

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:06.10.2015

CORAM:

THE HON'BLE MR. JUSTICE R.MAHADEVAN

W.P.No.21615 of 2015

S.Saravanan

[Petitioner]

Vs

1 Saveetha School of Law
Rep. by its Principal
Saveetha University
No.162 Poonamallee High Road
Chennai-600 077.

2 The Secretary
The Bar Council of Tamilnadu & Pondicherry
Chennai-104.

[Respondents]

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of mandamus directing the 1st respondent to return the original +2 mark sheet conduct certificate and transfer certificate etc to the petitioner without insisting the tuition and other fees for the remaining years.

For Petitioner : Mr.M.S.Palaniswamy

For Respondents : Mr.S.Saravanan (R1)

WEB COPY
O R D E R

Heard the learned counsel for the petitioner and Mr.S.Saravanan, learned counsel for the 1st respondent.

2. The petitioner had applied for admission to the respondent Law College and he was selected to undergo B.A., B.L.(Hons.) course which is also recognized by the Bar Council, for the academic year 2013-2014. The petitioner has also paid a sum of Rs.1,00,000/- as directed by the

respondent College and paid a sum of Rs.8,000/- towards trimester fees. The petitioner was promoted to the 2nd years of B.A., B.L.(Hons.). He paid a further sum of Rs.1,00,000/- towards the 2nd year fees and Rs.3,500/- towards the 2nd year 1st trimester fees. On 26.02.2015, there was a clash between a 2nd year and 5 year student in front of M.M.Convention Hall, which is near the Principal room. The whole college was gathered in a crowd there. Pursuant to the same, the petitioner was summoned by the Principal of the respondent College and the petitioner told him that he did not participate in any clash nor he knew the reason for the said clash. On 10.04.2015, a charge memo was issued. It is the grievance of the petitioner that no proper enquiry was conducted. Thereafter, on 22.05.2015, a show cause notice was issued and on 24.06.2015, the petitioner was debarred from attending college from 26.02.2015, the date from which the petitioner was suspended from attending college during IV trimester and the VI trimester commencing from 01.07.2015.

3. According to the petitioner, he is neither interested in continuing in the respondent College nor claiming Rs.2,11,500/- from the respondent College. However, when the petitioner and his father approached the respondent College on 01.07.2015, requesting them to return of the original certificates such as +2 certificates, conduct certificate and transfer certificate, a written letter was given asking to pay the tuition and other fees for the remaining years for processing the T.C. as mentioned and signed on the bond paper at the time of admission. The 2nd respondent also had not taken any action against the 1st respondent. Hence, the petitioner is before this Court for a direction to the 1st respondent to return the original +2 mark sheet, conduct certificate and transfer certificate etc to the petitioner without insisting the tuition and other fees for the remaining years.

4.The learned counsel appearing for the petitioner, on instructions, would submit that the petitioner is not feeling comfortable in continuing the studies in the respondent College and it would be suffice to direct the respondent to return the original certificates/testimonials along with Transfer and Character Certificate so as to enable him to join in some other college and pursue his academic career and prays for appropriate orders. In support of his submissions, the learned counsel appearing for the petitioner relied upon the following decisions:

- (i) Order dated 10.07.2012 made in Crl.O.P.No.9920/2012 [A.John Paul and two others v. State and another]

(ii) Order dated 18.12.2012 made in W.P.(MD). No.14394 of 2012 [S.Muthulakshmi v. The Director of Technical Education, Anna University, Chennai and others]

(iii) Order dated 05.11.2014 made in W.P.Nos.27809 to 27811 and 27973 to 27975 of 2014 [D.Vinoth Kumar and Others v. The Principal Secretary to Government of Tamil Nadu and others]

(iv) Vikrant Chourasiya v. State of M.P. And Others [W.P.No.12778 of 2013 dated 06.08.2014 - Madhya Pradesh High Court].

5. Per contra, Mr.S.Saravanan, learned counsel appearing for the respondent would submit that in the event of the petitioner being permitted to leave the college, the vacancy caused cannot be filled up till the duration of the entire course and since the petitioner institution is a self-financing institution, run on the fees collected from the students, the petitioner has to pay the entire course fees and in that event only, original certificates would be returned to him. In support of his submissions, the learned counsel for the respondent relied upon the following judgments:

(i) Irshad Mohammed Ali v. State of Kerala [CDJ 1996 Ker HC 271]

(ii) R.Gowthami v. The Regional Officer, All India Council for Technical Education and Others [CDJ 2012 MHC 1246 =2012 (1) CWC 798]

(iii) Order dated 22.01.2013 made in W.P.No.15881/2012 [Karnataka High Court]

(iv) Order dated 18.03.2014 made in W.P.No.13792/2009 [Karnataka High Court]

