

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA
RAO**

WP.No.31943 of 2015

ORDER:

The petitioner herein is a Swedish national who had joined the Masters in Business Administration course offered by 1st respondent which is run by 2nd respondent and affiliated to 3rd respondent-University.

2. The petitioner had joined the 1st respondent-Institution pursuant to an application made by him in the year 2014 on the basis of which a provisional identification letter dt.18.09.2014 was issued by the 1st respondent-Institution to him for admission into the I Year of the Two-Year Masters in Business Administration course in the 1st respondent-Institution for the academic year 2014-15.

3. At the time of admission, the petitioner had submitted Original Graduation Certificate, Original Graduation Transcript, Original Migration Certificate, Original 10 + 2 equivalent Marks Memo to 1st respondent-Institute. The receipt of these documents was acknowledged by 1st respondent-Institution and the 1st respondent-Institution confirmed that he can pursue the I Year of the Two-Year Masters in Business Administration course.

4. Towards the end of I Year, the petitioner faced some financial difficulties because of which he was forced to discontinue the course. So immediately after the completion of the I Year of the Two-Year Masters in Business Administration course, he approached the 1st respondent-Institution, explained his financial difficulties and requested for return of his original certificates. The 1st respondent-Institution refused to return the same and demanded that petitioner pay the entire course fee of the Two-Year Masters in Business Administration course as a condition precedent of the release of his original certificates.

5. The petitioner states that on account of his bad financial position, he could not meet the demand of 1st respondent-Institution. Although the petitioner made representations dt.16.09.2015 to 1st respondent-Institution to return the said original certificates and claimed that he had not attended a single class of the Two-Year Masters in Business Administration, the 1st respondent-Institution has not returned his original certificates. Therefore, he approached this Court.

6. The counsel for petitioner places reliance on the public notice issued by the All India Council for Technical Education (for short, 'the AICTE') vide advertisement No.AICTE/Legal/04(01)/2007 issued by the AICTE's Member Secretary which states as follows :

“In the event of a student/candidate withdrawing before the starting of the course, the wait listed candidates should be given admissions 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 Institutions and Universities to retain the School/Institution Leaving Certificates in original. Should a student leave after joining the course and if the seat consequently falling vacant has been filled by another candidate 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.

Any violation of instructions issued by the AICTE, shall call for punitive action including withdrawal of approval and recognition of erring institutions and Universities. AICTE shall on its own or on receipt of specific complaints from those affected take all such steps as may be necessary to enforce these directions.”

7. This was issued by the AICTE under Section 10 (n) of the All India Council for Technical Education Act, 1987, and in compliance of the directions of the Government of India issued under Section 20 (1) of the said Act instructing all the technical institutions, universities including deemed universities imparting technical education in matters concerning students as above.

8. The counsel for petitioner contends that having regard to the above direction of the AICTE, a public duty is cast upon the 1st respondent-Institution not to withhold the above referred original certificates of the petitioner; and

that the action of 1st respondent-Institution in retaining these original certificates of petitioner is not valid in law. The counsel for petitioner also relied upon the judgment of the Madras High Court in **M. Sumer v. The Chairmna, PMR Institute of Technology**^[1] wherein the said High Court also found fault with a private institution in retaining the original certificates of a student who had been admitted to a technical course for the academic year 2008 in Chennai.

9. The petitioner herein was permitted to serve notice on respondent nos.1 and 2 by Registered Post Acknowledgment Due (RPAD) and he had filed proof of service vide USSR.Nos.26354, 26356 and 26357 of 2015 that notice had been served on respondent nos.1 and 2.

10. None appears for respondent nos.1 and 2.

11. The learned Standing Counsel for 3rd respondent does not dispute the liability of respondent nos.1 and 2 to release the original certificates as per the advertisement of the AICTE referred to above.

12. In **Shri Anandi Mukta Sadguru Shree Muktajee Vandasjiswami Suvarna Jayanti Mahotsav Smarak Trust and others v. V.R. Rudani and others**^[2], the Supreme Court has clarified that the words “*any person or authority*” used in Article 226 of the Constitution of India are not confined only to statutory authorities and

instrumentalities of the State and would cover any other person or body performing a public duty. It further held that the form of the body is not very relevant and that what is relevant is the nature of duty imposed on the body. It held that the duty must be judged in the light of positive obligation owed by the person or authority to the affected party, and it does not matter by what means the duty is imposed. It held that if a positive obligation exists, then *mandamus* cannot be denied.

13. Since the advertisement of the AICTE referred to above is issued in exercise of its power under Section 10 of the AICTE Act, 1987 and also Section 20 (1) of the said Act, it creates a public duty on respondent nos.1 and 2 not to withhold the original certificates of petitioner. It is not open to respondent nos.1 and 2 to insist on payment of full tuition fee by petitioner for the entire two-year course as a condition precedent for returning the petitioner's original certificates. The respondents are not entitled to refuse to issue a No-Objection Certificate (NOC) to petitioner for the purpose of exit visa.

14. In this view of the matter, the Writ Petition is allowed and a *Writ of Mandamus* is issued directing 1st respondent in not issuing No-Objection Certificate (NOC) to petitioner for the purpose of exit visa and also the Original Graduation Certificate, Original Graduation Transcript, Original Migration Certificate, Original 10 + 2

equivalent Marks Memo, taken by 1st respondent-Institution at the time of petitioner's admission to the said Institution in the year 2014 for the Two-Year Masters in Business Administration course within a period of two (02) weeks from the date of receipt of a copy of this order. No order as to costs.

15. Miscellaneous applications, pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date: 22-12-2015

Ndr/*

[\[1\]](#) MANU/TN/3300/2009

[\[2\]](#) AIR 1989 SC 1607 (1)