

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 26805 of 2022****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE BHARGAV D. KARIA****Sd/-**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

PIYAM JIGESH DAVE

Versus

SAL SCHOOL OF ARCHITECTURE

Appearance:

MR RATHIN P RAVAL(5013) for the Petitioner(s) No. 1,2

MS JEENAL ACHARYA, AGP for the Respondent(s) No. 4

MR VM DHOTRE(1089) for the Respondent(s) No. 3

MR. MAYUR V DHOTARE(7019) for the Respondent(s) No. 3

NOTICE SERVED BY DS for the Respondent(s) No. 2,4

UDIT N VYAS(9255) for the Respondent(s) No. 1

CORAM: HONOURABLE MR. JUSTICE BHARGAV D. KARIA**Date : 16/02/2023****ORAL JUDGMENT**

1. Heard learned advocate Mr. Rathin P. Raval
for the petitioner, learned Assistant

Government Pleader Ms. Jeenal Acharya for the respondent no.4, learned advocate Mr.Udit N. Vyas for respondent no.1.

2. Rule returnable forthwith. Learned advocates for the respective respondents waive service of notice of rule.
3. By this petition under Article 226 of the Constitution of India the petitioner has prayed for the following reliefs:

“(A) be pleased to allow this petition;

(B) Be pleased to issue an appropriate writ/direction to the respondent no. 1- (Sal School of Architecture), to issue No Objection Certificate to the petitioner No.1 as requested in the application dated 22.10.2022;

(C) Be pleased to issue an appropriate writ/direction to respondent No.2 (Gujarat Technological University) to issue Migration Certificate to the petitioner No.1 as requested in the application dated 22.11.2022;

(D) Be pleased to issue an appropriate writ/direction to the respondent no.3 (Council of Architecture, Ministry of Education, Govt. of India) to issue NOC to the petitioner no.1;

(E) be pleased to pass such other and further orders may be deemed just and proper looking to the facts and circumstances of the case and in the interest of the justice."

4. Brief facts of the case are that the petitioner is a student who had taken admission in the year 2021-22 in the course of Bachelor of Architecture in the respondent No.1-Sal School of Architecture which is affiliated to the respondent No.2 Gujarat Technological University as well as respondent No.3- Council of Architecture, Ministry of Education, Government of India. It is the case of the petitioner that after completion of his first academic year of Bachelor of Architecture Course with respondent No.1-Institute the petitioner availed the provisional admission by migrating to another college/university. The petitioner therefore applied with the Nirma University and was successful in getting the provisional admission in the Institution of Architecture & Planning, Nirma University, Ahmedabad.

4.1 The petitioner thereafter requested respondent No.1 for issuance of No Objection

Certificate [NOC] by an undated application on 22.10.2022. However, respondent No.1 refused to provide acknowledgment for the same. Thereafter the petitioner sent an email 08.12.2022 to the respondent no.1 to provide for the NOC and the Migration Certificate which are required for regularization and the admission of the petitioner.

4.2 It is the case of the petitioner that SAL college demanded the fees for remainder of four years from the petitioner. During one of the visits the Director who introduced himself as "Mr.Vasani", illegally demanded the fees for four years failing which the no NOC would be issued.

4.3 It was difficult for the petitioner to even financially pay the entire fees for 4 years in lump sum manner. The respondent authorities were not even ready to give any time for payment of this fees.

4.4 The petitioner in full disagreement was left with no choice but to bow down to the illegal demand of the SAL College in the larger interest of the students career. The father

of the petitioner was therefore trying to gather the large sum of money to pay such demand of the Sal College.

4.5 It is the case of the petitioner that thereafter the fees was demanded by a person named "Thomas" by telephonic call to the petitioners father and he additionally stated that the fees will have to be paid in cash on 26.11.2022.

4.6. The petitioner did not receive any response from respondent No.1-Institute with regard to NOC, hence the petitioner has preferred this petition.

5. Learned advocate Mr.Rathin Rawal submitted that there are no Rules or Regulations or Act which prohibit respondent No.1-Institute from issuing NOC. It was submitted that the petitioner is also not requesting to refund the fees deposited with respondent No.1-Institute, but as the petitioner is not desirous to continue the study with respondent No.1-Institute for the Second Year of the course and has already taken admission with the Nirma Institute. However, respondent No.1, for no rhyme or reason, is

withholding the issuance of NOC.

