

SUPREME COURT OF INDIA

Anna Juhi John

Vs.

English and Foreign Languages Universities, Hyderabad

C.A.No.899 of 2017

(Dipak Misra and A.M. Khanwilkar and Mohan M.Shantanagoudar,JJ.,)

02.03.2017

JUDGMENT

Dipak Misra,J.,

1. The appellant No.1 appeared in All India Common Entrance Test, 2015 conducted by the respondent No.1, i.e., English and Foreign Languages Universities, Hyderabad which runs three satellite and constituent campuses at Hyderabad, Lucknow and Shillong, for selecting candidates in the B.A. (Hons.) in English. In the entrance examination, the appellant No.1 secured 68 marks and was placed at serial no.101 in the merit list as far as the Hyderabad Campus is concerned and at serial no.3 in the merit list published for admission in Lucknow campus. It is beyond dispute that the appellant no.1 belongs to general category and out of total 40 seats in the Hyderabad Campus, 26 seats are meant for the general category. In view of the marks secured, the appellant being ineligible to get the admission in the Hyderabad Campus, was compelled to join at Lucknow Campus.

2. While she was prosecuting her studies at the Lucknow Campus, certain seats fell vacant at Hyderabad Campus and that induced her to submit a representation to the 1st respondent on 3.8.2015 seeking transfer from Lucknow Campus to Hyderabad Campus. The authorities of the University maintained sphinx like silence and that constrained her to reiterate her representations seeking the same relief but all representation which was nothing but a sisyphian endeavour. The non-response impelled her to knock at the doors of the writ court and for the said purpose she, through her father, sought legal aid from the Legal Services Authority for appointment of a counsel to file the writ petition. Apart from stressing on the inaction of the 1st respondent, it was specifically asserted that one Tirna Chandra was extended the benefit of admission though she had not applied and in any case, not eligible and, therefore, her admission was vitiated and the appellant deserved to be transferred to Hyderabad Campus.

3. As the facts have been unfolded, the learned Single Judge, taking note of the specific allegation, the plight pronouncedly stated by the appellant through her father (as she was a minor and represented by her father in the writ petition), came to hold that there was no

specific material placed before the Court as regards the admission of Tirna Chandra in Hyderabad Campus and hence, it was not possible to express any opinion and come to a definite conclusion whether any irregularity had been committed while extending the benefit of admission to said Tirna Chandra; that the 'Important Instructions' notified by the University for the online admissions 2015-2016 though laid the postulate that no transfer was permissible, yet it was only restricted to a candidate who had chosen one campus at the time of admission but the said prohibition would not apply when he/she seeks transfer to another campus after taking admission; that in the obtaining factual matrix, Instruction No.5, which is a part of 'Important Instructions' was not applicable to the case of the writ petitioner; that the syllabi of the two campuses are same and there is no change of the University; and that as the appellant had been admitted to second year and eight vacancies at Hyderabad Campus having arisen, the transfer from one campus to another was permissible as that would not violate the norms of student-teacher ratio. Being of this view, the writ Court allowed the writ petition directing the respondent-University to transfer the petitioner therein from Lucknow Campus to Hyderabad Campus within a period of two weeks.

4. The University, being dissatisfied with the directions issued by the Writ Court, preferred Writ Appeal No. 723 of 2016. The Division Bench of the High Court took note of the fact that the University had prepared separate merit lists for each of the campus and hence, admission to Hyderabad Campus could only have been made on the basis of the merit list drawn as regards the said campus and permitting a student lower in rank to be transferred from the Lucknow Campus to Hyderabad Campus that too after completion of one year would defeat the object of the selection process which is founded on merit qua each campus.

5. The appellate Bench of the High Court further emphasized on the aspect that in the absence of any provision permitting transfer of a student from one campus to another, the declination by the University could not be treated as fallacious. Additionally, it has been held that merely because few seats are not filled up after admission for the academic session 2015-2016 which was closed on 29.7.2015, or fell vacant for some reason or other that by itself would not confer any right on the writ petitioner to advance a claim for admission in the Hyderabad campus under the guise of seeking transfer, for that would tantamount to ignoring the claims of other 51 students who had secured higher marks than her. On the basis of the aforesaid premises, the Division Bench differed with the opinion expressed by the learned Single Judge and consequently set aside the order passed by the Writ Court. Hence, the present appeal by special leave.

6. We have heard Mr. Vinay Navare, learned counsel who has been appointed as the Amicus Curiae to assist the Court and Ms. Kamini Jaiswal, learned counsel for the respondent.

7. It is submitted by Mr. Navare that the Division Bench of the High Court, in exercise of the corrective jurisdiction in an intra-court appeal should not have brushed aside the well reasoned judgment and order passed by the learned Single Judge who had made a subtle distinction between the scheme prevalent at the time of admission and a situation that compels a student to seek transfer. Learned counsel would contend that there are circumstances when the University itself had extended the benefit of transfer to other

students and, therefore, non-extension of the same in the case of the appellant, despite the enormous problems highlighted by her, smacks the act of the University as discriminatory and arbitrary. He has also seriously commented on the maladroit methods adopted by the University in admission to candidates who had never appeared in the examination of the University and for substantiating the said criticism, he has emphatically given the example of Tirna Chandra.

