

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.6.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

Writ Appeal No.2782 of 2018

SRM Medical College Hospital and Research Centre
SRM Nagar
Potheri, Kattankulathur
Kancheepuram District. ...Appellant / 4th Respondent

Vs.

1. Dr. Jeby Jacob ...1st Respondent / Petitioner
2. State of Tamil Nadu
rep. by its Secretary
Health and Family Welfare Department
Fort St. George
Chennai 600 009. ...2nd Respondent / 1st Respondent
3. Medical Council of India
rep. by its Secretary
Pocket 14, Sector 8
Dwaraka Phase I
New Delhi 110 077. ...3rd Respondent / 2nd Respondent
4. Medical Counselling Committee (MCC)
rep. by its Director General
Ministry of Health and Family Welfare
Nirman Bhavan
New Delhi. ...4th Respondent / 3rd Respondent

Prayer in Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 26.9.2018 made in W.P.No.17042 of 2018.

Prayer in W.P.No.17042 of 2018: 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 Appellant : Mrs.B.Saraswati

For Respondent-1 : Mr.R.Krishna Prasad
For M/s. Sarvabhuman Associates

For Respondent-2 : Mr.N.Srinivasan
Addl. Govt. Pleader

For Respondent-3 : Mr.V.P.Raman

For Respondent-4 : Mr.G.Karthikeyan
Addl. Solicitor General

J U D G M E N T

Dr.Vineet Kothari, J

The present intra-court appeal has been filed by the appellant SRM Medical College Hospital and Research Centre, a private Medical College, which is a Deemed to be University under the provisions of University Grants Commission Act, aggrieved by the order of the learned single Judge dated 26.9.2018 allowing the writ petition filed by the student Dr.Jeby Jacob and directing them to refund the part of fees amounting to Rs.1,90,000/- within a period of two weeks from the date of that order.

2. The facts in brief, which led to the filing of the present writ appeal, are as follows:

The first respondent, Dr.Jeby Jacob appeared in NEET 2017 in the Super Speciality Category for his Post Graduation Course and in pursuance of the first round of counselling conducted on 20th August 2017, he was provisionally allotted D.M. Nephrology seat in the appellant College. Consequently, he deposited a sum of Rs.20.00 Lakhs towards tuition fees and other fees by way of a demand draft dated 18.8.2017, with the appellant Institution. The first respondent was however entitled to three rounds of counselling to seek admission in other Colleges also, providing the same Post Graduation Course and accordingly, upon attending the second round of counselling on 11th September 2017, he got admission in the Madras Medical College in Chennai in the said stream of D.M. Nephrology. It was stated at Bar that after the third round of counselling, the first respondent got admission in Kilpauk Medical College in D.M.Gastroenterology, where he finally took the admission.

3. It appears that the first respondent did not take the admission in the appellant College, which is Deemed to be a University and therefore, he prayed for the refund of the said sum of Rs.20.00 Lakhs deposited by him towards tuition fees and other fees. But, the appellant Institution refunded only a sum

of Rs.18.00 Lakhs, after deducting a sum of Rs.2.00 Lakhs towards the processing fees, which is the bone of litigation in the present case.

4. The learned Single Judge, in the order under appeal, held in favour of the first respondent student and that since the first respondent was entitled to three rounds of litigation and never attended the classes in the appellant Institution as the session had not even commenced, he was entitled to the refund of the said fees and that the deduction of processing charges can be made only to the extent of Rs.1,000/- as per the University Grants Commission Guidelines Notification dated 23.4.2007 and at a maximum of Rs.10,000/- as per the Notification dated 11.7.2016 and accordingly, directed the appellant Institution to refund the balance sum of Rs.1,90,000/- to the student. Aggrieved by the same, the Institution is in appeal before us.

5. Ms.B.Saraswathi, learned counsel for the appellant Institution submitted before us that the appellant Institution was entitled to deduct 10% of the fees under the Guidelines published in December 2016 by the University Grants Commission, a copy of which is produced on record along with a communication dated 6th December 2016. However, the Notification bears no date and it is marked only as December 2016 and the Gazette notification publishing the said Notification has also not been produced on record. The previous Gazette Notification, which has been produced by the student, however specifies the deduction only to the extent of Rs.10,000/- in such cases. The said Notification in F.No.1-3/2016(CPPPI/DU) dated 11th July 2016 applicable to University Grants Commission (Institutions deemed to be Universities) Regulations, 2016, in Clause 6.2, quoted by the learned single Judge in the impugned order, provides for deduction not exceeding Rs.10,000/-, in such cases.

