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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.A.Nos.409, 419, 430 and 431 of 2022

Immaculate College of Education for Women,
Run by The Immaculate Heart of Mary Society,
rep. by its Principal,
Pakkumudayanpet,
Puducherry-605 008.

..Appellant in W.A.No.409/2022/Petitioner

Sree Narayana Educational Guidance Society,
(Educational Agency of Sree Narayana
College of Education),
rep. by its Secretary,
Having office at Cemetery Road,
Mahe-673 310,
Union Territory of Pondicherry.

..Appellant in W.A.No.419/2022/Petitioner

M/s.Senthil Education Society,
rep. by its Secretary,
No.36, Thiyaga Raja Street,
Puducherry-605 001.

..Appellant in W.A.No.430/2022

Idhaya College of Arts & Science,
Run by the Immaculate Heart of Mary Society,
rep. by its Secretary,
Pakkumudayanpet,
Puducherry-605 008.

..Appellant in W.A.No.431/2022/Petitioner

Vs

1.Pondicherry University,
rep. by its Registrar,
Kalapet,
Pondicherry-605 014.



2. Deputy Registrar (ACA-II),
Pondicherry University,
Kalapet, Pondicherry-605 014.

..Respondents in all appeals/Respondents

Prayer: Appeals under Clause 15 of the Letters Patent against the common order dated 05.01.2022 in W.P.Nos.25664 of 2010; 22212 of 2009; 25663 of 2010 and 25866 of 2010.

Prayer in W.P.Nos.25664 of 2010, 22212 of 2009, 25663 of 2010: These Writ Petitions are filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records relating to

i) Order No.PU/Aca-7/2009-10/862, dated:05.07.2010 (WP.No.25664 of 2010

ii) Order No.PU/Aca-7/2009-10/673, dated:29.06.2009 (WP.No.22212 of 2009

iii) Order No.PU/Aca-7/2009-10/862, dated:05.07.2010 (WP.No.25663 of 2010

passed by the second respondent in so far as the demand for payment of University Development Fund at the rate of Rs.1,000/- per student payable by the petitioner is concerned and quash the same.

Prayer in W.P.No. 25866 of 2010: This Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records relating to order No.PU/Aca-7/2009-10/862 dated 5.7.2010 passed by the second respondent in so far as the demand for payment of University Development Fund at the rate of Rs.500/- per student payable by the petitioner is concerned and quash the same and pass such further or other orders.

For the Appellants : Mr.Godson Swaminathan for
M/s.Isaac Chambers

For the Respondents : Mrs.A.V.Bharathi

COMMON JUDGMENT
(Delivered by the Hon'ble Chief Justice)

By these writ appeals, a challenge is made to the common order dated 05.01.2022 passed by the learned Single Judge, whereby the writ petitions preferred by the writ appellant colleges were dismissed. The writ petitions were filed to challenge the orders of the second respondent for demand of University Development Fund at the rate of Rs.1,000/- per student.



2. In the writ petitions, the challenge to the demand of the University Development Fund at the rate of Rs.1,000/- per student was made in reference to the Pondicherry University Act, 1985 (for short, "the Act of 1985"). It was submitted that similar levy of fee/fund was the subject-matter of challenge in W.P.No.11870 of 2006 etc. batch and by the order dated 06.09.2008, the writ petitions were disposed of. The learned Single Judge, however, found that the order in W.P.No.11870 of 2006 etc. batch was reversed by a Division Bench of this Court in W.A.Nos.591, 661 to 664 and 1209 to 1304 of 2009, decided on 27.02.2009. The learned Single Judge dismissed the writ petitions holding that the University is empowered to collect the University Development Fund at the rate of Rs.1,000/- per student.

3. Learned counsel for the writ appellants submitted that as per the Act of 1985, the University can provide for the fees to be charged for courses of study in the University and for admission to the examinations, degrees and diplomas of the University. Section 27 of the Act of 1985 does not permit levy of any other charges than the fee for the course/study. Going beyond Section 27 of the Act of 1985 and also beyond his competence, the second respondent has imposed the University Development Fund to be collected from each student. By a resolution of the Executive Council, the word "fee" was changed to "fund" and, accordingly, the respondents started collecting the University Development Fund going beyond their competence. Accordingly, the learned Single Judge ought to have accepted the challenge, as heavy burden has been cast upon the students to pay the University Development Fund, which was initially Rs.25/- and later on enhanced to Rs.1,000/- per student. The learned Single Judge, however, dismissed the writ petitions without even referring to the argument placed by learned counsel for the writ appellants, especially when the University cannot act against the provisions of the Act of 1985 and for that even the Executive Council has no power to amend the Ordinances or statutes. In view of the above, a prayer is made to set aside the impugned common order of the learned Single Judge and also the demand notices issued to the writ appellant colleges, as otherwise they were not collecting the University Development Fund from the students after the interim order passed by the learned Single Judge in the pending writ petitions till its disposal.

4. The writ appeals have been contested by learned counsel appearing for the respondents. Learned counsel submitted that the University Development Fund is being charged and paid by the colleges from the year 1998. Initially, the amount of University Development Fund was Rs.25/- per student for the entire course and subsequently, it was enhanced to Rs.1,000/-



per student in the year 2004. Charging of University Development Fund is one time event for a student and it was collected from the students and being paid by the colleges till a challenge was made in the year 2009.

