



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.02.2020

CORAM :

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CONT P (MD) No.1728 of 2019

in

WP (MD) No.415 of 2019

G.Kaliraj

... Petitioner / Petitioner

Vs.

1.Mohaideen Basha @ Ravi

The Correspondent,
Fathima College of Pharmacy,
103, Main Road,
Krishnapuram, Kadayanallur,
Tirunelveli District.

2.Kadar Mohideen

The Principal, Fathima College of Pharmacy,
103, Main Road,
Krishnapuram, Kadayanallur,
Tirunelveli District.

... Contemnors/9th and 10th respondents

Prayer : Contempt Petition is filed under Section 11 of the Contempt of Courts Act, 1971, to punish the contemnors for their deliberate and willful act of committing contempt of court by wantonly disobedience of the order of this Court made in WP(MD)No.415 of 2019 dated 10.04.2019.

Prayer in WP(MD). 415/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, directing the 1st and 2nd respondents to take appropriate action against the 4th respondents illegal activity upon the students based on the petitioner's representations' dated 11.07.2018, 14.08.2018 and 05.12.2018 according to law..

For petitioner : Mr.A.Prasanna Rajadurai

For Respondents : Mr.S.M.A.Jinnah for R1
Mr.N.Dilipkumar for R2



ORDER

The petitioner joined B.Pharm course in Fathima College of Pharmacy, 103, Main Road, Krishnapuram, Kadayanallur, Tirunelveli District - 625 759 in the academic year 2014-15. It is a four years course. The petitioner had submitted all the original educational certificates to the college management. Classes were held. But, the examinations were not conducted as per schedule. When the students questioned the management, the second respondent herein, who was the Principal of the college, assured the students not to worry, since the management had filed a case against the affiliating authorities and that the issue would be resolved to the satisfaction of the students. In February, 2016, the petitioner was asked to write the first year B-Pharm examination pursuant to the order made in WP No.1677 of 2016. Months rolled by. The petitioner was admitted to the third year and then the fourth year. The petitioner had been paying the requisite fees throughout. The course was completed in the year 2018. But then, university examinations for the second, third and fourth years were not conducted. The petitioner comes from an ordinary background and was virtually left in the lurch.

2.Hence, the petitioner filed WP (MD)No.415 of 2019. The petitioner wanted appropriate action to be taken against the management based on the representation submitted by the students. The writ petition was taken up along with the similar writ petitions. By order dated 10.04.2019, the following direction was issued.

4.The condition of the writ petitioners is truly pathetic. They do not seem to be from affluent background. Three of them are girl students and they are from the neighbouring State of Kerala. The petitioners can very well sue the college management for a hefty compensation for having spoiled their lives and career. But the petitioners through their counsel would state that they would be satisfied if they are atleast refunded the sums already paid by them.

5.Taking note of the facts and circumstances of this case, this Court directs the respondents 4, 9 and 10 to pay a sum of Rs.3,00,000/- (Rupees Three Lakhs only) each, to the petitioners Ms.P.G.Sree Kutty, Ms.Veena P.Bhaskaran and Ms.Neelima in W.P.(MD) Nos.411, 412 and 413 of 219 and a sum of Rs.2,00,000/- (Rupees Two Lakhs only) each, to the petitioners P.S.Pravin, G.Kaliraj and Raj Mohamed in W.P.(MD)nos. 414, 415 and 416 of 2019. The college management is directed to pay the said amount within a period of two weeks from today(10.04.2019).

<https://hcservices.ecourts.gov.in/hcservices/> 6.The learned counsel for the petitioners states that



they have already got all the certificates that are required for pursuing B.Pharm Course in some other institution. Only one direction needs to be passed against the respondents 2 and 3 / The Tamil Nadu Dr.M.G.R.University. The three girl students are from the State of Kerala. It is stated that their eligibility certificates and migration certificates are with the University. Since the said three girl students are going to study only in an institution in Tamilnadu, the university is directed to treat the said certificates as enabling them to pursue their B.Pharm course in Sri Venkateswara College of Paramedical Sciences, Erode.

