

HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

AND

HONOURABLE SRI JUSTICE K. LAKSHMAN

WRIT PETITION No.21137 of 2019

ORDER: *(Per Justice M.S.Ramachandra Rao)*

The petitioner had got admission in Mamata Medical College, Khammam (3rd respondent) in Telangana State under the 'C' Category (Management Quota) into the I Year M.B.B.S. Course for the Academic Year 2019-20.

2. The petitioner alleges that at the time of admission, she submitted her academic qualification original certificates to the 3rd respondent-College; that she later attended for certificate verification and counseling conducted by Dr. N.T.R. University of Health Sciences, Vijayawada in the State of Andhra Pradesh for seats reserved for non-locals; that she approached the High Court of A.P. to give a direction to consider her candidature against left-over vacancies; accordingly she got admission into a Government Medical College under the Convenor Quota under 'Open Category' in the final phase of counseling on 30.08.2019; that her father informed the 3rd respondent-College on 30.08.2019 about the said allotment and gave a representation to give back her original certificates along with the fee paid by her, but the 3rd respondent is dodging the issue and passing on the burden to the K.N.R. University of Health Sciences, Warangal (2nd respondent).

3. It is alleged that the said University issued notification dt.20.08.2019 for course exit on payment of Rs.3 lakhs; it also issued another notification on 29.08.2019 for filling up stray vacancies under Management Quota (left-over) seats by the private college managements itself by way of spot admissions till 31.08.2019; that the 3rd respondent ought to have availed that opportunity and filled up the vacancy caused by the exit of the petitioner from the 3rd respondent-College by filling it with another candidate; but they did not do so and orally informed that the petitioner should pay the entire course fee and then only they will return original academic certificates of her educational qualifications.

4. The petitioner contends that the action of the 3rd respondent College in not returning the original academic certificates submitted by the petitioner at the time of admission into the M.B.B.S. Course in the 3rd respondent-College even after informing about the allotment of seat under the Convenor Quota before the cut-off date is illegal, arbitrary and unconstitutional and seeks a direction to the 3rd respondent to refund the amounts given by the petitioner to the 3rd respondent in the form of capitation fee and tuition fee apart from return of her original academic certificates.

5. Though the Medical Council of India (4th respondent) engaged a counsel Ms.Pujitha, and the K.N.R. University of Health Sciences (2nd respondent) engaged Sri A. Prabhakar Rao, Standing Counsel, the said respondents did not file any counter-affidavit.

6. The Standing Counsel for 2nd respondent stated that the original academic qualification certificates of the students are only taken by the University at the time of grant of admission for verification purposes and they would be handed over to the respective colleges where the students are admitted after such verification. He stated that to the petitioner, on 03.07.2019, a receipt was issued by the University regarding the original academic qualification certificates of the petitioner taken from her at the time of grant of admission to her, but they were later given to the 3rd respondent-College where the petitioner initially took admission. He could not state why the original academic qualification certificates, after verification, were not returned to the petitioner and why they were given to the 3rd respondent-College and under what provision of law.

7. The 3rd respondent-College filed a counter-affidavit opposing the Writ Petition.

8. The 3rd respondent admitted that the petitioner was granted admission but stated that the original academic qualification certificates were deposited with it as per Rules prescribed by the 2nd respondent-University; but pleaded that it is not aware that the petitioner obtained a seat in the Government Medical College in the counseling held on 30.08.2019 by the Dr. N.T.R. University of Health Sciences, Vijayawada. It is denied that petitioner's father gave a representation to the 3rd respondent on 30.08.2019 at 04:00 p.m. and that the same was rejected by the 3rd respondent.

9. It is contended that as per notification dt.26.08.2019 issued by the 2nd respondent, the free exit date was 27.08.2019 before 03:00 p.m. for candidates who got admission in the 1st year M.B.B.S. course during the academic year 2019-20 under the Management Quota; that the petitioner failed to submit application for discontinuance of the course before the date and time.

10. According to the 3rd respondent, the 2nd respondent's notification itself stated that a candidate who discontinues the course after 27.08.2019 would incur a penalty and would have to pay tuition fee for the entire course to the college and forfeit Rs.3 lakh bond amount to the University and would be debarred from admission into 3rd respondent-University for three years.

