

In the High Court of Judicature at Madras

Dated: 18-07-2016

Coram

The Hon'ble Mr.Justice **M.Jaichandren**

W.P. No.5559 of 2016

Dr.Major K.Kamalanathan

.. Petitioner.

Versus

1. University Grants Commission
rep. by its Secretary,
Bahadursha Zafar Marg,
New Delhi-110 002.

2. The Medical Council of India
rep. by its Secretary,
Pocket-14, Sector-8,
Dwarka Phase-I,
New Delhi-110 077.

3. The Secretary to the '
Government of Tamilnadu,
Department of Health and Family Welfare,
Fort St. George,
Chennai-600 009.

4. Saveetha University (Deemed University)
rep. by its Registrar,
162, Poonamallee High Road,
Velappanchavadi,
Chennai-600 077.

.. Respondents.

Prayer: Petition filed under Article 226 of the Constitution of India,
praying for a Writ of Mandamus, directing respondents 1 to 3 to secure

to the petitioner, the refund of fees paid for petitioner's son K.Gokul Kumar for pursuing M.B.B.S Course, from the 4th respondent, as instructed by the 1st respondent.

For petitioner : Mr.K.Elango

For respondents : Mr.P.R.Gopinathan (R1)
Mr.V.P.Raman (R2)
Mr.R.Ravichandran
Additional Government Pleader (R3)
Mr.R.Muthukumarasamy,
Senior Counsel for
Mr.S.Saravanan (R4)

ORDER

Heard the learned counsel appearing on behalf of the petitioner, as well as the learned counsels appearing on behalf of the respondents.

2. This Writ Petition has been filed praying that this court may be pleased to issue a Writ of Mandamus, directing the respondents 1 to 3, to refund the fees paid on behalf of the son of the petitioner, namely K.Gokul Kumar, for pursuing his M.B.B.S course, in the 4th respondent University.

3. The petitioner's son, namely, K.Gokul Kumar, had joined the M.B.B.S course in the 4th respondent University. K.Gokul Kumar had secured 1110 marks out of 1200 marks, in the Higher Secondary Examination, conducted by the State Board of School Examinations,

Tamilnadu, during the month of March, 2015. After having appeared in a number of entrance examinations, he had joined the M.B.B.S course in the 4th respondent University. As the classes for the said course were to commence on 8.7.2015, he had paid a sum of Rs.71,000/- towards the hostel accommodation, mess fee and caution deposit, as required by the 4th respondent University, on 7.7.2015. He had also paid the tuition fee of Rs.15,00,000/- for the first year of the M.B.B.S course and Rs.3,15,000/- towards the one-time payment as the University fee and for the admission kit, I-Pad and other equipments. While so, he had been called for counselling, by the Devaraj Urs Academy of Higher Education and Research Medical College, at Kolar, Karnataka, on 26.6.2015. The petitioner's son had joined the 4th respondent University, on 15.6.2015, which is the day on which the Tamil Nadu government's rank list had been published. The counselling was to commence on 19.6.2015 and end on 25.6.2015. Therefore, the petitioner had requested the 4th respondent, on 16.6.2015, to furnish the original certificates of his son, to participate in the counselling and he had also obtained the same. The classes were to begin on 1.9.2015. In the meanwhile, K.Gokul Kumar, had been selected by Amrita Institute of Medical Sciences, Kochi, Kerala. He had appeared in the entrance examination, on 17.5.2015, and the rank list had been

published, on 16.6.2015, a day after he had got his admission in the 4th respondent University. As the fee structure of Amrita Institute of Medical Sciences was almost 50% less than that of the 4th respondent University, he had decided to join Amrita Institute of Medical Sciences. He had paid the necessary fees, on 29.7.2015. When the fact of his admission in Amrita Institute of Medical Sciences had been informed to the 4th respondent University, the Vice Principal of the 4th respondent University had compelled the petitioner to sign an 'Undertaking Letter', which was in a printed form. In the 'Undertaking Letter', dated 31.7.2015, the petitioner had declared and stated that the 4th respondent University did not owe any dues, whatsoever, to the petitioner. The petitioner has stated that he had been compelled to sign the undertaking, under duress. He had been told that he would have to pay a sum of Rs.75,00,000/-, for the entire course of five years, unless he signs the letter of undertaking. Thereafter, the petitioner had made several representations, on 5.8.2015, 7.9.2015 and 15.9.2015, seeking the refund of fees, from the 4th respondent University. He had also sent representations to the first and the second respondents, on 12.10.2015, seeking their intervention in the matter.

