

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 11TH DAY OF MARCH 2015/20TH PHALGUNA, 1936

W.P.(C).No.22751 of 2014 (T)

PETITIONER(S):-

VISHNU. R.NAIR, AGED 19 YEARS, S/O.RADHAKRISHNAN,
'SAI KRIPA', ANJOOR POST-680523,
KUNNAMKULAM, THRISSUR DIST

BY ADVS.SRI.SANTHEEP ANKARATH
SRI.ARUN MATHEW VADAKKAN.

RESPONDENT(S):-

1. UNIVERSITY OF CALICUT,
REPRESENTED BY ITS REGISTRAR, CALICUT UNIVERSITY POST,
THENHIPALAM, MALAPPURAM DISTRICT, PIN-673635

2. PRINCIPAL
MALABAR COLLEGE OF ENGINEERING AND TECHNOLOGY,
DESAMANGALAM, P O PALLUR, THRISSUR DISTRICT, PIN-679532.

* Addl.R3. THE STATE OF KERALA,
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF HIGHER EDUCATION, SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.

* ADDITIONAL 3RD RESPONDENT IS IMPEADED AS PER ORDER
DATED 12.11.2014 IN IA 14946/14.

R1 BY STANDING COUNSEL SRI.S.SANTHOSH MATHEW.

R2 BY ADVS. SRI.ANOOP.V.NAIR

SRI.M.R.JAYAPRASAD

SRI.P.MOHANDAS (ERNAKULAM)

R3 BY SENIOR GOVERNMENT PLEADER SRI.ROSHEN D.ALEXANDER.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
11-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS:-

- EXT.P1:- TRUE COPY OF THE RECEIPT DTD 4/6/2014 FOR RS 500/-
ISSUED BY THE 2ND RESPONDENTS INSTITUTE TO THE
PETITIONER.
- EXT.P2:- TRUE COPY OF THE RECEIPT DTD 16/6/2014 FOR RS 20,000/-
ISSUED BY THE 2ND RESPONDENT'S INSTITUTE.
- EXT.P3:- TRUE COPY OF THE RECEIPT DTD 16/7/2014 FOR RS.45,350/-
ISSUED BY THE 2ND RESPONDENT'S INSTITUTE.
- EXT.P4:- TRUE COPY OF THE RECEIPT DTD 1/8/2014 FOR RS 62,500/-
ISSUED BY THE 2ND RESPONDENT INSTITUTE.
- EXT.P5:- TRUE COPY OF THE REPRESENTATION DTD 11/8/2014 SUBMITTED
BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

RESPONDENT(S)' EXHIBITS:-

- EXT.R2(a) TRUE COPY OF G.O.(MS) NO.258/14/H.EDN. DATED 10.06.2014.
- EXT.R2(b) TRUE COPY OF JOINT DECLARATION GIVEN BY THE
PARENT/GUARDIAN AND THE CANDIDATE DATED 16.06.2014
BEFORE THE 2ND RESPONDENT'S COLLEGE.

Vku/

[true copy]

K. Vinod Chandran, J.

W.P(C) No.22751 of 2014-T

Dated this the 11th day of March, 2015

JUDGMENT

The petitioner, a student, is aggrieved with the alleged illegal withholding of the certificates and the denial of issuance of Transfer Certificate by the 2nd respondent.

2. The petitioner, admittedly, completed his Higher Secondary Course and applied for the Engineering Entrance Examination conducted by the State. The petitioner had also given options in the various colleges, which include the Government Colleges as also the Self Financing ones. The petitioner, as per the rank obtained in the entrance examination as also option exercised, was allotted to the 2nd respondent-College. The petitioner joined the 2nd respondent-College before the admission date and continued till August, 2014, when the petitioner sought discharge from the College. Then the 2nd respondent-College insisted on the petitioner paying the entire fees of the course.

3. The reason for the petitioner seeking for discharge from the 2nd respondent-College was that one another college near to the residence of the petitioner, was allotted more seats for the academic year and, hence, he desired to get admission in the said college, which was nearer to his residence. A request was made for refund of the fees as well as the originals of the academic certificates submitted to the 2nd respondent-College. The refusal of the 2nd respondent, obviously, was for reason of the petitioner having left the institute after the prescribed date and the petitioner being obliged to pay the entire fees for the course, to facilitate such transfer, as per the prospectus and the undertaking of the petitioner himself.