8. Ms. Kamini Jaiswal, learned counsel for the University, in her turn, would contend that there is a clear prohibition for change of campus and the concept of change of campus is not constricted to the stage of admission, for the change can only take place after admission. Learned counsel would urge that when the seats fall vacant, as a principle the University does not allow any transfer and the appellant no.1 cannot take advantage of such a fortuitous circumstance as that will be contrary to the postulates in various instructions issued by the University from time to time. It is admitted by the learned counsel for the respondent that the University on a singular occasion, when a student was prosecuting her studies at Shillong and suffered from malignancy for which there was no treatment at the place of her study, had been allowed to be transferred. According to her, in the instant case, the assertion is with regard to language problem and non-proximity to home and, if the said grounds are taken into consideration by the University, the entire policy formulated by the University will be in serious jeopardy.

9. To appreciate the contentions raised at the Bar, it is necessary to appreciate the “Online Admission 2015-2016”. The Rules of transfer, as enshrined in the said document, lays down thus:-

“Rules for transfer

Admission instruction/Rule 5:

Once selection of a campus is made, no requests for change of campus or transfer will be entertained before or after the admission for any reason whatsoever.”

10. On a perusal of the said instruction, it is limpid that once selection of a campus is made, no request for change can be entertained either before or after the admission for any reason whatsoever.

11. In another document, namely, “Confirmation Letter”, under clause 11, it has been provided as under:-

“Names of candidates occur once in the Merit List. If the names of candidates belonging to OBC/SC/ST/PWD/WDP occur in the unreserved list, they will be given admission only in the 'Unreserved List' and cannot claim seats under the reservation quota. No transfer Will be allowed from one campus to another campus of the University under any circumstances.”

12. The said clause, apart from dealing with the merit list and the unreserved list, also clearly lays down that no transfer will be allowed from one campus to another campus of the

University under any circumstances. In the admission procedure that has been formulated by the University, clause 14 reiterates that no transfer will be allowed from one campus to another campus of the University under any circumstances.

13. The instructions issued by the University do not stop there. It has taken pains to issue “Important Instructions” meant for the students. In clause 5, it has been provided thus:-

“5. The drop down menu in the application form allows you to select the campus (Hyderabad, Lucknow, Shillong) for a programme. Once selection of a campus is made, no requests for change of campus or transfer to another campus will be entertained before or after the admission for any reasons whatsoever.”

14. The aforesaid stipulations compel us to think that transfer from one campus to another campus is impermissible. True it is, at one point of time, the University had granted permission for transfer of a student from Shillong to Hyderabad as the student was suffering from malignancy but that cannot be regarded as a precedent. It has to be treated as an exception. The grounds that have been highlighted by the appellant no.1 herein are that she has a language problem at Lucknow and denial of proximity to home. We have been apprised in the course of hearing that the father of the appellant is living at Dehradun and she has done her Class 10th and 12th from Dehradun. We have stated those facts as they have been highlighted before us but in the eventual analysis they really do not weigh.

15. Be it noted, as the policy of the University reveals, a candidate can submit applications for two campuses and the admission procedure is campus-wise. The same is evident from clause 3 of “Important Instructions” which is to the following effect:-

“3. No student shall be allowed to apply for more than two full time programmes in an academic year. This is to be done by filling two separate forms and paying fee separately as applicable.”

16. From the aforesaid, it is discernible that a candidate has two options and he/she has to pay two separate fees. Assuming a candidate fills the form for a campus at Hyderabad and another at Lucknow and though he/she is more meritorious to go to Hyderabad Campus, he/she can choose the Lucknow campus; and after he chooses the campus at Lucknow, he/she cannot seek transfer to go back to Hyderabad. It is because there has to be definiteness, certainty and a determinative allocation of seats by the University. The various clauses under different headings are to be read in an apposite manner. The intent of the instructions is absolutely clear. It lays the postulate that a student is allowed to make the choice and once the choice and allocation attain finality, no flexibility is conceived of. That is the norm of admission of the University. It has been clearly spelt out and hence, there is no room for allowing any kind of interpretation to make a distinction between the stage of admission and stage after admission that can permit transfer.

17. Learned Single Judge, as is evincible, has made a distinction between the stage of admission and a stage of transfer but it does not flow from any of the clauses which we have

reproduced hereinabove. On the contrary, as is perceptible, permission of transfer is absolutely prohibited. Once a candidate chooses a campus, he/she exercises the option and is bound by it. Solely because a vacancy occurs at the other campus, no right accrues in favour of a candidate who had already given the option. There may be cases where the University, on real exceptional and extraordinary circumstances, may allow transfer like a student suffering from malignancy, as has been brought to our notice, but it cannot be done taking into consideration the grounds that have been canvassed by the appellant. We have said so, as we do not intend to say, in absolute terms, that the University under no circumstances can exercise the authority. The circumstances have to be exceptional and indubitably subject to judicial scrutiny. The University cannot act in an arbitrary and fanciful manner. It would not depend upon the whims and caprice of the University. It has to be based on cogent, germane and sound reasons which can withstand the strict judicial scrutiny.

18. As far as Tirna Chandra is concerned, the Division Bench has not expressed any opinion as there is no material brought on record. The learned counsel for the respondent would submit that she has substantiated the admission in the counter affidavit. We refrain from advert to the same for the simple reason that the said Tarni Chandra has not been arrayed as a party in the writ petition. As allegations are made against her, she is a necessary party. In the absence of her being arrayed as a party to the writ petition, neither her admission nor anything relating to her can be adverted to or dwelt upon by the Writ Court.

19. In view of the aforesaid premises, despite the best efforts made by Mr. Navare, we remain unimpressed and accordingly decline to interfere. Resultantly, the appeal, being devoid of merits, stands dismissed. There shall be no order as to costs.