6. Learned advocate Mr. Udit Vyas appearing for respondent No.1-Institute, on the other hand has filed affidavit-in-reply stating that the petitioner has not come with clean hands before the Court and has tried to mislead the Court by producing the documents which were never received by respondent No.1-Institute by trying to show that the petitioner has completed all the formalities.

7. It was further pointed out that as respondent No.1 is affiliated to respondent No.2- Gujarat Technological University, is bound to follow the policy as well as the circulars issued by the respondent No.3 from time to time and as per the circular dated 13.03.2003 issued by the Education Department, for transfer from one Engineering College to another Engineering College, according to Rule 12, for transfer from Self Finance Institute to another Self Finance Institute, the State Government would not interfere and no permission is required from the State Government.

8. It was therefore pointed out that as

respondent No.2-University by circular dated 15.07.2021 has prescribed the procedure to process the application for transfer from one institute to another and the last date of making such application on the portal of the respondent No.3-Institute had gone and therefore, the petitioner now cannot get transfer from respondent No.1-Institute and therefore there is no question of issuing any NOC to the petitioner.

9. Learned advocate Mr.Udit Vyas further submitted that as per the tentative academic calendar published by the Gujarat Technological University for the year 2022-23 (odd Term) for the purpose of Bachelor of Architecture Course, the 3rd semester has started and has already ended. It was pointed out that as the 3rd Semester is already over, there is no question of issuing NOC when the petitioner has not attended any class of the 3rd semester with the respondent No.1-Institute.

10. Learned advocate Mr.Udit Vyas thereafter relied upon the following averments made by the deponent of the affidavit filed on behalf of the respondent No.1.

"5. Petitioner No. 1 was admitted to the setup of Respondent No. 1 Institute through the centralized process conducted by the Admission Committee for Professional Courses in the academic year 2021-22 in its B.Arch. course.

6. After studying for 2 (two) semesters, Petitioner No. 1 left Respondent No. 1 Institute without any prior intimation to Respondent No. 1 Institute and applied for a No Objection Certificate only after completing her admission with another Institute. As such, she was required to approach Respondent No. 1 Institute for formally cancelling her admission and obtaining a No Objection Certificate prior to securing her admission with another Institute. On this ground also the present petition deserves to be dismissed.

7. At this juncture, apropos and in furtherance of the aforesaid, it would be apposite mention that even as per Regulation 5(2) of Council of Architecture (Minimum Standards of Architectural Education) Regulations, 2020 (hereinafter referred to as "COA Regulations, for the sake of brevity) migration is not permissible unless both institutes involved in the migration are not agreeable to the migration. Further, the permissible for migration is not a matter of right and is subject to the discretion of the institutes involved. Therefore, without the prior approval of Respondent No. 1 Institute Petitioner No. 1 could not have migrated to another institute. However, Petitioner No. 1 chose to migrate to another institute without seeking prior permission of Respondent No. 1 Institute. In view of the same, Petitioner No. 1 has no right to seek a No Objection Certificate in such an ex post facto manner.

8. Respondent No. 1 Institute is a private self- financing institution where the cost of imparting education is required to be borne by the student. Hence, Respondent No. 1 Institute has a fundamental right to charge and recover fees from the student which commensurate with

the cost of imparting education.

9. Further to the aforesaid, the fees of Respondent No. 1 Institute is also approved and determined by Fee Regulatory Committee (Technical) in accordance with the provisions of the Gujarat Professional Technical Educational Colleges or Institutes (Regulation of Admission and Fixation of Fees) Act, 2007 (hereinafter referred to as "Act 2007", for the sake of brevity). The fees are determined on the basis of the sanctioned intake of Respondent No. 1 Institute and is fixed for a particular batch of students.

10. In view of the above, if a student cancels her admission mid-stream and the concerned college cannot fill the vacancy created by the student, the institute would suffer a huge financial loss inasmuch as, the institute would could not be able to recover fees for the remaining semesters which would impinge upon the fundamental rights of the institute.

11. At this juncture, apropos and in furtherance of the aforesaid it would also be pertinent to mention that even the admission process is centralised and conducted in a time bound manner by the Admission Committee for Professional Courses. Accordingly, once the admission process is closed and the cut-off date for last admission has passed, no institute is permitted to make any further admissions irrespective of the vacancies. The cancellation of admission by Petitioner No. 1 is a mid-stream cancellation after studying for 2 semesters in such a manner that it would be impossible for Respondent No. 1 Institute to fill in the vacancy created by Petitioner No. 1 Institute.

