

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

MONDAY, THE 25TH DAY OF MAY 2015/4TH JYAISHTA, 1937

WA.No. 418 of 2010 () IN WP(C).13872/2006

JUDGMENT IN WP(C) 13872/2006 of HIGH COURT OF KERALA DATED 17-07-2009

APPELLANT/4TH RESPONDENT:

THE DIRECTOR, SCMS SCHOOL OF TECH.
SCMS SCHOOL OF TECHNOLOGY AND MANAGEMENT (MCA)
SCMS CAMPUS, MUTTOM, ERNAKULAM - 683 106.

BY ADV. SRI. MILLU DANDAPANI

RESPONDENTS/PETITIONER AND RESPONDENTS 1, 2, 3 AND 5:

1. ANOOP. V,
THENGAMOM EAST.P.O, PATHANAMTHITTA DISTRICT.
2. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY, EDUCATION DEPARTMENT
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.
3. THE COMMISSIONER FOR ENTRANCE
EXAMINATIONS, THIRUVANANTHAPURAM.
4. THE DIRECTOR OF TECHNICAL
EDUCATION, THIRUVANANTHAPURAM.
5. ALL INDIA COUNCIL FOR TECHNICAL
EDUCATION, INDIRA GANDHI SPORTS COMPLEX, I.P. ESTATE
NEW DELHI - 110 002.

R1 BY ADV. SRI. D. KISHORE
SENIOR GOVERNMENT PLEADER SRI. P. FAZIL

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 25-05-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

smv

**ANTONY DOMINIC
&
SHAJI P. CHALY, JJ.**

W.A No.418 of 2010

Dated this the 25th of May, 2015

JUDGMENT

Antony Dominic,J.

The 4th respondent in Writ Petition No.13872 of 2006 is the appellant. The first respondent herein filed the writ petition seeking a direction to the appellant to refund the liquidated damages that was withheld from out of the fee remitted by him in terms of Clause IV(c) of the prospectus for the academic year 2005-2006. By the judgment under appeal, the learned Single Judge directed the appellant to refund the amount as claimed. It is this judgment which is under challenge before us.

2. We heard the learned counsel for the appellant, the learned counsel for the 1st respondent and the learned Government Pleader appearing for the official respondents.

3. The 1st respondent was admitted in the merit quota for the MCA course for the academic year 2005-2006. Subsequently, he obtained Ext.P3 judgment of this Court where this Court directed the official respondents to transfer him to

one of the colleges where there was a vacant seat in the Government quota. Accordingly Ext.P4 was issued, transferring the 1st respondent to M.A.College of Engineering, Kothamangalam against an existing vacancy. The appellant was also ordered to relieve the candidate immediately and to return his certificates and fee as per the rules. In compliance of these orders, the candidate was relieved and his certificate was also returned. However, on the ground that by the time the admissions were already over, in exercise of their right under Clause IV(c) of the prospectus, the appellant withheld Rs.30,750/-. It was claiming refund of this amount, this writ petition was filed which was allowed by the learned Single Judge.

4. Counsel for the appellant contended that the first respondent was bound by the prospectus on the basis of which he secured admission and that clause IV(c) of the prospectus entitled the appellant to withhold the amount withheld by them. According to him, Ext.P3 judgment of this Court or Ext.P4 Government Order did not in any manner affect their right under Clause IV(c) of the prospectus. He also contended that Ext.P6,

did not have any application for the academic year in question.

5. All these contentions of the learned counsel were refuted by the learned counsel appearing for the respondents.

6. We have considered the submissions made. Clause IV(c) which entitles realisation of liquidated damages is intended to make good the loss suffered by the management on account of a student discontinuing the course after the admissions are closed and as a result, a seat is wasted. In so far as the question whether the seat was wasted for the academic year in question was concerned, there is absolutely no material before us.

7. Taking note of depth of such factual materials, this Court also has passed Order dated 12.03.2010 calling upon the appellant to file an affidavit and this order reads thus:

“Admit. Adv.Sri. D. Kishore takes notice.

The appellant will state as to whether in the place of the first respondent, subsequently any student was admitted after receiving fee or whether the seat was kept vacant.

This shall be stated in an affidavit. Two weeks' time granted for filing the affidavit.”

8. However, no affidavit has been filed in compliance with

the above order in spite of lapse of more than 5 years. In such circumstances, we are not persuaded to think that by directing refund of the amount withheld, the learned Single Judge has committed any illegality in the exercise of the discretion and such a judgment according to us, do not deserve to be upset in this appeal.

Appeal is accordingly dismissed.

Sd/-

**ANTONY DOMINIC
JUDGE**

Sd/-

**SHAJI P. CHALY
JUDGE**

//true copy//

P.A. to Judge

smv