7.As regards the other three petitioners, the university is directed to permit them to join the B.Pharm course in the Sri Venkateswara College of Paramedical Sciences, Erode. Even if certain technical impediments come in the way, as and when the petitioners join the said institution and the said institution forwards the registration of the petitioners to the University, the University shall recognize and register the same.

8.Call on 27.04.2019, for compliance."

3.The matter was taken up for final hearing on 29.04.2019 and the writ petitions were disposed of with the following directions :

"5.Taking note of the facts and circumstances of this case, this Court directs respondents 4, 9 and 10 to pay a sum of Rs.3,00,000/(Rupees Three Lakhs only) to each of the petitioners in W.P.(MD)Nos.411, 412 and 413 of 2019, namely, Sree Kutty, Veena P.Bhaskaran and Neelima. A sum of Rs.2,00,000/(Rupees Two Lakhs only) is directed to be paid by respondents 4, 9 and 10 to the petitioners in W.P.(MD) Nos.414, 415 and 416 of 2019, namely, P.S.Pravin, G.Kaliraj and Raj Mohamed. The college management had already been directed to pay the said amount within a period of two weeks from the date of receipt of a copy of the order.

6.The petitioners have got back the certificates. Taking note of the special facts and circumstances obtaining in this case, this Court directs the Tamil Nadu Dr. M.G.R. Medical University to facilitate the joining of girl students from the State of Kerala to pursue their B.Pharm course in Sri Venkateswara College of Paramedical Sciences, Erode. Their eligibility certificates and migration certificates are with the University. Since the said three girl students are going to study only in an institution in Tamilnadu, the University is directed to treat the said certificates as sufficient for the purpose of pursuing the B.Pharm course in Sri Venkateswara



College of Paramedical Sciences, Erode.

7.As regards the other three petitioners, the University is directed to permit them to join B.Pharm course in Sri Venkateswara College of Paramedical Sciences, Erode. Even if certain technical impediments come in the way, as and when the petitioners join the said institution and the said institution forwards the registration of the petitioners to the University, the University shall recognize and register the same.

8.In fact the directions on the lines indicated above were issued vide Order dated 10.04.2019. But till date, the college management has not acted in the matter. It is open to the petitioners herein to initiate contempt action against the erring management for non compliance of the order already passed. This Court has given a direction to the Inspector of Police, Kadayanallur police station, Tirunelveli District, to take action on the criminal complaint lodged by the affected students. A direction is given to the fifth respondent to monitor the investigation and ensure that the final report is filed within a period of four months from the date of receipt of a copy of this order."

4.Even though the college management and the contemnors herein were directed to pay the amount mentioned in the order dated 29.04.2019, it was not complied with. The writ petitioner therefore issued contempt notice dated 13.08.2019. Even though it was received, the demand set out in the notice was not complied with. In these circumstances, the petitioner filed Contempt Petition (MD) No.1728 of 2019. The contempt petition was admitted and notice was issued to the contemnors.

5.The Contemnors appeared in person and also filed their written response. The first respondent herein was the Vice President of the Trust which was running the college and it was he who represented the college in all the litigations. It is not in dispute that he was the correspondent of the institution. His stand is that the institution has not cheated the students. The institution was very much fighting for securing the affiliation and that he was not fully in charge of the management. The first respondent would want to shift the blame. He would claim that it was the Principal of the college who was collecting the fee amounts from the students and in any event, the first respondent cannot be said to have committed any act of misappropriation. He also would claim that he is not having any property in his name except his 1/7th undivided share in the ancestral property.

6.The second respondent was the Principal of the institution
<https://hccm.courts.gov.in/hccm/cases> at relevant time. His stand is that he was only a rubber

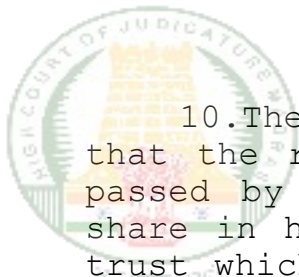


stamp of the management and that he did not have any independent power or authority. He also in his counter set out his mitigating circumstances.

7.The petitioner was examined and the petitioner's testimony was also duly recorded. The petitioner was cross examined by the counsel for both the contemnors. The petitioner narrated all the antecedent facts set out above. The first respondent also tendered his testimony. He repeated the mitigating circumstances set out in his counter affidavit. He was also cross examined by the petitioner's counsel. The second respondent also examined himself. He also stuck to the version set out in his counter affidavit. He was also cross examined by the petitioner's counsel.

