IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7390 OF 2012

Pravara Institute of Medical Science
(Deemed University)
At Loni, Tq. Rahata,
District Ahmednagar
Through its Registrar. ...Petitioner.

Versus

1. The Director General
(Investigation and Registration)
Bikaner House,
Barrack Sahajan Road,
New Delhi – 110 011.

2. Shri Javris R. Pareira,
Age. 22 years, Occ. Medical Practitioner,
R/o. 44, harmonty,
35, Nehru Road, Vakola,
Santacruz (East)
Mumbai – 400 055. ...Respondents.

Advocate for Petitioner : Senior Counsel Mr. V.D. Hon.
Advocate for Respondent No. 1 : Mr. D.G. Nagode.
Advocate for Respondent No. 2 : Mr. P.G. Paithankar.

CORAM : NITIN B. SURYAWANSHI, J.
DATE : 28.09.2021.

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties.

2. This petition takes exception to the order passed by the Competition Appellate Tribunal, New Delhi, dated 13.03.2012 in Unfair Trade Practices Enquiry No. 82 of 2007, thereby, allowing the complaint of respondent No. 2 and directing the petitioner to refund the fees deposited by respondent No. 2.

3. The petitioner is a Deemed University, which conducts MBBS, BDS, BPTh, etc, courses which are recognized. After publishing a prospectus wherein, rules and regulations for admission, cancellation for admission and refund of fees are mentioned, the petitioner conducted entrance examination (PIMS – AICTE 2005). The respondent No. 2 collected the prospectus and appeared for the entrance examination of the petitioner. Since he secured 146 marks and stood at Serial No. 172, in the merit list, after appearing for counseling he was admitted to MBBS course. He deposited Rs. 2,15,000/- towards the tuition fees and Rs. 5,000/- towards deposit on 21.06.2005. According to the petitioner, the respondent No. 2 cancelled his admission on 02.08.2005. He was refunded an amount of Rs. 5,000/- in terms of clause No. 19 of the prospectus.

4. The respondent No. 2, thereafter, approached the Monopolies and Restrictive Trade Practices Commission, claiming refund of fees contending that after taking admission with the petitioner on 21.06.2005,

he secured admission on 30.07.2005, at St. John, Medical College, Bangalore and hence, he sought for cancellation for admission with petitioner on 02.08.2005 and also sought for refund of fees. However, petitioner did not refund the fees.

5. Pursuant to the notice from the Commission, the petitioner appeared in the said matter and resisted the claim by respondent No. 2. The petitioner contended that the Commission had no jurisdiction to entertain the complaint of respondent No. 2. By relying on Clause No. 19 of the prospectus, the petitioner claimed that respondent No. 2 is not entitled to claim refund, save and except the amount of deposit of Rs. 5,000/-, which was already refunded on 05.09.2005. The petitioner, therefore, claimed dismissal of the complaint. Thereafter, the petitioner also filed written arguments wherein also the maintainability of the complaint before the Commission was questioned.

Thereafter, additional say was filed by the petitioner. By relying on Section 33 B, 36 D and the definition of services under Section 2 (r) of the Monopolies and Restrictive Trade Practices Act, 1969 (In short ‘the Act of 1969’), the petitioner contended that the complaint of respondent No. 2 is not maintainable.

6. The Appellate Tribunal allowed the complaint and directed the petitioner to refund the fees to respondent No. 2 within a period of two months. This order is impugned in the present petition.

7. Heard Mr. V.D. Hon, the learned Senior Advocate for the petitioner, Mr. D.G. Nagode, learned Advocate for respondent No. 1 and Mr. P.B. Paithankar, learned Advocate for respondent No. 2.

8. Learned Senior Advocate for the petitioner submitted that the tribunal had no jurisdiction to entertain the complaint filed by the respondent No. 2 and the petitioner is not covered under Section 2 (r) of the Act of 1969. Though this point was specifically urged before the Tribunal, in the impugned order the Tribunal has not at considered this aspect and has erroneously proceeded to issue the impugned direction. By placing reliance in *Nitte Education Trust, Nitte, Karkala Taluk, Dakshina Kannada and Another Versus Union of Indian and Another,* **1996 SCC Online Kar 176,** he submitted that the impugned order passed by the Tribunal is without jurisdiction and hence, the same is liable to be quashed and set aside.

9. Learned Advocate for respondent No. 1 by placing reliance in the affidavit-in-reply submitted that in view of repeal of the Act of 1969, as per Section 66 of the Competition Act, cases pertaining to UTPE were

transferred to the Competition Appellate Tribunal, for decision in accordance with the provisions of the Act of 1969. He, therefore, states that the Tribunal had jurisdiction to entertain the complaint.