6. The learned counsel for the appellant Institution urged that the said Notification applicable to the Colleges, which are Deemed to be Universities stood superseded by the Notification of December 2016. However, she was unable to satisfy the Court about the publication of the said superseding Notification by the University Grants Commission. There is no specific supersession of the aforesaid Gazetted Notification dated 11th July 2016, in the document of December 2016 produced by the appellant Institution. The 10% deduction of tuition fees, as claimed by the appellant Institution, is also shown in a downloaded document, which is claimed to be Annexure D of some other document, but the complete document has not been produced before us and in a column provided for the information of the students therein under the caption "other information" stipulates that details on website of the appellant institution shows that the transaction charges will be 10% of the tuition fees. Upon a specific query as to what is the transaction fees or processing fees and for what services rendered by the

appellant Institution to the student for which the said 10% of the tuition fee is deducted, the learned counsel for the appellant Institution was unable to give details of any such service provided to the students, to the Court.

7. The learned counsel for the first respondent, Mr.R.Krishna Prasad, on the other hand submitted that the Notification of the University Grants Commission earlier published on 23.4.2007 only provided for deduction of a sum of Rs.1,000/- towards processing fees in such cases where the student does not take admission in the Institution concerned. Later on, the said processing fee limit was increased to Rs.10,000/- under a published Gazette notification dated 11th July 2016 in Clause 6.2, which was quoted by the learned single Judge under the order under appeal and therefore, he submitted that the appellant Institution is not justified in not complying with the order of the learned single Judge and in contesting the said issue in the present appeal, which has no merit and thus, the appeal deserves to be dismissed.

8. Having heard the learned counsel for the parties, we are of the considered opinion that there is no merit in the present appeal filed by the appellant Institution and the same deserves to be dismissed.

9. The learned single Judge has elaborately discussed all the aspects of the matter and quoted the relevant statutory provision as to the deduction towards processing charges or administrative charges up to a sum of Rs.10,000/-. The document claimed to be a Notification of December 2016, relied upon by the appellant Institution, does not appear to be an authentically published statutory Notification. It does not bear a date nor any Gazette notification in which it is published by the University Grants Commission is produced. It seems to be a draft Notification, if at all, it can be attributed to the respondent University Grants Commission. On the contrary, the communication dated 6th December 2016 of the University Grants Commission signed by Professor Dr.Jaspal S.Sandhu addressed to the Vice Chancellors of all the Universities, shows that the University Grants Commission has taken a serious view of the various malpractices and the grievance of the students relating to fee refund and retention of original certificates and directed to take strict action against the Universities and their affiliated/constituent colleges breaching the provisions of the said Notification. However, the purported Notification of December 2016, superseding the statutory Notification of 11th July 2016, as claimed by the appellant Institution, does not appear to be an authentic Notification at all. The website information published by the appellant Institution itself on its own website, purportedly claiming their entitlement of 10% of deduction of tuition fees towards "transaction charges" does not have any legal sanction. The learned single Judge expressed a

doubt over the said document in the order under appeal itself. The learned counsel for the appellant Institution was unable to produce any relevant Gazette notification for satisfying even us in the present appeal about the authenticity of the said document.

10. We also tried to explore from the learned counsel for the appellant Institution for a huge sum of Rs.2.00 Lakhs deducted towards the administrative or processing charges, as to what services the appellant Institution has rendered to the student for justifying the deduction of a sum of Rs.2.00 Lakhs, when admittedly the student did not occupy the seat in the appellant Institution nor the academic session had started nor did he attend any class in the said Institution and as per his own entitlement to attend more rounds of counselling on the basis of his results in the NEET examination and only the clerical thing that the appellant Institution would have done is entering provisionally the first respondent's name in the provisional list of admission on 20th August 2017 upon the first counselling and then, removing his name on 11th September 2017 upon the second counselling, when he switched over to Madras Medical College. But the learned counsel for the appellant was unable to either elaborate any services rendered to the first respondent student in this regard, much less any document or evidence to justify the deduction of 10% of tuition fees towards administrative charges or the processing charges. We are satisfied that such a huge amount cannot be justified to be retained by the appellant Institution in the name of processing charges.

11. We are conscious of the fact that charging of high tuition fees and even high administrative charges in the medical education has ripple effect and if the education in the medical science becomes so costly an affair, it is bound to have a bearing on the medical profession as well, finally affecting the poor and middle class of the society adversely. What the Doctors would have spent in their education, they would definitely like to recover the same in their profession and that is a mere common prudence. We also cannot shut our eyes as to how the medical and engineering educational institutions have made bonanza of profits and such private institutions are running them as business houses rather than educational institutions run for the pious objective of imparting education to the students.