11. It is stated that the 3rd respondent has no objection to return the original academic certificates if the petitioner pays the tuition fee for the entire course, i.e., Rs.92,40,000/- to the college for the four-year course and Rs.3,00,000/- bond amount to the 2nd respondent-University. It is also stated that the father of the petitioner had executed a bond on 31.07.2019 agreeing to pay the entire course fee to the college if she discontinues from the course.

12. It is also stated that no vacancies were filled by the 3rd respondent-College pursuant to the notification dt.29.08.2019 on spot admission basis to fill stray vacancies.

Consideration by the court:

13. There is no dispute in the instant case as to the fact that the 3rd respondent has custody of the original academic qualification certificates of the petitioner and that the petitioner had discontinued the M.B.B.S. course in the 3rd respondent-College after she secured admission in a Government Medical College in the State of Andhra Pradesh on 30.08.2019.

14. The said certificates are undoubtedly the property of the petitioner.

15. It is important to note that in the entire counter-affidavit there is no mention as to the provision of law which empowers the 3rd respondent to withhold the original academic certificates of a student who discontinues the course.

16. Counsel for 3rd respondent sought to rely upon G.O.Ms.No.114 Health, Medical and Family Welfare (C.1) Department dt.05.07.2017 issued under Section 3 and Section 15(1) of the Telangana Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983 which stated that a candidate who is selected and admitted to the M.B.B.S. Course is not permitted to withdraw from the course after issue of notification for final round of web-based counseling by the University; if they so withdraw, they would be debarred for three years for admission into M.B.B.S. Course in the State of Telangana and shall also be liable to pay Rs.3 lakhs towards forfeiture of bond.

17. Para no.7(iii) of the said G.O. states as under :

“7(iii). The original certificate submitted by the candidates shall not be returned to the candidates till they complete their course of study and appear for the University examination.”

18. The counsel placed strong reliance on the above provision.

19. He also placed reliance on a decision of the Karnataka High Court in **Sanjat Suman Lenka vs. Medical Council of India and others**¹. In that case also there was discontinuance of the M.B.B.S. Course by a student and his original academic qualification certificates were retained by the College. The Court held that in the absence of rules framed by the State Government / M.C.I. and R.G.U.H.S., the petitioner should execute a bond or bank guarantee or furnish security of immovable property in favour of the college for 50% of the remaining course fee for return of all the original documents to enable him to pursue his studies at a Government Medical College in Maharashtra.

20. In the said judgment, no principle of law is laid down and the learned Judge himself stated in para no.53 that ‘*in the peculiar facts and circumstances ... in the interest of justice to both parties to the lis*’, the above direction was issued. Therefore, the said judgment cannot be relied upon by the 3rd respondent-College.

21. Admittedly, G.O.Ms.No.114 Health, Medical and Family Welfare (C.1) Department dt 05.07.2017 was issued invoking powers

¹ MANU/KA/0029/2017

under Section 3 and Section 15(1) of the Telangana Educational Institutions (Regulation of Admissions and Prohibition of Capitation Fee) Act, 1983 (Act 5 of 1983).

22. The statement of objects and reasons to the said Act states as under :

“The undesirable practice of collecting fee at the time of admission into educational institutions in the State has been on the increase. This practice has been causing frustration among the indigent and meritorious students at the same time contributing to a steep fall in the standards of education. The existing provisions contained in the A.P. Education Act, 1982 are found to be not adequate to control effectively this evil practice. In order to eradicate the practice of collecting capitation fee and to maintain excellence in the standards of education, the Government have decided to prohibit the collection of Capitation fee by an educational institution and to make any such collection a cognizable offence. Incidentally it has been proposed to regulate admission into educational institutions on the basis of merit. It has also been decided to regulate the fee that may be collected by the educational institutions. (Vide Bill No.2 of 1983 published in Part IV-A, dated 14-3-1983).”

