

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 12-06-2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI

AND

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

W.A.No.2221 of 2018

The Deputy Manager,
Footwear Design and Development Institute,
Plot No.E-1, E-2, Footwear Component Park,
7th Main Road, SIPCOT Industrial Park,
Irungattukottai,
Sriperumbudur-602 117. ... Appellant

-vs-

- 1.Smt.Deivayanai Palaniappan
- 2.The Government of India,
rep.by its Secretary to the Government,
Ministry of Commerce and Industry,
Udyog Bhawan,
New Delhi-110 001.
- 3.University Grants Commission,
Bahadurshah Zafar Margh,
New Delhi - 110 002. Respondents

Appeal under Clause 15 of the Letters Patent against
the Order, dated 25.07.2018, passed in W.P.No.9318 of 2018 on
the file of this Court.

Prayer in W.P.No.9318 of 2018:

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 Appellant : Mr.R.Thirunavukkarasu

For Respondent 1 : Mrs.AL.Ganthimathi

For Respondent 2 : Mr.G.Karthikeyan,
Asst.Solicitor General.

For Respondent 3 : Mr.P.R.Gopinathan

JUDGMENT

(By Dr.Vineet Kothari,J.)

This Writ Appeal has been filed by Footwear Design and Development Institute, Sriperumbudur, aggrieved by the order passed by a learned Single Judge of this Court on 25.07.2018, by which, the learned Single Judge allowed the Writ Petition filed by the writ petitioner- Smt.Deivayanai Palaniappan, who is the mother of Ms.P.L.Mahalakshmi - the student, first respondent herein, hereinafter referred to as 'the student', and directed the Appellant Institute to refund tuition fee and transportation charges to the student for the Academic Year 2014-2015 when she was admitted in the course of Fashion Design, conducted by the Appellant Institute.

2. The ground on which the learned Single Judge allowed the Writ Petition and directed the refund was that the Appellant Institute was not recognised by any competent body to impart education of the said course at that time and the alleged Memorandum of Understanding entered into by the said institute with one Mewar University of Rajasthan was liable to be terminated as there was no legal sanction for such MoU, under which the Appellant Institute could award a Degree of four year course by the University. The reasons and operative part of the order of the learned Single Judge are quoted below for ready reference :

'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."

3. Mr.R.Thirunavukkarasu, learned counsel for the Appellant, urged before us, that later on, after the first respondent-student discontinued her course after attending the first semester, the Appellant Institute was recognised as an Institute to impart the education of the said course under an enactment of the Parliament, known as 'The Footwear Design and Development Institute Act, 2017', which received the assent of the President of India on 04.08.2017, and Section 37 (c) of the said Act even provided that '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.' He, therefore, contended that had the first respondent student waited and not discontinued the course, she could have been awarded the Degree by the Institute itself under the aforesaid Act. He further submitted illustratively that another student of the same batch, by name, Mr.S.Hyder Ali, who was admitted in the said course along with the first respondent student, has got such a Degree on 21.03.2018. He, therefore, submitted that the learned Single Judge has erred in directing the refund of the fee and even the transportation charges for the transport service provided by the Appellant Institute to the first respondent student.

4. On the other hand, Mrs.AL.Ganthimathi, learned counsel for the first respondent student, submitted that the

Appellant Institute admitted the first respondent student on the false assurance that she would be awarded Degree from a recognised University, namely, Mewar University of Rajasthan, but, when the first respondent student came to know that the said University had no jurisdiction to confer such a Degree, she left the course in the mid-stream and prayed for refund of tuition fee and transportation charges, but the same was denied by the Appellant Institute and, therefore, the Writ Petition was filed. She also submitted that the learned Single Judge was justified in directing the refund of entire fee and transportation charges by the Appellant Institute.

5. Mr.P.R.Gopinathan, learned counsel for third respondent-UGC, appeared before us and prayed for some time to file the reply of UGC in writing.

6. We have turned down the request of the learned counsel for UGC, as we find that the dispute is essentially between the Appellant Institute and the first respondent student and as the pleadings are also available on record.

7. Having heard the learned counsels for the parties, we are of the opinion that as far as 'transportation charges' are concerned, refund of the same cannot be directed, because, that was just a reimbursement of the expenses incurred by the Appellant Institute for providing the transport services to the student, which was availed by the student i.e., daughter of first respondent. However, coming to the question of refund of 'tuition fee', it is stated at Bar that a sum of Rs.1,38,000/- was deposited by the student with the Appellant Institute. In the facts and circumstances of the case, we are of the opinion that merely because the Appellant Institute later on got some kind of statutory recognition by enactment of the aforesaid Act in the year 2017, they cannot insist that the first respondent student ought to have waited for any such recognition in the year 2016 and continued with the said course even though during that period they did not hold any such statutory recognition or any other recognition by any competent body in their favour. The assurance given by the Appellant Institute was to provide a valid Degree from a recognised University, namely, Mewar University of Rajasthan, which too could not have been given by them, in view of the directions of UGC to cancel the MoU between the Appellant Institute and the Mewar University, as noted by the learned Single Judge in Paragraph 4 of the order under appeal. Thus, when the first respondent student left the course on finding that the Appellant Institute had no legal or statutory recognition to provide a valid Degree, the student cannot be faulted for taking such a decision and leaving the said course to join some other Institute afresh to pursue her studies and obtain a Degree through a validly recognised

University. However, we also find that the student had attended some classes in the part of the first year and thereafter only, she left the said course.

8. Therefore, in the facts and circumstances of the case, we consider it appropriate and interest of justice will be met, if the Appellant Institute is directed to refund 50% of the 'tuition fee' deposited by the student, while entering the course. 50% of the amount so deposited would come approximately to Rs.65,000/-. Hence, we direct that the said sum of Rs.65,000/- be refunded by the Appellant Institute to the first respondent student by way of a Demand Draft in her favour within four weeks from today. If the said amount is not refunded by the Appellant Institute within the period aforesaid, the same will bear simple interest at the rate of 9% per annum from the date of deposit till the date of refund.

9. Writ Appeal is disposed of accordingly. No costs. Consequently, the connected C.M.P.No.17476 of 2018 is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

dixit
To

1.The Secretary to the Government,
Government of India,
Ministry of Commerce and Industry,
Udyog Bhawan,
New Delhi-110 001.

2.University Grants Commission,
Bahadurshah Zafar Margh,
New Delhi - 110 002.

+1cc to M/s.P.R.Gopinathan, Advocate Sr.48436
+1cc to M/s.R.Thirunavukarasu, Advocate Sr.48306
+1cc to M/s.A.L.Ganthmathi, Advocate Sr.47782

W.A.No.2221 OF 2018

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srg 25/07/2019