

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2019

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.11991 of 2018

S.Alagurajan

.. Petitioner

Vs.

1. The Secretary,
University Grants Commission (UGC),
Bahadur Shah Zafar Marg,
New Delhi-110 002.
 2. The Registrar,
Annamalai University,
Annamalai Nagar-608 002.
 3. The Director,
Rajah Muthiah Dental College,
Annamalai University,
Annamalai Nagar-608 002.
 4. The Principal,
Rajah Muthiah Dental College,
Annamalai University,
Annamalai Nagar-608 002.
- .. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondents 2 to 4 to refund a sum of Rs.12,39,000/- (Twelve Lakhs Thirty Nine Thousand only) paid by the petitioner towards tuition and other fees for 2nd, 3rd and 4th year with interest at the rate of 12% till the date of realization.

For Petitioner : Mr.V.Srinivasan

For Respondents : Mr.P.R.Gopinathan,
Standing Counsel for R1

Mr.K.Sathishkumar for RR 2 to 4

O R D E R

Seeking a direction to the respondents 2 to 4 to refund a sum of Rs.12,39,000/- (Twelve Lakhs Thirty Nine Thousand only) paid by him towards tuition and other fees for 2nd, 3rd and 4th year for his daughter's B.D.S. Course, with interest at the rate of 12% till the date of realization, the petitioner is before this Court.

2. The writ petitioner's daughter was a M.B.B.S. aspirant and appeared for NEET Examination UG 2016 and also got qualified. While she was waiting for her counseling call letter, she received the call letter from the second respondent on 08.07.2016 for admission to B.D.S. Course. In the counseling session, she was given admission at the fourth respondent College for B.D.S. course. She had informed the second respondent that she was intending to go for M.B.B.S. course and as the counseling for M.B.B.S. had not commenced, she may be given time till the completion of the M.B.B.S. counseling, but the second respondent rejected her request and instructed her to accept B.D.S. seat immediately, failing which, the same would be allotted to the next candidate in line. Accordingly, the fourth respondent had issued a provisional admission slip on 18.07.2016 and collected a sum of Rs.3,50,370/- towards first year fees and the petitioner's daughter also joined the fourth respondent college on 18.07.2016.

3. While so, on 24.09.2016, a call letter from the Admission Committee of Chettinad Academy of Research and Education for M.B.B.S. Course was received by the petitioner's daughter and the counseling was held on 27.09.2016. She also secured a seat in the M.B.B.S. Course and made payment of Rs.15,00,000/- towards first year tuition fees. After joining the M.B.B.S. Course, she discontinued the B.D.S. Course, she had joined earlier. The last class she attended in B.D.S. was on 01.10.2016.

4. After discontinuation, the petitioner's daughter approached the respondents to handover the Transfer Certificate (TC), Mark Lists and other records to facilitate her to join the M.B.B.S. Course. Instead of handing over the above mentioned documents, the respondents 2 to 4 demanded the payment of entire tuition fees for the remaining three years (2nd, 3rd and 4th years) of B.D.S. Course and directed the petitioner to pay a sum of Rs.12,39,000/-. Though the respondents had no right to make the said demand, which is unfair and unjust, as the petitioner's daughter had to join the M.B.B.S. Course immediately, out of compulsion the same was paid being the entire tuition fees, under protest and only after the payment of the entire course fees, the fourth respondent issued the TC, Mark Lists and other documents.

5. After admitting his daughter in M.B.B.S. Course, the petitioner approached the respondents 2 to 4 with a request to return the entire amount collected and paid for the B.D.S. Course, which was never responded to by the respondents 2 to 4. Hence, the petitioner had sent a complaint dated 06.11.2017 and also a reminder dated 04.12.2017 to the first respondent.

6. The first respondent - University Grants Commission (UGC) had instructed the second and third respondents to examine the matter and refund the admissible fees immediately to the petitioner. Despite the instructions from the first respondent, the respondents 2 to 4 have not refunded the course fees collected from the petitioner for her daughter's admission to the B.D.S. Course. Hence, the writ petition is filed for a Mandamus.

7. The writ petition was resisted by the second respondent University contending that the prospectus issued by the University was clear on the payment of fees and that the writ petition itself is not maintainable without challenging the prospectus.