23. Section 3 states as under :

3. Regulation of admission into educational institutions:--

(1) Subject to such rules as may be made in this behalf, admission into educational institutions shall be made either on the basis of the marks obtained in the qualifying examination or on the basis of the ranking assigned in the entrance test conducted by such authority and in such manner as may be prescribed:

Provided that admission into Agriculture, Dental, Engineering, Medical, Pharmacy and Veterinary Colleges shall be made on the basis of the ranking assigned by giving weightage to the marks secured in the relevant group subjects namely, Biology, Physics, Chemistry or Mathematics, Physics, Chemistry, as the case may be, in the Intermediate Public Examination or equivalent

Examination and weightage to the marks secured in the common entrance test as may be prescribed.

(2) The admission into educational institutions under sub-section (1) shall be subject to such rules as may be made by the Government in regard to reservation of seats to the members belonging to Scheduled Castes, Scheduled Tribes and Backward Classes and other categories of students as may be notified by the Government in this behalf and the Andhra Pradesh Educational Institutions (Regulation of Admission) Order, 1974.

(3) Notwithstanding anything in sub-sections (1) and (2) it shall be lawful for the Government, to admit students belonging to other States on reciprocal basis and the nominees of the Government of India, into Medical and Engineering Colleges in accordance with such rules as may be prescribed:

Provided that admission of students into the Regional Engineering College, Warangal to the extent of one-half of the total number of seats shall be in accordance with the guidelines issued by the Government of India, from time to time."

24. Section 15(1) of the Act deals with the power of the State Government to frame rules *for carrying out all or any of the purposes of the Act.*

25. Section 12 of the Act gives overriding power to the provisions of the Act to over-ride anything contained in any other law in force. It states as under :

"12. Act to override other laws:-- *The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force."*

26. When the clear intention of the Legislature when it passed the above statute is to protect students and parents and prohibit the collection of capitation fee by educational institutions to which they secure admission, in exercise of power conferred under the said Act, it

is not open to the State to make a provision like para no.7(iii) in G.O.MS.No.114, Health, Medial and Family Welfare (C.1) Department, dt.05.07.2017 permitting managements to withhold original academic qualification certificates of students till they complete their courses of study and appear for the university examination.

27. The whole policy of the said statute is to protect students and a provision like para no.7(iii) of the said G.O. runs contrary to the said policy and it could not have been the intention of the Legislature that such a provision should be made by the State Government in exercise of its powers under Section 15 of the said Act.

28. We hold that para no.7(iii) in G.O.MS.No.114, Health, Medial and Family Welfare (C.1) Department, dt.05.07.2017 is *ultra vires* the powers of the State Government under the Telangana Educational Institutions (Regulation of Admissions and Prohibition of Capitation Fee) Act, 1983 (Act 5 of 1983) and that in view of the non-*obstante* clause in Section 12 of the said Act, the said para 7 (iii) cannot be given effect to and the 3rd respondent-College cannot be allowed to retain the original academic qualification certificates of the petitioner and blackmail the petitioner saying unless she coughs up the entire course fee and the bond amount claimed by the 3rd respondent, it will not return them.

29. We are not expressing any opinion on the right of the 3rd respondent-College to recover amounts towards the entire course fee

or the bond amount of Rs.3 lakhs from the petitioner / her parent, but we hold that withholding her original academic qualification certificates, is impermissible in law.

30. Therefore, the Writ Petition is allowed; the action of the 3rd respondent-College in not returning the original academic qualification certificates of the petitioner who had discontinued study of M.B.B.S. I year course in the said college, is declared as illegal, arbitrary and violative of Article 14 and 300-A of the Constitution of India; Para no.7(iii) of G.O.MS.No.114, Health, Medical and Family Welfare (C.1) Department, dt.05.07.2017 is declared to be *ultra vires* the powers of the State Government under the Telangana Educational Institutions (Regulation of Admissions and Prohibition of Capitation Fee) Act, 1983 (Act 5 of 1983); and the 3rd respondent is forthwith directed to return the original academic qualification certificates of the petitioner to her. No costs.

31. Pending miscellaneous petitions, if any, shall stand closed.

M.S.RAMACHANDRA RAO, J

K.LAKSHMAN, J

Date: 24-01-2020
Ndr