12. The good, moral and value education and business made of education are two poles apart which stretch the society between them from one pole to another and generally, the helpless students and their parents and their financial resources are sacrificed at the altar of business of education. Unless the Courts, especially the Constitutional Courts come down heavily on such malpractices, where the justice seekers should go, is the question which stares us in the face.

13. Therefore, while finding no merit in the present appeal filed by the appellant institution and upholding the order of the learned single Judge, we dismiss the present appeal of the appellant institution with costs of Rs.20,000/- to 1st respondent and uphold the order of the learned single Judge, with a direction to the appellant Institution to refund a sum of Rs.1,90,000/- forthwith, with interest at the rate of 6% per annum from the date of deposit till the date of refund. If the refund is not made within a period of four weeks from today, the rate of interest shall stand increased to 9% per annum.

14. Since it is stated by the learned counsel for the appellant Institution that the appellant Institution has deposited some amount in this case with the Registry of this Court, as directed by Court, the Registrar concerned is directed to refund the said amount to the first respondent by cheque forthwith. The balance amount with interest, after deducting the amount paid by the Registry to the first respondent, may be paid by the appellant to the first respondent student within a period of four weeks, in the aforesaid terms.

15. In the result, the writ appeal is dismissed with costs. Consequently, CMP No.23005 of 2018 is also dismissed.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

kpl

To

1. The Secretary
Health and Family Welfare Department
Fort St. George, Chennai 600 009.

2. The Secretary
Medical Council of India
Pocket 14, Sector 8
Dwaraka Phase I, New Delhi 110 077.

3. The Director General
Medical Counselling Committee
Ministry of Health and Family Welfare
Nirman Bhavan, New Delhi.

+1 cc to M/s.Sarvabhauman Associates, Advocate, S.R.No.44800

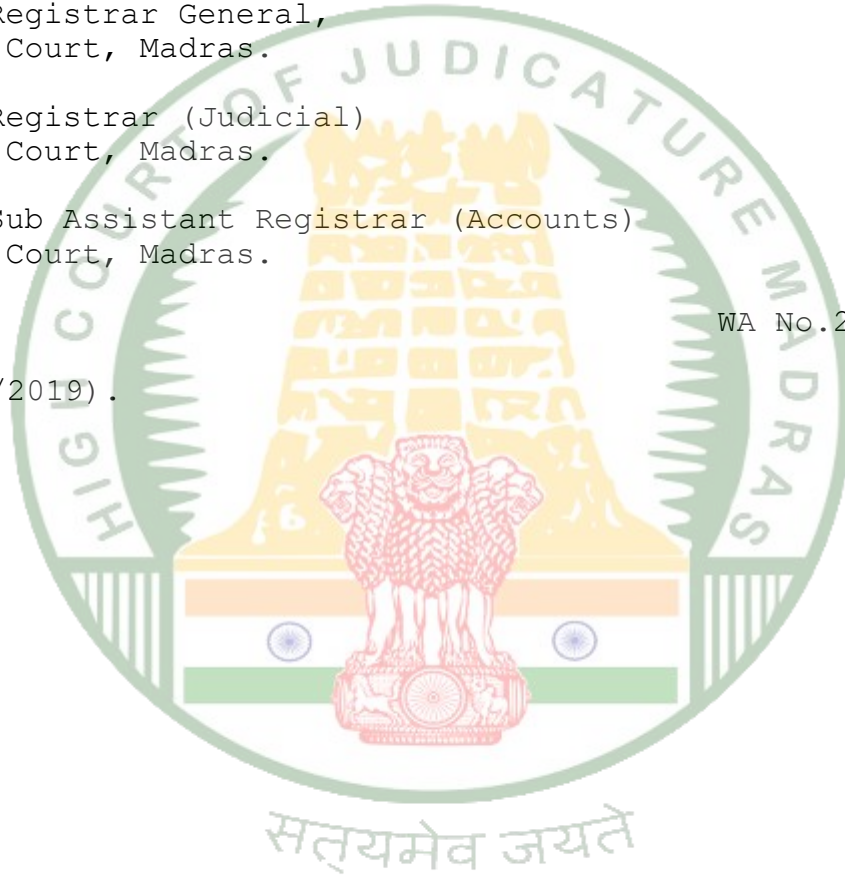
+1 cc to M/s.B.Saraswathi, Advocate, S.R.No.45195

cc to:

- 1) The Registrar General,
High Court, Madras.
- 2) The Registrar (Judicial)
High Court, Madras.
- 3) The Sub Assistant Registrar (Accounts)
High Court, Madras.

WA No.2782 of 2018

MR(CO)
SSM(19/07/2019).



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