

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 182 of 2015
Date of decision: 20.12.2016

Anmol Sachdeva

....Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

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

Present: Mr. Vikas Kuthiala, Advocate,
for the petitioner.

Ms. Lavanya Paul, AAG, Punjab.

Mr. Ashok Kumar Advocate,
for respondent no. 2.

Mr. Dinesh Arora, Advocate,
for respondents no. 3 and 4.

G.S.SANDHAWALIA, J.

The petitioner seeks the refund of the security deposit of ₹15,000/- as well as the 5th semester fee of ₹61,150/- as paid by her to respondent no. 3-university and respondent no. 4-college for pursuing the 5 year (10 semester) Bachelor of Architecture course. Interest @ 15% per annum on the refund of the security amount as well as on the 5th semester fee is also sought.

It is the case of the petitioner that she had taken admission in the said course in the month of June/July 2012 for the academic session starting from August, 2012. She attended the classes for two years till the 4th semester and cleared the examinations. At the time of admission, she had paid a sum of ₹15,000/- towards the security deposit. On 12.04.2014

(Annexure P-4), she had duly deposited a sum of ₹61,150/- towards tuition fee, Institutional Development Fund etc. for the academic session 2014-15 for the 5th semester which was to start in July, 2014. She got admission in the University of Central Florida at Orlando USA and, therefore, took admission in the overseas institute. She resultantly asked for refund of security fee and the 5th semester fee which she was entitled under the Fee Refund Policy of the respondent-university but the respondent-university/college has failed to refund the said amount. Resultantly, the present writ petition was filed.

The defence of the University/College is that the course was of 5 years commencing from August, 2012. On completion of the 4th semester, instead of attending classes for 5th semester, she moved an application dated 16.06.2014 (Annexure P-5) for refund. Since she had withdrawn from the course on her own leaving the seat vacant, which remained vacant, she was not entitled for the refund of the 5th semester fee. Reliance was placed upon the guidelines of the UGC public notice dated 23.04.2007 (Annexure R-3/4) to submit that the refund was applicable to students who vacate before joining the course and if the seat was vacated after joining the course, refund of fees would only be done if the set was filled up. Reference was also made to the subsequent guidelines of UGC dated 23.04.2013 (Annexure R-3/5) to submit that the refund would only be if the student withdrew before the beginning of the course. It was accordingly pleaded that refund would only be if the student surrendered the seat before the commencement of the course which meant the first semester itself and, therefore, the writ petition was liable to be dismissed.

Reliance was placed upon the judgment of this Court in ***CWP***

No. 9711 of 2010, Bhagwan Mahavir Institute of Engineering and Technology vs. The Haryana State Counselling Society and others dated 06.01.2012. Similarly, reliance was also placed upon the judgment in *CWP No. 1133 of 2011, L.K. Talwar and another vs. Lovely Professional University* dated 09.05.2012. It was accordingly submitted that the seat vacated by the student had not been filled up by the another student and, therefore, the refund could not be granted. Reliance was placed upon the prospectus (Annexure R-3/1) to submit that it was provided that if the vacated seat was not filled up, the candidate was entitled only for the refund of the security deposit.

The UGC, in its reply also, took the stand that the institute was to refund the fees and it was not a necessary party. However, reference was made to the public notice dated 23.04.2007 (Annexure R-3/4) which had been issued by it.

Counsel for the petitioner has accordingly relied upon the information brochure which had been circulated by the respondent on its website to submit the deduction on pro rata monthly fees alongwith non-refundable counselling fees was permissible under the Fee Refund Policy after the start of the session. It was submitted that monthly fees was equivalent to 1/6th of the total fee per semester.

Counsel for the respondents, on the other hand, accordingly submitted that the seat had gone vacant and, therefore, keeping in view the settled position and as per the instructions of the UGC, the amount was not liable to be refunded.