4. The 2nd respondent-College appeared and filed a counter affidavit, in which Exhibit R2(a) order of the Government was produced, which, by Clause 19, mandated that if a student discontinues his/her studies at any time after the cut-off date, the educational agency could retain the Tuition Fee remitted by the student and also demand the entire course fee. The petitioner, then, amended the writ petition, raising a specific challenge against the said clause.

5. The learned counsel for the petitioner would contend that Clause 19 of the Government Order, in any event, cannot bind the student who is not a party to the agreement between the Self-Financing College and the Government. It is also contended that the said clause is arbitrary, since there might arise a very situation when a student is forced to discontinue studies; when it would be harsh to mulct the liability of the entire course fees on such student or his/her parents. On facts, it is submitted that the 2nd respondent-College could not fill up all the seats allotted to it even on the close of admissions. In such circumstance, Clause 19 would not be applicable, since there were seats still remaining vacant.

6. The learned counsel for the petitioner has also raised a contention that in any event the College could not exercise any lien on the documents and if at all, any claim for money is raised, then the 2nd respondent-College would have to approach the appropriate Civil forum. The learned counsel places reliance on the decision of the Madras High Court in ***M.Sumer vs. The Chairman***, in W.P.(C).No.19908 of 2009 dated 26.11.2009.

7. One other contention, on the basis of the reply affidavit filed, is that just after the petitioner left the College, three students were admitted to the 2nd respondent-College.. Hence, the petitioner's vacancy was accommodated and the further rider in Clause 19 would enure to the benefit of the petitioner herein.

8. Both the Government and the 2nd respondent-College oppose the writ petition on the ground that the specific clause in the prospectus clearly indicates awareness of the prescription and that the student had, along with his parent, executed an undertaking produced as Exhibit R2(b). The specific clause in the agreement at Exhibit R2(a) and the prospectus of the Government are relevant for the purpose of this case. Clause 19 is as under:

“19. The Educational Agency can retain the Tuition Fee remitted by the student, in the event a student admitted under the Management quota or Government quota, discontinues his/her studies for any reason at any time after the 25th day of July 2014. The Educational Agency shall also be entitled to collect the tuition fee of the entire course. However, in the event of the seat so falling vacant being filled up by a new candidate, the tuition fee collected as per this clause

shall be refunded. The documents pertaining to such student shall be released only on payment of the above amount. The candidates will not have to make any payment, as stated above, if such candidate is forced to leave the college on the grounds of ragging or serious illness as certified by a medical board which prevents the student from continuing with his or her studies in the college. In the case of students joining AFMC/NDA/Naval Academy/Defence Institutions also will not have to make such payment but subject to the final outcome of the W.P.(C).No.645/2014 pending before the Hon'ble High Court of Kerala”.

9. The prospectus speaks of the binding nature of the conditions stipulated in the agreement between the Government and the Self Financing College, in Clause 2.1.1(b):

“2.1.1(b) The availability of Government seats in Self-financing Colleges run by institutions under Govt. control and other Private Self-financing colleges will be notified separately. Those candidates who seek admission in Private Self-financing colleges are bound to accept the conditions stipulated in the agreement between Government and Self-financing College Management(s) and deemed to have accepted such conditions”.

10. At the outset, it cannot be said that the student is not bound by the agreement, since the prospectus specifically states that the students who seek admission in Self-financing colleges are bound to accept the conditions in the agreement and are deemed to have accepted such conditions. In this context, the reliance placed by the learned Government Pleader on the decision of a Division Bench of this Court, reported in ***Hanna Thasnim, K.V. v. State of Kerala* [2014 (2) ILR Kerala 388]** is apposite. The Government, therein, had specifically raised a contention that a student is not admitted to the college merely on the basis of the marks and the option indicated by the student in the application has a vital role in such admission. The authority is bound to consider the student's option in accordance with his ranking and a student having opted to a particular college and secured admission therein, could not take up a contention that he is entitled to discontinue the course at his will and pleasure. Accepting the contention of the State, it was held by the Division Bench that the students who willingly opted for Self-Financing Colleges along with Government Colleges form a distinct class and it cannot be said that they cannot be treated separately.

