue delay on her part in filing the present writ petition.

10. In order to decide the merits of the case it is necessary to refer to some of the provisions of the Act and the Ordinances. u/s 17 of the Delhi University Act, 1922 the Academic Council is one of the authorities of the University. The powers and duties of the Academic Council are set out in Section 23 of the Act which reads as under :-

"23. The Academic Council shall be the academic body of the University and shall, subject to the provisions of this Act, the Statutes and the Ordinances, have the control and general regulation and be responsible for the maintenance of standards of instruction, education and examination within the University, and shall exercise such other powers and perform such other duties as may be conferred or imposed upon it by the Statutes. It shall have the right to advise the Executive Council on all academic matters. The constitution of the Academic Council and the term of office of its members, other than ex-officio members, shall be prescribed by the Statutes."

Section 30 of the Act provides that subject to the provisions of the Act and the Statutes, Ordinances may be framed which may provide for the matters specified therein. The relevant provisions of Section 30 read as under :-

"30 (a) the admission of students to the University and their enrolment as such;

(b) the courses of study to be laid down for all Degrees, Diplomas and Certificates of the University;

(c) all other matters which by this Act or the Statutes are to be or may be provided for by the Ordinances."

Section 31 provides for the manner in which Ordinances of the University are framed.

11. It will be seen that matters like admission of students to the University, the courses of study to be laid down, the degrees to be awarded, are some of the matters regarding which Ordinances may be framed. It must follow, therefore, that if with regard to any one of these items an Ordinance has not been framed the Academic Council cannot pass a resolution providing for any such matter. To put it differently, if there is no Ordinance providing for say a degree of Bachelor of Architecture being given, the Academic Council in exercise of its powers under Sec. 23 cannot possibly decide that the University shall award a degree of Bachelor of Architecture. Similarly matters regarding the admission of students to the University have to be provided by the Ordinances and cannot be provided, for the first time, by a resolution by the Academic Council.

12. Ordinance IV provides for migration of students. Clauses 1 (1) and (2) and 3 of the said Ordinance read as under :

"1.(1) A student who has not completed his course of study or having completed his course of study has not appeared at the examination for which he was reading in any other Indian University or in any College under the control of a Board of Intermediate Education shall not be admitted to the University except on production of the following documents:

(a) leaving certificate from the Principal of the College or from the Registrar of the University he is leaving;

(b) certified copies of the report of attendance against his name in the register of students of the University or the college concerned.

(2) Admission of a student to the University in the second academic year of study for a degree examination may only be allowed on the ground that the parent or guardian of the student is resident in or has migrated to Delhi.

3. Migration of the student to the University in a Course of Study to the Degree Examination under the Faculty of Technology shall not be permitted."

The contention on behalf of the petitioner, as already noted, is that by virtue of Ordinance IV, Clause 1 (2) admission of a student to the University in the second academic year can be allowed only on the ground that parent or guardian of that student is residing in or has migrated to Delhi. On behalf of the respondent, however, it is submitted that the said Ordinance does not apply to the M.B.B.S. Course. It is contended on behalf of the University that there is no academic year as far as the M.B.B.S. course is concerned and, therefore, the provisions of CI. 1 (2) can have no application.

13. In my opinion the only conclusion which is possible is that Ordinance IV does apply to the M.B.B.S. Course. Clause 1 (1) is not limited in its application to any particular course of study. This is not even denied by the learned counsel for the respondents. In other words, Clause 1 (1) will take within its ambit all courses the study of which has not been completed by an applicant. Clause 1 (2) talks of "second academic year of study for a degree examination". It is not denied that a student is awarded a degree of Bachelor of Medicine and Bachelor of Surgery (more popularly known as M.B.B.S.). What is now to be seen is whether there is or can be a second academic year of study for the said degree examination. In order to find an answer to this question it is necessary to refer to an Ordinance of the University of Delhi which came into effect in July, 1964 and which applies to the candidates admitted to M.B.B.S, Course in July, 1964 and thereafter. The said Ordinance has been annexed to the aforesaid affidavit dated 21st November, 1980 of Shri R. N. Thusu. Clause 3 of the said Ordinance refers to the duration of course of study. Clause 3 (a) reads as under :-

"(a) Every candidate for admission to the M.B.B.S. examination shall undergo a course of certified study extending over 4-1 academic years from the date of commencement of his//her study of the subjects comprising the medical curriculum to the date of completion of the final examination, provided that not less than the last three years of the course shall have been spent in study and training, which shall be continuous, in the clinical group of subjects.""

The M.B.B.S. course is divided into three parts. The first professional examination takes place after 18 months, the second professional examination takes place after 21 months thereafter and the third and final professional course examination takes place after 15 months thereafter. Each of these professional courses is divided into different academic terms and details of the same are contained in clauses 4, 5 and 6 of the said Ordinance. Whereas the attendance in the Delhi University is counted with reference to each academic year, Clause 6 of the Ordinance makes a departure with regard to the M.B.B.S. course. The said clause requires that a candidate should attend, in order to be eligible to take the examination, 3/4th of the lectures and practical etc. delivered in each subject at his or her college for full course of study and not for each academic year. In other words whereas the duration of the full course of M.B.B.S. is 4 1/2 academic years, a candidate's attendance will be

calculated with reference to the course of study for each professional examination separately.