6. This Court has carefully considered the rival submissions and also perused the materials placed before it.

7. The prayer in the writ petition is to direct the respondents to return the original certificates/testimonials along with the Transfer Certificate and Character Certificate so as to enable him to pursue his academic career in some other institution. According to the learned counsel appearing for the respondent unless and until the petitioner pays the entire course fees, certificates will not be returned for the reason that the seat which will fall

vacant, cannot be filled up till the completion of the entire course and one seat may also go vacant which in-turn would definitely cause hardship and financial loss to the respondent institution, which is a self-financing one. In the case of P.R.Rakesh vs. Directorate of Technical Education, (W.P.No.11477 of 2009 dated 16.07.2009), this Court after referring to the public notice issued by the All India Council for Technical Education, wherein it has been stated as follows:-

"In the event of a student/candidate withdrawing before the starting of the courses, the wait listed candidates should be given admission against the vacant seat. The entire fee collected from the student, after a deduction of the processing fee of not more than Rs.1000/- (Rupees one thousand only) shall be refunded and returned by the institution/University to the Student/candidate withdrawing from the programme. It would not be permissible for the institutions and Universities to retain the School/Institution Leaving Certificate in Original. Should a student leave after joining the course and if the seat consequently falling vacant has been filled by another candidates by the last date of admission, the institution must return the fee collected with proportionate deductions of monthly fee and proportionate hostel rent, where applicable".

directed the respondent to issue the transfer certificate and other original certificates if any submitted by the petitioner therein at the time of admission.

8. In the order dated 10.07.2012 made in CrI.O.P.No.9920/2012 [A.John Paul and two others v. State and another] passed by this Court, the facts of the case would disclose that the petitioners therein had resigned their job in a private school and approached the second respondent Management for return of the original certificates and it was declined to be returned and therefore, lodged a complaint and since no action was taken by the jurisdictional police, has filed the Criminal Original Petition for registration of a case on their complaint. The learned Judge, in the said decision, has taken into consideration Section 6 of the Transfer of Property Act and arrived at the conclusion that the certificates such as Mark Sheets, Conduct Certificates are

all properties which cannot be transferred at all and even by means of an agreement, the property which cannot be transferred cannot be the subject of transfer under the guise of the said agreement and it is to be treated as void and held that retention of the certificates by the Management is unlawful. The learned Judge further held that entrustment of the certificates cannot be treated as a transfer and consequently, the Management therein has no authority to retain the certificates after the petitioners therein had resigned their job and therefore, directed the return of the certificates.

9. This Court, in the order dated 18.12.2012 made in W.P(MD).No.14394 of 2012 [S.Muthulakshmi v. The Director of Technical Education, Anna University, Chennai and others], has held that the certificates given at the time of admission, are not like fixed deposit receipt on which, banks claim a general lien in terms of Section 171 of the Contract Act and therefore, it cannot be retained at any rate and issued a direction, directing the fourth respondent therein namely the Principal, Mount Zion College of Engineering, Pudukottai District to return all the original certificates to the petitioner therein.

10. In yet another order dated 05.11.2014 made in W.P.Nos.27809/2014 etc., batch [D.Vinoth Kumar and Others v. The Principal Secretary to Government of Tamil Nadu and others], this Court has granted similar relief and also reserved the right of the institution to resolve the same independently in appropriate proceedings taken by both parties.

11. In Irshad Mohammed Ali v. State of Kerala [CDJ 1996 Ker 271], the Kerala High Court has held that the third respondent College therein is entitled to demand the payment of the entire fees for the course before Transfer Certificate is issued.

12. Similar view was taken by this Court in R.Gowthami v. The Regional Office, All India Council for Technical Education & Others [CDJ 2012 MHC 1246 =2012 (1) CWC 798].

13. A Division Bench of Karnataka High Court, in the order dated 18.03.2014 made in W.P.No.13792 of 2009 [Miss Smruthy v. DA Pandu Memorial R.V. Dental College & Hospital and another], has held that in advance for the whole course, the college cannot collect the fees and if the college is of the opinion that the student may leave in the midstream then it can demand a student to execute the bond/bank guarantee for the balance fees for the whole course.

14. In yet another decision in Mr.Sunoj Mathew v. New Navodaya Institute of Nursing and Others [Order dated 22.01.2013 made in W.P.No.15881/2012], the Karnataka High Court held that so far as the documents which are in possession of the college, the dispute could be resolved between the parties in a private negotiation or else approach the appropriate forum.

15. The learned counsel appearing for the respondent has placed heavy reliance upon the prospectus of the University relating to Saveetha School of Law and it is relevant to extract the same:

"Fee Structure

The candidates once selected for admission should pay the following fees at the time of Admission and therefore in the month of May every year. The fees once paid will not be refunded. In case the candidate wants to discontinue/withdraw during the middle of the course, he/she has to pay the entire course fee (for five years) before discontinuing.

