

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2018

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.29359 of 2017

Sivaraj
rep. by his natural guardian / father
Shankar

... Petitioner

Vs

1.The Vice Chancellor,
Anna University,
Sardar Patel Road,
Guindy, Chennai - 600 025.

2.The Secretary,
Directorate of Technical Education,
No.53, Sardar Patel Road,
Guindy, Chennai - 600 025.

3.The Dean,
Anna University,
Regional Campus,
Maruthamalai Main Road,
Navavoor, Coimbatore - 641 046.

4.The Principal,
V.S.B. College of Engineering Technical Campus,
Coimbatore to Pollachi Road NH-209,
Ealur Pirivu, Solavampalayam Village,
Kinathukadavu, Coimbatore - 642 109.

Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, to direct the respondents 1 to 3 to direct the fourth respondent to return the petitioner's transfer certificate issued by his last studied school or transfer certificate of the fourth respondent's college showing as discontinued the course of B.E. Computer Science.

For Petitioner	: Mr.L.Mouli
For R1 & R3	: Mr.M.Vijayakumar
For R2	: Mr.C.Munusamy, SGP (Edn)
For R4	: Mr.V.G.Suresh Kumar

ORDER

The petitioner has come up with this writ petition for a mandamus, directing the respondents 1 to 3 to instruct the fourth respondent either to return his transfer certificate issued by the last studied school or issue a transfer certificate showing as discontinued the course of B.E. Computer Science.

2.The case of the petitioner in brief is that he joined the fourth respondent College in B.E. Computer Science under Government quota for the academic year 2017-18. At that time, he submitted all the original certificates and paid the necessary fees. He attended the classes from 21.08.2017 to 19.09.2017. Thereafter, he did not continue his course from 20.09.2017 onwards, as there was no proper facilities available in the fourth respondent college. On 22.09.2017, the petitioner approached the fourth respondent with a written request, to return all the original certificates produced by him at the time of admission. Finding no response, he sent a legal notice dated 28.09.2017 to the fourth respondent requesting to return of the certificates. On receipt of the same, the fourth respondent returned 10th and 12th mark sheets and community certificate, however, they did not return the transfer certificate and asked the petitioner to remit the three years tuition fees for return of the same. In the mean time, the petitioner joined S.V.S. College of Engineering, Coimbatore in B.E. Computer Science. Since he is hailing from the poor family and he is unable to pay the amount as demanded by the fourth respondent, he sent a representation to the respondents 1 to 3 requesting to direct the fourth respondent either to return the transfer certificate issued by his last studied school or to issue transfer certificate showing him as discontinued the course. However, the said representation has not been considered by the respondents. Hence, this writ petition.

3.The learned counsel for the petitioner, referring to the public notice issued by the All India Council for Technical Education (AICTE), submitted that the fourth respondent has no authority to retain the certificates produced by the petitioner at the time of admission. In support of the claim made by the petitioner, the learned counsel placed reliance on the decision of this Court in S.Muthukamatchi v. The Director of Technical Education, Anna University [2013 (1) CTC 595], wherein, this Court held that "the original certificates of the candidate cannot be retained by the institution as if it is a fixed deposit receipt on which the banks claim general lien in terms of Section 171 of the Contract Act". Therefore, the learned

counsel submitted that the fourth respondent may be directed to return the transfer certificate to the petitioner.

4.Reiterating the averments made in the counter affidavit, the learned counsel for the fourth respondent submitted that in the event of the petitioner being permitted to leave the college, the vacancy caused cannot be filled up till the duration of the entire course and since the fourth respondent college is a self-financing college, run on the fees collected from the students, the petitioner has to pay the entire course fees and in that event only, transfer certificate would be given to him. The learned counsel further placed reliance upon the decision in *Islamic Academy of Education v. The State of Karnataka* [(2003) 6 SCC 697], wherein, the Honble Supreme Court recognized the rights of the private institutions to charge fees for the entire course and required a student leaving the institutions in midstream to pay the fees for the remaining period.

5.Heard the learned standing counsel for the respondents 1 and 3 and the learned Special Government Pleader for the second respondent. According to them, as per the public notice issued by the AICTE, the fourth respondent college cannot retain the original certificates and demand fee for the subsequent years from the students cancelling their admission at any point of time.

6.I have considered the rival submissions and perused the materials placed before this Court.

7.Concededly, the petitioner joined the fourth respondent college in B.E. Computer Science under the Government quota for the academic year 2017-18 and attended the classes from 21.08.2017 to 19.09.2017. Due to some reasons, he did not continue his course in the fourth respondent college and sought to return the original certificates produced by him at the time of admission. Though the fourth respondent returned 10th and 12th mark sheets and community certificate to the petitioner, they retained the transfer certificate and insisted the petitioner to pay the entire course fee for return of the same.

8.It is the specific plea of the petitioner that the fourth respondent college has no authority to retain the certificates produced by the petitioner at the time of admission, by demanding the entire course fee, whereas, it is the stand of the fourth respondent that due to discontinuance of the course by the petitioner in midway, the college would incur loss by his seat remaining vacant during the remaining period of the course and hence, they insisted the petitioner to pay the entire course

fee for return of the transfer certificate. In support of their claim, the fourth respondent relied on the decision of the Supreme Court in Islamic Academy case (cited supra).

9. On a perusal of the records, it could be seen that in response to the petitioner's letter dated 04.11.2017, the AICTE has sent a communication dated 21.11.2017 to the fourth respondent college, wherein, it has been clearly indicated that as per the public notice dated 25.08.2017, it would not be permissible for institute to retain original certificates and demand fee for the subsequent years from the students cancelling their admission at any point of time.

10. Further, in the decision in S. Muthukamatchi case (cited supra), relied on by the petitioner, this Court, under similar circumstances, allowed the writ petition, directing the fourth respondent therein to return all the original certificates deposited by the petitioner therein forthwith. While doing so, this Court held as follows:

"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 lien on the certificates of the petitioner's daughter".

11. This Court is of the opinion that the fourth respondent college cannot trace any sustenance from the decision of the Supreme Court to withhold the transfer certificate on the ground that the entire course fee was not paid by the petitioner. In Islamic Academy case, it was stated that an educational institution can only charge prescribed fees for one semester/year and if an institution feels that any 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, whereas, in the present case, there is no such bond/bank guarantee executed by the petitioner. Therefore, the fourth respondent college cannot derive any benefit from the ratio laid down therein.

12. In such view of the matter, this Court holds that the fourth respondent college has no right to retain the original certificates of the petitioner and they cannot demand the fee, for which, the petitioner did not study. Keeping the original certificates and insisting for payment of dues would amount to a sort of unfair trade practise and also deficiency in service. Even if there is any fee to be paid by the petitioner, it can be recovered by the fourth respondent by instituting appropriate

proceedings. The return of certificates has nothing to do with the payment of balance of fee.

13.In the result, this writ petition is allowed by directing the fourth respondent college to issue the transfer certificate and other original certificates, if any, withheld by them forthwith. No costs.

Sd/-
Assistant Registrar(CS IX)

//True copy//

Sub Assistant Registrar

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To

- 1.The Vice Chancellor,
Anna University,
Sardar Patel Road,
Guindy, Chennai - 600 025.
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+1cc to Mr.M.Vijaya Kumar, Advocate SR.No.6246
+1cc to Government Pleader SR.No.6375

W.P.No.29359 of 2017

RSY(CO)
GN(16/03/2018)