

Home Secretary, U.T. Of Chandigarh And ... vs Darshjit Singh Grewal And Ors. on 21 July, 1993

Equivalent citations: JT1993(4)SC387, 1993(3)SCALE218, (1993)4SCC25, [1993]SUPP1SCR321, 1993 AIR SCW 2585, 1993 (4) SCC 25, (1993) 4 SERVLR 556, 1993 UJ(SC) 2 443, (1993) 2 GUJ LH 269, (1993) 4 SCT 415, (1993) 4 JT 387 (SC)

Author: B.P. Jeevan Reddy

Bench: B.P. Jeevan Reddy, N. Venkatachala

JUDGMENT

B.P. Jeevan Reddy, J.

1. Leave granted in Special leave petition (Civil) Nos. 3073-75 of 1993.
2. Admission to engineering colleges, whether constituent of affiliated, in the State of Punjab are made on the basis of the Joint Entrance Test (J.E.T.). The affiliated colleges, which are run by private managements were, however, permitted hitherto to fill up a certain number of seats, designated as Management Quota, on their own. For admission in the management quota, a student was required to obtain a certain minimum number of marks in the joint entrance examination. But in practice a number of students obtaining less than the minimum were also being admitted - on various considerations. Having obtained admission in management quota in affiliated colleges, some of them situated away from Chandigarh, the effort of many of the students was always to have themselves transferred to colleges located centrally like the Chandigarh Engineering College, a Constituent College of Punjab University. These appeals relate to a few such transfers.
3. The five appeals before as arise from five writ petitions filed in the High Court in Punjab and Haryana. The particulars of the writ petitioners (R.R.I to 5) are:

No. of W.P	No. of C.A.	Name of the Marks obtained	Marks obtained by the last in the in this Court candidate by him in J.E.T candidate in the relevant High Court faculty in the Punjab engineering college, Chandigarh.
------------	-------------	----------------------------	---

1. 2. 3. 4. 5. 11096/92 - Darshijit Singh (R-1) 109.25 240.50 12050/92 - Sunit

Kapur(R-2) 28 228 13228/92 - Anil Kr. Batra(R-3) 152.75 217.25 12628/92 -
Subhadra Yadav(R-4) 118.5 183.75 14991/92 - Rohit Tangri(R-5) 173.25 202.25

4. With the marks obtained by them, RR 1 to 4 could not be admitted in any engineering college in the State, on merit. Only Respondent No.5 could get admission on the basis of his merit, but in the Bhatinda engineering college, affiliated to the Punjabi University (as distinct from Punjab University). Respondents 1 to 4 sought for and obtained admission in Guru Nanak Dev engineering college, Ludhiana, in the management quota. This College is affiliated to Punjab University.

5. All the five respondents applied for transfer to Chandigarh Engineering College. It is evident that while in the case of respondents 1 to 4 the transfer was an intra-university transfer, in the case of fifth respondent, it was inter-university transfer. All of them applied for transfer on the ground of security. They pleaded that there were threats to their life at the place they were studying and, that in the interest of their safety, they must be transferred to Chandigarh Engineering College.

6. Punjab University is governed by the Punjab University Act, 1947. Sub-section (1) of Section 20 declares that the "executive government of the university shall be vested in the syndicate", while Sub-section (5) of Section 20 empowers the syndicate to "make such rules, not inconsistent with the provisions of this Act and Regulations, as they may deem necessary for carrying on executive government of the university as specified in Sub-section(I)"

7. The Rules framed by the Syndicate under Section 20(5) of the Act are found printed in volume III of the Punjab University Calender. Chapter XIV deals with "migration of students". The chapter is divided into several sub-chapters. Sub-chapter (a) prescribes the "Rules regarding migration from the affiliated college to another". Rule 1.1.3 says "migration of students shall not be allowed without any valid reasons". Rule 1.2 says "no student who has joined one college shall be admitted to another college during the same course unless -(i) the Principals of the colleges concerned agree and the application is forwarded to the 'Registrar for sanction, accompanied by the fee of Rs. 5/- which shall in no case be refunded, (ii) the Principal of the college from which he intends to migrate has given the leaving certificate". The Rule further says that "no application for transfer shall be entertained unless the student's statement is supported by his Principal who, in the case of migration of students provisionally promoted, shall state all the relevant facts on the application". Sub-chapter (e) prescribes the rules governing "migration of students from one engineering college to another affiliated to Punjab University in the faculty of engineering." We shall proceed on the assumption, without so holding, that these Rules permit and govern transfer from an affiliated college to a constituent college. It is necessary to notice Rules 1,2,5 and 6 of the eight rules occurring in this sub-chapter in view of their crucial relevance herein. The read as follows:

1. the applicant must have valid reasons for migration which cannot be claimed as a matter of right.
2. The applicant must have obtained permission of the Principals of the two colleges concerned for migration. The Principal of the Institution to which the candidate

wants to migrate may reject the application without assigning any reason. The application of a candidate for migration will be rejected by the Principal of the institution to which migration is sought:

(a) if there is no vacancy in the class;

(b) if the candidate does not fulfil all the qualifications necessary for admission to the college as laid down in the admission rules of the college;

(c) if the conduct and behaviour of the student has not been satisfactory in the previous college; and

(d) if the marks obtained in Joint Entrance Test (JET) by the applicant seeking migration, are below the marks obtained by the last candidate admitted in the 1st year class on the corresponding branch of Engineering of the Institution of that particular year against the category to which he belongs. The category shall be determined on the basis of the college prospectus of the relevant year of the Institution to which the migration is sought.

(emphasis added)

5. The migration will be subject to the approval of the Punjab University;

(6) Migration will be allowed in third and fifth semester only subject to the condition that candidate seeking migration in the third semester must have passed up to and including second semester examination and candidates seeking migration in the fifth semester must have passed up to and including fourth semester examination. Under no circumstances will any of the regulations for the different Engineering examinations be circumvented as a result of migration.

8. Sub-Chapter (f) deals with "Migration of students from other universities to the Punjab University in the faculty of engineering". According to these Rules "ordinarily no migration from other universities will be allowed beyond the second year class". Clause (d) of Rule 10 provides that "the application of any candidate for migration will not be entertained by the Principal of the institution to which migration is sought - if the percentage of marks obtained in J.E.T. by the candidate seeking migration is below the percentage of marks obtained by the candidate in JET of the last candidate (in the appropriate category as per college prospectus) admitted in the first year class of the relevant branch of engineering of the institution in that particular year." Chapter 42 provides for delegation of authority. Item 52 says that the syndicate which is the authority for "sanction of additional seats in the teaching departments/ affiliated colleges" can delegate that power to the Vice-Chancellor.

9. Section 31 confers upon the Senate the power to make Regulations, with the sanction of the government, to provide for all matters relating to the university, subject to the condition that the regulations so made shall not be inconsistent with the Act. Sub-section (2) of Section 31

particularises the matters in respect of which the regulations can be made. Clause (K) of Sub-section (2) speaks of "the rules to be observed and enforced by college affiliated to the university in respect of the transfer of students".

10. The regulations made by the senate under Section 31 are found printed in the Punjab University Calender, Volume I (1989 publication). Chapter VIII(A) sets out the conditions of affiliation. Regulation 19 in this chapter says that "every affiliated college shall observe the regulations laid down for admission, migration and inter-collegiate matters given in part-D of this chapter. If a college fails to do so, the Syndicate may take such action as it may deem necessary under Regulation 11.1 under this chapter". Regulation 15 in this chapter obliges the principal of every affiliated college to submit annually a report to the syndicate indicating inter alia the number and distribution of students. Chapter VIII(D) deals with "admission and migration of students and tuition fees." Regulation 31.2 occurring in this chapter specifies the conditions subject to which alone the student can be transferred from one college to another. It is in conformity with the Rules made by the Syndicate on the subject.

11. Regulation 33 declares that "notwithstanding anything contained in Regulation 31.1 and 31.2, the Vice-Chancellor shall have power to authorise migration of a student from one college to another or to allow admission of a student".