8. The learned counsel appearing for the University contended that Clause 9.3. of the Prospectus is the general instructions for the applicants, which reads as follows :

9.3. General Instructions for Applicants.

- i. The tuition fee and the caution deposit will be refunded after deducting the service charge of Rs.10,000/-, if the candidate discontinues the programme before commencement of classes provided the resultant vacancy is filled up.
- ii. However, in case a candidate discontinues the programme on or after the date of commencement of classes and the resultant vacancy is filled up, caution deposit and 75% of tuition fee will be refunded.
- iii. The candidate should pay the tuition fee for the entire duration of the programme, minus whatever has already been paid, if he/she discontinues the programme in the middle, i.e., after close of admission and the resultant vacancy is not filled up.

9. It was further submitted that as per the Hon'ble Supreme Court, the cut off date for admission to all the professional colleges is fixed as 30th September of every year and the Colleges would not be permitted to make any admission beyond the cut off date. As the petitioner's daughter had attended the second phase of counseling on 27.09.2016 and after getting her

admission for M.B.B.S. Course, she had discontinued the B.D.S. Course joined earlier only on 05.10.2016, which is beyond the cut off date, whereupon, the vacancy arose only after the cut off date, the College also was not in a position to admit the students in the said vacancy. Therefore, having allowed one seat to lapse, the petitioner has to pay the entire fees, which was paid by her without any protest. It is submitted that only after the voluntary payment made by the petitioner, the original certificates were returned to her.

10. Now the question that arises for consideration is whether the petitioner's daughter, who had joined the B.D.S. Course and discontinued after the cut off date is entitled for refund of the entire course fees paid by her ?

11. Learned counsel appearing on behalf of the University placed his reliance on the public notice issued by the first respondent - UGC dated 23.04.2007, as per which, if a student leaves after joining the course and if the seat consequently falls vacant and has been filled up by another candidate by the last date of admission, the institution must return the fees collected with proportionate deductions of monthly fees and proportionate hostel rent, where applicable. Citing the above notice, the learned counsel contended that as the student - petitioner's daughter discontinued the B.D.S. Course only on 05.10.2016, i.e., after the cut off date of 30th September, the vacancy created, could not be filled up by admitting another candidate and therefore the University has the right to retain the course fees collected from the petitioner's daughter.

12. It is argued by the learned counsel appearing for the University that in the event a student leaves after the cut off date, it would be difficult for them to make out a loss, as no student could be admitted beyond the cut off date, as prescribed by the Hon'ble Supreme Court. However, the said issue has to be worked out by the Universities and other Private Unaided Institutions separately. सत्यमेव जयते

13. A perusal of the "Notification on Remittances and Refund of Fees and Other Student-centric Issues" released by the first respondent - UGC during December 2016 sets out in detail, the remittances and refund of fees collected by the Higher Educational Institutions, which is applicable to the respondents 2 to 4 University also. Clause 3 of the above said notification says it supersedes the earlier public notice dated 23.04.2007, which was relied upon by the learned counsel appearing for the respondent University.

13.1. Clause 4.2.2. provides for Remittances and Refund of Fees, according to which, a Higher Educational Institution (HEI) shall charge fees in advance only for the semester or a year, in

which, a student to engage in academic activities. Collecting advance fees for entire programme of study or for more than one semester/year, in which, a student is enrolled is strictly prohibited as it restricts the student from exercising other options of enrolment elsewhere. This enabling provision is in line with the UGC guidelines on Choice-Based Credit System (CBCS) and Model Curricula which are geared towards promoting a student's inter-institutional mobility.

13.2. Clause 4.2.3. provides for the students to withdraw from the programme of study in which he/she is enrolled, then the institution concerned shall follow the following four-tier system for the refund of fees remitted by the student :

Sr. 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

13.3. The above fees includes the course fee and non-tuition fees, but excludes caution and security deposits.

14. It is reliably understood that the Ministry of Human Resources Development had asked all the colleges and universities to issue a waiting list to fill in seats as soon as the same were rendered vacant, if and when a candidate withdraws his/her application. It is also stated that if the UGC receives a complaint qua refund, the institution would receive a warning from the UGC for three years and in case the allegations exist, they would lose the UGC recognition.

