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NITASHA PAUL

v.

MAHARISHI DAYANAND UNIVERSITY ROHTAK AND ORS.

JANUARY 23, 1996

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[A.M. AHMADI, CJ, SUHAS C. SEN AND
K.S. PARIPOORNAN. JJ.]

Education :

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Dental College—Admission/migration—B.D.S. Second year course student—Application for migration—Held, eligibility for migration to be decided on the basis of merit, domicile and several other factors—Though migration from one University to another cannot be claimed as a matter of right, University cannot decide question of migration arbitrarily and according to whims of the Vice-Chancellor—Vice Chancellor must abide by certain norms and those norms must apply equally to every candidate.

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The appellant, a second year, B.D.S. student of K.L.E.S. Dental College and Hospital, Belgaum, Karnataka, applied for migration to the Government Dental College Rohtak for second year BDS Course 1993-94. A sub-committee headed by the Dean of Dental College, Rohtak was set up to process the applications for migration. There were 8 vacancies, and since meanwhile the Vice-Chancellor of the University had allowed one candidate to be admitted, the sub-committee, on the basis of the guidelines laid down in 1991, recommended the names of seven students, including the name of the appellant at serial number 3. However the Vice-Chancellor, ignoring the recommendations of the sub-committee, allowed migration of seven other candidates. The appellant filed a writ petition before the High Court. The Single Judge of the High Court directed the University to create an additional seat to admit the appellant. In the letters patent appeal filed by the University, the Division Bench of the High Court cancelled the selection and directed the authorities to process the applications afresh. Aggrieved the appellant filed the appeal.

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It was contended for the respondents that migration was not a legal right; that the guidelines for migration of medical students recommended in 1991 by the Committee set up by the Vice Chancellor were not accepted by the latter and therefore those guidelines did not have any binding effect;

and that academic merit alone could not be the basis for migration, particularly when the appellant was not domiciled in Haryana. A

Allowing the appeal, this Court

HELD : 1.1. Though migration from one University to another cannot be claimed as a matter of right, the University cannot decide question of migration arbitrarily and according to the whims of the Vice-Chancellor or the Principal of the College concerned. [866-G] B

1.2. In the instant case, no satisfactory explanation has been given as to why the recommendations of the sub-committee set up for selection of candidates were totally ignored. Nor is there any explanation as to why the guidelines for migration of candidates framed by the committee set up for this purpose in the year 1991 were not accepted, and in the absence of such guidelines as to what were the binding norms for allowing migration of candidates, the Vice-Chancellor must abide by certain norms for deciding the question of migration and the norms must apply equally to the case of every candidate. [867-F-G] C D

1.3. Eligibility for migration has to be decided on the basis of merit as also domicile and several other factors. There is no reason to presume that the sub-committee in deciding eligibility of the candidates had ignored the factor of domicile. The appellant had annexed a domicile certificate to the application for migration indicating therein her mother to be a permanent employee of Haryana State for the last several years. The report of the sub-committee was neither assailed before the High Court nor before this Court. The Vice-Chancellor is entitled to reject the report of the sub-committee on some valid grounds. Not having done that, the Vice-Chancellor cannot arbitrarily reject the selection made by the sub-committee. [868-D-E] E F

2. Though the Vice-Chancellor made the selections capriciously, it will not be fair at this stage to interfere with the course of study of the candidates migrated to the respondent College. Under these circumstances, the order of the Single Judge of the High Court is restored and the appellant should be allowed to join the Dental College at Rohtak. An extra seat may be provided for this purpose, if found necessary. [868-H, 869-A] G H

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2310 of 1996.

From the Judgment and Order dated 23.2.95 of the Punjab & Haryana High Court in L.P.A. No. 212 of 1994.

B H.N. Salve, P.P. Rao, R.K. Kapoor, P. Verma, Anis Ahmed Khan,
A. Mariarputham, Rajesh Kumar Sharma, Ms. Shalu Sharma, Goodwill
Indeevar, Ashok Mahajan, Ranjan Mukherjee, Ashok Grover, Ajay Kumar
for Mitter & Co, Pankaj Kalra, C.S. Ashri, Nidhesh Gupta, S.K. Sharma,
C Arun K. Sinha, Lalit Bahl, Ms. Suruchi Agarwal for Ms. I. Malhotra for
the appearing parties.