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5. So far as the legal issue is concerned, learned counsel for the respondents submitted that the appellants have referred to Section 27 of the Act of 1985 ignoring Section 5, which is in reference to the powers of the University. Section 5(20) of the Act of 1985 empowers the University to demand and receive payment of fees and other charges. The word "other charges" includes any charges which may be the University Development Fund. Yet to make the things appropriately clear, the word "fee" was clarified as "fund" by the Executive Council to amend the statutes. The decision of the Executive Council was not challenged by the writ appellant colleges and otherwise, the burden to pay the fee/fund towards the University Development Fund was not on the colleges, but on the students. The colleges are to collect the fund from the students and pay to the University. Yet without burden on the colleges, a challenge to the demand was made and, therefore, the learned Single Judge, finding no reason to entertain the writ petitions, rightly dismissed the same.

6. We have considered the submissions made by learned counsel for the parties and also perused the materials available on record.

7. The challenge to the demand of the University Development Fund has been raised in reference to Section 27(1) (e) of the Act of 1985. The provision aforesaid is quoted herein under for ready reference:

"27. Ordinances.- (1) Subject to the provisions of this Act and the Statutes, the Ordinances may provide for all or any of the following matters, namely:-

(a) ...

(b) ...

(c) ...

(d) ...

(e) the fees to be charged for courses of study in the University and for admission to the examinations, degrees and diplomas of the University;

(emphasis supplied)

8. Per contra, learned counsel for the respondents has referred to Section 5(20) of the Act of 1985, which is also quoted herein under for ready reference:



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"5. Powers of the University.- The University shall have the following powers, namely:-
(1) to (19)

(20) to demand and receive payment of fees and other charges;
...."

(emphasis supplied)

9. Section 27 of the Act of 1985 permits Ordinances on the subject-matter given therein and Section 27(1)(e) permits the fees to be charged for courses of study in the University and for admission to the examinations, degrees and diplomas of the University. Section 27(q) of the Act of 1985 is referred and quoted herein under:

"27(q) all other matters which by this Act or the Statutes may be provided for by the Ordinances."
The aforesaid is quoted to show that all other matters which by the Act of 1985 or the statutes may be provided by the Ordinances

10. In view of the above, the Ordinances may not only cover the subject-matter stated in Section 27(1)(a) to (p), but all other matters which by the Act of 1985 or the statutes may be provided for by the Ordinances. The aforesaid is to be considered in the light of Section 5(20) of the Act of 1985, quoted above.

11. Section 5 of the Act of 1985 refers to powers of the University, which includes power to demand and receive payment of fees and other charges. Thus, not only the fee, but other charges can also be demanded by the University. Accordingly, we do not find any merit in the argument of the writ appellants that the demand of University Development Fund is beyond the competence of the University. Rather, it is covered by Section 5(20) of the Act of 1985, as according to the definition "other charges" cannot exclude the demand of University Development Fund. In view of the above, we do not find that the demand of the University Development Fund was beyond the competence of the University.

12. Learned counsel for the writ appellants has referred to Section 27 of the Act of 1985 without taking note that the subject-matters indicated therein are for the Ordinances and not regarding powers of the University.

13. At this stage, it would be necessary to further refer the facts of this case. The University Development Fund was first imposed in the year 1998, which was a sum of Rs.25/- per student. All the colleges, including the writ appellant



colleges, collected the said amount and paid to the University without any protest. The amount of University Development Fund was enhanced in the year 2004 from Rs.25/- to Rs.1,000/- per student for the entire period of courses of study and again till the year 2009, none of the colleges before us raised an objection to it. Rather, writ petitions were filed when notices raising the demand for payment of the amount were given. It is no doubt true that initially an interim order was passed by the learned Single Judge, but finally the writ petitions were dismissed.

14. It could not be clarified that when the University Development Fund was imposed for the first time in the year 1998, if it was not permissible as per the Act of 1985, why every college was collecting and paying the amount aforesaid without any protest. It was even thereafter collected from the students when the same was enhanced in the year 2004. It may be limited to some students leaving others. The fact remains that the colleges were collecting and paying the amount aforesaid since 1998.

15. The issue is further required to be examined on the liability of the colleges. The amount of University Development Fund is to be collected from the students and is not a burden on the colleges. None of the students has come forward to challenge the demand of the University Development Fund. Rather, it has been challenged by the colleges having no burden on it. The writ appellant colleges are trying to justify the filing of appeals stating that the demand would be a burden on the poor students, without placing any facts and figures in support thereof. In any case, it is not the burden on the colleges. Rather, they have collected it from the students and paid to the University. It is more so when the University Development Fund is to be used for the development of the University in all respects as otherwise, to manage the affairs of the colleges remains difficult in the absence of sufficient fund for it. Therefore, we do not find even reason to challenge the demand of the University Development Fund.

16. In view of the above and taking note of the judgment of the Co-ordinate Bench of this Court, we do not find any ground to cause interference in the order passed by the learned Single Judge. It is even in reference to the decision of the Executive Council to amend the word "fee" to that of "fund". Even if it is ignored, the fact remains that the University Development Fund falls within the definition of "other charges" given in Section 5(20) of the Act of 1985.



17. Examining the case from all corners and finding no merit in the writ appeals, the same are dismissed. There will be no order as to costs. Consequently, C.M.P.Nos.3112, 3117, 3148, 3153, 3182, 3184, 3185 and 3186 of 2022 are closed.

Sd/-

Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

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To:

1.The Registrar,
Pondicherry University,
Kalapet, Pondicherry-605 014.

2.The Deputy Registrar (ACA-II),
Pondicherry University,
Kalapet, Pondicherry-605 014.

+4ccs to M/s.A.U.Bharathi, Advocate SR. No.15348

+1cc to M/s.Isaac Chambers, Advocate SR. No.15940

W.A.Nos.409, 419, 430 and 431 of 2022

RSI (CO)

PR (17/03/2022)