

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2020

CORAM:

THE HON'BLE MR. JUSTICE T.S.SIVAGNANAM

W.P.No.33212 of 2017

Rony Samuel

.. Petitioner

Vs

1. The Registrar,
Basheer Ahmed Crescent University,
Seethakathi Estate G.S.T. Road,
Vandalur, Chennai - 48.
2. The Director,
Crescent School of Business,
Seethakathi Business Centre,
Anna Salai, Chennai - 6.
3. University Grants Commission,
Rep. By its Secretary,
Bahadur Shah Zafar Marg,
New Delhi - 110 002.
4. The Director of Collegiate Education,
College Road, Chennai - 6.
5. All India Council for Technical Education (AICTE),
Southern Regional Office, Shastri Bhavan,
No.26, Haddows Road, Nungambakkam,
Chennai - 6.
(R5 impleaded as per order dt. 10.01.2020 made in
WMP.No.22857/19 in W.P.No.33212/17 by TSSJ) .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus to direct the respondents 1 and 2 to release the certificates of the petitioner viz. 1) Mark sheets for eight semesters, 2) PGDM convocation certificate, 3) Course completion certificate and 4) Fees receipts for Rs.3,25,000/- within the stipulated time.

For petitioner	: Mr.D.Muthukumar for M/s.Paul and Paul
For R1 & R2	: Mr.Mohd.Yaqoob Kaleel for Ms.M.Kaviyarasi
For R3	: Mr.P.R.Gopinathan
For R4	: Mr.S.Karthikei Balan, GA
For R5	: Mr.B.Rabu Manohar, SCGC

ORDER

The petitioner, by way of this writ petition, seeks for issuance of a writ of mandamus to direct the respondents 1 and 2 to release the certificates of the petitioner, namely, Marks Sheets for eight semesters, PGDM Convocation Certificate, Course Completion Certificate and fee receipts for Rs.3,25,000/-.

2. The petitioner, after completion of B.Tech. in Electronics & Communications from an Engineering College affiliated to Osmania University, is stated to have joined in a reputed company as Risk Investigator with a salary package of Rs.2.9 lakhs per annum. The petitioner would also submit that he had come across the advertisement of MBA course issued by the second respondent and assuring a job placement in reputed companies. The petitioner was lead to believe that the course and the college was approved by AICTE and UGC. The petitioner joined the course of Post Graduate Diploma in Management Strategy and Leadership (PGDM) during August, 2016, for the academic year 2016-2017. The petitioner was informed that total fee payable towards tuition fee is Rs.5,00,000/- and towards Boarding and Lodging is Rs.2,00,000/- and non-refundable deposit of Rs.75,000/- had to be made. The petitioner would state that there was also an assurance of granting waiver in tuition fees. The petitioner is stated to have paid a sum of Rs.3,25,000/-.

3. In the affidavit filed in support of the writ petition as well as in the arguments put-forth by the learned counsel for the petitioner, various other facts have been placed and among other things, it is contended that the course has not been approved by the UGC and the petitioner was lead to believe that the second respondent had necessary approval. With these facts, the petitioner seeks for an appropriate direction to return the certificates and such direction is sought for against the respondents 1 and 2.

4. The respondents 1 and 2 have filed a counter affidavit, in which, it has been stated as follows at paragraph No.9:-

"9. With regard to para 8, that as per the payments schedule of fee for the course and accommodation, the total fee payable for the course was Rs.5,00,000/- and total hostel fee payable was Rs.2,00,000/- and overall fee payable was Rs.7,00,000/-. As stated above initial fee concession of Rs.25,000/- was given and thereafter for the first 4 months from September 2016 to December 2016 the petitioner made payments as per the

terms accepted but from January 2017 the petitioner defaulted in making payments and remitted only after due dates. The installment fee for January 2017 was paid in the month of February 2017 vide SBI Cheque No.816322 dated 12th February 2017 and February 2017 installment fee was paid in the month of April 2017. In the month of March 2017 the petitioner was absent from the course stating various reasons and thereafter demanded for concession in the hostel fee of Rs.2,00,000/-. Even thereafter the Registrar of the Institute provided hostel fee concession of Rs.17,000/- to him considering students welfare and his education. After considering his initial course of concession of Rs.25,000/- towards course fee and Rs.17,000/- towards hostel fees, total amount payable by the petitioner was Rs.6,58,000/- whereas as on date he had paid only Rs.3,25,000/- (towards tuition fee Rs.2,25,000/- as against Rs.4,75,000/-; towards hostel fees Rs.1,00,000/- out of Rs.1,83,000/-). The petitioner can receive his certificates from the second respondent after submission of certificates of no due to the second respondent in accordance with the Rules and Regulations of the Institution."

5. Further, it is stated that the institution is functioning as Deemed to be University from the academic year 2009 as per the UGC Notification dated 23.03.2009 and MHRD Notification dated 16.12.2008. Further, it is submitted that when the course was commenced, no approval was required to be obtained from UGC. The other averments made by the petitioner have been denied in the counter affidavit.