The issue, in the present case, is that whether the respondents could as such charge advance fee in April, 2014 for the session which was

yet to start in the month of August, 2014. A perusal of the communication dated 29.08.2012 (Annexure R-3/2) would go on to show that the academic session commenced in August, 2012 which was supplied to the petitioner at that point of time when she took admission. The fees of the 5th semester (3rd year) was, thus, taken in April, 2014 i.e. 4 months in advance. The UGC public notice dated 23.04.2007 (Annexure R-3/4), which has been relied upon by the respondent, would go on to show that the policy of collecting full fees from the admitted students and retaining their schools/institutions leaving certificate in original has not been appreciated. The relevant portion of the said public notice reads thus:-

“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.”*

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.”

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.”

In the above circumstances, this Court is, thus, of the opinion that the petitioner is entitled for the refund of the advance fees which had been taken in the necessary facts and circumstances alongwith sum of ₹15,000/- as the security deposit regarding which there is no dispute as such since the prospectus itself provided that the refund of the security deposit is permissible.

Once the respondents in their information brochure (Annexure

P-6) had themselves held out that there was a Fee Refund Policy which was

published on its website qua which a specific averment has been made in para no. 10 and which has not been specifically refuted, the petitioner, thus, would be entitled for the claim of the same. It is also pertinent to mention that even as per the prospectus (Annexure R-3/1), the candidates had been advised to visit the university website as per clause 11 which reads thus:-

“11. Candidates are advised to visit the University website www.chitkara.edu.in regularly for the updates.”

The Fee Refund Policy on the website reads as under:-

“FEE REFUND POLICY”

Before the start of session: Deduction of Rs. 3500/-
(Processing and Counseling fee)*

*After start of session: Deduction on pro-rata monthly fee ** basis along with non refundable Counseling fee of Rs. 2500/-.*

**Please note that for the purpose of refund, the date of receipt of application in the admission office will be considered as the date of surrender of the seat*

*** Monthly fee is equivalent to 1/6th of the total fee per semester.”*

Reference to the judgment in *Bhagwan Mahavir's case (supra)* by counsel for the respondents would be not warranted for since in that case, the institutes were challenging the orders directing refund of the fees deposited by the student. This Court found that the cut off date was 10.08.2009 and the students had left after the cut off date. It was accordingly held that the seats vacated by the private respondents against which they were admitted were lying vacant and, therefore, the refund as such could not be granted and the orders passed by the State were quashed.

It was not a case where advance fee as such had been taken, which has been

done in the present case.

Similarly, in *L.K. Talwar's case (supra)*, the case was regarding refund of tuition fee and hostel fee and the student had chosen to leave the course in September, 2009 and attended classes upto 23.09.2009 and she had filed an application for refund on 25.08.2010. Resultantly, the writ petition was dismissed and it was also not a case of deposit of advance fee.

In similar circumstances, this Court in ***CWP No. 17763 of 2013, Vinod Kumar and another vs. Manav Rachna Dental College, Faridabad and others*** decided on 07.12.2016 allowed the writ petition whereby, the fees had been charged in advance for the 3rd and 4th year of the BDS course in spite of the fact that the students had not been able to clear their examination of the earlier years and had not progressed to the subsequent years in question of which the fees had been charged. They had never attended classes of the subsequent years and on account of the statutory regulations that the students who do not clear first exam in all the subjects within three years it had led to the cancellation of their admission and in spite of that the college had charged advance fees. Resultantly, directions had been issued for refund of fees for the 3rd and 4th years.

Accordingly, keeping in view the fact that neither any bond had been executed by the student that she is bound to pay the fees for the whole course, the stand of the respondents cannot be justified. Accordingly, the writ petition is allowed. The security deposit of ₹15,000/- as well as the 5th semester fee of ₹61,150/- be refunded to the petitioner within a period of 1 month from the date of receipt of certified copy of the judgment. In case the same is not done, the petitioner will be entitled for interest @ 8% per annum

from the date the amount was deposited i.e. 12.04.2014 till date the payment is made.

20.12.2016
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No