8.The core argument of the counsel appearing for the first contemnor is that there was no willful or deliberate disobedience of the order passed by this Court. The first respondent does not have the means to comply with the direction of this Court. Both the counsel emphasized that contempt can be said to be made out only if there is willful disobedience or breach. Since there is no willful disobedience or breach, contempt is not made out. While the first respondent would want to blame the second respondent, the second respondent would want to blame the first respondent. It was a mutual blame game.

9.I am unable to agree with the submissions of the learned counsel appearing for the contemnors. Their culpability is beyond dispute. The first respondent was the correspondent of the institution. The second respondent was the Principal. Both knew fully well that the course in which the petitioner had joined did not have approval. With that full knowledge, they had admitted the petitioner herein. They could have taken some remedial measures atleast soon thereafter. They did not do so. They somehow thought that the writ petition filed by them will be allowed and that this Court in order to protect the interest of the students will grant them approval. Nothing of that sort happened. In the meanwhile, four years went by. The clock cannot be put back. The years wasted stand wasted. All that the petitioner wanted was return of his original certificates and some amount of reparation. They have to join a new institution to pursue the course from the beginning. They need funds. That is why this Court directed the respondents to pay a sum of Rs.2.00 lakhs to the petitioner herein. This order was passed by me as early as on 10.04.2019. The contempt petition was not filed immediately. Only after issuing notice, it came to be filed. If the respondents were of the view that they were not liable to make the said payment, they ought to have taken steps to challenge the order passed by this Court before the Hon'ble Division Bench. They did not do so. Therefore, they were bound to have complied with the direction of this Court. They have not done so. They chose to be indifferent.



10. Therefore, I have to necessarily come to the conclusion that the respondents have willfully committed breach of the order passed by this Court. The first respondent does have undivided share in his ancestral property. He is the Vice President of the trust which ran the institution. The assets of the trust ought to be liquidated for the purpose of honoring the obligations enjoined by this Court. Therefore, I have no hesitation to come to the conclusion that the contemnors/respondents herein are guilty of contempt.

11. This court finds both the contemnors guilty of contempt. I do bear in mind the mitigating circumstances pleaded by the respective counsel. Considering the nature of contempt committed by the first respondent, I sentence him to undergo six months simple imprisonment under Section 2(b) of the Contempt of Courts Act, 1971 read with Article 215 of the Constitution of India. As regards the second contemnor is concerned, the learned counsel for the second respondent submitted that some leniency may be shown as the second respondent undertakes to deposit a sum of Rs.50,000/- as compensation to the petitioner. Considering the request made by the second respondent, he shall remit a sum of Rs.50,000/- as compensation before the Registry, failing which, he will have to undergo six months simple imprisonment. On such deposit, the said amount shall be disbursed to the petitioner on proper identification.

12. Accordingly, this Contempt Petition is allowed. The order passed by this Court is suspended for a period of two weeks from the date of receipt of a copy of this order. The jurisdictional magistrate shall enforce this order and take steps to secure the first contemnor and commit him in prison. The sentence of imprisonment shall run concurrently with the sentences imposed in Cont P(MD)Nos.1724, 1725, 1726, 1727 and 1729 of 2019. The petitioner is at liberty to enforce the order passed in the main writ petition by proceeding against the properties of the trust/college which ran the institution in question.

Sd/-

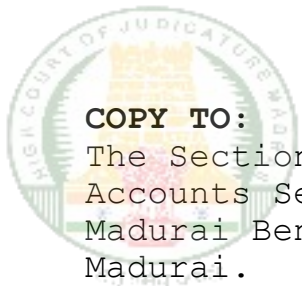
Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar

TO
THE JUDICIAL MAGISTRATE,
TENKASI.



COPY TO:

The Section Officer,
Accounts Section,
Madurai Bench of Madras High Court,
Madurai.

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+1 CC to M/s.A.PRASANNARAJADURAI, Advocate (SR-7318[F] dated
20/02/2020)

CONT P (MD) No.1728 of 2019
in

WP (MD) No.414 of 2019
18.02.2020
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