

IN THE HIGH COURT OF PUNJAB AND HARYANA, AT
CHANDIGARH

416

CWP-17763-2013

Decided on : 07.12.2016

Vinod Kumar and another

... Petitioners

Versus

Manav RachnaDental College Faridabad and others

.. Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr. Gorav Kathuria, Advocate
for the petitioners.

Mr. Amrit Paul, Advocate
for respondents No.1 to 3.

None for respondent No.4.

Mr. M.S. Longia, Advocate
for respondent No.5.

G.S.Sandhawalia, J.

The petitioners had initially sought directions for rejoining the course of Dental Science in the college of respondents No.1 to 3 on the ground that they had been charged fees for the five year course by the respondents.

It is case of the petitioners that the admission for BDS Course had been taken place in the year 2009-2010, however, in view of the Dental Council of India Revised BDS Course Regulations, 2007, petitioners' admission was cancelled since it was provided that any student who does not clear the first BDS University exam in all subjects within three years

from the date of admission shall be discharged from the course. Vide communication dated 15.10.2012 (Annexure P/8), the petitioners were informed of their disqualification.

In view of the statutory bar, counsel for the petitioners has not pressed the challenge as such to the cancellation of admission. However, in the replication, it has been specifically averred that respondents have charged fees for the subsequent years i.e. five years, amounting to Rs.7 lacs. Even though, the petitioners could not clear the first year examination, itself the fee was taken on account of the fact that they would be allowed to sit in the reappear examination.

The issue thus, which arises is that whether the respondent-college is entitled to charge the fees for the subsequent years, whereas the students have not even studied in the said years.

Reference can be made to Chapter-5 the fee structure which is part of the prospectus (Annexure R-1/3), which has been appended. Clause 2 of said Chapter, provides that those candidates who withdraw their admission upto 15th September, 2009, in writing to the Director/ Principal of the participating Institution after having the receipt of the withdrawal application would be refunded the fees within two weeks through cheque after deducting Rs.5,000/-. No fee shall be refunded if a candidate withdraws his/her admission after 15th September, 2009.

Similarly, as per Chapter-6, the candidate is admitted on the basis of information submitted by him/her and if at any subsequent stage, it is discovered that any portion of this information is incorrect, the students will be removed from the institution and all fees and other dues paid/liable

to be paid up till the date of such removal shall be forfeited. Any further action, as deemed suitable, may also be taken by the institution against such student/parent/relative. The said clause reads as under:-

“4. The candidate is admitted on the basis of information submitted by him/her and if, any subsequent stage, it is discovered that any portion of this information is incorrect, the students will be removed from the institution and all fees and other dues paid/liable to be paid up till the date of such removal shall be forfeited. Any further action, as deemed suitable, may also be taken by the institution against such student/parent/relative.”

Combined reading of the above two chapters, thus would go on to show that even for the ineligible students who were admitted, in case of their removal, fee is only to be paid till the date they continue to be attending the course. In the present case, as noticed, advance fee for the subsequent years could not have been taken without the students having actually studied in the course as per the regulations.

A perusal of Annexure R-1/6 filed by the respondent-institute would go on to show that the petitioners had got admission in the year 2009 and had attended classes for two years till June, 2011. After that in the session commencing from 2011 they had not attended any classes, since their attendance has been marked 'NO'. The relevant portion of the said Annexure for petitioner No.1 and 2 read as under:-

“MANAV RACHANA DENTAL COLLEGE

SINGLE STUDENT LEDGER REPORT

Student Name: Vinod Kumar

Father Name: Mr. Akshay Lal

Roll No.:2009/76

Batch:2009

Branch: BACHELOR OF DENTAL SURGERY

S. No	Particulars	Receipt No.	Fee amount (in)	Recd. Date	Remarks	Attendance	PRACTICAL	THEORY	Examination	R.no	Result	Subject
1.	First year fees	1/1274	100000.00	1/9/2009		OCT-09 to JUNE 2010	92/164	117/171	Aug-10	007536	Reappeared in BD-01, BD-02, BD-03	General Anatomy, General Biochemistry & Physiology, DADH
		1/1466	125420.00	18/03/2010					Dec-10	16206	Reappeared in BD-01	General Anatomy
2.	Second year fees	1/1812	70000.00	16/08/2010								
		1/2155	103385.00	4/1/2011		Aug-10 to June 2011	68/125	135/175	Aug-11	27220	Reappeared in BD-01	General Anatomy
3.	Third year fees	1/2532	179670.00	6/8/2011		NO			Dec-11	39844	Reappeared in BD-01	General Anatomy
									Aug-12	65476	Cancelled	
4.	Fourth year fees	1/1/2736	100000.00	8/11/2011								
		Jan-39	79670.00	11/11/2011		NO						