4. It has been further stated that the 4th respondent University had replied to the 1st respondent, through a communication, dated 21.12.2015, that the fees paid on behalf of K.Gokula Kumar, for pursuing the M.B.B.S course, in the 4th respondent University would not be returned, as it is inadmissible as per their refund policy. Further, the conditions stipulated in the prospectus had been quoted while rejecting the request made by the petitioner. An affidavit of undertaking had also been obtained, by the 4th respondent University, from K.Gokul Kumar, wherein he had stated that he was fully aware of the refund policy of the 4th respondent University. He had also undertaken that, in case of discontinuation of the course, in the middle of the course, for any reason, he would pay the remaining entire course fees. The refund policy of the 4th respondent University had been notified as follows:

Refund Policy

<i>S.No.</i>	<i>Time of Withdrawal</i>	<i>Fee Refund</i>
01	Anytime after admission, but before 10 days from the date of commencement of classes	Total fees excluding processing fee of Rs.50,000, University Registration fee. Eligibility and Admission Fee.
02	Anytime thereafter & within 15 days, from the date of	50% of first year tuition fees subject to the condition that

<i>S.No.</i>	<i>Time of Withdrawal</i>	<i>Fee Refund</i>
	commencement of classes	the seat so vacated is filled up.
03	After 15 days from the date of commencement of classes	No refund

Since the 4th respondent University had denied the refund of the fees paid, by the petitioner, on behalf of his son K.Gokul Kumar, he has been constrained to file the present Writ Petition, before this court, invoking the Writ jurisdiction, under Article 226 of the Constitution of India.

5. The first respondent has filed a counter affidavit stating that the Government of India, Ministry of Human Resources Department, had declared Saveetha Institute of Medical and Technical Sciences, Chennai, Tamilnadu, as a Deemed University, vide Notification No.F.9-3/2002-U.3, dated 18.3.2005, under Section 3 of the University Grants Commission Act, 1956. It has also been stated that all the Deemed Universities are governed by the University Grants Commission (Institutions Deemed to be Universities), Regulations, 2010, as amended during the years, 2014, 2015 and 2016. Clause 6 of the Regulations has dealt with the process relating to the admissions and the fees structure of the Deemed Universities, in detail. Further, the

procedures for the refund of fees to the student, who had been admitted to a particular course, leaving the University, had also been dealt with.

6. In the counter affidavit filed on behalf of the 4th respondent University, the allegations made by the petitioner, against the 4th respondent University, had been categorically denied. The refund policy of the University, as notified in the prospectus had also been stated thereunder. The refund policy of the 4th respondent University reads as follows:

Refund Policy

<i>S.No.</i>	<i>Time of Withdrawal</i>	<i>Fee Refund</i>
01	Anytime after admission, but before 10 days from the date of commencement of classes	Total fees excluding processing fee of Rs.50,000, University Registration fee. Eligibility and Admission Fee.
02	Anytime thereafter & within 15 days, from the date of commencement of classes	50% of first year tuition fees subject to the condition that the seat so vacated is filled up.
03	After 15 days from the date of commencement of classes	No refund

7. The learned counsel appearing on behalf of the petitioner had admitted that the original certificates belonging to the son of the petitioner had been returned, by the University, on 16.6.2015, after he had been admitted therein, on 15.6.2015. However, the candidate had chosen to join Amrita Institute of Medical Sciences, as the fees structure of the said Institute was about 50% less than that of the 4th respondent University. The learned counsel had further submitted that, in spite of several requests having been made, the 4th respondent University had failed to refund the sum of Rs.18,86,000/-, paid towards the tuition fee and for the other fees and the equipments to be provided by the 4th respondent University, for the M.B.B.S course conducted by it.

