HONOURABLE SRI JUSTICE V.RAMASUBRAMANIAN

AND

THE HONOURABLE DR. JUSTICE SHAMEEM AKTHER

WRIT PETITION No.19876 OF 2018

ORDER: *(Per Hon'ble Sri Justice V. Ramasubramanian)*

The petitioner, who joined the First Year of the M.B.B.S. Course in the 4th respondent College and who subsequently discontinued, has come up with the above Writ Petition seeking (i) the return of the original certificates; (ii) the refund of the amounts paid; and (iii) the cancellation of the bank guarantee.

2. Heard Mr. Sunil Kumar Jha, learned counsel for the petitioner, Mr. A. Prabhakar Rao, learned Standing Counsel for the 3rd respondent University and Mr. G. Madhusudhan Reddy, learned counsel for the 4th respondent College.

3. Even according to the petitioner, he was granted admission to the first year of the MBBS Course in the 4th respondent college for the academic year 2017-18 and he joined the college on 09.08.2017. According to the petitioner, he surrendered the original certificates relating to the educational qualifications etc. and also paid the admission fee of Rs.12,40,000/-(Rupees twelve lakhs and forty thousand only).

4. But, the petitioner, who hails from Madhya Pradesh, seems to have got admission to a college in Madhya Pradesh subsequently

and hence he discontinued the course in the 4th respondent college. Even according to the petitioner, he communicated his intention to discontinue the course, only on 09.09.2017. But, by 31.08.2017, the last date for admission to Medical Courses was over. Therefore, claiming that the seat will go a waste, resulting in substantial loss for them, the 4th respondent college refused to part with the original certificates. Therefore, the petitioner came up with the above writ petition.

5. At the time when the writ petition came up for orders as to admission, this Court ordered notice to the 4th respondent college. After the 4th respondent college entered appearance, we passed an interim order on 16.07.2018 directing the college to return the original certificates subject to payment of a sum of Rs.5,00,000/- (Rupees five lakhs only) fixed by the Government, in such circumstances. The amount was payable to the University. After the petitioner paid the amount, the 4th respondent college returned the original certificates on the petitioner. Therefore, one portion of the grievance of the petitioner got redressed.

6. Now, what remains is two other grievances of the petitioner. One is the amount of Rs.12,40,000/- paid by the petitioner for the first year of the course and another is the bank guarantee for a sum of Rs.11,55,000/- furnished by the petitioner towards fees for the second year.

7. The question of entitlement of the petitioner to the refund of the fee paid for the first year and the question of cancellation of the bank guarantee, depends upon who was at fault. As per paragraph No.3 of the affidavit in support of the writ petition, the petitioner communicated his intention to discontinue the course only on 09.09.2017. The 4th respondent college has filed a counter affidavit contending that the petitioner attended college for three months and discontinued only thereafter.

8. Even if the claim made by the 4th respondent is rejected, the fact remains that the petitioner expressed a desire to discontinue the course only on 09.09.2017, when the cut-off date for admission even under the Management Quota was over on 31.08.2017. Therefore, the petitioner cannot actually seek refund of the tuition fees paid for the first year.

9. But, insofar as the bank guarantee is concerned, it is for ensuring payment of fees in the second year of the course. The petitioner did not continue in the second year of the course. It may be that the seat has gone a waste. But, such claims of the 4th respondent college are in the nature of damages. Therefore, it is not possible for us to allow the 4th respondent college to invoke the bank guarantee. If at all the 4th respondent has any claim, they must go only to Civil Court.

10. Therefore, the Writ Petition is partly allowed directing the 4th respondent college to release the bank guarantee furnished by the petitioner. However, the petitioner will not be entitled to the refund of the fee paid in the first year of the course. Upon production of a copy of this order, the bank through which the petitioner furnished the bank guarantee, shall cancel the bank guarantee. However, there shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition, shall stand closed.

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V. RAMASUBRAMANIAN, J

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DR. SHAMEEM AKTHER, J

February 20, 2019
Smr/Mgr