11. The claim of arbitrariness in Clause 19, has to be looked at in the perspective of the mushrooming of Self-Financing Colleges and the concept behind the same. Higher education, especially of a professional nature, was confined to Government Colleges, which limited the professionals coming out of such colleges. Self-Financing Colleges were introduced to provide for more opportunities to the students to take a professional degree. Self-Financing Colleges, however, sustain on the fees paid by the students. *De hors* the fact, the allotted seats are not filled up, the Self-Financing Colleges have to provide for the minimum infrastructure and the faculty required for imparting training to the allotted seats. It is, hence, the Government has, on consideration of the financial implication also, entered into an agreement with the Self-Financing Colleges, whereby only 50% of the seats set apart are to be filled up with merit based students, as allotted by the State Government as per the ranking in a Common Entrance Examination conducted under the aegis of the Government by the Commissioner for Entrance Examinations. The other half is permitted to be filled up under the management quota subject to the threshold eligibility conditions

being satisfied.

12. It is, hence, a specific agreement has been entered into with the managements, whereby the educational agency is given authority to retain the tuition fee remitted by the student if he discontinues the study for any reason after 25.07.2014. No student can contend that the said agreement is not binding on him or her, for reason only of the agreement being a bipartite one between the management and the Government; since the prospectus specifically speaks of the said agreement. The fact that the said conditions have been disclosed to the student herein is evident from the undertaking given. The student cannot escape from the liability merely on the ground that the agreement gives the right to the 2nd respondent only for a claim for money, which has to be agitated before an appropriate forum. If that be so, definitely the claim for return of certificates also is one that could be agitated before the appropriate forum.

13. This Court, exercising jurisdiction under Article 226 of the Constitution, would not issue such directions to the 2nd respondent-College, which does not answer the definition of a "State" under Article 12 of the Constitution of India. This Court, on

the above reasoning, is unable to accept the afore-cited decision of the High Court of Judicature at Madras.

14. Clause 19 also speaks of retention of documents submitted for enforcing payment. No arbitrariness also can be found in the said prescription, since a student with open eyes seeks allotment as per the option in his/her application. Having accepted the allotment and having not sought release from the same within the time stipulated, a student cannot be allowed to discontinue his studies without complying with the condition of payment of entire course fees.

15. True, there might arise a situation wherein a student is disabled from continuing in a course merely due to unfortunate circumstances. Clause 19 specifically takes in discontinuance on grounds of sickness, ragging or even admission secured in institutions of high reputation; when the stipulation would not be enforced. Any other instance could be considered, extending the equitable jurisdiction of this Court. However, we are not faced with such a situation herein. The student herein seeks discharge and re-admission in another College merely for his convenience. The proximity of the College

to his residence is the only ground pleaded. That would be a situation where this Court would not extend its equitable jurisdiction to direct the College to waive the condition of deposit of the entire course fee. This Court, hence, declines any exercise of discretion on the facts projected.

16. One other contention advanced by the learned counsel for the petitioner is with respect to three students having been admitted after the petitioner left. The specific rider in Clause 19, requiring the tuition fee collected to be refunded in the event of the seat so falling vacant being filled up by a new candidate, would not be applicable in this case. Admittedly the 2nd respondent-College could not fill up all its allotted seats. Even when the petitioner discontinued his studies in the college, there were remaining vacant seats in the 2nd respondent-College. The filling up of three seats after the petitioner's discontinuance cannot be said to be the filling up of that vacancy left by the petitioner. Only if the entire allotted seats were filled, could it be said that the seat left vacant by the petitioner was also filled up. In such circumstance, the petitioner cannot raise any claim on the basis of the exception provided in Clause 19.

17. The petitioner's contentions having been found to be devoid of merit, the writ petition would stand dismissed.

18. However, if the petitioner wishes to continue his studies in 2nd respondent-College itself, the 2nd respondent shall permit the same, provided the petitioner has taken up the same branch/subject in the other College in which the petitioner has been admitted and the other College certifies that the petitioner has sufficient attendance as required by the University. The University also, in such circumstance, may take a lenient view, permitting the petitioner to continue in the 2nd respondent-College. The petitioner's continuation and participation in the examination, however, would depend upon his obtaining the required attendance, as per the Regulations of the University.

Sd/-
K. Vinod Chandran,
Judge

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