

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2017

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition No.1452 of 2016

1. P.M.Nivedha
2. M.Subhashini
3. R.Rahavi

..Petitioners

Vs.

1.Rajah Muthiah Medical College
Rep. by its Registrar
Annamalai Nagar, Chidambaram,
Cuddalore District.

2.Annamalai University
Rep. by its Administrator
Annamalai Nagar,
Chidambaram,
Cuddalore District.

..Respondents

Prayer :Writ petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, to direct the respondents to refund Rs.9,39,000/- and Rs.5,00,000/- collected by the respondents towards balance tuition fee and penalty as named Bond Breakage Fee respectively, to each of the petitioner.

For Petitioners : Mr.V.V.Sathya

For Respondents : Mr.K.Satish Kumar,
learned standing counsel,
For R1 to R2.

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O R D E R

The petitioners seek for a mandamus directing the respondents to refund Rs.9,39,000/- and Rs.5,00,000/- collected by the respondents towards balance tuition fee and penalty named as Bond Breakage Fee respectively, to each of the petitioners.

2. The case of the petitioners is as follows:-

2.1. After successfully completing +2 course during the academic year 2014-2015, they applied to the respondents for admission to MBBS course in their University. However, the petitioners were allotted BDS course and they have paid the annual fee of Rs.3,50,000/- each, for the first year BDS course for the academic year 2014-2015 and joined the said course also. As they were desirous of studying only MBBS course, they applied for MBBS course before the Director of Medical Education for the academic year 2015-2016. Considering their marks status, they were selected and admitted in MBBS course for the academic year 2015-2016 in three different private medical colleges. When the petitioners approached the respondents to hand over their transfer certificate, marks lists and other records so as to facilitate them to join the MBBS course, the respondents demanded that they should pay the entire tuition fee for the remaining two years of BDS course and thus directed to pay a sum of Rs.9,30,000/- each towards the balance tuition fee. They have also demanded each of the petitioners to pay a sum of Rs.5,00,000/- each as penalty which was named as "Bond Breakage Fee". Since the petitioners have to join the MBBS course immediately, out of compulsion and force, they paid the balance tuition fee of Rs.9,30,000/- and Rs.5,00,000/- each as penalty named as "Bond Breakage Fee". Such collection of balance tuition fee and penalty by the respondents is illegal, arbitrary and un-sustainable in law. Hence, the present writ petition is filed seeking for refund of such fee collected by the respondents.

3. The respondents filed a counter affidavit, wherein, it is stated as follows:

The MBBS, BDS, MD, MS and MDS courses offered by the respondent / University are self supporting courses. Thus, the fee has been fixed taking into account the overall infrastructure facilities made available to the students. The costs of these services met out from the funds of faculty of medicine and dentistry itself. The Government did not contribute any fund for running the self-supporting courses and so the fees so collected was absolutely essential to sustain the continuity of the above said courses. As the said courses are self-supporting courses, it is necessary to raise adequate resources through fees. By accepting the offer of admission provided by this University, the petitioners themselves admitted to the rules and regulations of the University. It has been clearly mentioned in the prospectus that the bond has to be executed at the time of admission in the format shown in Annexure II of the prospectus. The petitioners have gone through the same and executed such bond at the the time of joining. The petitioners joined the BDS course after accepting every clause of the prospectus issued by the University for the

academic year 2014-2015 including the fee structure. Therefore, the petitioners cannot claim immunity or exemption from the procedures being adopted by the University, having accepted the prospectus and completed the first year course. They cannot now say that the relevant clauses made in the prospectus are impermissible. The prospectus clearly states that the petitioners have to pay the penalty amount in the event of discontinuing the course after 30th September 2014, in addition to forfeiture of tuition fees as stated in Item No.12 of the prospectus. The vacancy caused on the discontinuance of the petitioners after a year of study cannot be filled up and this leads to the revenue loss to the institution running under the self financing scheme.

4. An additional counter affidavit is filed by the respondents / University, wherein it is clearly stated that the vacancy due to the petitioners' discontinuation got lapsed and no one was admitted, since they discontinued the course after completion of their 1st year. It is further stated in the counter affidavit that for the very same academic year 2014-2015, out of 100 seats, 13 students, including the petitioners, have discontinued their course after the cut of date and all the 13 vacancies got lapsed and no one was admitted in those vacancies. It is further stated that the respondents / University collected entire course fees with bond fees from all the 13 discontinued students as per the prospectus.

5. The learned counsel for the petitioners after inviting this Court's attention to the prospectus submitted that the action of the respondents in collecting the Bond Breakage Fee of Rs.5,00,000/- is totally un-sustainable, since such payment is not contemplated under clause 12 of the prospectus. In other words, it is the contention of the learned counsel that when clause 12(iii) only deals with the non-refundable terms in respect of tuition fee, the petitioners are entitled to get back the Bond Breakage Fee of Rs.5,00,000/- atleast.