12. In view of the above, unless - (1) Respondent No. 1 Institute is in a position to fill-in the vacancy created by Petitioner No. 1 with another similar situation seeking migration or (2) Petitioner No. 1 pays the fees for the balance 8 (eight) semesters, Respondent No. 1 Institute cannot be compelled to issue a

No Objection Certificate in favour of Petitioner No. 1..

13. At this juncture, apropos and in furtherance of the aforesaid, it would not be out of place to mention that as per the law laid down by the Hon'ble Supreme Court in the matter of Islamic Academy of Education & Anr. V/s State of Karnatake & Ors. inter alia reported in (2003) 6 SCC 697, Respondent No. 1 Institute is entitled to recover the fees for the entire duration of the course from a student in the event of a mid-stream cancellation. In view of the same, Petitioner No. 1 is obligated to furnish the entire fees for the balance term of the course with Respondent No. 1 Institute, if Petitioner No. 1 Institute is desirous of cancelling her admission and seeking migration to another institute.

14. Without prejudice to the aforesaid, it would not be out of place to mention that in order to avoid the complexities such as the present one, Respondent No. 2 Gujarat Technological University has developed a mechanism / portal whereby, any student studying in any college or institution affiliated to Respondent No. 2 University can apply for transfer/migration to another college through the portal. This centralized portal was created with a view to ensure that while student is permitted to seek transfer to another college, the colleges are also given an opportunity to fill in the vacancies caused by migration through a common pool of similarity situated students. In this manner, the interest of the student and the right of the institute are both safeguarded.

15. However, it is not in dispute that Petitioner No. 1 had not availed the facility provided by Respondent No. 2 University for seeking her migration. Being affiliated to Respondent No. 2 University it is not permissible for Respondent No. 1 Institute to receive or process a request for migration that

has not been put through the centralized portal of Respondent No. 2 University.

16. Therefore, viewing from any angle it is evident that Petitioner No. 1 has no right much less a fundamental right to a No Objection Certificate from Respondent No. 1 Institute unless Petitioner No. 1 Institute is ready and willing to deposit the entire fees for the balance 8 (eight) semesters of the course which Respondent No. 1 Institute would be deprived of on account of the mid-stream cancellation of her admission."

11. Relying upon the aforesaid averments it was submitted that the prayers made by the petitioner cannot be granted by directing the respondent No.2-University to issue NOC.

12. Learned advocate Mr.Dhotre appearing for respondent No.3 submitted that respondent No.3-Council of Architecture, by communication dated 13.12.2022, has already called upon respondent No.1-Institute to do the needful. It was further submitted that the respondent No.3 as per the notification dated 11.08.2020 issued under the Architecture Act, 1972 shall also consider the necessary implication of the migration of the petitioner from one institute to another as per clause 5(2) of the said notification.

13. Having heard learned advocates for the

respective parties it appears that the petitioner, after taking admission in the Course of Bachelor of Architecture with respondent No.1-Institute in the year 2021, was desirous to migrate to other institute from the 3rd Semester and accordingly, got the admission with the Nirma Institute on 26.07.2022. The petitioner was therefore justified in applying for NOC with the respondent No.1-Institute. Learned advocate Mr.Vyas failed to point out any Rule, Regulations from any Act which prohibits respondent No.1-Institute to issue NOC to the petitioner for migration to the other institute except the circular issued by the respondent No.2-Gujarat Technological University on 15.07.2021 which prohibits for process of application for transfer of institute on its portal.

14. It is for the petitioner to comply with the provisions of the GTU. So far as the respondent No.1-Institute is concerned, the only prayer made by the petitioner in this petition is to direct respondent No.1 to issue NOC, which according to my opinion, respondent No.1 cannot deny when the petitioner does not want to study with the

respondent No.1-Institute and more particularly, when the petitioner has studied 3rd Semester in the Nirma University and in such circumstances, in order to see that the petitioner continue the study of Bachelor of Architecture without any hindrance, respondent No.1 is hereby directed to issue NOC to the petitioner within two days from today.

15. With the aforesaid direction, petition is disposed of. Rule is made absolute to the aforesaid extent.

16. It is clarified that rest of the prayers made by the petitioner are not considered at this stage as in absence of NOC to be issued to respondent No.1, such prayers are premature in nature.

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Sd/-
(BHARGAV D. KARIA, J)

URIL RANA