

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2018

CORAM:
THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.9318 of 2018

Deivayanai Palaniappan

... Petitioner

vs.

1. Government of India,
represented by its Secretary to the Government,
Ministry of Commerce and Industry,
Udyog Bawan,
New Delhi - 110 001.
 2. University Grants Commission,
Bahadurshah Zafar Marg,
New Delhi - 110 002.
 3. The Deputy Manager,
Footwear Design & Development Institute,
Plot No.E-1, E-2, Footwear Component Park,
7th Main Road, SIPCOT, Irungattukottai,
Sriperumbudur Taluk - 602 117.
- ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the 3rd Respondent herein to refund the sum of Rs.1,62,000/- (Rupees One Lakh Sixty Two Thousand only) paid by the Petitioner towards tuition and transportation fees for her daughter in B.Design Course for 1st and 2nd semester course from 2014-15 with interest at 12% premium.

For Petitioner : Mr.P.Prithivi Chopda,
for M/s.AL.Ganthimathi

For 1st Respondent : Mr.A.Murugan, ACGSC

For 2nd Respondent : Mr.P.R.Gopinathan

For 3rd Respondent : Mr.D.Selvaraju

O R D E R

Petitioner has come up with the present Writ Petition seeking a direction to the 3rd Respondent herein to refund

the sum of Rs.1,62,000/- (Rupees One Lakh Sixty Two Thousand only) paid by her towards tuition and transportation fees for her daughter in B. Design Course for the 1st and 2nd semester from the academic year 2014-15, with interest at 12% premium.

2. The case of the Petitioner is, as under:

2.1. The Petitioner's daughter P.L.Mahalakshmi, who was much interested in doing Fashion Designing Course, came to know of an advertisement by the 3rd Respondent that they are conducting a four-year duration Fashion Designing Course, and that they are affiliated with Mewar University in Rajasthan, which has been established by an Act of State Legislature of Rajasthan as a private University and is empowered to award degrees as specified under Section 22 of UGC Act.

2.2. On such advertisement by the 3rd Respondent, the Petitioner's daughter applied for B.Design (Fashion Design) Course with the 3rd Respondent/Institute, which is stated to be in affiliation with Mewar University. The Petitioner's daughter's name was shortlisted and she secured 1056th rank in FDDI and was called for counselling on 04.07.2014, wherein four campus were shown and one of the campus was the 3rd Respondent. In a bonafide belief that her daughter will be awarded proper degree, the Petitioner made her daughter join B.Design Course with the 3rd Respondent and also paid a sum of Rs.1,37,500/- and Rs.24,500/- towards transportation for the 1st and 2nd semester.

2.3. After joining the course and after completing the 1st semester, the Petitioner came to know that the 3rd Respondent is not affiliated with any University and no valid degree will be given to her daughter by Mewar University. Immediately, the Petitioner made a representation to all the Respondents herein seeking information under the Right to Information Act, as to whether the 3rd Respondent is affiliated with Mewar University and whether the Degree awarded by the said University will be valid.

2.4. After repeated requests made by the Petitioner under the Right to Information Act, ultimately on 02.02.2016, the 2nd Respondent herein informed the Petitioner that Mewar University has been established by an Act of State Legislature of Rajasthan as a private University and is empowered to award Degrees as specified

under Section 22 of UGC Act through its main campus in regular mode with approval of statutory bodies/councils, wherever it is required. Further, it was informed that Mewar University is not authorized to open Study Centre/Campus Centre beyond the territorial jurisdiction of the State as per the judgment of this Court and further the University cannot open its Centres even within the State as per UGC Regulations, 2003 without the approval of UGC. Further, it was informed that the UGC has not granted any approval to the University to open campus/study centre.