8. The learned counsel had further submitted that the undertaking given by the petitioner, as well as the candidate, namely, K.Gokul Kumar, that they would not ask for the refund of the fee already paid to the 4th respondent University, had been made due to threat meted out by the fourth respondent University, stating that the candidate would not be permitted to leave the 4th respondent University unless the entire course fees of Rs.75,00,000 is paid by the candidate concerned. It had been further stated that the terms and

conditions stipulated in the prospectus of the 4th respondent University cannot over ride the instructions issued by the University Grants Commission, New Delhi, in its Circular, dated 22.6.2011. In the Circular, dated 22.6.2011, issued by the University Grants Commission, it has been stated as follows:

"F.No.6-1(7)/2006 (CPP-1)

The Vice Chancellor/Director

All the Institutions Deemed to be Universities

Subject: Retention of original certificates and refund of fees in case student leaves after joining the course.

Sir,

A Public Notice was issued by the University Grants Commission vide No.F/1-3/2007(CPP-II) dated 23.4.2007, (Copy enclosed) wherein the Institutions/Universities were instructed not to retain the original certificates and also requested to abide by the instruction issued with regard to refund the fee in case of students leaving the Institutions/Universities. It has come to the notice of the University Grants Commission that some of the Institutions Deemed to be Universities are not adhering to the instructions issued and are admitting students to technical and professional education programmes long before the actual starting of an academic session; collecting full fees from the admitted students; and, retaining their school/institution's leaving certificates in the original. These deemed to be universities are also reportedly confiscating the fee paid if a student fails to join by such

dates and insisting fee for remaining semesters from those who leave after joining the course, before returning their original certificates.

The University Grants Commission is of the view that these deemed to be universities, by way of retaining the certificates in original and forced retention of admitted students, are limiting the opportunities for the candidates from exercising other options of joining other institutions of their choice. As such, it is not permissible for institutions deemed to be universities to retain the School/Institution Leaving Certificate, mark sheet, caste certificate and other documents in original.

The deemed to be universities have already been requested by the University Grants Commission to maintain a waiting list of students/candidates in the event of a student/candidate withdrawing before the starting of the course, the waitlisted 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/- (One Thousand only) shall be refunded and returned by the institution deemed to be university to the student/candidate withdrawing from the programme. 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 deemed to be university must return the fee collected with proportionate deductions of monthly fee and proportionate hostel rent, where applicable.

All the deemed to be universities are hereby requested to abide by the above instructions issued by the University Grants Commission with regard to refund of fees and return of original certificates."

9. It has been further stated that the instructions issued by the University Grants Commission would prevail over the terms and conditions specified in the prospectus of the 4th respondent University. Accordingly, the petitioner is entitled for the refund of the tuition fees and the hostel fees paid by him, on behalf of his son, K.Gokul Kumar, from the 4th respondent University, after a proportionate amount is deducted, as per the instructions issued by the University Grants Commission.

10. It had been further stated that the candidate had joined the 4th respondent University, on 15.6.2015. The M.B.B.S Degree course had commenced, on 8.7.2015. The petitioner had informed the 4th respondent University about the admission of his son in Amrita Institute of Medical Sciences, on 31.7.2015. However, the 4th respondent University had refused to refund the fees paid by the petitioner on behalf of his son, stating that the classes for the M.B.B.S course had commenced and that the petitioner would not be entitled

for the refund of the amount paid as fees. The learned counsel had also submitted that the seat that had fallen vacant due to the leaving of the son of the petitioner had been filled up by the 4th respondent University.

11. It had also been pointed out that, at the time of the leaving of the candidate, the petitioner had given an undertaking , dated 31.7.2015, stating that no amount was due from the fourth respondent University. The candidate concerned had also given an undertaking saying that if he discontinues the course, the entire course fees would be paid to the 4th respondent University. The said stand taken by the 4th respondent University, is arbitrary and illegal, in view of the instructions issued by the University Grants Commission. It had also been submitted that the instructions given by the University Grants Commission would override the terms and conditions specified in the prospectus of the 4th respondent University. In support of his contentions, the learned counsel had relied on the following decisions:

11.1. In *RamDeo Baba Kamala Nehru Engineering College and others Vs. Sanjay Kumar and others*, (2002) 10 SCC 487, it had been held that in the event of the cancellation of admission, at the behest of either party, money ought to be refunded, subject to deductions.

