

Court No. - 10

Case :- WRIT - C No. - 25203 of 2023

Petitioner :- Priyanka Mishra

Respondent :- State Of U.P. And 6 Others

Counsel for Petitioner :- Janardan Prakash, Ved Prakash Rai

Counsel for Respondent :- C.S.C, A.S.G.I., Rohit Pandey, Vivek Kumar Singh

Hon'ble Kshitij Shailendra, J.

1. Heard Shri Raj Kumar, learned counsel for the petitioner, learned Standing Counsel for the State-respondent Nos. 1 and 2, Shri Abhishek Mishra, learned counsel holding brief of Shri Rohit Pandey, learned counsel for the respondent No. 3, Shri Vivek Kumar Singh, learned counsel for respondent No. 6.

2. Raising prima facie doubts on the maintainability of the writ petition, this Court passed the following order on 24.08.2023:

"1. Supplementary affidavit filed today is taken on record.

2. Shri Raj Kumar, learned counsel for the petitioner, Ms. Shambhavi Tiwari, learned counsel holding brief of Shri Rohit Pandey, learned counsel for respondent No.3, Shri Vivek Kumar Singh, learned counsel representing the respondent No. 6 are present.

3. This writ petition has been filed claiming certain reliefs against respondent No. 4 i.e. Rajshree Medical Research Institute Bareilly.

*4. Prima facie, I find that the writ petition is not maintainable in view of the judgment of Full Bench of this Court in the case of **M.K. Gandhi vs Director of Education (Secondary) U.P.** reported in 2006 (62) ALR 27 as discussed by the Apex Court in the case of **Committee of Management, Delhi Public School and another vs M.K. Gandhi and others**, reported in 2015 (17) SCC 353 and the*

*latest decision of the Supreme Court in the case of **St. Mary's Education Society and another vs Rajendra Prasad Bhargava and others**, reported in 2023 (4) SCC 498.*

5. Shri Raj Kumar, learned counsel for the petitioner prays for time to study the matter in the light of aforesaid decisions.

6. Put up this case as fresh on 14.09.2023."

3. Learned counsel for the petitioner has explained before this Court the ratio of the decision of the case of St. Mary's Education Society (supra) as contained in paragraph Nos. 59, 69, 70 and 75 of the said judgment and submits that private Institution imparting education would fall within the meaning and ambit of instrumentality of the State and, therefore, the writ petition is maintainable.

4. Further reliance has been placed upon paragraph Nos. 268.3 of the judgment of Apex Court in the case of Kaushal Kishor vs State of Uttar Pradesh and others, reported in (2023) 4 SCC 1.

5. In view of the ratio laid down by the Apex Court in the aforesaid authorities, the writ petition is held to be maintainable.

6. The grievance raised by means of this writ petition is with respect of non-issuance of mark-sheets concerning the M.B.B.S. Course from Sessions 2017 to 2022 and also refund of excess fees allegedly charged from the petitioner.

7. It is contended that after filing of this writ petition before this Court, the concerned mark-sheets have been issued to the petitioner, however after charging a sum of Rs. 2,80,000/- (rupees two lac eighty thousand), which the petitioner deposited by cheques that have been encashed by the concerned respondents.

8. In sum and substance, the grievance of the petitioner now remains is with respect to refund of excess fees allegedly charged

from the petitioner including additional sum of Rs. 2,80,000/- (rupees two lac eighty thousand).

9. Shri Ashish Malhotra, learned counsel for the respondent-University submits that such grievance can be redressed by the Admission and Fee Regulatory Committee, Bansmandi Chauraha, Lucknow represented through its Secretary and, therefore, the petitioner may approach the said Committee for redressal of her grievance.

10. Learned counsel for the petitioner is directed to implead Secretary, Admission and Fee Regulatory Committee, Basmandi, Chauraha, Lucknow as respondent No. 8 in the array of the parties during the course of the day.

11. The writ petition is being **disposed of** permitting the petitioner to file a detailed and specific complaint disclosing every fact regarding alleged excess fees with supporting law before the respondent No. 8.

12. In case, such a complaint is moved before the respondent No. 8 **before 10.12.2023**, the same shall be decided in accordance with law after providing opportunity of hearing to the Institution, namely, Rajshree Medical Research Institute Bareilly **before 31.01.2024** and the decision shall be communicated to the petitioner by registered post immediately thereafter.

Order Date :- 7.11.2023
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