Course	Annual Fee
B.A.B.L. (Hons.)	Rs.1,25,000/-
B.B.A.B.L. (Hons.)	Rs.1,25,000/-

Apart from the tuition fee, the following has to be paid at the time of admission:

Admission Fee	Rs.5,000/-
University Registration Fee	Rs.3,500/-
Eligibility Fee	Rs.1,500/-
Cautions Deposit	Rs.5,000/-

(Refundable at the end of the course)"

The prospectus stipulates that the fees once paid will not be refunded and in case if a candidate wants to discontinue/withdraw during the middle of the course, he/she has to pay the entire course fee (for five years) before discontinuing.

16. In Kesavan v. Director of Medical Education, Kilpauk, Chennai-600 010 and another [(2011) 8 MLJ 454], the petitioner joined BDS course at Tamil Nadu Government Dental College, Chennai during the academic year 2000-2009 and subsequently, discontinued the studies and requested the respondents therein to return the transfer certificate and his +2 mark sheet, so that he can secure employment and since it was not considered, filed the writ petition. The

official respondents took a stand that since he has executed an agreement to pay a sum of Rs.2,00,000/- in the event of discontinuation, he was asked to pay the same and unless and until the said amount is paid, the certificates could not be returned. The learned Judge has taken note of the fact that there is no clause in the bond that the respondents could retain the certificates until the payment is made and held that for not paying the amount, they could at the most take recovery proceedings against the petitioner based on the bond and consequently, issued directions for return of the certificates.

17. Similar view has also been taken in the (i) Order dated 10.07.2012 made in Crl.O.P.No.9920/2012 [A.John Paul and two others v. State and another] ; (ii) Order dated 18.12.2012 made in W.P.(MD).No.14394 of 2012 [S.Muthulakshmi v. The Director of Technical Education, Anna University, Chennai and others] and in the (iii) Order dated 05.11.2014 made in W.P.Nos.27809 to 27811 and 27973 to 27975 of 2014 [D.Vinoth Kumar and Others v. The Principal Secretary to Government of Tamil Nadu and others]. The Madhya Pradesh High Court also, in the order dated 06.08.2014 made in W.P.No.12778/2013 [Vikrant Chourasiya v. State of M.P. and others] has held that there are no statutory rules, regulations or scheme which permit the institute to retain the documents.

18. In Islamic Academy of Education vs. The State of Karnataka reported in MANU/SC/0580/2003: (2003) 6 SCC 697, no reference has been made by the Hon'ble Supreme Court with regard to withholding of the transfer and other certificates.

19. In the considered opinion of the Court, the above cited decisions are fully applicable to the facts of this case and the ratio laid down in the said decisions is also in consonance with common sense and logic. Even as per the prospectus of the respondent College, the fees once paid will not be refunded and in case the candidate wants to discontinue/withdraw during the middle of the course, he/she has to pay the entire course fee (for five years) before discontinuing. The petitioner executed affidavit of undertaking stating among other things that in case of discontinuation of the course in the middle of any reason, he promises to pay the remaining entire course fees and his father has also counter signed the said affidavit of undertaking and stood as the guarantor for the affidavit of undertaking. It is pertinent to point out at this juncture that even in the said affidavit of undertaking, no promise/undertaking has been given by the petitioner to the effect that unless and until he pays the entire course fees,

he is not entitled to get the certificates. Therefore, there is no clause either in the prospectus or in the affidavit of undertaking dated Nil executed by the petitioner, counter signed by his father, to the effect that the certificates cannot be returned unless and until the entire course fees is paid.

20. In the light of the reasons assigned above, the respondent is directed to return the original testimonials/certificates collected from the petitioner at the time of admission to B.A., B.L.(Hons.) course for the academic year 2013-14 along with the Transfer Certificate and Character Certificate to the petitioner within a period of two weeks from the date of receipt of a copy of this order and the respondent is also at liberty to initiate appropriate legal proceedings to recover the sums/fees from the petitioner and also from his father.

21. In the result, the Writ Petition is disposed of accordingly. No costs.

-Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

rg

To

1 The Principal
Saveetha School of Law
Saveetha University
No.162 Poonamallee High Road
Chennai-600 077.

2 The Secretary
The Bar Council of Tamilnadu & Pondicherry
Chennai-104.

+1 CC to Mr.M.S.Palaniswamy Advocate. Sr.No.54136
+1 CC to Mr.S.Saravanan Advocate. Sr.No.54330

W.P.No.21615 of 2015

CO-GR
JD 09/10/2015