12. Since the Chandigarh Administration finances the engineering colleges within the Union Territory of Chandigarh (including the Punjab engineering college, Chandigarh, to which Respondents 1 to 5 sought transfer), it has enunciated certain guidelines governing "Migration to various technical/professional colleges under the control of Chandigarh Administration", contained in its Memo No. 7646-1H(2)-91/18942 dated September 6, 1991. It is necessary to notice the same:

Subject: Policy regarding migration to various Technical/Professional Colleges under the control of Chandigarh Administration.

The matter regarding migration to various Technical/Professional College like Punjab Engineering College, Chandigarh, Chandigarh College of Architecture, Chandigarh, Govt. College of Arts, Chandigarh and Polytechnic was under active consideration of the Administration in order to bring uniformity in these institutions, it has been decided to examine the requests of migration on the following points:

(1) Migration will be considered only on grounds of security of the student and ill health of the student. No other ground like ill health of relatives, security of relatives, financial considerations.

(2) In case to be considered on security grounds, a report of the District Magistrate of the District where the student is studying at present will be obtained. The report would have to specifically state that continued study of the student in the district would seriously endanger the life of the student.

(3) In cases of medical grounds, the students will be asked to appear before a Medical Board to be appointed by the Administration to determine whether continued study of the student at present place endangers the life of the student on medical grounds.

(4) The student will be asked to give an affidavit stating the following:

(i) details of security/medical grounds;

(ii) the fact that he was selected on merit and not on any quota whatsoever;

(emphasis added)

(iii) that he had not paid any capitation fees or donation to the college for seeking admission.

2. You are, therefore, requested that all the migration cases may be examined on the above guidelines before sending the proposal to the Administration.

sd/-

Superintendent Home-I for Home Secretary, Chandigarh Admn.

13. It is not suggested that these guidelines are in any way inconsistent with Rules and Regulations made under the Act. The guidelines expressly speak of admission to inter alia Punjab Engineering College, Chandigarh, a constituent college.

14. Reading the Rules and Regulations of the University and guidelines issued by the Chandigarh Administration, the following are the relevant conditions of migration:

(i) Principals of both the colleges should agree to it;

(ii) there must be a vacancy available in the relevant faculty in the transferee college;

(iii) transfer shall be permitted only in third and fifth semesters;

(iv) the student being transferred should not have obtained (in the J.E.T.) less marks than the last student admitted in that faculty in the transferee college;

(v) transfer is permissible only on the ground of security or medical grounds; and

(vi) the student seeking transfer should not have been admitted in any quota i.e., he should have been admitted on merit. (This condition makes explicit what is implicit in the Rules framed by the syndicate.)

15. It may be relevant to emphasise at this juncture that while the Rules and Regulations referred to above are statutory, the policy guidelines are relatable to the executive power of the Chandigarh Administration. It is axiomatic that having enunciated a policy of general application and having communicated to it all concerned including the Chandigarh engineering college, the Administration is bound by it. It can, of course, change the policy but until that is done, it is bound to adhere to it.

16. Grewal applied for transfer from Guru Nanak Dev Engineering College, Ludhiana to Punjab engineering College, Chandigarh sometime in the year 1991 in the form prescribed by the Punjab University. He was then studying in the first year (second semester). The Principal of the Guru Nanak Dev Engineering College, Ludhiana agreed to his migration on August 17, 1991. When it came to the Principal of the Punjab Engineering College, Chandigarh, he did not agree in the first instance. In his letter dated November 19, 1991 addressed to the Home Secretary, Chandigarh Administration, he pointed out - giving full particulars of all the 43 applicants including Grewal - that none of them are eligible for transfer according to Rules, Regulations and the policy guidelines. He pointed out in particular, that (i) there are no vacancies in his college and (ii) that the marks obtained by the applicants are less than the marks obtained by the last candidate admitted in his college in the relevant faculty. Within one week, however, he agreed to the migration of Grewal on November 20, 1991-but with a rider. In the certificate, (which is a part of proforma prescribed by the University) he scored out Clause (iii) which reads: "(iii) Seat offered to the student is within the quota of the seats sanctioned by the University" and noted, in hand, "it will be additional seat", (similar endorsement are found in the case of Respondents 2 to 5). The matter then went before the Syndicate of the Punjab University, evidently for the reason that there were no seats available in the Chandigarh college for accommodating these Respondents, as reiterated in the aforesaid note of the Principal of the Chandigarh College. The Syndicate not only approved the transfer of Grewal and a few others, it also sanctioned a few additional seats in May/June, 1992.