15. Admittedly, in the case on hand, the student had discontinued the B.D.S. Course from the respondent University on 05.10.2016, whereas, the cut off date is 30.09.2016. The petitioner's daughter had attended the counseling on 27.09.2016 and got her admission to M.B.B.S. Course on the same day, but seems to have attended the classes in the B.D.S. Course on 01.10.2016 and discontinued only from 05.10.2016, which is falling under Clause (2) of the table referred to above. The petitioner's daughter had withdrawn from the admission from the respondents University within fifteen days from the formally-

notified last date of admission and therefore, she would be entitled for refund of 80% of the refund of fees, as indicated above, as per the UGC guidelines.

16. Accordingly, the respondents ***2 to 4** are directed to refund 80% of the fees paid by the petitioner's daughter within a period of four weeks from the date of receipt of a copy of this order.

17. This writ petition is ordered accordingly. There will be no order as to costs.

Sd/-

Assistant Registrar(CCC)

DATED : 30/04/2019

***Corrected as per order dated 12/09/2019
in WP No.11991 of 2018**

Sd/-

Assistant Registrar(CCC)

DATED : 25/09/2019

//True copy//

Sub Assistant Registrar

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To

1. The Secretary,
University Grants Commission (UGC),
Bahadur Shah Zafar Marg,
New Delhi-110 002.

2. The Registrar,
Annamalai University,
Annamalai Nagar-608 002.

3. The Director,
Rajah Muthiah Dental College,
Annamalai University,
Annamalai Nagar-608 002.

4. The Principal,
Rajah Muthiah Dental College,
Annamalai University,
Annamalai Nagar-608 002.

**To be Substituted the
order already dispatched
on 25/06/2019**

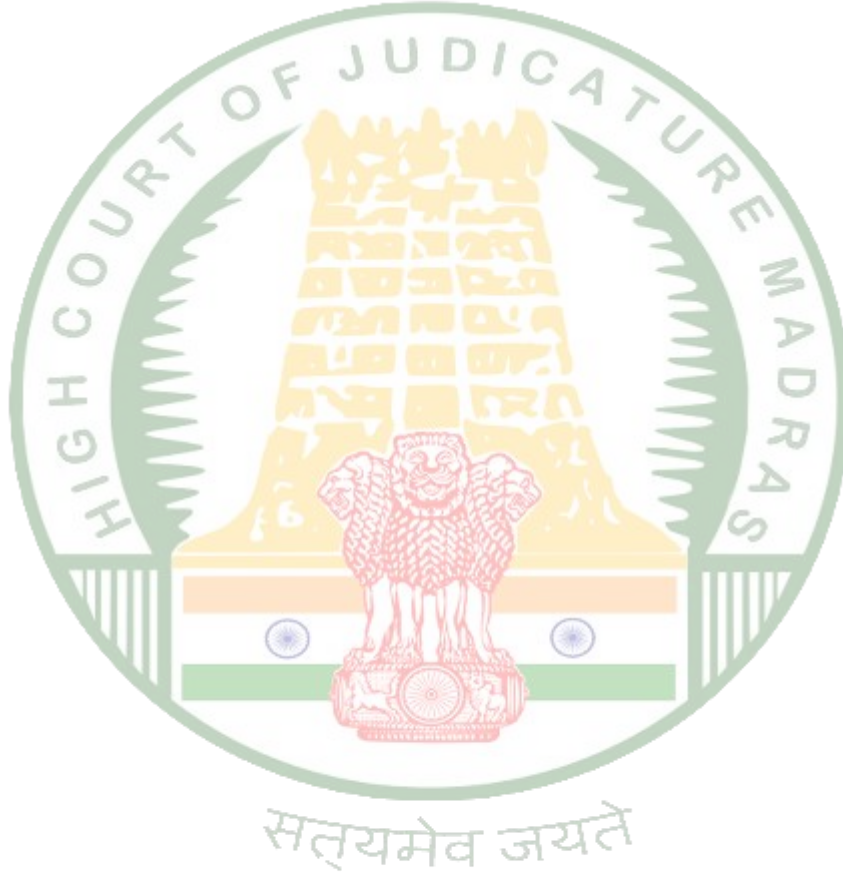
+1cc to Mr.P.R.Gopinathan, Advocate SR.No.30819

+1cc to Mr.V.Manoharan, Advocate SR.No.30622

+1cc to Mr.K.Sathishkumar, Advocate SR.No.***78582**

W.P.No.11991 of 2018

SAI (CO)
GMY (03/05/2019)
GMY (26/09/2019)



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