

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) No. 2917/2015

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23rd March, 2015

RUCHIKA LALIT & ORS.

..... Petitioners

Through: Mr. Sanjoy Ghose and Mr. Rishabh
Jetley, Advs.

versus

ALL INDIA COUNCIL FOR TECHNICAL EDUCATION & ORS.

..... Respondents

Through: Mr. Anil Soni, Mr. T.Singhdev and
Mr. Manan Khera, Adv. for R-1.

Ms. Sangeeta Sondhi and Mr. Manish
Sharma, Adv. for R-2.

Mr. Sradhananda Mohapatra and Mr.
Vipin Singh, Adv. for GGSIPU.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **Yes**

VALMIKI J. MEHTA, J (ORAL)

1. There are a total of 25 petitioners in this writ petition filed under Article 226 of the Constitution of India. The main relief which is argued for and prayed before this Court is the claim for service dues of the

petitioners against the respondent no.5/College and which is run by the respondent no.3/Society.

2. I have repeatedly put to the counsels for the petitioners that in one petition there cannot be innumerable number of petitioners whose facts constituting causes of action for grant of specific monetary emoluments are different and there is no common question of fact between one petitioner and all the other petitioners then how can one omnibus petition be filed. Putting it differently, dues of each individual petitioner arise from separate facts particular to each petitioner because of the services, its tenure, its nature etc etc which are performed by each of the petitioners with the respondent no.5/College naturally once facts are different, hence separate monetary emoluments under different heads will have to be claimed qua each specific petitioner and therefore there cannot be joinder of causes of action of one petitioner with the other petitioners. Merely because all petitioners worked in one college cannot mean on such basis because the college is the respondent, one petition can be filed. The present petition is therefore really 25 petitions of 25 petitioners joining separate facts constituting causes of action qua each petitioner as regards the different amounts which will be payable to each petitioner.

3(i) Not only that, I find that the writ petition is totally bereft of specific facts/particulars qua each of the 25 petitioners as to under which head qua each different petitioner service benefits under different heads arise and that which head of claim has to give which amount of monetary emoluments, how the monetary emoluments claimed arise in favour of each of the petitioner by pleading of the facts of the causes of action qua each petitioner etc etc. Counsel for respondents rightly argues that it is extremely difficult to prepare a counter-affidavit in such a case and in fact a respondent on account of lack of pleadings and joinder of facts qua 25 petitioners can even be caused grave prejudice in defending such a petition.

(ii) Also, the writ petition only makes general averments of claims of dues of petitioners, and hence this Court will be called upto to pass general orders for payments of dues which would not be specific but would be vague in nature and resultantly when the issue will arise of enforcement of the orders, the vague order would be such which would not be capable of being enforced either by filing a contempt petition or by filing appropriate independent proceedings.

4. The present writ petition therefore quite clearly, is barred by mis-joinder of causes of action so far as the claim of monetary reliefs

claimed for each of the individual petitioner is concerned and it is also barred because there is complete lack of requisite pleadings as to different heads of monetary emoluments qua each petitioner and how the facts exist qua each petitioner which are specified for the petitioners to get the monetary reliefs. Putting it in sum and substance each of the petitioner has to file a separate petition and individual judicial proceedings to claim the reliefs with respect to monetary emoluments claimed by him/her as per different facts of each of such individuals as to their salaries, their nature of services, their length of service etc etc.

5(i) That takes us to the second prayer of the petitioners and which is that with respect to the dues of the petitioners, which are to be paid by the respondent no.5/College, respondent nos.2 & 4 being respectively the Government of NCT of Delhi and the University with which respondent no.5 is affiliated, be appointed in effect as receivers for ensuring payments of dues of the petitioners.

(ii) Appointments of respondent nos. 2 and 4 effectively as receivers is to take over complete charge of the respondent no.5/College, however limited for the purpose that petitioners' dues have to be cleared.

6. An order for appointment of receivers can be passed on specific instances having been averred and established by the writ petition that there is deliberate and *malafide* frittering away of monies by the respondents no.3 and 5 and as a result whereof the monetary dues of the petitioners would be put in jeopardy, however, not even a single instance of frittering away of monies by the respondent nos. 3 and 5 have been given in the petition and therefore on the basis of general averments, drastic relief of appointing respondent nos. 2 and 4 as receivers of respondent nos. 3 and 5 hence cannot be granted by the Court.

7. I may state that during and after the hearing, I put it to counsel for the petitioners that separate writ petitions or any other independent judicial proceedings must be filed by different petitioners, and that for appointment of a receiver, since specific instances should be given to show frittering away of monies, and which have not been given and which can be done by filing a fresh petition incorporating the requisite averments, but, the counsel for the petitioners insisted that this Court must hear the petition and decide the petition. I have therefore no option but to dismiss the petition so far as the relief claimed of monetary emoluments of each petitioners individually is concerned not only on account of lack of requisite pleadings

but also because of mis-joinder of causes of action. And, so far as the relief of appointment of respondent nos.2 and 4 as receivers is concerned, since no specific instances of siphoning of the monies or secreting the monies is pleaded showing abuse of the authority by the respondent nos. 3 and 5, the drastic relief in the nature of appointment of a receiver cannot be granted.