11.2. In *Prabhjot Singh Vs. Punjab University, Chandigarh, CDJ 2009 PHC 151*, it had been held that in view of the instructions of the A.I.C.T.E and U.G.C., the respondents were duty bound to refund the fee, if the student has withdrawn before the commencement of the course.

11.3. In *Annamalai University Vs. Secretary to Government, Information and Tourism Department*, it had been held that the provisions of the U.G.C. Act are binding on all universities, whether conventional or open. Its powers are very broad. The regulations framed by the U.G.C in terms of Sections 26(1)(e), (f), (g) and (h) of the U.G.C act are of wide amplitude. They apply equally to all universities, as also to formal conventional universities.

Therefore, the petitioner is entitled to get the relief, as prayed for by him in the present Writ Petition.

12. The learned counsel appearing on behalf of the first respondent had submitted that the 4th respondent University comes under the purview of the provisions of the University Grants Commission, Act, 1956. As such it is bound by the University grants Commission (Institutions Deemed to be Universities) Regulations,

2010. According to which, instructions had been issued to all the deemed Universities, with regard to the procedures relating to the admission and the fees structure. According to the public notice issued by the University Grants Commission, on 23.4.2007, the entire fee collected from the student, after a deduction of the processing fee, of not more than Rs.1,000/-, shall be refunded and returned by the institution, to the candidate withdrawing from the programme. It also states that if a student leaves the institution after attending the course and if the seat, consequently falling vacant, has been filled up by another candidate, by the last date of admission, the institution, Deemed to be University, must return the fee collected, with proportionate deductions of monthly fee and proposed hostel rent, where applicable. Accordingly, the petitioner is entitled for the refund of the fee paid on behalf of his son, namely, K.Gokul Kumar, as prayed for by him, in the present Writ Petition, after a proportionate amount is deducted, by the 4th respondent University. It has also been stated that the terms and conditions imposed on the candidates, by way of the prospectus, cannot override the instructions issued by the University Grants Commission. The learned counsel had relied on the following decisions in support of his contentions:

12.1. The decision made in *RamDeo Baba Kamala*

Nehru Engineering College and others Vs. Sanjay Kumar and others, (2002) 10 SCC 487, had been relied on by the learned counsel appearing on behalf of the first respondent to state that, in the event of the cancellation of the admission, the caution money and the tuition fee were liable to be refunded, subject to the permissible deductions.

12.2. The decision made in *Prabhjot Singh Vs. Punjab University, Chandigarh*, CDJ2009 PHC 151, had been relied on to state that, as per the instructions of the A.I.C.T.E and U.G.C., the respondents were duty bound to refund the fee, if the student has withdrawn before the commencement of the course.

12.3. In *Atam Parkash Khatter and another Vs. Commissioner and Secretary to Govt. of Haryana and others*, it had been held that the educational institutions cannot be permitted to behave like a business establishment, who work with profit motive and that there is no justification on the part of the respondent-institution in retaining the substantial fee paid by a student, who decides not to pursue his or her studies in the said institution.

13. In view of the submissions made by the learned counsels appearing on behalf of the petitioner, as well as the respondents, and

on a perusal of the records available and on considering the decisions cited supra, it is noted that the son of the petitioner, namely, K.Gokul Kumar, had joined the 4th respondent University, on 15.6.2015. He had paid a sum of Rs.15,00,000/-, as tuition fee, for the 1st year M.B.B.S course and Rs.3,15,000/- towards the one-time payment, as University fee. He had also paid a sum of Rs.71,000/- towards hostel accommodation, mess fee and caution deposit, on 7.7.2015. While so, he had got admission to pursue the said course in Amrita Institute of Medical Sciences. The classes for the M.B.B.S course, in the 4th respondent University, had commenced, on 8.7.2015. The petitioner had informed the 4th respondent University that his son had joined the Amrita Institute of Medical Sciences, on 31.7.2015. He had made several representations to the 4th respondent University to return the fee paid by him, to the 4th respondent University, on behalf of his son. However, the 4th respondent University had refused to refund the amount stating that the terms and conditions stipulated in the prospectus of the 4th respondent University made it clear that the refund policy of the 4th respondent University was as follows;

Refund Policy

<i>S.No.</i>	<i>Time of Withdrawal</i>	<i>Fee Refund</i>
01	Anytime after admission,	Total fees excluding