10. Learned Advocate for respondent No. 2 vehemently argued that the Tribunal had jurisdiction and the order impugned in the present petition is rightly passed by the Tribunal. By placing reliance in the decision in Writ Petition No. 5559/2016 of Madras High Court and Writ Petition – C No. 43139/2019 of Allahabad High Court, the learned Advocate states that the High Courts have entertained the prayer of the students for refund of the fees. Therefore according to him, the Tribunal was justified in entertaining the prayer. Learned Advocate Mr. Paithankar also sought to place reliance on the circulars issued by the University Grants Commission, New Delhi, in support of the claim of respondent No. 2.

11. It is settled legal position by catena of decisions of the Hon'ble Supreme Court that education is not a business, trade or commercial activity.

12. In *St. Stephen's College Versus University of Delhi,* **AIR 1992 SC 1630,** the Hon'ble Supreme Court held :

> *"The educational institutions are not business houses. They do not generate wealth. They cannot survive without public funds*

or private aid. It is said that there is also restraint on collection of students fees. With the restraint on collection of fees, the minorities cannot be saddled with the burden of maintaining educational institutions without grant-in-aid. They do not have economic advantage over others. It is not possible to have educational institutions without State aid".

In *Unni Krishnan, J.P. Versus State of Andhara Pradesh,* **AIR 1993 SC 2178,** it is held :

"We have held the right of education to be implicit in the right to life, because of its inherent fundamental importance. As a matter of fact, we have referred to Articles institutions have been treated as a supplemental activity or a activity supplemental to the main efforts by the State and not as a trade or business……

….We are certainly of the opinion that such activity (establishing of educational institutions) can neither be a trade or a business nor can it be a profession within the meaning of Article 19(g). Trade or business activity normally connotes an activity carried on with a profit motive. Education has never been commerce in this country. Making it one is opposed to ethos, tradition and sensibilities of this nation. The argument to the contrary has an unholy ring to it. Imparting of education has never been treated as a trade or business in this country since times immemorial. It has been treated as a religious duty. It has been treated as a charitable activity. But never as a trade

> *or business. We agree with Gajendragadkar, J., that education in its true aspect is more a mission and vocation rather than profession, trade or business, however wide may be the denotation of the two latter words."*

In view of the enunciation of legal position in the aforesaid ratio, the Appellate Tribunal does not have jurisdiction to entertain the complaint of a student for refund of fees.

13. The Act of 1969 operates in commercial field, the same is designed to ensure that the operation of the economic system does not result in concentration of economic power to the common detriment and is introduced to prohibit such Monopolies and Restrictive Trade Practices as are prejudicial to public interest. The act is enacted to provide that the operation of the economic system does not result in the concentration of economic to the common detriment for the control of Monopolies, for the prohibition of Monopolies and Restrictive Trade Practices and for matters connected therewith or incidental thereto.

Section 2 (r) defines services under the Act of 1969 reads thus:

> *" 'Service' means service of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, entertainment, amusement or the*

purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service."

14. Taking into consideration the statement of object of the Act of 1969 and the definition of services into Section 2 (r), it is clear that the said act has no application to the facts of the present case. The petitioner by imparting education is not doing any trade or business. In this view of the matter also the complaint of respondent No. 2 for refund of fees was not maintainable before the Appellate Tribunal constituted under the Act of 1969.

15. Though the point of jurisdiction was specifically raised by the petitioner before the Appellate Tribunal, the same is not at all dealt with by the Appellate Tribunal while passing the impugned order. The impugned order is, therefore, also vitiated on the ground of non application of mind on the part of the Appellate Tribunal.

16. Learned Advocate for respondent No. 2 tried to argue that the Madras High Court as well as Allahabad High Court have entertained the prayers of the students for refund of the Court fees. Entertainment of the grievance of the students for refund of tuition fees by the High Court does not mean that the Appellate Tribunal constituted under the Act of 1969,

has jurisdiction to entertain the complaint of the petitioner. The circulars of UGC relied upon by the learned Advocate for respondent No. 2 also do not help the case of respondent No. 2 and they do not confer jurisdiction to the Appellate Tribunal.

17. For the aforestated reasons, I am of the considered view that the Appellate Tribunal had no jurisdiction to entertain the complaint of respondent No. 2 seeking refund of the fees from the petitioner. The impugned order is, therefore, without jurisdiction and cannot be sustained. In the result, the petition is allowed in terms of prayer clause 'B'. The impugned order dated 13.03.2012, passed by the Competition Appellate Tribunal, New Delhi, in Unfair Labour Practices, Enquiry No. 82/2007, is hereby quashed and set aside.

18. Liberty is granted to respondent No. 2 to seek refund of the fees by availing appropriate remedy as may be available in law.

19. Rule is made absolute in the above terms. No costs.

(NITIN B. SURYAWANSHI, J.)

S.P.C.