8. Counsel for the petitioners sought to argue that this Court has extraordinary powers under Article 226 of the Constitution of India to do justice, however, I do not feel that the provision of Article 226 of the Constitution of India has to be invoked and applied *dehors* the applicable laws. No doubt, the Code of Civil Procedure, 1908 (CPC) does not apply to writ petitions however, that does not mean that facts and causes of action qua each separate individual can be jumbled up together with cases of dozens of other persons, in one petition against basic principles of law of pleadings and filing of cases, though, common questions of fact do not arise qua each petitioners. This Court therefore cannot be called upon to decide various cases within one writ petition. Under Article 226 of the Constitution of India laws are enforced and it cannot be the position that under Article 226 of the Constitution of India, laws can be breached and reliefs can be sought and granted in violation of the basic principles of law, more so when

on account of misjoinder of causes of action there can be caused prejudice to the respondent because of jumbling of facts of various persons in one petition. I cannot agree with the counsel for the petitioners that in service law writ petitions under Article 226 of the Constitution of India basic principles of law of misjoinder of causes of action and existence of vague pleadings can be overlooked.

9. Another relief which is claimed by the 25 petitioners is that as public law damages a re-location allowance be paid to the petitioners because petitioners' services are being re-located from respondent no. 5/College which is situated at G.T.Karnal Road, Delhi to Mahavir Swami Institute of Technology (MSIT) at Sonapat. Though it would not be relevant for the discussion hereinafter it is to be noted that G.T.Karnal Road where the respondent no.5/College is situated is in the North of Delhi and even Sonapat would be a few kilometres to the North of Delhi and possibly keeping this in view the respondent nos. 3 and 4 authorities have re-located the petitioners not in some other affiliated college in the South, West or East of Delhi but with MSIT, Sonapat. This relief clause (c) claimed by the petitioner reads as under:-

“c. Issue a writ, order or direction to the respondent No.4 to formulate a scheme with the assistance of the Respondent No.2 to provide for some sort of re-location allowance to the petitioners for their complete and effective rehabilitation of the petitioners in MITS in terms of the order of the Respondent No.4 dated 19.11.2014 payable as public law damages to the Petitioners who had relied on the strength of the affiliation granted by this Respondent to the college and accepted employment with the college.”

10. In essence the cause of action which is pleaded with respect to grant of this relief is that petitioners claim that they joined the respondent no.5/College as it was found to be affiliated to respondent no.4-University, and which University is approved by the respondent no.1 being the All India Council for Technical Education (AICTE), however, these authorities have breached their fundamental duties in continuing the respondent no.5/College although the facilities were not existing, and which ultimately led to the closure of the respondent no.5/College and hence for re-location, petitioners have to be compensated. Reliance is also placed by the petitioners upon the Statute 24 issued under Section 26 of the Guru Gobind Indraprastha University Act, 1998 with its Clauses 3(ii)(e) which states that no college will be admitted to the privileges of the University unless the college has the necessary infrastructure etc as specified in 3(ii)(e), and which reads as under:-

“(3). xxxxxxxx

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(ii) No college or institution shall be admitted to the privileges of the University unless-

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(e) it actually has suitable and adequate physical facilities in terms of space, accommodation, sanitation, laboratories and workshops, equipment, library and reading room, furniture and other infrastructural facilities as specified by the University from time to time for maintenance of requisite standards in the Ordinance;”

11. Similar provision is relied upon so far as respondent no.1/AICTE is concerned.

12. The relief of re-location allowance can be claimed either on the basis of a contract or a statute, but, that is not the pleaded cause of action. The relief thus claimed is based on law of torts i.e alleged tortious wrongs committed by the public authorities being the AICTE and the University which granted affiliation to the respondent no.5/ College. In my opinion, the writ petition in such circumstances is not an appropriate remedy because if public law damages are claimed, such damages will have to be calculated and that too after proving facts constituting the cause of action under law of

torts i.e not only damages will have to be calculated, there will exist disputed questions of fact which require trial with respect to the infrastructure provided or not provided by the respondent no.5/College, what were the aspects which were lacking, and whether they were deliberate, what is the role of the petitioners qua continuing their services with respect to such an institution, whether petitioners are estopped in making their claims as they have taken benefit of services with the respondent nos. 3 and 5 being the Society and the College, and various other disputed questions of fact and law. No doubt, this Court while hearing a writ petition, qua an appropriate case and depending on facts of a particular case, may also decide disputed questions of fact after trial, however, considering the facts of the present case, I do not think it fit that this Court should decide disputed questions of facts and law under the jurisdiction of Article 226 of the Constitution of India. Therefore, the remedy of public law damages cannot be appropriately granted by this Court in exercising the writ jurisdiction under Article 226 of the Constitution of India. Petitioners do not seek enforcement of a contract or a statutory provision for claiming re-location allowance, and petitioners' case therefore will really be under the law of torts viz tortious actions alleged of respondent nos.1, 2 and 4 for tortious actions and recovery of

monies, and hence a suit after paying the court fees will be an appropriate remedy and not a writ petition.

13. It also bears note that the petitioners need not re-locate themselves by taking employment in the college at Sonepat and it is only their option to do so. In fact, petitioners are benefitted by re-location, but for which their services/employment would have come to an end. Petitioners since are getting this profit cannot become over-ambitious and claim damages from a university which by re-locating them is protecting their services.

14. No other issue is pressed or arises.

15. Dismissed.

MARCH 23, 2015
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VALMIKI J. MEHTA, J.