

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.10.2020

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

W.P.Nos.13822 & 13824 of 2020
and WMP.Nos.17186 & 17187 of 2020

K.Eniyaa

...

Petitioner in
W.P.No.13822/2020

V.Tamilarasu

...

Petitioner in
W.P.No.13824/2020

..Vs..

1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Indian Medicine and Homoeopathy Department,
Fort St.George,
Chennai - 600 009.

2.The Director,
Indian Medicine and Homoeopathy Department,
Arumbakkam, Chennai - 600 106.

3.The Joint Director,
Indian Medicine and Homoeopathy Department,
Arumbakkam, Chennai - 600 106.

Respondents in both W.Ps

Common Prayer : These Writ Petitions are filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus calling for the entire records connected with the impugned clause 24(ii) of the Prospectus 2018-19 issued by the 2nd respondent for admission into BHMS course and the consequential order passed by the 3rd respondent dated 03.02.2020 in O.Mu.No.16745/Thi.Va-2/2019 and quash the same and consequently direct the respondent to refund a sum of Rs.9,00,000/- (Rupees Nine Lakhs) paid by the respective petitioners, with interest.

For Petitioners : Mr. S.N.Ravichandran

For Respondent : Mr. M.Mani Gopi
Government Advocate

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COMMON ORDER

Both these Writ Petitions have been filed for challenging the impugned clause in the prospectus for the Academic Year 2018-19, which stipulated the payment of penalty of Rs.10,00,000/- for any student, who discontinues the course after joining the same.

2. This Court carefully considered the submissions made by the learned counsel for the petitioners and the learned Government Advocate appearing on behalf of the respondents and also the counter filed by the respondents. The nature of dispute that has been projected in both the Writ Petitions involves appreciation of facts.

3. That apart, the penalty that has been imposed in the prospectus is questioned by placing reliance upon the Contract Act and the manner in which liquidated damages/penalty can be fixed for the alleged breach of contract. These are issues which cannot be gone into while deciding a Writ Petition and the Civil Court will be the appropriate forum before which the petitioner can seek redressal for the grievance. It goes without saying that the petitioner will be entitled to take advantage of the provision under Section 14 of Limitation Act 1963, which provides for exclusion of time where a proceeding is bona fide agitated before a Court without jurisdiction. The time spent by the petitioners in prosecuting these writ petitions can be taken into consideration while computing the period of limitation. Useful reference can be made to the judgment of the Hon'ble Supreme Court in M.P.Steel Corporation Vs. Commissioner of Central Excise reported in 2015 7 SCC 58 and in A.P.Power Coordination committee Vs. Lanco Kondapalli Power Ltd., reported in 2016 3 SCC 468.

4. In view of the above, liberty is granted to the petitioners to workout their remedy before the appropriate Civil Court and redress their grievances in accordance with law.

5. Both the Writ Petitions are disposed of accordingly. No costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-

Assistant Registrar (CS-VIII)

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Sub Assistant Registrar

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To

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+1cc to Mr.S.N.Ravi Chandran, Advocate SR.34594

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NR(CO)
CB(07/12/2020)



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