17. The Chandigarh Administration too approved the transfers.

18. However, when the question of actual admission of these Respondents arose, the Principal of the Chandigarh College demurred again, on the ground that additional seats can be sanctioned only by the central government in consultation with the All India Council for Technical Education (A.I.C.T.E) - hereinafter referred to as 'the council' - and that no such sanction is forthcoming. By his letter dated July 23, 1992, the Principal pointed out again that the migration of the said students is contrary to the rules and regulations of the Punjab University and the policy guidelines of the Administration, besides pointing out that the sanction of additional seats for accommodating them in the Chandigarh College can be sanctioned only by the Government of India in consultation with the All India Council for Technical Education (Council). He followed up this letter by another letter on August 24, 1992, which reads thus:

Subject: Migration.

This office have received 35 applications (13 applications for inter college migration and 22 applications for other University of Punjab University migration). A statement in duplicate showing the particulars of the applicants, reasons for migration and

whether the Institute is approved by the AITCE has been recorded against each, for favour of further action at your end.

It is added for the information of the authorities that there is no seat vacant at the College to accommodate the students who are seeking migration. Before deciding the cases, it may please be kept in view that the Administration has already sanctioned 10% additional seats more than the sanctioned intake of 310 seats as is allowed by the Punjab University to accommodate sportsman and dependent children of Terrorist Victims, and for migration of any student, prior sanction of the Govt. of India for sanction of additional seats will be required and where equivalency is yet to be decided by the University, the same will have to be decided and further prior approval of the Punjab University is essential for allowing migration. Moreover, no one is eligible for migration as the marks obtained in the Combined Entrance Test (CET) by the applicant are below the marks obtained by the last candidate admitted in the first year class of the corresponding branch in that particular year.

(emphasis added) The case file of all the 35 applicants are enclosed in original for favour of early decision in the matter.

Principal Punjab Engineering College Chandigarh.

19. It is at this stage that Grewal approached the High Court of Punjab and Haryana by way of the aforesaid writ petition. He submitted that though his migration has been approved by both the transferor and transferee colleges, as well as by the Syndicate of the Punjab University and the Chandigarh Administration, the Principal of the Chandigarh College was now refusing to admit him into the college. The writ petition was admitted and an interim order (in the first week of September, 1992) made directing the Principal to admit Grewal into Chandigarh Engineering College. Similar orders followed in the case of respondents 2 to 4 thereafter. Neither the Punjab Engineering College nor the Chandigarh Administration (appellants in these appeals) questioned the said interim orders. Respondents 1 to 4 were accordingly admitted. The writ petitions were heard finally in January, 1993 and judgment reserved. While doing so, the High Court directed that the fifth respondent, (who was not admitted by then) should also be admitted in the Chandigarh College. Against this interim order, the Chandigarh Administration and the Punjab University appealed to this Court by way of S.L.P.(C) 1808/93.

20. The judgment in the writ petitions was delivered by the High Court on January 20, 1993. The writ petitions were allowed under a common order. Against the said common order, the present civil appeals are filed. The two main reasons assigned by the High Court are (1) the Principal of Chandigarh Engineering College, having once given his consent for transfer of these respondents, was not justified in resisting the transfers after they were approved by the University and the Administration and (2) that the Principal was in error in taking the stand that additional seats in his College can not be sanctioned by the Syndicate and that it can be done only by the Central Government in consultation with the Council.

21. On February 11, 1993, we dismissed S.L.P. 1808/93 as having become infructuous inasmuch as it was directed against an interlocutory order pending the writ petition which itself came to be disposed of on January 20, 1993, as stated above.

