

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2018

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P.No.17042 of 2018

Dr. Jeby Jacob ... Petitioner

Versus

1.State of Tamil Nadu

Rep by its Secretary

Health and family Welfare Department

Fort St. George

Chennai-600 009

2.Medical Council of India

Rep. by its Secretary

Pocket 14, Sector 8

Dwaraka Phase I

New Delhi-110 077

3.Medical Counselling Committee (MCC)

Rep. by its Director General

Ministry of Health and Family Welfare

NirmanBhavan

New Delhi

4.SRM Medical College Hospital and

Research Centre

SRM Nagar, Potheri

Kattankulathur, Kancheepuram District

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus directing the fourth respondent herein to forthwith refund the sum of Rs.2,00,000/- deducted from the petitioner's tuition fees as processing charges for rendering him an admission.

For Petitioner : Mr.R.Krishna Prasad

for M/s. Sarvabhauman and Associates

For R1 : Mrs. V.Annalakshmi

Government Advocate

For R2 : Mr. V.P.Raman

O R D E R

The petitioner had completed his Bachelor's Degree in medicine in September 2010 and decided to pursue his Masters Degree in medicine and successfully completed Post Graduation in the year 2016.

2. The petitioner has decided to pursue Doctorate in medicine and therefore, appeared for examination in NEET 2017 in the Super Speciality Category. Thereafter, petitioner has appeared for first round of counselling conducted by the third respondent on 20.08.2017. In the first round of counselling, the petitioner was provisionally allotted D.M. Nephrology in the fourth respondent college. The petitioner has promptly approached the fourth respondent and paid a sum of Rs. 20,00,000/- (Rupees Twenty Lakhs only) towards tuition fees and other fees by way of Demand Draft dated 18.08.2017.

3. It is not in dispute that as per the norms, the petitioner can attend three rounds of counselling conducted by the third respondent and choose even a better Course or College. The petitioner attended the second round of counselling held on 11.09.2017 conducted by the third respondent and was allotted D.M Neurology in Madras Medical College, Chennai. After securing admission in Madras Medical College, the petitioner seems to have approached the fourth respondent for return of the amount, the petitioner had paid towards tuition fees and other fees. It is also stated by the petitioner that the petitioner had surrendered the original certificates to the fourth respondent. It is stated that the fourth respondent however refunded only a sum of Rs.18,00,000/- after deducting a sum of Rs.2,00,000/- towards processing fees. The petitioner stated in the affidavit that he protested for deduction of such huge amount. The petitioner has further stated that the fourth respondent was holding the certificates and that therefore he was forced to sign several documents and agree to receive only a sum of Rs.18,00,000/-.

4. The case of the petitioner is that as per guidelines, a candidate is permitted to attend up to third round of counselling conducted by third respondent in order to get the preferred course and to choose the college. Even though the petitioner was allotted in the fourth respondent college in the first round of counselling, the process of admission is not over and that, the final allotment of any candidate, who appeared in the counselling, will be on the basis of the final round of counselling conducted by third respondent. The petitioner stated that the other colleges have not deducted more than ten thousand rupees towards processing fee and that the deduction of Rs.2,00,000/- (Rupees Two Lakhs only) by the fourth respondent towards processing fee is not only excess but also against the University Grands Commission regulations.

5. The petitioner has relied upon the University Grand Commission notification dated 23.04.2007 wherein it has been categorically stated as follows.

□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 a student/candidate withdrawing before the starting of the course, the wait listed candidates should be given admission against the vacant seat. The entire fee collected from the student, after a deduction of the processing fee or not more than Rs.1000/- (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.□

6. The regulation, which were framed in D.O.No.F.1-3/2007(CPP-II) by University Grands Commission dated on 23.04.2007 was reiterated by the University Grands Commission by a subsequent communication dated 11.01.2016. All the institutions are required to abide by UGC notification in the public notice dated 23.04.2007 and to ensure compliance of these instructions by the Universities and the Institutions affiliated to the universities. This communication was addressed to the Vice chancellors of the universities.

7. The learned counsel for the petitioner further relied upon the University Grands Commission notification dated 11.07.2016. Clause 6 of the notification is relating to the admission and fees structure. Clause 6(2)(a) is relevant to this case and hence, it is extracted below:

□6.2 a) In case the student informs of his intention not to join the institution at least 7 days before the start of the academic session, then 100% of the fees collected minus the processing charges, which shall not be more than Rs.10,000/- or any other amount fixed by UGC. The same shall be refunded within 15 days of receipt of information from the student.□

8. By referring to Clause 6(2) of the notification dated 11.07.2016, the learned counsel for the petitioner reiterated that the fourth respondent cannot deduct more than thousand rupees as it was stated in the first notification in the year 2007. The learned counsel for the petitioner also relied upon the order of the learned Single Judge of this Court in W.P.No.5559 of 2016 dated 18.07.2016 in the case of Dr.Major K.Kamalanathan vs. University Grants commission and others. After referring to the UGC regulations and similar conditions notified in the prospectus of the institutions concerned, this Court has considered the issue whether the University or the Institution can have a different policy than the circular issued by the UGC. It has been categorically held that the instructions in the notification of the University Grant Commission would prevail over the terms and conditions notified in the prospectus of the deemed University. The Writ petition filed by the student was allowed with the direction to the respondents to refund the entire fees as per the notification issued by UGC.