“MANAV RACHANA DENTAL COLLEGE
SINGLE STUDENT LEDGER REPORT
Student Name: Etesh Kumar Father Name: Mr. Ashok Kumar
Roll No.:2009/16
Batch:2009 Branch: BACHELOR OF DENTAL SURGERY

S. No	Particulars	Receipt No.	Fee amount (in)	Recd. Date	Remarks	Attendance	PRACTICAL	THEORY	Examination	R.no	Result	subject
1.	First year fees	1/1319	225420	1/9/2009		OCT-09 to Jan 2010	57/162	72/171	Aug-10	007576	Reappeared in BD-01, BD-02, BD-03	General Anatomy, General Biochemistry & Physiology, DADH
2.	Second year fees	1/1775	173385	04/08/2010		Aug-10 to June 2011	78/125	120/175	Dec-10	16185	Reappeared in BD-02	General Biochemistry & Physiology
3.	Third year fees	1/2557	179670	12/8/2011		NO			Aug-11	24217	Reappeared in BD-02	General Biochemistry & Physiology
4.	Fourth year fees	1/3207	117230	16/07/2012		NO			Dec-11	39843	Reappeared in BD-02	General Biochemistry & Physiology
									Aug-12	65475	Reappeared in BD-02	General Biochemistry & Physiology

Thus, from the perusal of the above chart, it is apparent that the fees has been taken for the 3rd and 4th year even without the students having attended classes and, therefore, the respondent-Institute is not entitled to retain the same only on account of the fact that it has taken advance fees, as per Annexure R-1/6.

It is argued by the counsel for the respondents that the petitioners had availed the facility and the seats had gone vacant. The said argument cannot be accepted. It is not the case that the students have voluntarily left. Academically, they could not qualify the said examinations for the next year. Nothing has been shown from the prospectus or any rule that the Institute is entitled to charge fees for the subsequent years in advance. This practice has been frowned upon and instructions have also been issued by the UGC to this effect. Resultantly, the petitioners are well justified to seek the refund of the fees beyond the first year.

The Apex Court in '**Islamic Academy of Education and another Vs. State of Karnataka and others**' 2003 AIR (SC) 3724 also held that the fees could not be collected in advance for the entire course and only bonds/bank guarantee could be asked for. The relevant observations read as under:-

“It must be mentioned that during arguments it was pointed out to us that some educational institutions are collecting, in advance, the fees for the entire course i.e. for all the years. It was submitted that this was done because the institute was not sure whether the student would leave the institute midstream. It was submitted that if the student left the course in midstream then for the remaining years the seat would lie vacant and the institute would suffer. In our view an educational institution can only charge prescribed fees for one semester/year, if an institution feels that any particular student may

leave in midstream then, at the highest, it may require that student to give a bond/bank guarantee that the balance fees for the whole course would be received by the institute even if the student left in midstream. If any educational institution has collected fees in advance, only the fees of that semester/year can be used by the institution. The balance fees must be kept invested in fixed deposits in a nationalised bank. As and when fees fall due for a semester/year only the fees falling due for that semester/year can be withdrawn by the institution. The rest must continue to remain deposited till such time that they fall due. At the end of the course the interest earned on these deposits must be paid to the student from whom the fees were collected in advance.”

Reference can also be made to the public notice issued by the University Grants Commission, New Delhi on 23.04.2007, whereby the collecting of full fees from the admitted students and retaining their school/institutions leaving certificate and original was held not to be permissible. The said public notice reads as under:-

“F.No.1-3/2007 (CPP-II)

23rd April, 2007

PUBLIC NOTICE

*It has come to the notice of the University Grants Commission that institutions and Universities including institutions deemed to be universities are admitting students to various programmes of studies long before the actual starting of academic session; **collecting full fee from the admitted students**; and, retaining their schools/institutions leaving certificates in original. The institutions and universities are also reportedly confiscating the fee paid if a student fails to join by such dates.*

2. The Commission is of the view that the institutions/universities, by way of retaining the certificate in original, force retention of admitted students which limits the opportunities for the candidates from exercising other options of joining other institutions of their choice. However, it would not be permissible for institutions and universities to retain the School/Institutions Leaving Certificate, mark sheet, caste certificate and other documents in original.

3. The Ministry of Human Resource Development and University

Grants Commission have considered the issue and decided that the institutions and universities, in the public interest, shall maintain a waiting list of students/candidates. In the event of students/candidates withdrawing before the starting of the course, the waitlisted candidate 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.1,000 (one thousand only) shall be refunded and returned by the Institution/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 must return the fee collected with proportionate deductions of monthly fee and proportionate hostel rent, where applicable.