We have heard Sri Kapil Sibal for the appellants (Chandigarh Administration and Chandigarh Engineering College) and S/Sri G. Ramaswamy, Harish Salve and Sri Tawakley for the respondents.

22. The first question we have to address is whether the High Court was right in holding that the Principal of the Chandigarh Engineering College was precluded from objecting to the admission of the respondents in view of the consent given by him for their transfer earlier? It may be recalled that when the matter first came up before him, the Principal did not agree to their transfer on the ground that it would be violative of the rules and regulations of the Punjab University. However, within one week he changed his mind and agreed to the transfer while pointing out that such transfer would involve creating of an additional seat. Then again, after the University and the Chandigarh Administration had approved the transfer and sanctioned the additional seats, he sought to raise the very same objections, coupled with a new objection relating to the competence of the University to sanction additional seats. The High Court was of the view that the Principal can not do this. It has, however, not considered whether the consent given by him earlier was in accordance with law and if it is not, what is its effect? It went by the broad circumstance that having once given his consent to the transfer, he cannot turn round later and object to it. In our opinion the High Court ought to have considered the said question. In any event we are obliged to consider the same.

23. Rule-2 in sub-chapter (e) of the Rules made by the Syndicate provides inter alia that "the application of a candidate for migration will be rejected by the Principal of the Institution to which migration is sought: (a) if there is no vacancy in the class and (d) if the marks obtained in Joint Entrance Test (J.E.T.) by the applicant seeking migration are below the marks obtained by the last candidate admitted in the first year class of the corresponding branch of engineering of the institution of that particular year against the category to which he belongs". Applying the Rule, the applications of the respondents 1 to 5 were liable to be rejected by the Principal on the said two grounds. The Principal had no power to agree to the transfers contrary to the said Rule. He had no discretion in the matter. He was bound to reject the applications. The question is whether he is precluded from raising the said issue at the time of actual admission in view of his earlier consent. Is he precluded from doing so either by the doctrine of promissory estoppel or any other rule of equity? In our opinion neither the rule of promissory estoppel nor any other equitable rule brought to our notice, bars him from raising the said objection at any time before the actual admission of the students. The Principal of Chandigarh Engineering College is an officer/Authority of the University. University is a corporate body governed by law. The subject of migration of students is a matter governed by law. The Principal could only act within the said provisions - not outside them. Respondents had applied for transfer/migration in accordance with the said rules. They knew what the rules were. In any event, the Principal could accord his consent to the transfer only in terms of the said Rules. The Rules are emphatic. They left no choice to him. He had no option but to refuse his consent. The consent given by him was thus contrary to law. It was beyond his power i.e., ultra vires his powers. It should be noted that the violation was not a technical one. It was not a procedural or peripheral one. It touched the core, the substance of the Rules. It is worse that it was a

conscious violation. Can it be said in these circumstance that he is bound in law by such consent or that he is estopped from reiterating his objections based upon the Rules before the actual admission of the Respondents? We think not. (We do not wish to express any opinion on the question whether he could do so even after the Respondents were admitted in his college.) The doctrine of Promissory estoppel is a rule of equity. It is a rule of law of evidence. It can not be utilised or relied upon to defeat or nullify a provision of law. We must reiterate that the violation involved in grant of consent was not a technical, procedural or peripheral one. It was a substantial violation. The violation was of an emphatic Rule couched in categorical language. The Rule is based upon sound public policy. It is designed to check back-door admission of ineligible students. It was conceived as a bar to doing indirectly that which could riot be done directly. It was conceived in the interest of fairness, good administration and quality and standards of education. The case of second Respondent is an eloquent illustration of this Rule - With his total of 28 marks in the J.E.T., he could not have dreamt of admission in Chandigarh College (a Constituent College, which had no such thing as Management quota). But he has achieved precisely that by virtue of the consent of the Principal as well as the approval and sanction of additional seat by the University - all in contravention of emphatic Rules. Since the acts of University are equally violative of the said Rules, they do not add any strength to the Respondents' case. It is thus abundantly clear that an equitable rule like the Rule of Promissory estoppel can not be invoked to defeat such a salutary provision - which can indeed be termed mandatory.