The Judgment of the Court was delivered by

SEN, J. Special leave granted.

D The appeal arises out of a writ petition filed by Nitasha Paul. Her
case is that she obtained admission in K.L.E.S. Dental College and Hospi-
tal, Belgaum [Karnataka]. After passing the first year professional BDS
examination, she applied for migration to the Government Dental College,
Rohtak for the second year course. The case of Nitasha is that the Dental
E College at Belgaum was a recognised institution and she was admitted on
the basis of her performance in the earlier examinations. Along with her
application for migration, she attached a No Objection Certificate from the
Belgaum College wherein it was certified that she was a bona fide student
of the college studying in the second year BDS course for the year 1993-94.
F Nitasha's application was received by the office of the Dental College,
Rohtak on 4th August, 1993 and was marked S. No. 4293.

G The Maharishi Dayanand University [for short 'M.D. University'] had
received 49 applications in all, seeking migration from different colleges
throughout the country. A sub-committee was set up to process the ap-
plications.

H The sub-committee was headed by the dean of Dental College,
Rohtak. Out of 49 applications, 23 candidates were found eligible and the
remaining 26 applications were rejected. The sub-committee recommended
the following names :

1. Aradhana Mishra	411/540	A
2. Umand S. Nayyar	419/600	
3. Nitasha Paul	416/600	
4. Naveen Chhabra	411/600	B
5. Puneet	409/600	
6. Puneet Batra	408/600	
7. Rashi Majithia	405/600	C

There were eight vacant seats available for migration to the Dental College, Rohtak for the academic year 1993-94.

It is alleged that the selection was made by the sub-committee on the basis of guide-lines framed by a committee set up by the Vice-Chancellor of the University. The guidelines were laid down on 20th February, 1991 and have been followed since then. According to these guidelines, applications for migration had to be made within three months of the declaration of the results for admission to the 1993-94 BDS course second year. The applications were invited to be made within 8th October, 1993, i.e., within three months of the declaration of the results. D E

The Vice-Chancellor, however, ignoring the norms of the University and even before the last date for making the applications was over, allowed Munish Madan to be admitted to the Dental College, Rohtak on 14th September, 1993. Since one seat went to Munish Madan, a nominee of the Vice-Chancellor, only seven seats remained to be filled up and the sub-committee under the circumstances, recommended names of seven candidates only, purely on the basis of merit. F

After the sub-committee had made its recommendations, the Vice-Chancellor once again ignored the recommendations and allowed migration of - G

1. Ms. Puneet

2. Ms. Bindu Bansal

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- A 3. Mr. Sumeet Malik
4. Ms. Monika Bhasin
5. Ms. Pooja Batra

- B 6. Mr. Manoj Mittal
7. Mr. Tarun Kumar Bhutani

C It has been contended on behalf of Nitasha that the Vice-Chancellor and also the Director/Principal of Dental College Rohtak have totally ignored the recommendations of the sub-committee, the guidelines laid down for admission and the merit list of the candidates and for reasons of their own, they selected persons of their own choice for admission in a high-handed and arbitrary manner.

D Neither the Vice-Chancellor nor the Principal of the Dental College made any affidavit to refute the allegations. However, an affidavit was filed by the Registrar of the University in the court below on behalf of the Principal and the Vice-Chancellor. This mode of refuting the serious allegations brought by Nitasha Paul against the Vice-Chancellor or the Principal personally is totally unsatisfactory. To meet the serious allegations against them for the alleged arbitrary selection of candidates for migration, the Vice-Chancellor and the Principal should have come forward with affidavits denying the allegations.

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F The Registrar, Shri Devender Singh, has filed an affidavit in this Court on behalf of the University. In that, he has taken a legal point that migration is not a legal right and the mere fact that the University has granted migration to some candidates in preference to others cannot be a ground for a writ petition.

G It is true migration cannot be claimed as a matter of right from one University to another but the University cannot decide questions of migration arbitrarily and according to the whims of the Vice-Chancellor or the Principal of the Dental College.