2.5. The Petitioner came to know that the 3rd Respondent had given false promises stating that they will be awarding degrees from Mewar University and hence, immediately her daughter stopped doing the Course, since that it will be a waste of time and money, and, she cannot get a valid degree. Immediately, the Petitioner made a representation on 13.02.2016 to the 3rd Respondent and stated that her daughter will not be doing the Course from the 3rd semester and requested to refund the sum of Rs.1,62,000/- which has been paid to them.

2.6. As there was no reply from the Respondents, the Petitioner made representations on 23.02.2016 and 15.03.2016 to the 1st Respondent. One of her representations was forwarded by the 1st Respondent to the 3rd Respondent for suitable action. Even thereafter, there was no reply from any of the Respondents. Hence, the Petitioner again made a representation on 13.07.2016 and the 3rd Respondent informed the Petitioner that they are in receipt of the matter. As per the available records, the Petitioner's daughter has not been attending classes from August 2015 and no written intimation was given till 18.03.2016 and hence, the Petitioner was requested to visit Chennai Campus and ensure the process for clearance and fee refund. The Petitioner again wrote to the 1st Respondent on 31.08.2016 for refund of fees.

2.7. Pursuant thereto, the Petitioner received a reply from the 1st Respondent on 07.12.2016 stating that the Petitioner has not submitted any request for withdrawal at the respective campus and her request for withdrawal once submitted will be considered after fulfillment of clearance formalities from her respective campus.

2.8. Thereafter, the Petitioner went to the 3rd Respondent campus and obtained a Certificate that she was a bonafide student of the Institute and she completed one year full time in Fashion Design Course Session (2014-18) from that Institute and she also submitted a letter to the 3rd Respondent requesting for refund of fees and also obtained No Due Certificate from the Department and

submitted to the 3rd Respondent. The same was received by the 3rd Respondent, counter-signed by all the Departments and pending for consideration till date. The Petitioner has submitted such letter on 13.08.2017 and also a reminder letter on 29.01.2018. However, till date, there is no response from the Respondents as regards refund of fees. Since the Petitioner is not able to get refund of fees, despite repeated representations, she is before this Court.

3. The 2nd Respondent/University Grants Commission has filed counter affidavit stating that the 3rd Respondent/Footwear Design & Development Institute is an Institution of National importance declared by the Act of Parliament. One of the campuses is Footwear Design and Development Institute, Irungattukottai, Kancheepuram, Tamil Nadu. Before the 3rd Respondent/Institute was declared as an Institution of National importance, students were admitted in FDDI, Noida and its campuses, under the enrolment of Mewar University. It is further stated by the 2nd Respondent that the Degrees awarded to the students admitted in these campuses including Footwear Design and Development Institute, Irungattukottai, Kancheepuram, Tamil Nadu were not recognized by UGC, as Mewar University was not empowered to award degrees to the students studying outside their campuses. Moreover, Mewar University cannot affiliate any Institute/College.

3.1. The 2nd Respondent, has further stated that if a student chooses to withdraw from the Course of study in which he/she is enrolled, the Institution concerned shall follow the following four-tier system for the refund of fees remitted by the student.

S.No .	Percentage of refund of aggregate fees*	Point of time when notice of withdrawal of admission is served to HEI
1	100%	15 days before the formally-notified last date of admission
2	80%	Not more than 15 days after the formally-notified last date of admission
3	50%	More than 15 days but less than 30 days after formally-notified last date of admission
4	00%	More than 30 days after formally-notified last date of admission

*(inclusive of course fees and non-tuition fees, but exclusive of caution money and security deposit)

In case of S.No.1 in the table above, the HEI concerned shall deduct an amount not more than 10% of the aggregate fees as processing charges from the refundable amount and Fees shall be refunded by all HEIs to an eligible student within fifteen days from the date of receiving a written application from him/her in this regard.

3.2. The above Notification issued by the 2nd Respondent is statutorily applicable and binding to all the Undergraduate, Post-graduate and Research Programmes run by all the Statutory Universities, recognized by the 2nd Respondent under Section 2(f) of the UGC Act, 1956, together with all Colleges under their affiliating domain and also Institutions declared as Deemed to be Universities under Section 3 of the UGC Act, 1956.

