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

+ **W.P.(C) 11803/2022 & CM APPL 35190/2022**

Date of Decision: 12.09.2023

MISS TANISHKA

(Aged about 19 years)

D/o Shri Manoj Kumar

R/o E-198, Krishna Vihar, Sultan Puri, Nithari,

New Delhi-110086

MASTER SOHIL SAJEEV

(About 19 years)

S/o Shri Sajeev Vijayan

R/o Flat no. 753, Sky Lark,

CGHS, Plot no. 35, Sector-6, Dwarka

New Delhi 110075

.... Petitioners

Through: Mr. Alok Kumar, Senior Advocate
alongwith Ms. Manisha A. Narain, Mr. Amit Kr.
Singh, Mr. Varun Maheshwari and Mr. Manan
Soni, Advocates

Versus

GOVT. OF NCT OF DELHI

Through the Chief Secretary

Near, Sachivalaya Road, IG Indoor

Stadium, ITO, Vikram Nagar,

New Delhi-110002

UNIVERSITY GRANT COMMISSION

Bahadur Shah Zafar Marg,

ITO Metro Gate No.3

New Delhi-110002

GURU GOBIND SINGH INDRAPRASTHA UNIVERSITY

Through Registrar, Sector-16C, Dwarka

New Delhi-110078



MAHARAJA SURAJMAL INSTITUTE OF TECHNOLOGY
C-4 Market, Fire Station Rd., Janakpuri
New Delhi-110058

AGRASEN INSTITUTE OF MANAGEMENT STUDIES
Plot No.1 Rohini, Plot No.1,
Ch Bhim Singh Nambardar Marg,
Sector-22, PSP Area, New Delhi-110086

..... Respondents

Through: Mr. Avishkar Singhvi, Mr. Naved Ahmed and Mr. Vivek Kr. Singh, Advocates for respondent No.1

Mr. Apoorv Kurup and Ms. Kirti Dadheech, Advocates for UGC

Ms. Anita Sahani, Advocate for respondent No.3

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

PURUSHAINDR KUMAR KAURAV, J. (ORAL)

1. Learned senior counsel appearing on behalf of the petitioners after arguing for a while, submits that at present the petitioners would be satisfied if their case is considered sympathetically by the respondent-University to be an extraordinary case of medical hardship.

2. He points out that petitioner no.1-Miss Tanishka lives in Krishna Vihar, Delhi and she is pursuing her BBA course from Maharaja Surajmal Institute of Technology. He submits that the institute in question, where, petitioner no.1 is pursuing her course is situated in Janakpuri, New Delhi and the said institute is more than 30 kilometres from the residence of petitioner no.1.



3. He further submits that petitioner no.1 suffers from allergic Rhinitis, which is associated with a group of symptoms affecting the nose and these symptoms occur when one breathes in something they are allergic to. He also submits that petitioner no.1 is allergic to, such as dust, animal dander or pollen. It results in watery eyes, sneezing and dizziness.

4. Learned senior counsel for the petitioners submits that petitioner no.2- Master Sohil Sanjeev lives at Sector-6 Dwarka and studies in Agrasen Institute of Management Studies situated in Rohini, Delhi. He, therefore, submits that in order to facilitate petitioner no.1, petitioner no.2 readily agreed for interchange of the institutions. Both the petitioners, therefore, jointly applied for the same to the University.

5. He submits that the University did not take a decision. However, later on, a notification dated 13.07.2022 came to be issued, whereby, the provision in Ordinance 7, which is related to migration of students, has been amended and a complete ban has been imposed with respect to *intra* and *inter* university migration.

6. Learned senior counsel for the petitioners submits that notwithstanding the complete ban in terms of notification dated 13.07.2022, the cases like the present one can always be treated to be an exception, considering extraordinary medical reasons.

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*¹ 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.*

¹ (2009) 107 DRJ 42

² 2009 SCC OnLine Del 3290



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 Mal 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.

PURUSHAINDR KUMAR KAURAV, J

SEPTEMBER 12, 2023

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