24. There is another reason why the rule of Promissory estoppel could not have been invoked in this case. The Respondents had not changed their position basing upon the representation (i.e., the consent of the Principal). They were not yet admitted to the Chandigarh College. They were continuing in their own parent college. The reiteration of objections by the Principal) was before their admission into the Chandigarh College. There was no other rule by which it could be said that Principal was precluded from reiterating the law. Interest of law is served by permitting him to do so - not by, preventing him.

25. Applicability of rule of promissory estoppel - or for that matter any other similar rule - vis-a-vis the ultra vires acts of public officials and statutory corporations has been a vexed subject in law, both in this country as well as in England and USA¹. It is however not necessary to go into it for the purposes of this case, inasmuch as there is no room for invoking the rule of Promissory estoppel in these cases. As pointed out hereinbefore, the Respondents had not changed their position basing upon the representation - whether the representation consisted of the earlier consent of the Principal or the approval by University and Chandigarh Administration. Further, the said Rule can not, in any event, be invoked to perpetuate the violation of a provision of law, that too a provision couched in emphatic terms (leaving no discretion in the authority) and based upon sound public policy i.e., a mandatory provision. It is not necessary to say more than this for the purpose of these cases. The decisions of this Court on the doctrine of Promissory estoppel viz., *Union of India v. Anglo Afghan Agencies*, *M.P. Sugar Mills v. State of U.P.* *Jit Ram Shiv Kumar v. State of Haryana* and *Union of India v. Godfrey Phillips* do not say otherwise. Indeed, it is reiterated in these cases that the said Rule is not available in respect of the ultra-virus acts of a statutory body/authority nor can it be invoked to compel the Government - a public authority - to carry out a promise which is contrary to law or ultra-virus its powers. Also see *State of Kerala v. Gwalior Rayon silk Mfg. & Wvg.*

Co. Ltd. .

26. In this view of the matter, it is not necessary to go into the correctness of the second ground in the Judgment of the High Court. Even if the High Court is right on that question, its decision is liable to be set aside on the first ground aforesaid.

27. For the above reasons the judgment of the High Court is set aside. But in view of the fact that respondents 1 to 4 have been admitted to Chandigarh Engineering College as far back as September 1992 and have been studying since then, that they have given up their admission in Guru Nanak Medical College and further in view of the fact that the appellants had not chosen to question the interim orders made by the High Court in the writ petitions filed by the respondents 1 to 4 at the proper juncture, we are not inclined to send the respondents 1 to 4 back to Guru Nanak College. At the same time we are constrained to add that it would have been more appropriate if the High Court had not directed the Respondents to be admitted in Chandigarh College by way of interim orders; it could have made these orders more appropriately at the final stage. Such interim orders, it is obvious, foreclose the options at the final hearing. Even if the W.P. fails, the mischief of the interim orders can not be rectified in view of the change in situation, coupled with lapse of time. This is precisely the situation confronting us. We are therefore compelled to say that the High Court should not pass such orders - except in those rare cases where the non-passing of such order would cause such injury as could not be repaired later. These were not such cases. The respondents have been studying in the Guru Nanak Dev College, or such other college as the case may be, for a period of one year or more. They had obtained admission therein, in the management quota, with their eyes open. They could have been and ought to have been asked to wait till the final disposal of the writ petitions, which could be - and, indeed, were - expeditiously heard. We are obliged to make these observations in view of the fact that we have come across several such orders passed by High Courts. Such mandatory orders ought not to be made at an interlocutory stage, except in rare cases, as emphasised hereinabove.

28. So far as Respondent 5 is concerned, we are informed that he had not been admitted in Chandigarh College; upon that representation we had ordered that he be admitted in his parent college.

29. The appeals are accordingly allowed, subject to the directions in the preceding paragraphs. No costs.

1. See in this connection Wade's Administrative Law - (Sixth Edition pages 261 to 263 and 41 to 46 AND Corpus Juris Secundum (1964 Edition) pages 706 to 724 and C.J.S. (1983 Edition) Vol. 73 para 69.