H No satisfactory explanation has been given in the affidavit as to why the recommendations of the sub-committee set up for selection of can-

didates were totally ignored. In the affidavit, it has been admitted by the Registrar that a sub-committee was set up consisting of Dr. (Mrs.) M.L. Chanda, Dr. B.R. Arora and Dr. V.K. Grover to examine the migration cases of candidates for the BDS courses. The sub-committee was set up by the Dental College with the sole purpose of separating eligible candidates from the ineligible candidates and listing them on the basis of merit alone. It has further been stated that the recommendation of this committee was never placed before the Academic Council and hence its recommendation could not be treated as binding.

It has further been argued that although the Vice-Chancellor had set up a committee to frame guidelines for migration of medical students and a set of guidelines were recommended by the committee on 20th February, 1991, the guidelines have not been accepted by the Vice-Chancellor as yet. Therefore, these guidelines do not have any binding effect.

It has further been stated that academic merit cannot be the basis for migration from one University to another. Admission to a medical college may be based on a merit list, but for migration many other factors have to be taken into consideration. Hardship of the candidates, domicile of the candidates and various other factors are to be taken into consideration before migration of a student from one University to another University is allowed. In the instant case, Nitasha Paul did not qualify because she was not domiciled in Haryana. Therefore, she could not be accepted for transfer from another University to M.D. University, Rohtak.

There are several reasons for which this argument cannot be accepted. No satisfactory explanation has been given why the guidelines for migration of candidates framed by the committee set up for this purpose were not accepted. In the absence of such guidelines what were the binding norms on the basis of which the question of migration of candidates has to be decided? In effect, the stand taken on behalf of the University is that migration is not a matter of right and the Vice-Chancellor has an unfettered discretion in this matter. In our view, the Vice-Chancellor must abide by certain norms for deciding the question of migration and the norms must apply equally to the case of every candidate. It has not been stated by the Vice-Chancellor or anybody on his behalf why the guidelines recommended by the committee on 20th February, 1991 were not accepted.

A Moreover, there is no reason to presume that the sub-committee in deciding eligibility of the candidates had ignored the factor of domicile. In fact, the appellant had annexed a domicile certificate to her applications for migration. The mother of the appellant is a permanent employee of Haryana State for the last several years. There is no reason to presume that the sub-committee had overlooked this aspect of the matter. It has been rightly pointed out by the Trial Judge in the court below that if the Vice-Chancellor had entertained some doubt the domicile of the candidate in spite of the report of the sub-committee, he should have called upon Nitasha Paul to prove her domicile.

C Another point taken is that the sub-committee had not prepared a merit list, but had merely prepared a list of candidates who were eligible for migration. This argument again is of no substance. Eligibility has to be decided on the basis of merit as also domicile and several other factors. It has not been stated that the sub-committee had acted on any irrelevant material or had failed to take into consideration any relevant material. In fact, the report of the sub-committee was not assailed in the courts below nor before this Court. The Vice-Chancellor is entitled to reject the report of the sub-committee on some valid grounds. Not having done that, the Vice-Chancellor cannot arbitrarily reject the selection made by the sub-committee.

F The next question is to what relief is the appellant entitled under these circumstances. The appeal court has cancelled the selection and directed a fresh process of admission. But that will not help anybody, because the admission year of 1993-94 is already over. At this stage, this process for admission in 1993- 94 course cannot be started afresh.

G The Trial Court had directed the University to admit Nitasha and for this purpose to create an additional seat. The reason that impelled the Trial Court to do so was that several candidates had already been absorbed. Those candidates have given up their old colleges and had migrated and were actually studying at Dental College at Rohtak. Under these circumstances, it will not be fair at this stage to interfere with their course of study. The University stated that creation of an additional seat will cause problems for the Dental College. But this situation has been brought about by the capricious mode of selection adopted by the Vice-Chancellor.

Under these circumstances, we direct that the order of the Trial Court should be restored and Nitasha Paul should be allowed to join the Dental College at Rohtak. An extra seat may be provided for this purpose, if found necessary. A

Under these circumstances, we allow this appeal, set aside the order under appeal dated 23rd February, 1995 and restore the judgment and order of the Trial Court dated 15th December, 1993. There will be no order as to costs. B

R.P

Appeal allowed.