9. The learned counsel for the fourth respondent has relied upon the notification dated Nil December 2016 of UGC on remittance and refund of fees of other student centric issues. As per the notification relied upon by the learned counsel for the fourth respondent, clauses 4.2.3 to 4.2.4 are relevant to this case and they are extracted as below.

□4.2.3. If a student chooses to withdraw from the program 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.

Sl.

No

Percentage of Refund of

Aggregate fees

Point of time when notice of withdrawal of admission is served to HET

(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)

4.2.4. In case of (1) in the table above, the HET concerned shall deduct an amount not more than 10% of the aggregate fees as processing charges from the refundable amount.□

10. Apparently, clause 4.2.3., in the notification is contrary to Clause 4.2.4. It also to be mentioned that this notification appears to be applicable in case where the students choose to withdraw from the programme of study, in which he/she is enrolled. It is not made clear from the said notification that it is intended to be made applicable even to a case where provisional allotment was made during the first phase of counselling. It is seen that the intention behind the notification is to prevent various coercive and shady dealings by several institutions with profit motive.

11. It is not in dispute that the petitioner was originally allowed in the fourth respondent college in D.M. Nephrology and the fees required to be paid by the petitioner was only Rs.20,00,000/-. As per the norms, the petitioner is entitled to participate in the second and third round of counselling and the final decision as to the admission of candidate to a course is determined only when the petitioner makes a decision before the final phase of counselling. When such is the position, this Court is unable to see any reason to justify the conduct of the fourth respondent in deducting a sum of Rs.2,00,000/- on the basis of a UGC notification, which is not applicable to a case of this nature. The notification produced by fourth respondent is neither dated nor shown to have been notified. Even assuming that such a notification was issued in December 2016, the same cannot be made applicable to the present case where the students choose another college in the second round of counselling as permissible.

12. It is not as if the fourth respondent did not get another candidate in the place of the petitioner during counselling and that, the fourth respondent could not utilise the seat. The UGC (Institutions deemed to be Universities) Regulations 2016 was framed in exercise of powers under sub section (1) of the University Grant Commissioner Act 1956. Any other notification even if it is contrary to the statutory notification cannot be relied upon and the notification relied upon by the fourth respondent cannot have any legal sanction to deny the benefit to the candidate as per the statutory notification issued by the University Grants Commission dated 11.07.2016 which is to regulate the Institutions as deemed to be Universities.

13. The petitioner states that the notification, dated 23.04.2007 is in force and that therefore, the petitioner is entitled to get the entire amount less a sum of Rs.1,000/- , which can be deducted towards processing fees. Even as per the notification dated 11.07.2016, a candidate is entitled to get refund of 100% of the fees minus the processing charges, which shall not be more than Rs.10,000/-or any other amount fixed by UGC. Though the amount fixed by the UGC fixed as per notification dated 23.04.2007 is only at Rs.1,000/-,the deduction upto Rs.10,000/- is permissible as per 2016 notification and the petitioner is entitled to a sum of Rs.1,90,000/-. This Court is also able to see that the conduct of the fourth respondent in this case is not appropriate or reasonable to deny the benefit of the UGC regulations to the petitioner.

14. The learned counsel for the fourth respondent submitted that the petitioner has approached this Court with the delay of 1 1/2 years and hence, this Writ Petition is liable to be dismissed on the ground of delay and laches. He further submitted that the petitioner has not impleaded UGC as a

party to this Writ Petition and that, therefore the Writ Petition is not maintainable as the issue involved is regarding interpretation of the notification issued by the UGC.

15. This Court is unable to accept the contention of the learned counsel for the fourth respondent. The submission of learned counsel for the fourth respondent regarding the delay in filing the Writ Petition can be accepted by this Court only to deny interest for the delay in payment of refund of the amount claimed by the petitioner. Since no relief is sought for against the UGC, this Court find no reason to doubt the maintainability of the Writ Petition without impleading UGC as a party to this Writ Petition.

16. In the result, this Writ Petition is allowed. The fourth respondent is directed to refund the sum of Rs.1,90,000/- to the petitioner within a period of two weeks from the date of receipt of a copy of this order.

26.09.2018

Speaking/ Non-speaking order

Internet: Yes/No

Index : Yes / No

mpa/vsg

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S.S.SUNDAR, J.
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