6. Per contra, the learned counsel for the University submitted that when the prospectus is very clear in respect of the condition of non-refund of the tuition fee, if a candidate discontinues in the middle of the programme and that the prospectus also specifically mandates the execution of the agreement bond by the selected petitioners as found in clause 8 (k), the petitioners having accepted the terms of the prospectus and executed the bond as stated supra, are not entitled to seek for refund, especially when the institution was running as self financing institution only at the relevant point of time. He further submitted that when the resultant vacancies were not filled up and the same were allowed to get lapsed, it only caused the revenue loss to the University and therefore, the

petitioners are not justified in seeking for refund. The learned counsel for the University in support of his submission relied on a decision of this Court reported in [2012] (1) CWC 798.

7. Heard both sides.

8. It is not in dispute that the petitioners who got admission in BDS course in the respondent University left the said course in the middle of the programme after completion of 1st year, for the purpose of joining MBBS course. It is also not in dispute that the petitioners, at that time of collecting the transfer certificate and other records from the respondents for getting admission into the MBBS course in other institution, paid the balance tuition fee for remaining academic years and also the Bond Breakage Fee of Rs.5,00,000/- each. However, it is stated before this Court that such collection was out of compulsion and force and therefore, the petitioners were left with no other option except to pay those fees for the purpose of getting their certificates. Therefore, they approached this Court and filed the present writ petition seeking for refund of such payment made at that time of receiving the certificates from the respondent University. Hence, the question that would arise is as to whether the petitioners are entitled for refund of such fees paid by them.

9. There is no dispute to the fact that certain clauses referred to in the prospectus issued by the respondent / University for the academic year 2014-2015, deal with the present dispute between the parties. Clause 8(k) of the prospectus which deals with the execution of agreement bond reads as follows:

"8(k). Bond: Candidates selected for admission and his / her parent / guardian will have to execute an Agreement Bond during admission to College as prescribed in the format. Failure to execute the Agreement Bond will lead to cancellation of selection".

10. Clause 12(iii) deals with non-refundable tuition fee to a candidate who discontinues the course in the middle of the programme and the resultant vacancy is not filled up. The said clause reads as follows:

"12(iii). The tuition fee shall not be refunded if a candidate discontinues in the middle of the programme and resultant vacancy is not filled up."

11. Annexure-II of the prospectus is the agreement bond to be executed by the candidates, who got admitted in the MBBS/BDS

course for the academic year 2014-2015. In the said agreement bond, clause 4 specifically contemplates that the candidates who discontinues the course between 25th September and 29th September 2014 are bound by the bond and thereby they shall have to pay a sum of Rs.50,000/- as penalty for breaching the contract and the candidates who discontinues on or after 30th September 2014 shall have to pay a sum of Rs.5,00,000/- as penalty, in addition to forfeiture of tuition fees as stated in Item No.12 of the prospectus. The said clause in the bond reads as follows:

"4. Candidates who discontinue the course between 25th September and 29th September, 2014 are bound by the bond and thereby they shall have to pay a sum of Rs.5,000/- (Rupees fifty thousand only) as penalty for having breached the contract in the bond and the candidates who discontinue the course on or after 30th September, 2014 and in any date of the subsequent years shall have to pay a sum of Rs.5,00,000/- (Rupees Five Lakhs Only) as penalty in addition to forfeiture of tuition fees as stated in item No.12 of the prospectus."

12. It is not in dispute that the petitioners herein have left the course after completion of 1st year. It is also not in dispute that those seats became vacant and were not filled up later by the University and that the same were allowed to get lapsed. There is no dispute to the fact that the said courses offered by the respondents are under the self-financing scheme. The petitioners having accepted the terms of the prospectus and got admitted into the respondent University are bound by the terms of the prospectus. As already referred supra, when clause 12(iii) specifically prohibits the student from seeking for refund of tuition fee once they discontinue the course in the middle of the programme and that the resultant vacancies were also not filled up, the petitioners who come under such category are not entitled to seek for refund of the tuition fee. Likewise, the Bond Breakage Fee paid by the petitioners is also in pursuance of executing the bond to that effect by all these petitioners at the time of getting admission into the BDS course. When clause 4 of the said bond specifically contemplates the payment of Rs.5,00,000/- as penalty in addition of forfeiture of the tuition fee, the petitioners now cannot say before this Court that those fees were collected under force. Needless to say that the petitioners having accepted the terms of the prospectus and got the admission also after executing the bond in such terms as stated supra, there is no question of seeking refund, when they admittedly left the course in the middle of the academic year, thereby allowing those seats to become vacant throughout the programme.

13. At this juncture, it is relevant to note that this Court by an order passed and reported in [2012] (1) CWC 798, refused to grant the relief to the petitioner therein under similar circumstances. It is further seen that a learned Judge of this Court in WP.No.17372 of 2014 dated 06.06.2017 has refused to entertain a similar request made for refund of the tuition fee. Considering all these facts and circumstances, this Court is of the view that the petitioners are not entitled to the relief as sought for in this writ petition. Accordingly, the writ petition fails and the same is dismissed. No costs.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Registrar,
Rajah Muthiah Medical College
Annamalai Nagar, Chidambaram,
Cuddalore District.
- 2.The Administrator,
Annamalai University
Annamalai Nagar,
Chidambaram,
Cuddalore District.

+1cc to MR.M.V.Venкатaseshan, Advocate SR.No.51864
+1cc to Mr.K.Sathish Kumar, Advocate SR.No.51824

WP. No.1452 of 2016

PA(CO)
GN(09/08/2017)

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