4. The Universities/Institutions are requested to abide by the instructions issued by the UGC. The UGC, 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.

5. Institutions/Universities are also required to convey these instructions to the colleges affiliated to them.”

Reliance can be placed on the judgment in ***Akhil Bhardwaj Vs.***

The Secretary of Human Resources Development, New Delhi and others, 2013(1) PLR 118. In the said judgment, the candidate had taken admission in the MBA course with the Punjab Agricultural University. Therefore he had sought refund of fee from the institute which had denied to refund. It was accordingly, directed that even though, the student had left after the cut off date and even there were vacant seats in the institute, therefore, the institute could not be entitled to charge the fees and had to refund the same.

The relevant paras No.7 and 8 of the judgment read as under :-

“7. No doubt, the provisions made in the AICTE regulations and those of the prospectus may tend to help the cause of the respondent Institute but the facts in this case are peculiar and in my view, it would be unfair to fully apply the effect of these

instructions to the fact situation in this case. As per the AICTE norms, on a student withdrawing from a course, wait listed candidate should be given admission against the vacant seat. In that event the entire fee collected from the student after deduction of processing fee of not more than ₹1000/- is required to be refunded and returned by the Institution to the student or the candidate withdrawing from the programme. There is a further bar for the Institution to retain the school/Institution leaving certificate in original. This provision then states that should a student leave after joining the course and the seat remains vacant, then the Institution must return the fee collected with proportionate deduction of monthly fee and proportionate rent, whichever is applicable. It would, thus, be seen that this rule does not entitle an Institution to decline the refund of fee in both the events, where the student leaves and the seat remained unfilled or where the seat vacated by the student is filled from the students in waiting list. In the first eventuality, the Institution can deduct proportionate monthly fee and some rent etc. but in the later case it has no option but to refund the entire fee. Thus, this rule does not entitle the Institution to retain the fee, which is charged, when the student vacates the seat after taking admission, even if the seat remains unfilled. The provision made in the prospectus can not override the instructions issued by the AICTE and this provision in the prospectus, thus, can not be pleaded to justify their stand by the respondents.

8. *Even otherwise, the seat remaining vacant in this Institution in the course where the petitioner took admission appears meaningless. Against the 60 allotted seats to this Institution by AICTE, only 11 students had joined the course, out of which four concededly have left. Only 7 students are pursuing this course against 60 seats allotted to this Institution. What significance of a seat remaining vacant would have in this case where as many as 49 of the total seats allotted are not filled and at present 53 seats are lying vacant. Not only his seat but large number of seats, as many as 53, have remained unfilled. In this background, the Institution in my view would be unfair in pressing this plea to retain the fee deposited by the petitioner. One could have considered this line of submission as pursued by counsel for the respondents, if only the seat vacated by the petitioner had*

remained unfilled or even to some extent 2 or 3 seats had so gone waste because of late vacation of seats by some students. This Institution, which is allotted 60 seats, is running this course with 7 students and the action of the petitioner in vacating the seat, which has remained unfilled is of no significance.”

Counsel for the respondents has relied upon the judgment of the Madras High Court titled as '***R.Gowthami Vs. The Regional Officer, All India Council for Technical Education and others***', decided on 09.03.2012. A perusal of the said judgment would go on to show that while studying in the second year of B.E. course, the student had got selected in the MBBS Course and asked for the transfer certificate. Resultantly, the full fees of 3rd and 4th year had been demanded for issuing the same, which was accordingly paid and thereafter, the refund was asked for. It was, accordingly, noticed that the petitioner has paid the fees without lodging any protest and got the transfer certificate and, thereafter, had left the college in the middle of the course. Resultantly, it was held that the refund is not liable to be made.

As noticed in the present case, the petitioners have not left voluntarily but could not qualify academically, which led to the cancellation of their admission. In the abovesaid case, the students had left voluntarily, therefore, it has been held that the college had collected the fees for the subsequent years without any objection. Thus, the said judgment is distinguishable in the facts and circumstances.

Resultantly, keeping in view the above discussion, this Court is of the opinion, that the present petition is liable to be allowed. The respondents shall refund the fees paid for the 3rd and 4th years as per

Annexure R1/6. The said amount be paid within a period of two months

from the date of receipt of certified copy of the order. In case the amount is not paid within the prescribed period, the petitioners are also entitled interest @ 8% per annum from the date when the fees was charged.

[G.S. SANDHAWALIA]
JUDGE

07.12.2016
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Whether speaking/reasoned	:	Yes
Whether Reportable	:	Yes