S.No.	Time of Withdrawal	Fee Refund
	but before 10 days from the date of commencement of classes	processing fee of Rs.50,000, University Registration fee. Eligibility and Admission Fee.
02	Anytime thereafter & within 15 days, from the date of commencement of classes	50% of first year tuition fees subject to the condition that the seat so vacated is filled up.
03	After 15 days from the date of commencement of classes	No refund

14. It is further noted that the University Grants Commission, New Delhi, had issued a Circular to the Deemed Universities, including the 4th respondent, which would be applicable to the 4th respondent University, specifying the policy to be followed by such universities for the refund of the fee. In the said instructions, it had been clearly stated that the refund of fee would be as follows:

"F.No.6-1(7)/2006 (CPP-1)

The Vice Chancellor/Director

All the Institutions Deemed to be Universities

Subject: Retention of original certificates and refund of fees in case student leaves after joining the course.

Sir,

A Public Notice was issued by the University Grants Commission vide No.F/1-3/2007(CPP-II) dated 23.4.2007, (Copy enclosed) wherein the Institutions/Universities were instructed not to retain the original certificates and also requested to abide by the instruction issued with regard to

refund the fee in case of students leaving the Institutions/Universities. It has come to the notice of the University Grants Commission that some of the Institutions Deemed to be Universities are not adhering to the instructions issued and are admitting students to technical and professional education programmes long before the actual starting of an academic session; collecting full fees from the admitted students; and, retaining their school/institution's leaving certificates in the original. These deemed to be universities are also reportedly confiscating the fee paid if a student fails to join by such dates and insisting fee for remaining semesters from those who leave after joining the course, before returning their original certificates.

The University Grants Commission is of the view that these deemed to be universities, by way of retaining the certificates in original and forced retention of admitted students, are limiting the opportunities for the candidates from exercising other options of joining other institutions of their choice. As such, it is not permissible for institutions deemed to be universities to retain the School/Institution Leaving Certificate, mark sheet, caste certificate and other documents in original.

The deemed to be universities have already been requested by the University Grants Commission to maintain a waiting list of students/candidates in the event of a student/candidate withdrawing before the starting of the course, the waitlisted 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/- (One Thousand only) shall be refunded and returned by the institution deemed to be university to the student/candidate withdrawing from the programme. 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 deemed to be university must return the fee collected with proportionate deductions of monthly fee and proportionate hostel rent, where applicable.

All the deemed to be universities are hereby requested to abide by the above instructions issued by the University Grants Commission with regard to refund of fees and return of original certificates."

Thus, from the facts and circumstances of the case, it is clear that the instructions of the University Grants Commission, would prevail over the terms and conditions notified in the prospectus of the 4th respondent University. Accordingly, the petitioner would be entitled for the refund of fee, after a proportionate deduction of the fees, as specified in the instructions. Further, the undertaking given by the petitioner, on 31.7.2015, that no dues are payable by the 4th respondent University, to the petitioner, cannot be given any weightage, as it has been stated by the petitioner that such an undertaking had been obtained, by the 4th respondent University,

under duress. As such, this court is of the considered view that the petitioner is entitled to the refund of the entire amount paid as fees, to the 4th respondent University, after deduction of the proportionate amount, as per the instructions of the University Grants Commission, in the Public Notice, dated 23.4.2007 and the Circular, dated 22.6.2011. Accordingly, the 4th respondent University is directed to refund the amount to the petitioner, as stated above, within a period of four weeks from the date of receipt of a copy of this order. The Writ Petition is allowed, with the above directions.

Index:Yes/No
Internet: Yes/No
csh

18-07-2016

To

1. The Secretary,
University Grants Commission
Bahadursha Zafar Marg,
New Delhi-110 002.

2. The Secretary,
The Medical Council of India
Pocket-14, Sector-8,
Dwarka Phase-I,
New Delhi-110 077.

3. The Secretary to the
Government of Tamilnadu,
Department of Health and Family Welfare,
Fort St. George,
Chennai-600 009.

4. The Registrar,
Saveetha University (Deemed University)
162, Poonamallee High Road,
Velappanchavadi,
Chennai-600 077.

M.JAICHANDREN,J.

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