4. The 3rd Respondent/Footwear Design & Development Institute has also filed counter affidavit, to the following effect:

4.1. U.G.C. raised certain objections on the MOU between FDDI and Mewar University and UGC also asked to terminate the said MOU on 21.05.2015. As guided by UGC, FDDI terminated the MOU with Mewar University on 28.05.2015. In order to protect the interest of the students, who joined in the Institute for various Degree programmes, FDDI moved to Union Government of India, through Ministry of Commerce and Industries, under which, the Institution is run, for conferment of status of "Institution of National Importance" and the same had been conferred vide the FDDI Act, 2017 passed in the Parliament.

4.2. The Petitioner's daughter had attended Classes for 1st and 2nd semester only, but did not attend the Course from the 3rd semester, i.e. since August 2015 and did not make any request for discontinuing the Course from Irrungattukottai Campus of FDDI. In June 2016, the Petitioner had given a request to the NOIDA Office (Head Office) of the FDDI for discontinuation of the Course and sought for refund of fees. Immediately, the Head Office, Noida, vide letter dated 13.07.2016, informed the Petitioner to initiate the process for clearance and Fee Refund (as per Policy) at Irungattukottai Campus of FDDI.

4.3. The Petitioner again made a request to Noida Office for the return of the entire fees and other amenity charges like transportation, though she was informed that her daughter can get the Degree. Instead of giving a letter to the 3rd Respondent/Institute directly, the

Petitioner, through the Consumer Welfare Council, West Mambalam, Chennai, sent a letter to the Head Office asking for refund of fees paid by her. In reply, vide letter dated 10.08.2016, the Head Office of FDDI, Noida, stated that the issue of awarding degree is subjudice in W.P. (Civil) No.9012 of 2015 before the Delhi High Court, and the student can continue her Course and her interest will be protected and she can get a valid Degree. Further, it is stated that if a student voluntarily discontinues the Course, she can get refund of Rs.10,000/- security deposit only, after getting clearance from the concerned Department.

4.4. Even after receipt of the communication from the Head Office, the Petitioner did not give any request with no due clearance from the Department to the campus-in-charge. She has submitted a letter of request to the Campus In-charge at Irrungattukottai only on 29.01.2018. Immediately, the 3rd Respondent had asked the Petitioner to get the refund of security deposit of Rs.10,000/-, whereas the Petitioner refused to receive the same stating that the entire amount of Rs.1,62,000/-, i.e. the tuition fees, amenity charges and transportation charges, etc. has to be refunded. According to the 3rd Respondent, refund of the entire amount is not permissible, since the student had undergone the Course and availed all the amenities.

4.5. It is stated that the Petitioner's daughter had discontinued the course voluntarily for her own reasons without even making any request to the Institution for withdrawing herself from the Course. Further, having underwent the Course for 1st and 2nd semesters and availed all the amenities from the Institute, the Petitioner's daughter is only entitled for refund of security deposit of Rs.10,000/-.

5. Heard the learned counsel on either side and perused the material documents available on record.

6. Admittedly, the Petitioner has joined B. Design (Fashion Design) Course in the 3rd Respondent/Institute and discontinued the Course as early as in 2016 itself, before the Footwear Design and Development Institute Act, 2017 came into force. It is seen that the 3rd Respondent/FDDI has admitted in their counter that as per Section 37(c) of the Act, any student, who joined classes of the existing Institute on or after the academic year 2012-13 or completed the Course on or after the academic year 2013-2014, shall, for the purpose of clause (iii) of Section 7, be deemed to have pursued a course of study in the existing

Institute, if such student has not already been awarded Degree or Diploma for the same course of study.

