

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07.06.2016

Coram:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

W.P.No.4133 of 2016

and

W.M.P.No.3468 of 206

K.S.Shabna

... Petitioner

vs.

1.The Principal,
Madha Dental College,
Madha Nagar,
Kundrathur,
Chennai-600 069

2.The Chairman,
A Unit of Madha Medical College
& Research Institutions,
Kundrathur Main Road,
Kovur, Thandalam,
Chennai-600 122

3.The Director,
(Selection Committee)
Directorate of Medical Education,
Kilpauk, Chennai-600 010

... Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus directing the respondents 1 and 2 to return the petitioner's educational certificates and other original documents produced by her at the time of admission in BDS course in the first and second respondents' college viz., Madha Dental College, Kundrathur, Chennai, and also to refund the fees of Rs.2,75,000/- paid by the petitioner.

For Petitioner : Mr.M.Duraiselvan

For Respondents : Mr.P.Sanjaigandhi,A.G.P. for R3

ORDER

By consent, the writ petition itself is taken up for final disposal.

2. The petitioner got admission to B.D.S. course conducted by Madha Dental College (first respondent), under Backward Class Muslim Category, through the counselling conducted by the third respondent and she got admitted in the said course for the academic year 2015-16. The petitioner would claim that on the date of counselling itself she has paid a sum of Rs.25,000/- and after allotment to the first respondent college, paid a sum of Rs.2,75,000/- on 31.07.2015, for which, no receipt whatsoever has been issued by the said institution. The petitioner was a hosteller and subsequently selected and admitted to M.B.B.S. course in Kalinga Medical University, Bhuvaneshwar and at present, she is undergoing the M.B.B.S. course. The petitioner, for the purpose of joining the said course, prayed for return of the original testimonials from the first respondent and despite repeated requests, the said certificates have not been returned. But she persuaded the Kalinga Medical University to admit her with true xerox copies of the testimonials. The grievance expressed by the petitioner is that inspite of repeated representations submitted to the Madha Medical College as well as to the Additional Director of Medical Education, she has not been favoured with any kind of response. Therefore, she has come forward to file this writ petition.

3. The learned counsel appearing for the petitioner, apart from drawing the attention of this Court to the typed set of papers has also to the decision of this Court in S.MUTHUKAMATCHI VS. THE DIRECTOR OF TECHNICAL EDUCATION, ANNA UNIVERSITY (reported in 2013(1) CTC 595), would submit that the certificates submitted by the concerned student for getting admission cannot be retained by the concerned institution and prays for appropriate orders.

4. Per contra, Mr.P.Sanjaigandhi, the learned Additional Government Pleader, who accepts notice on behalf of the third respondent, would submit that the petitioner, apart from approaching the concerned official, had also approached the police and seeks to get necessary instructions as to whether any direction has been issued to the concerned institution to return the original testimonials of the petitioner.

5. This Court has considered the rival submissions and also perused the materials placed before this Court. A single Bench of this Court, in the above cited decision, has observed as follows:

"4.The certificates of the petitioner's daughter represent her property. They cannot be retained by the College at any rate. Even if the

College has any monetary claim, the rejection of the said Certificates is not the method by which, the claim can be enforced. There is no lean on the Certificates of the petitioner's daughter.

5. However, Mr.N.Balakrishnan, the learned counsel appearing for the Fourth Respondent contended that if the student leaves a course in the midstream, he would be entitled to the return of the Certificates, only after paying the tuition fee for the remaining incomplete period of the course. The learned Counsel also contended that if a student leaves a College in the midstream, the seat goes waste and that the fixation of fee for every student is actually based upon the cost worked out before the Fee Fixation Committee. Once the particular fee is fixed for a particular academic year, the students admitted in that academic year are obliged to pay the same fee, till the end of the course every year. Similarly, there is an obligation casts upon the College to charge only those fees. In such circumstances, it is implicit that the students like the petitioner's daughter will have to pay the fees for the rest of the course of study for collecting the Certificates.

6. I would not venture to get into that controversy, namely, whether the College is entitled to collect the balance of fees or not. The main grievance of the petitioner is about the Certificates of her daughter. Those Certificates are not like fixed deposit receipt on which, banks claim a general lien in terms of Section 171 of the Contract Act. Therefore, the Certificates cannot be retained at any rate. Hence, this writ petition is allowed directing the fourth respondent to return all the original certificates deposited by the petitioner forthwith."

6. In the light of the ratio laid down in the above said decision, for the purpose of recovery of fees/payment of fees, the original certificates given by the petitioner cannot be retained as a lien. The best course open to the respondents 1 and 2 is to return the original testimonials and invoke the common law remedy to recover the amount due, if any.

7. In the result, the writ petition is disposed of and the respondents 1 and 2 are directed to return the +2 mark-sheet, Transfer Certificate, Conduct Certificate, Original Community Certificate and other documents, if any, to the

petitioner forthwith. Respondents 1 and 2 are also at liberty to invoke the common law against the petitioner for recovery of the amount due and payable, if any, subject to the law of limitation. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

msk

To

- 1.The Principal,
Madha Dental College,
Madha Nagar,
Kundrathur,
Chennai-600 069
- 2.The Chairman,
A Unit of Madha Medical College
& Research Institutions,
Kundrathur Main Road,
Kovur, Thandalam,
Chennai-600 122
- 3.The Director,
(Selection Committee)
Directorate of Medical Education,
Kilpauk, Chennai-600 010

+10ccs to Mr.M. Duraiselvan, Advocate, S.R.No.30821
+1cc to the Government Pleader, S.R.No.30520

RK(CO)
EU(21/06/2016)

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