6. However, with regard to the prayer sought for by the petitioner, the reply given by the respondents 1 and 2 is that the petitioner can receive the certificates from the second respondent after submitting No Due Certificate in accordance with the Rules and Regulations of the Institution. Admittedly, the same is not feasible, because, even according to the respondents 1 and 2, the petitioner has paid only Rs.3,25,000/- and he is in arrears of both tuition fees and hostel fees. Therefore, obtaining No Due Certificate from the second respondent is next to impossible. Hence, the question would be as to whether the respondents 1 and 2 can withheld the certificates after the petitioner has undergone the course and whether they can withheld other credentials of the petitioner and other documents namely UG course certificates, etc. The

answer to the question lies in the Regulations framed by the UGC termed as UGC (Institutions Deemed to be University) Regulations, 2016. The relevant portions of the Regulations have been set out in the counter affidavit filed on behalf of the third respondent/UGC and it is relevant to extract thus:-

"1.1 These Regulations may be called the UGC (Institutions Deemed to be Universities) Regulations, 2016.

1.2 These Regulations shall apply to every institution seeking declaration as an institution deemed to be university under the Act as also, albeit prospectively, to an institution which has been declared as an institution deemed to be university under Section 3 of the UGC Act, 1956.

1.3 They shall come into force with effect from the date of their notification in the Official Gazette.

1.4 These Regulations shall replace the UGC (Institutions Deemed to be Universities) Regulations, 2010 and its subsequent amendments."

7. Apart from the above, the following regulations pertaining to Admission and Fees Structure would also be relevant:-

"6.0 ADMISSION AND FEES STRUCTURE:

6.9. No institution deemed to be University, who has in its possession or custody, of any document in the form of certificates of degree, diploma or any other award or other document deposited with it by a person for the purpose of seeking admission in such institution, shall refuse to return such degree, certificate, award or other document with a view to induce or compel such person to pay any fee or fees in respect of any course or programme of study which such person does not intend to pursue or avail any facility in such institution.

6.11 No institution deemed to be university shall, issue or publish--

(a) any advertisement for inducing students for taking admission in the institution, claiming to be recognized by the appropriate statutory authority where it is not so recognized; or

(b) any information, through advertisement or otherwise in respect of its infrastructure or its academic facilities or

of its faculty or standard of instruction or academic or research performance, which the institution, or person so authorized to issue such advertisement on behalf of the institution knows to be false or not based on facts or to be misleading."

8. In terms of Regulation 6.9, the respondents 1 and 2 have no jurisdiction to withheld the certificate of degree, diploma or any other award or document deposited with it by a person for the purpose of seeking admission in such institution. It cannot refuse to return such certificates of degree, diploma or any other award or other documents with a view to induce or compel such person to pay any fee or fees in respect of any course or programme of study which such person does not intend to pursue or avail any facility in such institution. Therefore, the detention of petitioner's credentials, such as marks sheets of eight semesters and other documents produced by him at the time of joining the course is wholly illegal. Hence, the respondents 1 and 2 are bound to return the same.

9. So far as the PGDM diploma course is concerned, the respondents 1 and 2 in the counter affidavit do not dispute the fact that the petitioner has completed the Diploma Course, but, the counter proceeds only on the basis that the petitioner is in arrears of tuition fees and hostel fees and unless he clears the same, his credentials cannot be returned. This stand is not tenable, more particularly, in the light of Regulation 6.9 of Admission and Fees Structure as noticed above. That apart, the respondents 1 and 2 cannot exercise any lien over the credentials of the petitioner and if the same is permitted to be done, then it will be a classic case of commercial exploitation of education, which cannot be permitted to.

10. Thus, for the reasons stated above, the respondents 1 and 2 are directed to return the mark sheets for eight semesters, PGDM Convocation Certificate, Course Completion Certificate and fees receipts for Rs.3,25,000/- and his other B.Tech. certificates and any other certificates retained in original which was given at the time of admission, to the petitioner within a period of 15 days from the date of receipt of a copy of this order by directing the petitioner to appear before the first respondent to collect the same in person. In this regard, the first respondent is directed to send an intimation to the address given by the petitioner in this writ petition by registered post fixing the date and time on which the petitioner has to appear before the first respondent. So far as arrears of tuition fees and hostel fees, it is left open to the respondents 1 and 2 to work their remedy before the appropriate forum and in the event the respondents 1 and 2

initiating the proceedings against the petitioner for recovery of the said amount before the appropriate forum, it is well open to the petitioner to set up a defence as well as counter claim.

11. In fine, the writ petition is disposed of with the above directions. No Costs.

-s/d-

Assistant Registrar(CS-I)

True Copy

Sub-Assistant Registrar

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To

1. The Registrar,
Basheer Ahmed Crescent University,
Seethakathi Estate G.S.T. Road,
Vandalur, Chennai - 48.
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Southern Regional Office, Shastri Bhavan,
No.26, Haddows Road, Nungambakkam,
Chennai - 6.

+1 CC to Mr.B.Rabu Manohar, Advocate sr 6324.
+1 CC to M/s. Paul and Paul, Advocate sr 6912.
+1 CC to Mr.M.Kaviyarasi, Advocate sr 7163.
+1 CC to Mr.P.R.Gopinathan, Advocate sr 5997
+1 CC to The Govt. Pleader sr 6678.

W.P.No.33212 of 2017

BP(CO)
SP(02/03/2020)