7. For better appreciation of the case, relevant provisions of the Footwear Design and Development Institute Act, 2017 (in short '2017 Act') are extracted hereunder:

37. Notwithstanding anything contained in this Act-

(a) the Governing Council of the Society functioning as such, immediately before the commencement of this Act shall continue to so function until a new Governing Council is constituted for the Institute under this Act, but on the constitution of a new Governing Council under this Act, the members of the Governing Council holding office before such constitution shall cease to hold office;

(b) until the first Statutes and the Ordinances are made under this Act, the rules and regulations, instructions and guidelines of the Society as in force, immediately before the commencement of this Act, shall continue to apply to the Institute insofar as they are not inconsistent with the provisions of this Act; and

(c) any student who joined classes of the existing Institute on or after the academic year 2012-2013 or completed the course on or after the academic year 2013-2014 shall for the purposes of clause (iii) of Section 7, be deemed to have pursued a course of study in the existing Institute if such student has not already been awarded degree or diploma for the same course of study.

8. It is further seen that the validity of the said provisions has been upheld by the High Court of Delhi in the final order dated 05.09.2017 passed in W.P.(C) No.9012 of 2015. Relevant portion of the said order is extracted hereunder:

"Learned counsel for respondents points out that Footwear Design and Development Institute Act, 2017 has been notified in the Gazette on 05.08.2017.

The Petitioner Institute have the power to grant degrees to its student; this would apply retrospectively in terms of Section 37(c) of the said Act. This satisfied the prayer made in the petition."

9. It is admitted by the 2nd Respondent/UGC that Mewar University cannot affiliate any Institute/College. Though the 3rd Respondent/FDDI has the power to grant Degrees to its students, the Petitioner's daughter, unwilling to take risk, has discontinued B.Design Course, which she has been pursuing with the 3rd Respondent/Institute, in 2016 itself, i.e. after attending 1st and 2nd semesters, before coming into force of Footwear Design and Development Institute Act, 2017.

10. Strictly speaking, the amount should have been refunded to the Petitioner's daughter before the enactment of 2017 Act. As the demand by the Petitioner's daughter was prior to 2017 Act, without waiting for the legislation to come into force, the 3rd Respondent should have paid the amount. Trying to take shelter under Section 37 of the 2017 Act at a later point of time, is not justified. This Court would have appreciated and accepted the contention of the 3rd Respondent, if the Petitioner's daughter had made a request for refund of money after the 2017 Act came into force. Section 37 of the 2017 Act protects a person, who has pursued the Course and obtained the Degree after the academic year 2012-2013. Those persons have taken risk with the hope that there will be a legislation protecting their Degree. However, in the present case, the Petitioner's daughter did not want to take risk. Hence, the act of the Petitioner's daughter in seeking refund prior to the legislation, is justified.

11. Now that Footwear Design and Development Institute Act, 2017 is in force, the four-tier system for the refund of fees to a student, prescribed by the 2nd Respondent/UGC, may not be applicable to the case on hand and the Petitioner's daughter will be entitled to refund of entire amount of fees and the same shall be paid by the 3rd Respondent/Institute to the Petitioner's daughter, within a period of 45 days from the date of receipt of a copy of this order.

The Writ Petition is disposed of with the above direction and observation. No costs.

Sd/-
Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

(aeb)

To:

1. Government of India,
represented by its Secretary to the Government,
Ministry of Commerce and Industry,
Udyog Bawan, New Delhi - 110 001.
2. University Grants Commission,
Bahadurshah Zafar Marg,
New Delhi - 110 002

+1 CC TO MR.AL.GANTHIMATHI Advocate SR.NO. 50491

+2 CC TO MR.D.SELVARAJU Advocate SR.NO. 50932

+1 CC TO MR.B.RABU MANOHAR Advocate SR.NO. 50231

Order in
W.P.No.9318 of 2018

सत्यमेव जयते

NA (CO)
ASK(13/08/2018)

WEB COPY