14. The reading of the aforesaid Ordinance, and Cl. 3 thereof in particular, can leave one in no manner of doubt that with regard to M. B. B. S. course reference is made to academic years of study. In the 4 1/2 academic years a student will have to take three professional examinations. Cl. (I) (2) of Ordinance IV refers to the second academic year of study for a degree examination. In the present case the course of study, with which we are concerned, commenced in July, 1978. The first academic year would come to an end in June, 1979. The second academic year would be 1979-80. It is in this academic year that the first professional examination takes place. It is thereafter that migration is permitted by the University. To my mind this migration which would take place in the second academic year of study would clearly be governed by the terms and conditions of Ordinance IV. I see no reason as to why the clear words of Ordinance IV should be given a restricted meaning so as to exclude its application to the M. B. B. S. course. Wherever it was desired that the said Ordinance should not apply, a specific provision to that effect was made. It is for this reason that in Clause 3 of Ordinance IV it was clearly stated that migration would not be permitted to the degree examination under the Faculty of Technology. There is no such prohibition with regard to migration of students to the University for taking the degree examination of M. B. B. S. Apart from the aforesaid Ordinance reference may also be made to Ordinance VII. Clause 1 (3) sets out the courses of study with regard to various degrees, diplomas and certificates. With regard to the degree of M. B. B. S. it is stated therein that the course of study is "5 academic years". This fact further lends support to the petitioner's contention that in the M. B. B. S. course there are first, second, third, fourth and fifth academic years of study and that whenever migration is to be permitted to a student to the University in the second academic year of study then the restriction contained in Ordinance IV, Cl. 1 (2) would be applicable.

15. Having come to the conclusion that Ordinance IV applies, the next question which arises for consideration is as to whether the Academic Council can pass a resolution which would, in effect, be contrary to the provisions of the said Ordinance. To my mind the answer must necessarily be in the negative. The Academic Council cannot exceed the powers which have been conferred on it by S. 23 of the Act. The Academic Council has to act subject to the provisions of the Act, the Statutes and the Ordinances. While exercising its powers u/s 23 and the Statutes framed thereunder it cannot pass any resolution which would have the effect of nullifying the provisions of any Ordinance. The Academic Council cannot permit the migration of students contrary to the provisions of Ordinance IV. Any action which is taken and which would be in violation of the provisions of Ordinance IV would be liable to be struck down.

16. The next contention of the learned counsel for the Delhi University is that the holding of examinations for the purposes of admitting students in the second course is as per the instructions and directions issued by the Medical Council. It is contended that the Academic Council of Delhi University has applied the instructions which have been issued by the Medical Council of India. To my mind there is no conflict between Ordinance IV and the resolution dated 15th January, 1980. Reading the two together it would only mean that amongst all the eligible candidates, the eligibility condition being provided by Ordinance IV, namely, the residence in Delhi of the parent/guardian of the applicant, the seats are to be filled according to merit. For example if there are ten students who want migration on the ground that their parents are in Delhi but the number of seats is only five then those seats will be filled up according to merit from amongst those ten students.

17. Relying on [Chaman Lal Talwar Vs. Guru Nanak University and Another](#), and [S.P. Manocha and Another Vs. The State of Madhya Pradesh and Others](#), it is contended by Shri Gopal Narain that the petitioner has no right to file the writ petition. I am unable to agree with this contention. In the first case the applicant was admittedly ineligible for the grant of admission. It was, therefore, held that he had no right to claim admission. In the second case the rules themselves had been amended to the detriment of the candidate. None of those two cases has any application to the present case. The petitioner has the locus to file the writ petition contending that the University have not complied with the mandatory provisions of the Ordinances. In other words the contention, in effect, is that the Academic Council of the University has exceeded its jurisdiction contained in S. 23 of the Act, No rule or resolution can be framed which would in effect nullify the effect or operation of any Ordinance. I have already held that Ordinance IV applies to M. B. B. S. course. The Delhi University could, therefore, have allowed migration only to those students whose parents were residing in Delhi.

18. It is lastly contended by Shri G. N. Aggarwal that at the time when the Ordinances were framed the Medical Faculty had not come into existence. To my mind this would make no difference in the applicability of the Ordinances. The courses of study have, with the passage of time, been increased in the Delhi University. The Act, Statutes and the Ordinances have also been amended from time to time as and when the need has arisen. The mere fact that the Medical Faculty did not exist when Ordinance IV was promulgated does not mean that the said Ordinance, for this reason, is not applicable to the M. B. B. S. course. The plain reading of Ordinance IV leaves no manner of doubt that it applies to migration of students to the Delhi University in the M. B. B. S. course. The language of the said Ordinance is wide enough to take within its ambit all degree courses except the course conducted by the Faculty of Technology, which is expressly excluded by Cl. 3 of Ordinance IV.

19. In the view that I have taken, ordinarily the migration of respondents 3 to 8 should be held to be invalid. It will, however, be seen that these respondents have been admittedly in Delhi and have been studying here for a number of months. They have severed their ties with Colleges where they were previously studying. Even the petitioner before me has not prayed for the quashing of their selection. These respondents cannot be penalised for any mistake which might have been committed by the University. Under these circumstances I refrain from setting aside their selection.